

The Role of the Criminal Justice Delivery System in ensuring Gender Justice: A Socio-legal Study

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Abstract

Redefining peace towards a just, non-violent and sustainable future of the world is the most needed at present time at the global level. The paper deals with the issue in the light of gender equality and criminal justice. It further incorporated the role of criminal justice delivery system and human rights implementations. Gender equality is at the very core of human rights and united nations values. The international perspective like Convention on elimination of all forms of discrimination against women (CEDAW), Beijing conference on women, UN women, security council resolution on women, peace and security as well as sustainable development goals are discussed. The constitutional and legal framework is taken into consideration along with role of information and communication technology, resilient and responsive institutions, innovations in peace and security and case laws in achieving the aim.

Keywords

Peace, Non-Violence, criminal justice delivery system, just, gender, sustainable development, human rights.

Introduction

"Fight for gender equality is not a fight against men counterpart. It is a fight against the traditions that have chained them – a fight against the attitudes that are ingrained in the society – it is a fight against the system, a fight against proverbial Lakshman Rekha that is boundaries which is set different for men and different for women. The society must rise to the situation. It must recognize and accept the fact that men and women are equal partners in life. They are also individual who have their own identity".

- Dr. Justice A.S. Anand

The principle of gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. The Constitution not only grants equality to women, but also empowers the State to adopt measures of positive discrimination in favour of women for neutralizing the cumulative socio economic, education and political disadvantages faced by them. Within the framework of a democratic polity, our laws, development policies, Plans and programmes have aimed at women's advancement in different spheres.

India has also ratified various international conventions and human rights instruments committing to secure equal rights of women. Key among them is the ratification of the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in 1993. Indian Judiciary also played an important role in promoting gender justice. Through various judicial pronouncement Supreme Court, they tried to eradicate all forms of discrimination against women and provide safety measures against the crime committed against the women. Along with the judiciary the components of criminal justice delivery system like the police, the prison, remand home, correctional home and NGOs also contributed a lot in this regard. Sustainable development Goals also aims to eradicate all forms of discrimination against women in order to have a peaceful environment.

Gender justice and role of criminal justice delivery system

The principle of normative theory of feminism is the belief that nobody should be disadvantaged because of their sexual orientation. Men and women are entitled for equality in every field but where injustice is done just because of their sex is termed as gender injustice. United Nations effort in this respect is highly appreciable. The security council resolution 1325 passed in 2000 provided for women participation in all field and prevention of conflict is the essential part of international security. This has immensely changed the landscape of international policy as well as practice by bringing gender issues more in focus across peace and security at the global level considering development, humanitarian conflicts and human rights issues.

The constitution of India itself provide for prohibition on any kind of discrimination on the basis of sex. The term 'sex' has narrower meaning than word 'gender'. Article 14 provides for equality before law and equal protection of laws and Article 15 provides for prohibition on any kind of discrimination only on the basis of religion, race caste, sex or place of birth. So, the gender equality is enshrined under the wider ambit of Article 14, 15 and 16. Article 51 also provide for maintaining peace both at national and international level.

Peace and harmony would not be established at the global level if gender justice is not taken into consideration. Contribution of half of the population is as equivalent as the other half for the growth of any country.

Role of judiciary

Judiciary has played a vital role in maintaining gender justice and through judicial activism they pronounced judgements which brought women at par with men. The notable judgements are:

In C.B.Muthamma vs. Union of India In this case supreme court struck down the rules and regulation of Indian civil services which are discriminatory in nature as violative of the principles enshrined in Article 14 and 16 which prohibits any kind of discrimination to women in matters of public employment.

Justice Krishna Iyer said

“Freedom is indivisible, so is justice. That our basic faith enshrined in Articles 14 and 16 should have been tragically ignored vis-a-vis half of India's population, our women is a sad reflection of the gap between Constitution in the book and its implementation in action.”

In Nargesh Meerza's Case Supreme Court struck down the discriminatory regulations of Air India which bars the services of Air Hostesses in matters of pregnancy and retirement.⁹

In Githa Hariharan vs. RBI being the historic judgement of Supreme Court where it upholds the principle of gender equality and held that mother can be natural guardian of child even when his father is alive.

In Bodhisattwa Gautam vs. Subhra Chakraborty supreme court held that rape is a heinous crime against women and it is violative of the fundamental principle of Article 21 that is right to life and personal liberty and ordered for the victim compensation to the rape victim.¹³

In Neera Mathur vs. L.I.C the Court recognized woman's right to privacy in respect of information regarding her reproductive functions. It held that the questionnaire that sought information of the dates of the menstrual periods and past pregnancies amounted to an invasion of privacy of a person and therefore could not be made.

In Vishaka vs. State of Rajasthan Supreme Court has demonstrated great judicial activism while coming to rescue of the working women by resorting to judicial activism under Article 141 of the Constitution. To combat the sexual harassment experienced by women at workplaces the Court stepped into the shoes of the lawmaker and issued directions in this sensational case.

In Madhu Kishwar vs. State of Bihar Justice K Rama Swamy observed that, "Half of the Indian population are women. Women have always been discriminated against and are suffering it in silence. Self-sacrifice and self-denial are their nobility and fortitude and yet they have been subjected to all inequalities, indignities, inequality and discrimination."

In Sarla Mudgal vs. Union of India, it was observed that even though the State has not till made any effort to introduce Uniform Civil Code in India, the judiciary has recognized the necessity of uniformity in the application of civil laws like the law of marriage, adoption, succession, and maintenance etc. to protect the rights of women.

In Gaurav Jain vs. Union of India, the Court speaking through Justice K. Ramaswamy has elaborately dealt with the issues pertaining to the rescue and rehabilitation of prostitutes and their children who have far-reaching circumstances. The court in this regard also issued guidelines for the same.

*In Charu Khurana and Others Vs. Union of India*²⁰ the Apex Court has once again expounded the concept of Gender Justice by observing that "though there has been formal elimination of institutionalized discrimination but the mind set and attitude ingrained in the subconscious level have not been erased".

Role of police

Police play a vital role in criminal justice delivery system as defined under Police Act, 1861. The functions of police like to comply and execute all orders and warrants issued by competent

authority. Maintaining peace and harmony is the utmost duty. Prevention of commission of offences, search, seal, investigation, detain and arrest the offender are some basic functions to performed so that justice should be delivered. Maintenance of order, control of crowd, public agitation, riots and more. Police is one of the most important instrumentalities of criminal justice delivery system.

Social Institution and Gender Index

The Social Institutions and Gender Index (SIGI) is a cross-country measure of discrimination against women in various forms in social institution. There are some social institutions which restricts enjoyment of fundamental rights like access to education, justice and empowerment opportunity as well as undermining their decisions making authority.

The SIGI covers some forms of discriminatory social institutions like Discriminatory nature of family code, Restriction on physical integrity, Restrictions imposed on resources and assets, Restriction on civil liberty.

The index represents scores which is ranging from 0 to 1, meaning thereby that 0 represents there exists no discrimination against the women and 1 represents maximum that is indicating that there is a highest level of discrimination against women.

National Initiatives to curb the Gender Violence

National Commission for Women

In January 1992, the Government set-up this statutory body with a specific mandate to study and monitor all matters relating to women and the constitutional and legal safeguards provided to them. It also includes the review of existing legislation to suggest amendments wherever necessary.

Reservation for Women in Local Self-Government

The 73rd Constitutional Amendment Act passed in 1992 by Parliament to ensure one-third of the total seats in all elected offices in local bodies whether in rural areas or urban areas to be reserved for women.

The National Plan of Action for Girl Child, (1991-2000)

The objective of Plan of Action is to ensure survival, protection and development of the girl child with the ultimate objective of building up a better future for them.

National Policy for the Empowerment of Women, 2001

The Department of Women & Child Development of the Ministry of Human Resource Development took initiative to prepare “National Policy for the Empowerment of Women” in the year 2001. The goal of this policy is to bring development, advancement, and empowerment of women.

International scenario along with sustainable development goals

Under Universal declaration on Human Rights, 1948 Where Article 2 states that everyone has the right to enjoy all rights irrespective of race, sex, color, language religion, political or other opinion, social or national origin, birth, property or other status, Article 3 states that everyone has the right to life and liberty and security of person, Article 16 states that Men and women of full age, without any discrimination, on ground of race, nationality or religion, have the right to marry and to make a family. They are entitled of equal rights as to marriage, during marriage and at its

dissolution. Marriage should be entered into only with the free consent of the intending spouses.

Under convention on the political rights of women, 1953 where Article 1 states that women are entitled to vote in election as like men on equal terms, Article 2 states that women are eligible for election to publicly elected bodies, Article 3 states that women are entitled for public offices.

Under convention on the elimination of all forms of discrimination against women, 1979 (CEDAW) where Article 2 states that the state parties should embody equality of men and women in their national constitution, Article 8 states that state parties should take measures so that women should be given equal rights in representing their government at international level and participating in international organization, Article 9 states that state parties should grant equal rights to women to acquire, retain or change nationality, Article 10 states that state parties should take measures to avoid any kind of discrimination against women in matters of education, Article 11 states that state parties shall take appropriate measures in order to avoid any discrimination against women in public employment.

Declaration on the elimination of violence against women, 1993 where Article 3 states that women are entitled for all fundamental rights in equal proportion as like men in field like social, cultural, religious, economic or any other field, Article 4 states that state should take measures to condemn any kind of violence against women in matters of custom, religion and tradition.

Commission on the status of women. The commission on the status of women is the principle intergovernmental body exclusively dedicated for the establishment of gender equality and women empowerment. It is a functional instrument of Economic and social council. In 1996, ECOSOC in resolution 1996/6 (see p. 20) expanded the mandate of commission and came to a point that it should take active role in monitoring and reviewing progress as well as problems in the proper implementation of the Beijing Declaration and Platform for Action, and in process of mainstreaming a gender perspective in UN activities.

Beijing Declaration and Platform for Action

The Beijing Declaration and Platform for Action is a visionary agenda for women empowerment. It is also one of the reference frameworks to analyse and understand the situation of women around the world and to assess the efforts of States in support of women empowerment.

The Platform of Action covers 12 critical areas of concern such as Women and the environment, Violence against women, The girl child, Women and the economy, Institutional mechanism, Women and armed conflict, Human rights of women, Education and training of women, Women in poverty, Women in power and decision making, Women and health, Women and the media.

The Platform sets an agenda for governments, international organizations, civil society and the private sector to safeguard women's human rights and to ensure that gender is taken into consideration in all national, regional and international policies and programmes.

Sustainable Development Goals (SDG)

Gender equality is not only a fundamental human right, but a basic foundation for a peaceful, prosperous and empowered world.

Sustainable Development Goal 5 targets:

End all forms of discrimination against women everywhere. Eliminate all forms of violence against women in the public and private spheres, including trafficking and sexual and other types of exploitation. Eliminate all harmful practices, such as child marriage and female genital mutilation, Recognize and value the unpaid care and domestic work of women. The provision of public services, infrastructure and social protection policies are a way forward in this respect. The idea of shared responsibility within the household and the family should be promoted. Ensure women effective participation and provide equal opportunities for leadership at all levels of decision making in economic, political and public life, Ensure universal access to sexual and reproductive health. The reproductive rights as agreed in accordance with the Program of Action of the International Conference on Population and Development and the Beijing Platform for Action and the outcome documents of their review conferences should be adhered to. Undertake reforms to provide women equal rights to economic resources including access to ownership and control over land and other forms of property. It also aims to provide financial services, natural resources and inheritance rights in accordance with laws. Enhance the use of information and communications technology, to promote the empowerment of women, Adopt and strengthen effective policies and legislation for the promotion of gender equality and the empowerment of women at all levels.

Gender Justice and Indian Legal Framework

A Legal Framework is Necessary for A Social Change in Which Women Have Equal Rights with Men. – Dr B.R. Ambedkar

Constitutional provisions

The constitution states that the equality before the law and the equal protection of laws shall be available to any person. Similarly, there shall also be no discrimination against any citizen on the ground of sex. Article 15(1) guarantees equalities of opportunities for every citizen in matters of employment without discrimination. Article 15(3) provides that the state can make any special provisions with respect to women and children. Besides, directive principle of state policy also has emphasis on women and their status and these include Article 39(a) right to an adequate means of livelihood; (d) equal pay for equal work both men and women, (e) protection of health and strength of workers including women and Article 42 provides for just and humane conditions of work and maternity relief.

Under Indian Penal Code

There are crimes which fall under the category of crimes against women, defined under the Indian Penal Code (IPC), 1860 such as Rape (Sec. 376 IPC), Kidnapping & Abduction for different purposes (Sec. 363-373 IPC), Murder for Dowry, Dowry Deaths or their attempts

(Sec. 302/304-B IPC), Cruelty (Sec. 498-A IPC), Outraging Modesty (Sec. 354 IPC), Sexual Harassment (Sec. 354A IPC)

There are also numerous legislations which focuses on the issues of women and their rights thereby promoting gender justice in India. Although all laws are not gender specific, but the provisions of laws affecting women significantly have been reviewed periodically and amendments carried out to keep pace with the emerging requirements.

Other Laws for Women in India are:

The Immoral Traffic (Prevention) Act, 1956, The Dowry prohibition Act, 1961 (28 of 1961) which is (Amended 1986), The Indecent Representation of Women (Prohibition) Act, 1986, Protection of women from Domestic Violence Act, 2005, The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, The Criminal Law Amendment Act, 2013, The Employees State Insurance Act, 1948, The Plantation Labour Act, 1951, The Family Courts Act, 1954 , The Special Marriage Act, 1954, The Hindu Marriage Act, 1955, The Hindu Succession Act, 1956 with amendment in 2005, The Maternity Benefit Act, 1961 (Amended in 1995), The Medical Termination of Pregnancy Act, 1971, The Contract Labour (Regulation and Abolition) Act, 1976, The Equal Remuneration Act, 1976, The Prohibition of Child Marriage Act, 2006, The Factories (Amendment) Act, 1986, The Protection of Children from Sexual Offences Act, 2012, The Transgender Person's (Protection of Rights) Act 2019, Commission of Sati (Prevention) Act, 1987.

These laws are enacted to protect the rights of women and provide them safe and secure environment to live and contribute in nation's development.

Suggestions

Measures To Solve Gender Inequality

Changes at District level mechanism: A clear cut administration should be made available at the district level for monitoring and reviewing the incidence of gender inequality against women.

Changes at State level Mechanism: Similarly, like District level mechanism there should be State level machinery at the State level where there should be special entry for those cases which needs immediate actions. These institutions will have a control over the district level machinery. So that corruption or fraud with innocent persons can be avoided.

Law of Torts: It is also an area of civil wrong. Law of torts is probably one of the most underutilized areas with respect to the problem of gender injustice. The law of torts that are directly applicable on offences are: Assault, Battery, Unlawful Imprisonment, Nuisance, Tort of harassment, Tort of Medical Pre- Natal test. Punishment can also be given under law of torts.

Sensitization of Criminal Justice Delivery system: The police officers, prosecutors, and judges at all levels of hierarchy need to be imparted training to the gender equality education which would help enlightening them on existing assumptions, myths and stereotypes of women and how these can be hinderance with the fair and equitable administration of justice. Judicial system should comprise of all types of officers like from judiciary such as judges, police officers and others which should take immediate action in serious cases.

Family Law: In family relations there are wrongs which frequently occur. In this accused can be punished under the Domestic Violence Act, 2005 and Dowry Prohibition Act, 1987 other laws relating to family disputes. The suit/ case can be filed for domestic violence or any other household wrong.

Conclusion

Violence against women is the one of the biggest problems in India. Women do not take a step and speak about the violence because of the fear and shame in the public. Threat of Violence against women is the main barrier to equal participation in society and women Empowerment. Dr BR Ambedkar, a social visionary advocated for specific rights to women in the constitution and also some specific laws were made to stop violence against women but still women are deprived of their rights due to the lack of the proper education and awareness. Women Empowerment has not achieved its objective in true sense till now.

A quote by Michelle Obama says that “No country can ever flourish in true sense if it stifles the very potential of its women and deprives itself of the contributions to be made by half its citizens.” “There is no limit to what we, as women, can accomplish. When women are educated, their countries become stronger and more prosperous.”

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