

RIGHTS OF WOMEN: A COMPREHENSIVE GUIDE TO LEGAL PROTECTIONS FOR WOMEN

Ritu Malik¹, Dr. Shipra Gupta², Monika Jakhar³, Dr. Madhu Bala⁴, Robin Mahiwal⁵, Dr. Pranav Ranga⁶

¹Research Scholar (Phd.), Department of Law, Maharishi Markandeshwar (Deemed to be University), Mullana-Ambala.

²Professor, Department of Law, Maharishi Markandeshwar (Deemed to be University), Mullana-Ambala.

³Research Scholar (LL.M.), Department of Law, Maharishi Markandeshwar (Deemed to be University), Mullana-Ambala.

⁴Assistant Professor, Department of Law, Maharishi Markandeshwar (Deemed to be University), Mullana-Ambala.

⁵Research Scholar (LL.M.), Department of Law, Maharishi Markandeshwar (Deemed to be University), Mullana-Ambala.

⁶Assistant Professor, Department of Law, Maharishi Markandeshwar (Deemed to be University), Mullana-Ambala.

Abstract

The rights of the women are part of the realization of human rights, and democratic governance. In the last several decades, legal regimes all over the world have had to develop in order to deal with gender inequality with the help of constitutional provisions, legal frameworks, and judicial activism. The Constitution and other legislative acts of India also offer women a wide range of protection against discrimination, violence, and exploitation. Nevertheless, the application of these rights is still being hampered by structural inequalities and socio-cultural barriers. It is a research-based analysis of the constitutional grounds, laws, and judicial interpretations of the rights of women in India with a recent historical focus of providing explicit example of decisions of the Supreme Court that have broadened equality of sex in fields like reproduction, inheritance, and occupational security.

Key Words

Women, Legal Protection, Rights, Criminal Justice System

INTRODUCTION

The issue of women rights in the criminal justice system is one crucial aspect that contributes to gender equality and a just society. Yet, women are in a different predicament which is caused by strictly rooted inequality and society prejudices. These problems are exacerbated when women are victims of gender-based violence, including domestic abuse, sexual assault, trafficking, or harassment; or are accused individuals or imprisoned persons. In both of these cases, women tend to face numerous obstacles to justice, such as victim-blaming, stigmas, and institutional biases, which do not allow them to consult the help or even obtain a just treatment by the law. Women who are subjected to violence need a strong legal system that will offer them protection and offer them legal solutions. The law should allow women to report crime without having to fear being discriminated against, actively engage in the law process, and have a fair trial. Nevertheless, women, particularly in the marginalized groups, are usually afraid to speak out due to cultural stereotypes and victim-blaming. Furthermore, the justice system should be aware and sensitive to the special needs of the women when they are imprisoned including reproductive health services, mental health and support of women who are the main caregivers to the children. The stress of being deprived of children and the inhumane environment in prisons have worsened the problems that women go through, making their rehabilitation and readmission into society difficult. These gender-related concerns have to be incorporated into the criminal justice system so as to help them identify and take appropriate measures to treat women with dignity and fairness. The law must be accommodating to women and this can be done by giving women proper healthcare in prison as well as supporting them as caregivers. Moreover, it is important to train law enforcement agents, legal practitioners and judges on gender sensitivity issues so as to treat women with fairness and impartiality during the legal process.

HISTORICAL ASPECT OF RIGHTS OF WOMEN AND THE CRIMINAL JUSTICE SYSTEM

The history of female rights in the criminal justice system has been characterized by an unending battle against institutionalized biases in the society, legal inequalities, and gender violence. During the very first periods of the forming of the social and legal framework, women received rather peripheral treatment, and they could hardly have any legal safeguards and lacked a means to appeal to justice. In ancient and medieval societies, women were given little legal status and when they were victims of violence, whether it was a case of domestic abuse or sexual assault, it was often attributed to them and ignored. Such lack of concern with the rights of women was also reflected in the colonial and early American legal systems in which women were not considered in the legal proceedings and could not obtain justice towards crimes perpetrated on them. Women were in most cases prone to exploitation and abuse because legal structures failed to safeguard them.ⁱⁱⁱ

The late 19th and early 20th centuries saw the rise of the first systematic defense of the rights of women, which were promoted by such movements as women suffrage. Elizabeth Cady Stanton and Susan B. Anthony were pioneers who did not only struggle to secure the right to vote but also initiated the process of illuminating the legal and social inequalities that the women experienced even in the criminal justice system. Although a few initial legal changes were made, including the criminalization of rape and domestic violence, the prejudice and victim-blaming of the society still affected the efficiency of the law. Women were not given much attention by the criminal justice system as the victims of gender-based violence were not well-supported.^{iv}

This was a major turning point that occurred especially in the post-World War II era, particularly the civil rights and feminist movements of the 1960s and 1970s. Rights activists like Betty Friedan and Gloria Steinem started to bring out the way the criminal justice system did not always appreciate the unique struggles women have to contend with. It was during this time that there was a significant change, especially in the field of rape law reform. New laws were created that aimed at prosecuting the acts of the victims and not questioning the character of the victims. It was also towards this period that there was an increase in appreciation that women in prison had special problems including inadequate medical care, psychological health, and how being in prison affected them as caregivers.^v

In the 1990s, there was a lot of progress as a bill was passed in the United States called Violence Against Women Act (VAWA) in 1994. This historic bill ensured women that were victims of violence receive federal protection and designated funds to aid the victim. The other mandate was law enforcement training so that more responsive and sensitive measures can be taken to crimes such as domestic violence, sexual assault, and trafficking. Also, the movement in support of incarcerated women started to gain momentum as an agitation to implement changes that would more effectively accommodate their health and mental health needs or issues that they encounter when it comes to the devastation of family ties and custodial roles. The increase in women imprisonment during the 1980s and 1990s highlighted the necessity of having more gender sensitive policies in prison.^{vi}

GLOBAL LEGAL FRAMEWORK OF WOMEN'S RIGHTS

The international criminal justice system of women rights is embedded in international treaties and regional agreements, and the national laws that guarantee gender equality, defend the rights of women, and prevent gender-based violence. The major tools of gender equality in both legal and judicial systems at the international level are the Universal Declaration of Human Rights (UDHR) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The other important treaties such as the International Covenant on Civil and Political Rights (ICCPR)^{vii} and the International Covenant on Economic, Social and Cultural Rights (ICESCR) highlight the non-discrimination and access to justice by women. The United Nations Convention against Torture (UNCAT) and the United Nations Convention on the Rights of the Child (CRC) are also crucial in abuse prevention and other special provisions to vulnerable women especially incarcerated women and young girls within the justice system^{viii}

Coupled with these treaties of binding, there exists a number of UN guidelines and resolutions that offer definite standards of gender-sensitive justice. The UN Bangkok Rules (2010) emphasize unique requirements of the female convicts, the need to treat them with humanity, and to provide them with healthcare services, as well as sentencing alternatives to mothers. The UN Standard Minimum Rules of the Treatment of Prisoners (Nelson Mandela Rules) have wider provisions about the conditions of prisons and the Declaration of the Elimination of Violence against Women (1993) and UN Security Council Resolution 1325 (2000) were aimed at preventing violence against women and ensuring their contribution to justice and security in the society.^{ix}

On the regional level, the rights of women in the criminal justice system are further enhanced by legal tools. The Maputo Protocol (2003) in Africa has made violence against women and gender a crime and has required protection by law. In Europe, gender equality and the prosecution of violence against women are strongly legalized and can be found in the European Convention on human rights (ECHR) and the Istanbul Convention (2011). In the Americas, gender-based violence is recognized as a human rights violation in the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (Belém do Pará Convention, 1994) and women are assured of legal protections in the Middle East and North Africa by the Arab Charter on Human Rights (2004)^x.

In spite of these structures, a lot of challenges are still there in the criminal justice system. In most cases, women have been impeded in seeking justice such as discrimination, unavailability of legal assistance and cultural stigmas. Domestic violence, sexual violence and trafficking are among the other issues that have affected gender-based violence and should be dealt with effectively through the law. As criminals, women are not well represented in court, sometimes they are discriminated against in sentencing and mistreated in detention centers where they can lack medical care and are abused. Bangkok Rules promote non-custodial sentences and better terms and conditions to women inmates, particularly those with children who are underage.

NATIONAL LEGAL FRAMEWORK OF WOMEN'S RIGHTS IN INDIA

India has also come up with an elaborate legal system that protects the rights of women and enhances gender equality. The Constitution of India gives the main principles on the protection of women and their empowerment. Article 14 guarantees equality under law and also Article 15(1) proscribes discrimination on sex. It is related to the fact that Article 15(3) acknowledges the necessity of affirmative action and allows the state to make special provisions to women and children. Also, Article 21 acknowledges the right to life and individual freedom that also safeguards against gender-based violence. Article 39a, 39d of the Directive Principles of State Policy highlights the need to pay women equally and treat them fairly when working and Article 51A(e) encourages citizens to abandon derogatory practices against women.^{xi}

In a way to curb the issue of gender-based violence and discrimination, a number of milestone legislations are established. Protection of Women against domestic Violence Act, 2005 offers civil solutions to domestic abuse victims that offer legal protection and support. The Dowry Prohibition Act, 1961 is a criminal offense against dowry transactions that address a common social problem causing excessive violence against women (Chesney-Lind and Pasko, 2013). In the same light, The Prohibition of Child Marriage Act, 2006 provides legal age restriction and punishing those who avert child marriages in the effort to discourage forced and underage marriages that contravene the rights of young girls.^{xii} The crime of rapes and sexual offenses against females has been done away with using more stringent laws. Harsher penalties for rape, acid attacks, stalking, and voyeurism were provided by the Criminal Law (Amendment) Act, 2013 (Mukesh and Another Versus state of Delhi NCR (2017) 6 SCC 1), which is the indication of the interest of the state in combating gender-related crimes. The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 also requires internal complaint committees and redressal mechanisms in workplaces to provide safer working environments (US Department of Justice, 2021). Further, the Medical Termination of Pregnancy (MTP) Act 1971 that permits legal abortion under certain circumstances and The Maternity Benefit Act 1961 that provides maternity leave and protection of the pregnant mother in the workplace are all laws protecting reproductive rights.^{xiii}

Under The Immoral Traffic (Prevention) Act, 1956, human trafficking and sexual exploitation are covered under and serves to criminalize organized trafficking and give the means to rehabilitating a victim (Dufresne, 2006). In addition to the legislative, gender-sensitive policing, special cells of women, and compensation schemes of victims of gender-based crimes have been initiated to take care of the survivors of gender-based crimes. There are also certain legal protections that provide women with incarceration, such as separate prisons, reproductive health care, and the needs of mothers with young children.^{xiv}

In as much as there are powerful legal provisions, there are still challenges to the implementation of these provisions. Women are afraid to report crimes because of social stigmas, the blaming of victims, and judicial processes. In addition, under-representation of women in law enforcement and judiciary restricts good enforcement. Ignorance especially in the rural regions does not allow many women to exercise their rights under the law. Possible solutions to these concerns include legal reforms that are coupled with gender sensitive training of law enforcers and law officers. Law strengthening opportunities, the creation of the fast-track courts, and the publicity of the awareness campaigns are necessary to ensure justice to women. To become completely gender equal, it would be necessary to have strict legislation as well as to enforce it properly and work together to break down systemic obstacles that prevent women. It was a case that broadened the application of The Protection of Women from Domestic Violence Act, 2005 to acknowledge the rights of women in live-in relationships. The Supreme Court decided that women in non-marital domestic relations have the right to be under protection in the Act as well.^{xv} In a historic case on the maintenance rights under the Chapter 125 of the Criminal Procedure Code (CrPC) and presently Section 144 of the Bharitya Nagarik Suraksha Sahita, 2023, the Supreme Court ruled that a Muslim woman could maintain her rights to maintenance despite divorce under the husband as she was entitled to financial support regardless of religious laws. Based on this ruling, the Muslim Women (Protection of Rights on Divorce) Act, 1986 came into being.^{xvi} The Supreme Court decided that a woman has a right to live in her matrimonial household under The Protection of Women from Domestic Violence Act, 2005, though this was not the right concerning property that belonged to relatives of the husband.^{xvii} Here, the accused was found guilty by the Supreme Court by Section 304B of the Indian Penal Code (IPC) today, Section 80 of Bhartiya Nyaya Sahanta, 2023 (Dowry Death) based on circumstantial evidence to prove the existence of dowry-related harassment and unnatural death.^{xviii} The case formed the basis of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The Supreme Court came up with recommendations that were referred to as the Vishaka Guidelines that required every workplace to have systems to remediate on sexual harassment claims.^{xix} The Supreme Court approved of the reproductive autonomy of a woman and held that a mentally ill woman could not be coerced to have an abortion against her will. This case stood on the precepts of The Medical Termination of Pregnancy (MTP) Act, 1971^{xx}. Although this judgment is not specifically a women rights case, it confirmed the right to life under Article 21 to encompass the right to livelihood and this is related to the access of economic resources and protection against forced eviction by women.^{xxi} Lack of resistance was used to form a controversial acquisition by the Supreme Court, which cleared two policemen of raping a tribal girl, Mathura. This caused societal hue and cry and change in law to include the Criminal Law (Amendment) Act in 1983, which brought in more stringent rape provisions.^{xxii} The case also dubbed as the Nirbhaya Case by the media was a case that upheld the death penalty on the accused of the 2012 incident in Delhi of gang rape. This case led to the introduction of stiffer punishments of rape, acid attacks, stalking and voyeurism through the Criminal Law (Amendment) Act, 2013.^{xxiii} The Supreme Court decided on The Hindu Succession (Amendment) Act, 2005 that daughters are equal to sons in coparcenary property irrespective of whether the father was alive during the time of the amendment.^{xxiv} This case provided equality in property rights to the Christian women in

Kerala so that they were guaranteed to inherit property as provided under the Indian succession act of 1925.^{xxv} The Supreme Court decided that women officers can be given permanent commission and command slots in the Indian Army and this will provide gender equality in the armed forces. The Supreme Court instructed the government on the need to rehabilitate and protect the women who were forcibly subjected to prostitution because they had a Right to Dignity in the Article 21.^{xxvi} The Supreme Court affirmed a law in Haryana which made it a requirement to have minimum educational qualifications to contest the election of local bodies. Although it was considered to be discriminating against women and marginalized people, it increased the relevance of education in government.^{xxvii}

CONCLUSION

The history of women rights in the criminal justice system is of a long and arduous fight of equality, dignity, and justice. In the past, women were excluded in the laws and refused a proper defense against violence, discrimination, and exploitation. As the years have gone by, continuous advocacy by the women groups, legal scholars, and human rights groups has seen some major changes in the law and the institutions so that the inequalities based on gender can be addressed. The international legal documents, regional conventions and national constitutions have both imposed significant protections to safeguard the rights of women and grant them the right to access to the justice.

International treaties and conventions have been critical at the international level in establishing guidelines on gender equality and protection against violence. These frameworks include the principle of non-discrimination, access to justice, human treatment of women in detention, and prevention of abuse. Likewise, constitutional guarantees have been implemented in national legal systems especially in India with specific legislation being enacted to tackle such problems as domestic violence, sexual harassment, and trafficking, as well as crimes concerning dowry and discrimination in the workplace. These rights have also been reinforced by judicial activism that has interpreted constitutional rights widely and that women are autonomous, dignified and equal before law.

Although such progressive changes have occurred, there is a lot of work to be done in terms of successfully executing legislation crafted to safeguard women. The stigma attached to women in society, victim-blaming attitudes, and delays in the procedures still obstruct the access of women to justice. Women who are in conflict with the law or those who are in prison usually go through extra problems, such as lack of proper healthcare provision, poor living conditions, and parting with their children. These problems emphasize the ongoing necessity of gender sensitive changes in the system of criminal justice.

Legal frameworks should be supported by efficient enforcement procedures, sensitization and institutional reforms to make the difference. Police officers, prosecutors and judges should be trained in a gender-sensitive manner to ensure that they are not biased and that they extend equal treatment. Another important measure to a more equal justice system is strengthening legal aid services, fast-track courts referring to gender-based crimes, and enhancing prison environments of women.

After all, not only legal reform but also the willingness of society to equality and human dignity by the criminal justice system manifests through the protection of the rights of women. It is imperative that a justice system that acknowledges the special experience of women, a system that caters to systemic obstacles and that promotes equal protection by the law is necessary in creating a just, inclusive, and democratic society. The sustained endeavors by the governments, civil society and international institutions will play a pivotal role in making the dream of justice a reality to all the women.

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