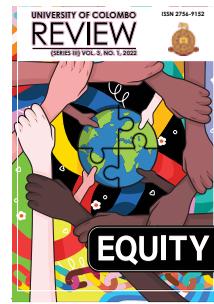


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## Instigating murder? Gendered inequities in the interrogations of a primary witness in a murder trial

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### ABSTRACT

Women's confrontation with the justice system is often replete with inequalities and inequities of gender. Approaching the law through cultural theories that focus on gender and power opens up an interdisciplinary field at the intersections of law and culture. Through a feminist reading of a judicial narrative of a murder trial at the appellate court in Sri Lanka, this exploratory article focuses on gender inequities that surface in the narrative of a criminal law case.

Narrative, or storytelling, is the site of an important intersection of literature and law. Legal narratives imagine the likelihood of the causal elements of a crime, perceived and understood from each jurist's/judge's subjectivity. They draw on dominant cultural codes of behavior and thinking. Thus, legal narratives become a site of contest in which ideologies are reflected, reinforced, produced, and reproduced, and a discursive space in which gender subjectivities are constructed, deconstructed, and reconstructed to "explain" a narrative representation. The exploration of judicial narratives, through cultural and feminist theoretical lenses, offers insights into the gendered constructions of agency and morality in the judgment, while its language structures and terminology identify and position the woman as both agent and vulnerable, ultimately holding her responsible for the crime. The gendered discourse that produces the woman in this judicial narrative, and how the woman is positioned in the narrative foreground the gender inequities that emerge through/in judicial interpretations.

### KEYWORDS:

Literature, law, gender, feminist critical theory, cultural theory, agency, power.

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## Introduction

In Sri Lanka, in the last few decades, laws have been amended and continue to be amended to bring in inclusive language, reflecting scholars' and activists' perseverance towards gender equality in, and before, the law. Yet, even as men and women are considered equal before a particular law in theory, sociocultural expectations and “norms” often create an inequitable reality for subjects before the law.

In the scholarship on legal narratives, scholars challenge the language that influences the law, and explore the gendered subjectivities that are inherent in judicial systems<sup>1</sup>. Judicial narratives are sites of contest in which various ideologies construct, resist, and reinforce dominant social narratives. In these narratives, we encounter the inequities inherent in legal interpretations, as courts subscribe to, and in turn, reinforce dominant cultural codes, prescriptions, and perspectives. The exploration of legal narratives and their analysis through the lens' of cultural theory offers a space in which ideologies encounter each other, creating a site of submission and/or resistance. In arguing for a space for cultural theory to engage with law, Mezey (2001) posits that the interdisciplinary project of exploring the law through cultural theory is critical to “understand law not in relationship to culture, as if they were two discrete realms of action and discourse, but to make sense of law as culture and culture as law, and *to begin to think about how to talk about and interpret law in cultural terms*” (p. 36, my emphasis). Further, using feminist theoretical perspectives opens up questions on how the justice system reflects and reinforces socio-political and cultural understandings of identities, gendered discourses, as well as discourses on class and race among others, and how they shape the application and implementation of the law.

Narrative, or storytelling, forms an important intersection of literature and law. Both fields “converge around...fundamental issues (such) as language and interpretation, the formation of subjectivity, and the connection of narrative and authority” (Dolin, 2018, p. 1). The making, transmission, and reception of stories are layered, and thus their analysis in literature offers us a space in which narrative divergences can be explored. In a legal trial, at least two competing stories are constructed based on the submitted evidence. As “the ability to construct and tell a convincing story is also a crucial part of the trial lawyer’s rhetorical toolbox”, trials are often “a contest between two competing versions of a traumatic incident” in which particular types of narratives “are performed” (Dolin, 2007, pp. 29-30). As an author does in literature, in legal narratives, individuals are constructed and positioned by agents of the judiciary (lawyers, judges, and juries) during a trial.

Narrative content and form are pivotal in legal decision-making. A legal case is presented by the prosecution and the defense as a “story”, based on the same evidence that is causally connected by differing perspectives. These stories are made up of events, situations, and characters, among other elements, to construct a meaningful narrative, and they are interpreted by the court – the judge and jury – to conclude which version of the story “makes sense”. The evidence is interpreted within a framework of the applicable legislation, case law, and sociocultural understandings and perspectives. This calls on the layman’s (the jury) and the judiciary’s understandings of how the individuals involved in the case are meant to have behaved, could have behaved, and did (or did not) behave in

the given circumstances. These understandings mediate the subsequent interpretations of narratives. Margaret Somers (1994), exploring identity formation, argues that

social life is itself *storied*... (and) that stories guide action; that people construct identities...by locating themselves of being located within a repertoire of emplotted stories; that ‘experience’ is constituted through narratives; that people make sense of what has happened and is happening to them by attempting to assemble or in some way to integrate these happenings within one or more narratives, and that people are guided to act in certain ways, and not others, on the basis of the projections, expectations, and memories derived from a multiplicity but ultimately limited repertoire of available social, public and cultural narratives (p. 614).

Thus, while the trial constructs at least two stories based on the evidence, the court constructs a single unified story made of the constellation of relationships evidenced, that selectively appropriates the evidence to constitute what Somers terms “causal emplotment”<sup>2</sup>. She argues that “narrativity demands that we discern the meaning of any single event only in temporal and spatial relationship to other events” (p. 616). It is in this formulation of a narrative that sociocultural ideologies become evident.

The manifestation of narrative in law is pervasive in the way stories are told and retold, received, understood and interpreted because “narratives do not simply recount happenings; they give them shape, give them a point, argue their import, proclaim their results” (Brooks, 2002, p. 4; Brooks, 2006, p. 13). Therefore, the interpretation of the “stories” shared, and how they are received during a trial becomes a significant discursive space in which identities and subjectivities are constructed, deconstructed, and reconstructed to “explain” the chain of events of the story. The importance of these narratives lies in how they are understood as well as interpreted by the listeners such as the police, judges, and the juries (Daly, 2006). Crucially, legal narratives imagine the likelihood of the causal elements of a crime, as perceived and understood by each jurist/judge. Thus, in criminal law cases, a jury/judge has to grapple with the tools of imagination and reconstruction, based on subjective interpretations of the narrative/s that are argued at the trial. As this imagining involves the interpretation of collated evidence to reflect the circumstances of the crime, the listener draws in (and perhaps even relies on) dominant cultural codes and understandings of the behavior and thinking of those involved in the crime. These understandings, interpretations, and reasonings become legitimized thereafter as ‘facts’, rather than a subjective interpretation, given the nature of courtroom arguments and the law’s perceived authority, which generally offers its findings as “truth”.

Legal narratives are located within a discourse informed by the view that law gains authority through its “claim to truth”, and this authority constructs a legal discourse that often disqualifies other knowledge; and, through its power to define behavior acquires the power to set and reset the parameters of particular behavior (Brooks, 2002 & 2006; Smart 1989 & 2002). While law reflects cultural values, there is a dynamic and dialectical relationship between the reproduction and reinforcement of these values which emerge from judicial interpretations, reasoning, and decisions. Thus, legal narratives become a site of contest in which ideologies are reflected, reinforced, produced, and reproduced. Studying the ideologies that are reflected in and produced through judicial interpretations offers insight into the (gendered) inequities that emerge through the judiciary’s production and reinforcement of sociocultural expectations and “norms”.

Intervening in this space as a literature scholar, my interest is in the exploration of the discursive power of legal discourses. While acknowledging that women's confrontation with the justice system is generally replete with gendered inequalities, as well as economic class, race and other structural disadvantages, my focus here is on the inequities that surface in judicial narratives, particularly of criminal law cases, in which women play a primary role either as perpetrator, victim or witness, although these legal terms are not necessarily watertight. These inequities reflect the lived realities women are forced to confront when they attempt to access the justice system.

### Gender equity in law

Wickramasinghe (2018) defines gender equity as “the biologically and socially constructed differences between men and women that require acknowledgment from the law” and explains that, in essence, while gender equality stems from an assumption of sameness, equity takes into account the difference debates within feminism (pp. 4-7). Citing Savitri Goonesekera's (2012) assertion that the content and scope of substantive gender equality is “a norm that seeks to achieve de facto and de jure equality by addressing women's experience of disadvantage, discrimination and marginalization”, Wickramasinghe argues that a consideration of gender equity is imperative to recognize “the differences, needs, and vulnerabilities of women and men that emanate from their sex/gender, political, economic, social, and cultural differences and inequities” (p. 7). She ultimately argues for the concept of equity to be used concurrently with the concept of equality to achieve gender justice by “allowing the gaps of one concept to be fulfilled by the other; ensuring that the disadvantages of one are rectified by the other; and guaranteeing that the limitations/expansions of one are balanced by the other” (p. 9).

While a witness is gender-neutral before the law, the sociocultural interpretations of the witness's actions and behavior in the case evince a gendered positioning in the judicial narrative. As the trial progresses, the judgment offers a narrative of a woman who did not (allegedly) conform to the court's prescriptive cultural standards of behavior. In the judicial narrative under study, her lived realities and vulnerabilities as an informal worker/employee and a single mother, of which the court is silent, evince the gendered inequities that are reinforced by the narrative. Thus, in this article, I explore the inequities that surface during the trial through the narrative of its judgment, to gain an understanding of the shifts in perceptions and perspectives of the court as a female witness shifts in position from vulnerable victim and primary witness to possible perpetrator or instigator of a murder.

Feminist perspectives in legal scholarship has shifted over time, from challenging male-centered law and interrogating the different roles men and women play (and are portrayed to play) in crime and criminal justice, to attempting to make women more “visible as active subjects rather than as passive victims of male oppression” (Daly, 2006, pp. 205-213). In the 1980s, scholarly interventions began focusing on the justice system through analyzes that drew on critical theory to discuss gendered power relations as well as those of class, race and patriarchy, while feminist scholarship in the 1990s posed “major shifts... (with) ... greater emphasis placed on differences among women, representations

of women and gender, and different epistemologies in knowledge production” (Daly, 2006, pp. 205-206). The recognition and acknowledgment of gender differences have highlighted the gendered inequities that surface in the lived experiences of women.

Thus, feminist legal scholarship problematizes the ways in which sex/gender structure women’s and men’s identities and actions, and the ways in which men and women, as active agents, reproduce these structures. It also focuses on the intersections of gender, class, race, and sexual difference, and the relation law has to the institutionalization of cultural and structural categories (Daly, 2006). The constructions of gender<sup>3</sup> within legal discourse then reflects these “norms” while simultaneously reinforcing them through the law’s problematic claim to “truth” and “objectivity”. Moreover, feminist scholars assert that the acceptance of, and subscription to, dominant cultural ideologies by the judiciary could go so far as to violate the individual subject positions of women. Thus, feminist interventions in the legal sphere begin by asking questions about the gendered understandings, assumptions, and relations “in the shaping of crime, justice and criminology” (Daly, 2006, p. 205).

While Binder and Weisberg (2000) counsel that we explore law’s representations of the social “aesthetically... according to the society it forms, the identities it defines, the preferences it encourages, and the subjective experience it enables” (p. 463), Mezey (2001) calls for interdisciplinary cultural analyzes of the law to understand the intersections of law and culture, and the “ways in which specific cultural practices or identities coincide and collide with specific legal rules or conventions, thereby altering the meanings of both” (p. 58).

In Sri Lanka, recent interdisciplinary scholarship on legal narratives has been predominantly on criminal narratives of rape. Sandani Abeywardena (2016) explored the link between language and the law, the dynamics of power in the courtroom, and the politics of gender using a critical discourse analysis approach to study rape cases between 1997 to 2010 in Sri Lanka. She concluded that there exists an “expected code of conduct” for a victim of rape and those who don’t conform to this code have the blame and responsibility shifted on to them, reinforcing stereotypes and vesting on them the authority of the law, violating the principles of fairness, objectivity, impartiality, and the rights of the victim. In Samararatne’s (2020) study of the system of adjudication and the legal and political culture in which judicial officers operate, an analysis of nine cases of gender justice in Sri Lanka is provided. Concluding that the link between female judges and gender justice is, at best, tenuous, she asserts that the ways in which the system of adjudication operates better explains the dynamic of gender justice in adjudication. Thus, she calls for the development of both a feminist consciousness that requires revisions and reforms of law that discriminate against women, and a legal culture that recognizes and is sensitive to the social discrimination and exclusion of women. I locate my research within this broad area of exploring the system of adjudication, and particularly on how it contends with gendered constructions of legal narratives, to problematize the structural inequities in the judicial system.

I therefore study the appellate court’s judgment of the contentions raised following a murder trial in which both accused were convicted for murder and sentenced to death. The method for my study comprised an analysis of the judgment as narrative, read and analyzed

through a feminist theoretical lens to explore the gendered discourse that emerged in its text. Through this analysis, I explore how the woman is positioned in the narrative, and the gender inequities that are revealed by the cultural parameters that produce her.

In my analysis, I problematize the gendered constructions of agency and morality in the judgment, as the appellate court is called on to examine the creditworthiness of the prosecution's primary witness. In this case, the witness's behavior, conduct, and decisions are questioned and interpreted by the court to signify her "total incredibility and complete lack of creditworthiness" (*Wimalaratne*, 2008, p. 104) while her gendered, classed subjectivity – as a woman financially dependent on her alleged abuser and a single mother – remains undiscussed, albeit referenced, and essentially submerged. In contrast, there are no assumptions about, or allegations against, the morality of either her male abuser or the man who allegedly killed the abusive man.

### The case study

Understanding legal decision-making and decisions through a feminist<sup>4</sup> mode of inquiry allows us to explore the ways in which crime is differently experienced by male/female bodies, and masculine/ feminine subjects (Daly, 2006). Through an analysis of this case, I attempt to problematize the judicial narrative's positioning of the woman, and the gendered discourse that produces the woman and men involved.

The judgment I explore here is of *Wimalaratne Silva and another v. Attorney-General* [2008] 1 Sri L.R. This judgment is of the contentions forwarded in the Appeal submitted by two men who were convicted, for the murder of another man, and sentenced to death by the Ampara High Court in 1997. The two men, Appu and Putha<sup>5</sup>, contended in appeal that (A) the prosecution's main witness displayed a complete lack of creditworthiness; (B) due to the absence of direct evidence as to the actus reus, there is no clear cut evidence of who caused the death by way of individual liability or joint liability on the basis of common intention; (C) the two accused were seated in wrong places during the trial giving rise to confusion; and (D) the judge had not properly scrutinized and analyzed the defense's evidence, had not evaluated the evidence with regard to defense of alibi offered by the accused, and had misdirected himself on the burden of proof. In my analysis, I focus on the examination of the first contention, though discussion of, and reference to, the others will be included where relevant.

The "facts" of the case are given at the beginning of the judgment, and are narrated thus:

The deceased Piyaratne, the main prosecution witness Siriyawathie, the 1st accused 'Appu' and his younger brother, the 2nd accused 'Putha' were all living in close proximity to each other in the village of... Siriyawathie's husband had expired...and the young 32 year old (*sic*) widow was living alone with her...children... Siriyawathie eked out an existence by doing manual labour in the deceased Priyaratne's paddy land. The deceased was (*sic*) middle aged (*sic*) man of around 37 years at the time of his death and was having constant quarrels with his wife Sumanawathie over his involvement with other women and Siriyawathie. A few days before the incident, Sumanawathi had

left the deceased Piyaratne and gone with her two daughters...in search of employment. The 21 year old (*sic*) first accused Wimalaratne Silva alias Appu too closely associated with the deceased Piyaratne and of late had developed an intimacy with the young widow Siriyawathie. (*Wimalaratne*, 2008, p. 106)

Here, each of the main “characters” in the “story” are positioned in the narrative very specifically. The witness Siriyawathie’s<sup>6</sup> identity is tied to her singlehood (as widow) and motherhood, and financial dependence on informal work. Piyaratne<sup>7</sup> is painted in broad strokes as a philanderer, in his wife’s view. Appu (whose brother is the second appellant, Putha) was a villager who had “developed an intimacy” with Siriyawathie. With this introduction to the characters of the story, the setting is recounted as

...in the far-flung hamlet of... there arose the eternal triangle, the young widow fighting for survival with no scruples about her morals, the middle-aged man who provided employment to her having quarrels with his wife and the youngster just attained manhood attracted to the young widow. The formula was therefore ripe to generate criminal activity that ensured to disturb the tranquillity of this village. (*Wimalaratne*, 2008, p. 106)

Thus, the judgment narrates a romanticized setting of a “far-flung hamlet”, a triangle of relationships between the characters, and a cast of stereotypes – the “young widow fighting for survival”, and the demonized older man from whose “clutches” she needed to be saved by the “youngster...just attained manhood”, who is positioned as the “savior”<sup>8</sup>. Yet, in the narrative of the court’s examination of evidence, there are shifts in these positions. Siriyawathie’s identity as the “young widow” shifts from one tied to her economic status (“eking out an existence” and “fighting for survival”) to her morality (“with no scruples about her morals”). Piyaratne shifts in power and authority as he changes from a man left by his wife after quarrels about his philandering to the one who provided Siriyawathie employment. Appu’s agency shifts from the active to the passive with him having “developed an intimacy” to being “attracted to the young widow”. Significantly, it is only the woman’s morality that is highlighted and marked, while the men’s morality remains unmentioned and unmarked. These shifts, and their connotations, are suggestive and influential, as they would inform and mediate the interpretations of the statements and action made and taken, respectively, by the characters, in the examination of their narrative veracity.

Having set the stage thus, and elucidated the disruptive elements within it, the narrative offers the evidence that was led by the prosecution at the trial in the High Court. It asserts that the case had rested entirely on circumstantial evidence, and lists the witnesses who had given evidence which includes Siriyawathie and several others. The narrative then goes on to construct the story based on the findings of the case as led by the evidence of witnesses. This evidence encompasses Piyaratne’s visit to the homes of three of Siriyawathie’s neighbours on the night of the incident, and alleged inebriation, as well as him being seen conversing with Appu on the road in front of Siriyawathie’s home. The narrative further recounts that Piyaratne had attempted to coerce Siriyawathie to his house, and upon her refusal, had assaulted her. When Appu intervened, he too was

assaulted by Piyaratne, and the former had subsequently left the premises. Piyaratne too had subsequently left, after having stood on the road issuing death threats to Siriyawathie. The next day, Siriyawathie had told Appu's brother, Putha, that she was considering selling her home and leaving the village as she feared Piyaratne, and Putha had assured her that Piyaratne had left the village. Later, Putha had told another neighbour, who was also a witness at the trial, that Piyaratne would not be returning to the village, and later still had told Siriyawathie that he and Appu had killed Piyaratne. Thirteen days later, Piyaratne's body was found in a marshy land adjacent to Appu's and Putha's paddy land.

Finally, the judgment narrates the examination of Appu's and Putha's contentions, "having perused the entirety of the proceedings, the judgment of the learned trial Judge, the Information Book Extracts and the oral and written submissions tendered to court" (*Wimalaratne*, 2008, pp. 110-111).

The examination and analysis of the legalities of the judgment is outside the scope of this article. My intervention here is in exploring the socio-cultural representations and constructions that emerge in the judicial narrative as it reasons its way to a conclusion and verdict. Therefore, my attempt here was to problematize how the "facts" of the case are narrated and interpreted, to explore the socio-cultural assumptions underlying such interpretations, and to gain insight into the gendered inequities in judicial interpretations.

### Positions of agency

Having narrated the findings of the High Court thus far, the Appellate Court "emphasized that the paramount question that has to be answered first is the question of credibility of the main witness Siriyawathie in order to arrive at a reasonable conclusion..." (*Wimalaratne*, 2008, p. 111). It held that the features examined in Siriyawathie's evidence were the contradictions that had surfaced at the High Court trial, which the Trial Judge had "disregarded...on the basis that they do not go to the root of Siriyawathie's evidence" (*Wimalaratne*, 2008, p. 111). It asserted that even though Siriyawathie had initially denied admitting giving a false statement to the police, and false evidence at the inquest and non-summary inquiry, it had been indicated otherwise at the non-summary proceedings. When she later admitted to having given false evidence, she had been remanded. She is also positioned as "not only a belated witness but also a reluctant witness as she made no attempt to divulge...vital information either to the Grama Sevaka or the Police, until she was apprehended by the Police and her statement was recorded..." (*Wimalaratne*, pp. 111-112).

Taking into account her explanation for the delay (that she waited for the body to be found), the narrative concludes that "under the circumstances, the conduct of Siriyawathie was more in the nature of an accomplice who may have instigated the commission of the offence" (*Wimalaratne*, 2008, p. 112). Here, then, is a further shift in Siriyawathie's character: from a woman eking out her existence to one with "no scruples about her morals", akin to an *accomplice* to the killing who may have even *instigated* the conduct. So, how did an individual who is essentially a bystander, and legally a witness, shift to being a possible accomplice/instigator of a killing within the course of the exploration of the evidence of the case?

The narrative concludes that Siriyawathie's denial of the relationships at the various junctures of the case go to the root of the matter, and asserts that features in Siriyawathie's evidence, despite having been "vehemently denied...at the High Court trial", indicate her "total unreliability and complete lack of creditworthiness" (*Wimalaratne*, 2008, p. 112).

The narrative posits that

"... it is quite evident that Siriyawathie was the mistress of both. As the *entire episode* revolved around the *relationship of Siriyawathie* with the deceased (Piyaratne) and the 1st accused-appellant (Appu), and this contradiction goes to the root of the matter as far as Siriyawathie's creditworthiness was concerned" (my emphases). (*Wimalaratne*, 2008, p. 112)

The structure of the phrase "the relationship of Siriyawathie" locates agency in Siriyawathie. It places the noun "relationship" at the head of the phrase as the central element, and associates it with Siriyawathie. Having constructed such agency, the narrative holds that her denial of the action goes to the root of the matter. With this is an implicit shift in the roles of the men Piyaratne and Appu: with Siriyawathie positioned as agent, their positions shift to being merely the target recipients of her agency rather than active participants in the events.

Implicit in this shift is also the position of power Siriyawathie is offered through her positioning in the narrative. Piyaratne slides from the demonized abuser to victim. Thus, the narrative positions Piyaratne as the ultimate "victim". Siriyawathie had a relationship with him; his wife left him; his inebriated attempt to coerce Siriyawathie to his house in the middle of the night failed, and then he is killed. Appu's position as "savior" becomes blurred as he is now positioned not as an agent but as the addressee of Siriyawathie's decision/s. These shifts in character, from vulnerable victim to agent, to possible accomplice/instigator in Siriyawathie's case; and from demonized abuser to victim in Piyaratne's case, highlight questions of narrative interpretation.

The representation of a woman as a "mistress" is usually understood to connote a lack of agency. Yet, here, the term "mistress" enters the narrative tied to questions of "morality", and this linkage positions Siriyawathie as the agent of the relationships, invoking gendered stereotypes of a "deviant", "non-conforming" woman with agency to form (illicit) relationships with the men of her choice. The use of the word "mistress", used in the context of a woman who has a relationship with a married man, further frames her conduct as immoral and invokes assumptions about the relationship. In the context of this type of relationship being considered to be "illicit" or "transgressive" socially, the agent of the relationship also becomes the repository of blame. Here, while Piyaratne, the married man transgresses, it is nevertheless the (single, widowed) woman who is positioned as the blameworthy agent. Further, she is positioned as "mistress" in relation to the single man, Appu. An argument I don't explore here is the possibility that this narrative also subscribes to the stereotype of a single woman who makes her own choice about her sexual conduct and partner as being immoral. Nevertheless, with the woman positioned as an "immoral" agent of "illicit" relationships, the men's position in the relationships remains unexamined and unmarked. Thus, "mistress" here, while used to identify the woman, also positions

her within relationships that are considered transgressive, and she is made to bear the sole blame and responsibility for the conduct.

Reinforcing this position is the reference to the “entire episode”. This is assumed to mean the alleged killing of Piyaratne by Appu (and his brother). Appu (the alleged perpetrator) and Piyaratne (the victim) are linked here by the alleged relationship each had with the same person. In locating the killing to have revolved around the relationships the woman (as agent) had, and positioning the relationships and murder consequentially, an argument emerges for the agent of the relationships to be held, at the very least, to have been complicit in the killing. It is this precise location of agency in Siriyawathie – in having had the relationships and failing to behave prescriptively (by making a “timely” complaint to the police) – that leads to her being deemed a possible accomplice and/or instigator. Implicit in the expectation that a woman should have taken the initiative in making a complaint – about her employer who entered her land, was inebriated, persisted in attempting to gain entry into her home, and then assaulted her for refusing him – is a male-centered perspective of having nothing to fear. This is not a woman’s perspective of having everything to fear, from stigma and violence to legal judgments, as evidenced here.

Entertaining a hypothetical recasting of the narrative by granting agency to the two men involved in the trial – that the entire episode revolved *around the relationships Appu and Piyaratne had with X* – opens up a space to further explore Siriyawathie’s subjectivity as a single woman without financial stability (who is “eking out an existence” and “fighting for survival”) and on whom there are multiple dependents (children). Recast this way, Appu (the “youngster”) would be held to be merely conducting a relationship with a single woman, legal by any account. In contrast, arguing that Piyaratne had had a “relationship” with Siriyawathie foregrounds the inequities in this relationship, given that he was her employer, and taking into account her rejection of him on the night of the incident. Supportive of such an interpretation is that she had confided in Putha that she was considering selling her land and moving from the village “in fear of...Piyaratne” (*Wimalaratne*, 2008, p. 108). Thus, the narrative of a man who has made advances on his employee, who arrives at her home in the night, persists in attempting to coerce her to accompany him to his house, and assaults her when she refuses him, signals a palpable inequitable power structure in which the woman is in the weaker position. At best, these inequities evince an involuntary or coercive relationship, which would not position Siriyawathie as an agent, but rather, as a single woman who had merely (allegedly) had a relationship with a single man (Appu), both consenting adults. Would such an exploration provide an alternate perspective to the evidence that indicated there was a “relationship” between Piyaratne and Siriyawathie? Would it create a space in which to explore whether Siriyawathie did, indeed, have “blameworthy” “relationships” that would ultimately compromise her credibility? In the narrative’s failure to explore the witness’s lived experience/ subjectivity, there is then a perpetuation of social inequities. Moreover, the court’s male-centered perspective and subscription to dominant gender stereotypes highlight the gendered inequities that work against women in the judicial system.

If the courts were to have placed the burden of agency for the relationships on the men, Siriyawathie's position in the narrative may have been understood differently. While the knowledge Siriyawathie added to the trial through her witness testimony would likely not differ, it is likely that she would be positioned as multiply victimized: exploited, harassed, assaulted, and threatened by her employer. This positioning would amend the definition of the "relationship" to which the court alludes, and the narrative may have been of a single woman who had a relationship with a single man, while being harassed by her employer. Thus, if we were to complicate this narrative (with the possibility of one relationship being one of coercion, an unequal one based on force), questions on Siriyawathie's morality would become irrelevant. Thus, awareness of the gendered subjectivity of an individual could yield alternate reasonings that could result in a more equitable application of judicial interpretations.

Yet, Siriyawathie is not offered such a recasting. Instead, being called on to provide primary evidence in the murder trial, it is she – and her behavior and conduct – which then become the focus of the appellate court's examination. Thus, in this case, we are confronted with a trial within a trial. Within the trial to examine the accused-appellants' contentions, there is a trial of sorts of Siriyawathie's failure to conduct herself prescriptively, leading to an examination of her credibility. However, an important distinction here is that while the accused were offered opportunities to defend their position at the trial, and subsequently to appeal the decision made against them, the nature of the legal procedure that unfolds in the appellate court does not allow Siriyawathie a voice to mount a defense. The evidence against her is examined despite her own deafening silence.

### Positions of morality

It is well understood that sociocultural standards of morality apply to men and women differently. Here, the primary roles in the narrative are played by a married man who attempted to (sexually?) harass and coerce his employee, a single man who chose to conduct a relationship with a woman who may have already been in another relationship, and a single woman who allegedly had an affair with a man while being harassed by her employee. Yet, of the three, only the woman is deemed to have "no scruples about her morality".

The court begins its examination of Siriyawathie by referencing its understanding of her lack of "moral scruples" for allegedly having a "relationship" with "both" men. As discussed above, by identifying her as the "mistress" of the men, the narrative represents her conduct as deviant, transgressive, and immoral. Thus, it implicitly offers, in this context, both a definition and the parameters of morality. Yet, these parameters are neither applied nor explored in relation to the narratives of the men. In line with Somers' (2001) argument that identities are constructed by the narratives within which we place ourselves and others, I argue that this interpretation by the court mediates the subsequent explorations of Siriyawathie's identity, behavior, and conduct. What are the odds that a woman deemed and already judged to have "no scruples about her morals" have to be seen in a positive light whatever her subsequent actions and decisions? The narrative concludes that Siriyawathie's

denial of the “relationships”, read together with the evidence indicating the existence of the “relationships”, mark a significant contradiction in her witness statements which is at the core of the argument that ultimately condemns her.

The morality of any other person in the narrative – including of the married man who attempted to force Siriyawathie into his home, assaulted her and her “savior” Appu, and who threatened to kill them while in a state of inebriation – remains unexamined. There are no conclusions made on the morality of the men who allegedly chose to conduct a relationship with the same woman, and who chose to resolve this dilemma or “the eternal triangle” through violence. Such silences highlight questions of how far the interpretations of the primary witness’s statements were mediated by the “verdicts” on the witness’s adherence to the court’s understanding of “morality”. It could be argued, however, that while the court offered opinions on her morality, it did not allow itself to be mediated and/or influenced by such opinion in reaching its verdict. Yet, why was her “morality” examined and opined on in the first place? Such questions are central to a feminist reading as they provide insights into how the roles, behavior, conduct, and decisions of the men and women represented in the text are narrated. These representations, in turn, offer insights into the structural inequities in the judicial system. In positioning Siriyawathie as being “immoral” her identity is devalued, and by not attempting to understand her hesitancy to report a murder she had heard about (and not directly witnessed), her evidence is ultimately rejected.

Consequently, in the examination of the first contention, it is decided that Siriyawathie is not “creditworthy” as she had denied being involved in “relationships” with the men despite evidence indicating otherwise. Yet, at the beginning of the examination of evidence, the court contends that Appu’s and Putha’s statements (that they were at home from 8.30pm onwards on the night of the killing) are contradicted by witness statements that indicate that Appu had been seen at /or in the proximity of Siriyawathie’s house even at 9.45 pm. However, this contradiction in the accused-appellants’ statements is left unexamined while the court goes on to examine the contradictions in Siriyawathie’s statements. It is unclear why there is a privileging of the contradictions in some statements over those in others, except that the appellate court’s duty, in its narrowest sense, is to examine (only) Siriyawathie’s credibility. Yet, it is impossible to ignore that here, the woman remains in a quasi-trial of her own and that it is her morality, victimhood, agency, and “creditworthiness” which are the focal points of the narrative.

## Conclusions

In her representation (as widow, single mother, and economically dependent), the primary witness Siriyawathie straddles an ambiguous space in which she is positioned as vulnerable even as she is quasi agentive. She is constructed as the vulnerable woman in need of a savior while she is simultaneously the wily, lying woman who victimized the men and may have even killed one with an invisible hand. These shifts in roles can be problematized when read against the lived reality of women and the sociocultural setting in which the “story” takes place. Placing agency on the woman positions her as an individual

who was possibly involved in the crime (rather than being a mere bystander and/or witness) as it is explicitly supposed that she conducted herself more like an accomplice and/or an instigator. Thus, while the trial was to examine the guilt of two men who allegedly killed another man, the appeal becomes, implicitly, about the female witness's guilt – for allegedly lying in her statements to the police, delaying the reporting of the crime, and her assumed motives for being akin to/an accomplice and/or instigator. Here, then, the “fault” of resorting to violence – by and between the men – ultimately shifts to the bystander witness, who is held to be the agent of the preceding action based solely on her having allegedly conducted relationships with the men, although the power structures inherent in these “relationships” remain unexplored in the narrative. These constructs lay bare the gendered inequities in judicial interpretations that subscribe to dominant cultural ideologies and gendered stereotypes.

In conclusion, in the exploration of the gendered discourse that produces the woman in this judicial narrative, there emerges the various cultural parameters and frameworks within which the woman is positioned. This positioning highlights the dominant socio-cultural ideologies to which the court subscribes in reaching its verdict, and how far these mediate the examination of the applicable legal parameters and limits. Access to the High Court's trial documents, as well as the other documents that were at the disposal of the appellate court – such as the oral and written statements admitted in evidence – could offer further insights into the reasoning of the court and the ways in which the events have been interpreted. An exploration of the socio-cultural constructions that emerge in the discursive space of judicial narratives offer, therefore, an invaluable opportunity to understand the underlying principles, belief systems, socio-cultural considerations, and ideologies of the judiciary. They also offer insights into the gender subjectivities and structural inequities that confront women who access the judicial system in Sri Lanka. Moreover, this judicial narrative could be further explored to study how a woman's behavior, conduct, and very body is policed and disciplined/ punished, while men's bodies remain untouched – marking the gendered structural inequities inherent in the judicial system.

There is an argument to be made, therefore, for a more reflexive exploration of individual subjectivity in the judicial system, based on the understanding that judicial officers are human, and thereby each individual's belief system and principles are conditioned and mediated by socio-cultural aspects that are unique to him/her. By conducting a cultural, feminist analysis of judicial narratives, this article attempted to add a more nuanced understanding of cultural politics: of how women are produced in judicial narratives, and the dialectic of the judiciary reflecting sociocultural prescriptions while reinforcing them in application. Such an exploration is also necessary for challenging interpretations that are based on the production of (gendered) stereotypes (and their related prescriptive roles, behaviors, and conduct) and for understanding experience and subjectivities as intersectional and multidimensional. In analysing the language of the law, there is much scope for advocating for a more gender-sensitive approach to the law.

1. See Smart (1989, 2002 and 1990), Gelsthorpe (2003), and Daly (2006) for useful discussions on the representations and reflections of gendered subjectivities in judicial systems generally, and de Mel and Samararatne (2017) for a compelling discussion on the ways in which “dominant gender norms are mobilized by law enforcement authorities and those adjudicating the law to determine who is afforded sanctuary within it and who is cast out” (18) when women attempt to gain justice through the law.
2. Margaret Somers (1994) identifies four features of a reframed narrativity for the social sciences: 1) relationality of parts, 2) causal emplotment, 3) selective appropriation, and 4) temporality, sequence, and place. She explains that narrativity turns events into episodes through ‘emplotment’, and causal emplotment is the accounting of why a narrative has the story that it does (p. 616).
3. See Hunter, Rosemary, Clare McGlynn, and Erika Rackley (2010) for a discussion of feminist theoretical concerns about the ways in which law constructs gender.
4. The use of a feminist perspective, while appreciably limiting, undoubtedly seeks to expand on different kinds of knowledge about women, gender, and crime. Daly (2006) offers a useful discussion of this.
5. I use the names of the individuals as they are given in the judgment, which is a public document, and to distance my analysis from strictly legal terms such as the “convicted”, “accused”, “accused-appellant”.
6. This witness’s name is spelled as both “Siriawathie” and “Sriawathi” throughout the narrative. As there are more references in the former spelling, I have retained this to avoid confusion except where the latter is used in direct quotations from the text.
7. The victim’s name is spelled as both “Piyaratne” and “Priyaratne” throughout the narrative. As there are more references in the former spelling, I have retained this here to avoid confusion except where the latter is used in direct quotations from the text.
8. The narrative later asserts that Appu “saved” Siriawathie from Piyaratne’s “clutches” and uses the word “savior” to describe Appu (*Wimalaratne*, 2008, p. 117).

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