

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 5 | Issue 3

2022

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An Analytical Study on Treatment of Women in Justice System

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ABSTRACT

Criminal justice system of country is solely contributed with strength & power to put into practice laws not in favour of brutality, to complete a criminal examination, to capture and confine the offenders and to give equity to the crime. There are many cases where we can find that there is a difference between "female and male criminals". Equal opportunities are the most ardent issues in today's society and the most important concern are human rights issue, which have an effect on women in particular, play a critical role in maintain harmony and wealth in society. Gender justice means that there should not be any discrimination in administering justice on the origin of sex. The process of delivering justice to woman in certain cases is par slow. The whole process is followed from lodging FIR to judgment and many years past in the completion of this process but women are unable to get justice for e.g- Nirbhaya case, even after passage of such a long period justice is not delivered to nirbhaya despite such heinous crime against her. Some women are uneducated and they have no knowledge about the particular rights they have. There are set of victim in the classification.

I. INTRODUCTION

The most trustful and important factor after any crime which is committed against any person in this world is Justice System and Women's connection in Justice System has been more of a victim rather than perpetrators.² From Police to Correctional Institution in between judiciary also involved group of woman is mainly concern is of them. There are lot of problems women have to deal with justice system that's include protracted police response ; numb responses of police to spousal abuse; humiliating questioning; failure of police to guard victims and lack of supports to witness and treatment of witness as criminal.³ If we talk about minority in system than woman is the first thing get comes into our mind and they have different need compare to man. Woman are always branded as weaker sex it is not a new practice in the society, As it was held by K.Ramaswamy, J. in Madhu kishwar v State of Bihar:⁴ "Self-surrender and self-

¹ Author is an Assistant Prof. at ACLC, Bhilwara, India.

² Arvind K. Singh, Women and Criminal Justice pg.1

³ ibid

⁴ (1996)5 SCC 125.

dissent are woman nobleness as mostly all the time woman suffer discrimination on the all the places and they are forcefully subjected to the ill treatment, not treat with the due respect.”⁵ It is the side effects of separation from sexual orientation only that women have been victims of brutality and abuse by men-led society around the world. We can say that due to the masculine power of man; woman experience lots of malice directly or indirectly. Violation of human rights, for example, physical brutality, human trafficking, assault and other sexual abuse, despite the fact that it affects women and girls in every audience around the world.

Gender Justice

Gender Justice is like open-ended expressions. On some incident it means alike treatment between men and women and on some it's like “justice to the fairer sex”. The ultimate purpose of gender justice is that due to gender issue there should be no delay in the justice and there should be no discrimination on basis of gender. Gandhi ji once said that “Women are companion of men, gifted with the equal mental capacity. Ignoring them will be a big mess for the civilization.” The Struggle for the equality is one of the key concerns for the women in the society. This concern leads to the moment at various instances. Gender is more than the talks of men and women it concern about to transform society towards the mindset of equality. It has to be placed where man and women should be treated equally. Equality should not be only on statues and legal document. It should take into concern while discussing about access to justice.

II. ANCIENT HISTORICAL PERSPECTIVE AND INTERNATIONAL CONVENTIONS

“Our old Indian tradition preaches us ‘Matri Devo Bhava’ which means worships the mother thereby advocating that women should be treated with great reverence like goddess.”

(A) Historical Perspective

As for India, the irony lies in the fact that in our country where women are worshiped as shakti, it is looked down upon totally different. Today Indian women also face several problems to guarantee justice. Jawaharlal Nehru, in his book entitled "Discovery of India", observed the legal position of Indian women, said: "Compare to Rome and Greece the condition of India Woman is far better"⁶. If we look into the history women were respected and there was gender dignity. Manu says:” If god is happy then is due to that women are treated with honoured but if not then all efforts come to nil.”⁷ After the independence there were lot on concerned are and

⁵ ibid

⁶ Nehru, *Discovery of India*, Jawaharlal Nehru Memorial Fund.

⁷ *Ramante tatra devatahh...* (*Manusmrithi* III, 56)

one of them was the condition of woman so towards the protection of woman there are lots of provision in that and on other side judiciary with the same route as constitution protects the woman rights many times.⁸

(B) International Conventions and Declarations

The concerned are of woman not only an national issues but it is international look out point for the development of the country woman and people too. Human rights of each and every person is protected by the United Nations Organization and for the protection of woman rights there is Universal declaration on violence against woman which proceed the definition with the gender based violence. Article 1 of the declaration states that "Sexual, Physical or psychological to women and arbitrary deprivation of personal liberty no matter occur in public place or private place or any gender based violence will be count as violation."⁹ With addition to these violence occur at family, general place or community also comes under this.¹⁰ Another important convention relating to women is the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) which describe "discrimination against women" as "any discrimination regarding equality or of basic human rights which is enjoyed by each and every person including woman and if any restriction made on them that's lead to the violation"¹¹.

III. CONSTITUTION AND WOMEN

The legal language marginalised woman by saying that "he" includes "she". Of Course this marginalised of woman in legal languages was a mere reflection of her marginalisation in real life.¹² The laws and legal institution were of men, run by men, and for men especially and only exceptionally for women. Women have been victims of discrimination under practically every branch of the law but the Constitution came into force in 1950, such discrimination was at least normatively forbidden. It is a authorized purity document each and every government whether centre or state have to respect it.¹³

(A) Fundamental Rights: A Woman Perspective

Theories of the rule of law¹⁴ or the basic rights stem by the struggle for individual liberty In 1948, it was in Universal Declaration of Human Rights where first time rights of woman are

⁸ Balasubrahmanyam, In Search of Justice.

⁹ Assembly, "Universal Declaration of Human Rights."

¹⁰ *ibid*

¹¹ CEDAW, "Convention on the Elimination of All Forms of Discrimination against Women."

¹² Upendra Baxi, "On Being a Woman", Har Anand Publication, New Delhi, 1994,p.168

¹³ Bradley and Ewing, Wade and Phillips Constitutional and Administrative Law.

¹⁴ Dicey, The Law of the Constitution.

recognised as individual rights¹⁵ and further more The convention on the Elimination of All Forms of Discrimination Against Woman 1981 and Vienna Convention of 1993 also recognised that gender equality is an vital aspect of human rights. But if we look into the reality there are enormous places in the Justice System in India where the violation of human rights of women take place. Police is the first and most significant factor of the fairness system and if he tortures the woman in his custody and harass her then how someone can develop trust in them. At many instance they come to the villages where lot of people are illiterate and grill woman as criminals. In Mathura - Tukkaram and Anothers - State of Maharashtra, 1978 - two policemen apparently raped a teenage orphan named Mathura in the police station to which they were attached. This is the landmark Case which the scenario of Criminal Procedure in India. First time in the history an letter was drafted by the great scholar Upendra Baxi along with Lokita Sarkar to make some changes in the Criminal Producers code of India and the result of this the amended provisions of Section 376 of IPC and Section 114 A of Indian Evidence Act are a direct consequences of the Mathura Case.

The preamble of India itself starts with the “We the people of India,…” it include both the men and woman of the country regardless on the basis of the religions, sex and caste. It contains enormous provisions for protection of the woman.

1. Article 14

Article 14 talks about the “equality before law” and forbid the prejudice among people. Article 14 prohibits the discrimination among the gender. As we saw in the landmark judgment of Air India V. Nargesh Mirza¹⁶ Court Held that terminating the services of an air hostess on the grounds of pregnancy amounted to discrimination as it was unreasonable ground for termination.

2. Article 15

Article 15 (1) prohibits the gender bias and Article 15(3) permits state to make particular provision regarding the woman.

3. Article 16

It provides equivalent chance in matter of public service.

4. Article 21

Each & every citizens have right to leave with the dignity and each one have personal liberty

¹⁵ Poonacha, Gender within the Human Rights Discourse.

¹⁶ (1981) AIR 1829

so as women. In *Neera Mathur v. LIC*¹⁷ it was held that personal liberty includes privacy. In another case *Vishaka v. State of Rajasthan*¹⁸ Apex Court held that ; each and every person have right to work with dignity and there is should be no harassment with woman at work place and said that it a fundamental rights to work with the dignity. In another case *Delhi Domestic Women's forum v. Union of India*¹⁹, 1995 Apex Court pointed out that, there is lacuna in the administration process victims especially woman are generally humiliated by the police. Apex court laid down the guidelines for the rape trail and assistance should be provided to the victims for the aid.

5. Article 23

Article 23 prohibits trafficking in and other similar activities. Interchange in human being includes “devadasi”²⁰ In *Gaurav Jain v. Union of India*²¹The Apex Court has issued several directives relating to the rehabilitation of children of prostitutes, underage prostitutes and the creation of their youth homes.

(B) Protection under Directive principles of State policy and Fundamental Duties

Directive principles are not enforceable but State have to protect the interest of the women. According to Article 39(a), the State should made policies securing that to protect both men and women of the country in the same way, have right to an sufficient means of living.²² Article 39(d) directs equivalent pay for equal work for the both men and women. Article 42 it plays an essential role for the well-being of women as it imposes a responsibility on the state to guarantee fair and humane working conditions and assistance to motherhood. Part IV which deals with fundamental duties contains some provisions relating to women as an exception to the dignity of women.

IV. CRIMINAL JUSTICE SYSTEM: A FEMINIST VIEW

The dilemma of crime against woman is not fresh. In Indian society there are many cases where women face violence including mistreatment, torture, human trafficking, rape, murder and many others. Whether country is towards success or not it can be determined by the rate of protection and security to its women. There are numerous rights provided by the Indian legislation for the women protection in India. But at every stage they get violated by various

¹⁷ (1992) 1 SCC 286

¹⁸ (1997) 6 SCC 241.

¹⁹ (1995) 1 SCC 14.

²⁰ Raval, “Analytical Study of Global Problem of Human Trafficking Issues and Challenges in Indian Perspectives.”

²¹ (1997) 8 SCC 114.

²² Tellis, “V. Bombay Municipal Corporation, AIR 1986 SC 180.”

authorities involved in the justice system. Police is first & most important factor in the justice system. If there is any violation of rights or any crime happens then at first instance person will go to the police. In India, the key criminal justice institutions of police and prisons reflect persisting gender discrimination, both within, and in their outward responses to women. But if we look into the facts then the condition of women is very miserable in the system. *Sheela Base v State of Maharashtra*²³ deal with the inquiry of conduct of women in police lock ups.

Our country's Justice System is made up of many complex relationships between the various laws that derive from the system including the Indian Criminal Code 1860, the Criminal Procedure Code 1973 and Indian Evidence Act 1872 and various special laws.

(A) The Indian Penal Code, 1860

- Sections 292 to 294 of the Indian Penal Code speak regarding obscenity; books that have obscene figures or figures are punishable by law.
- Section 354 deal with the battering or used of criminal force with the intent of outrage her modesty.
- Section 366 B deal with the import of girls from the foreign country underneath the age of 21 years.
- Section 375 describes rape as the penetration of the penis interested in the vagina or mouth of a woman and if he does against her will or without her consent, he said to have committed the act of rape against the women and Section 376 gives the punishment of such heinous crime which is not less than 10 year which can extend to life imprisonment. The amended provisions in Section 376 of the Indian Penal Code and Section 114 A Evidence Act are a direct consequences of the outrage the Mathura Judgment²⁴ created.

(B) Criminal Procedure Code, 1973

The Criminal Procedure Code it is the main procedural operate, which establishes the powers and functions of the police, the judicial process, the court and the defense councils. In addition to the general provisions applicable to all people, there are some provisions in the code, which have only been enacted for the benefit of woman.

1. Delay in lodging FIR: One of the most concern area in the system is delay in FIR. In rape, dowry death and many other instances there is delay in reporting the crime to police. In *Pappu v. State*²⁵ there was delay of 25 hour and delay its self create

²³ AIR 1983 SC 378

²⁴ 1979 AIR 185

²⁵ 1981 Raj. Cr.C. 419.

doubt on the prosecution. But In *Sri Narayana Saha v. State of Tripura*²⁶ Supreme Court held that if the case is related to rape, hindrance in lodging the FIR does not formulate case false.

2. Right to privacy during registration of the declaration - According to section 164 of the CrPc, rape victim can register her complaint or statement to the magistrate in private only no one should while recording the statement of the victim. If victim want then statement can be record at home or any other place where she find convenient
3. Search only from another woman - According to section 51 (2) of the CrPc, women should be check or search by another woman only.
4. Opportunity to leave the house - Section 47 (2) CrPc says, in case accuse is hiding in the place where woman also present and as per as custom of woman if they cant appear in front of any other man than police can't enter into the house until and unless a reasonable chance given to woman to disappear.
5. Even after not having the jurisdiction of the crime scene police can't refuse to file an FIR of a victim. In case, you have the precise to present a FIR at any police station under FIR Zero.(Lalita Kumari Case).
6. Medical test by a female professional - Section 53 (2) CrPc, provides that the examination of women must be done by female doctor or medical professional who registered herself.
7. No arrest past dark – Section 46 protects the rights of woman as they should not be arrested after the sunset and in case if urgent then arrest only by female police or by any other women officer with the due permission of first class judicial magistrate only..²⁷
8. Identity protection; with all due respect the individuality of a rape victim can't be disclosed as section 228 A of the IPC makes it punishable.
9. Detention - Keeping the woman arrested in police custody even for a short time was a danger. The Mathura case would not have occurred if it had not been in the agents' custody. Based on the 84th Commission recommendation, women are not held in custody at the police station during late hours. They must be sent to detention centers or protection houses authorized for this purpose.

²⁶(2004) 7 SCC 775.

²⁷ Muralidhan, "Rights of Victims in the Indian Criminal Justice System."

10. Bail: Granting bail is on the discretion of judges and there are many cases even after heinous crime against women, accused get the bail easily and in offences like rape and dowry death it give ample time to accused to fabricate the evidence is if he release on the bail.

V. CONCLUSION

Thus the road map of Woman in Justice System is there but still we have go mills on this path. Unequal status of women when compared to men is offensive to human dignity and it consider gross violation of human right and gender inequality is the violation of basic human rights provided to the women. Justice System towards women crime is so slow that even after eight year a rape victim unable to get justice in another case rape victim was killed before the final verdict. This kind of incident clearly proves that even after the 70th year of independence somehow India is still male dominating country. Police is there to help the people but as we saw there are numerous instances where how police violated the “rights of woman in the justice system” and due to such bad experience there is fear under woman towards police. In the cases related to the heinous crime against women there should not be delay in lodging the FIR. As per the provisions Brutal crime like rape should deal by the fast track court and within the time period of two month for each investigation and trail should be completed but we all know the harsh reality of Indian Criminal Justice System. On other hand to some extent we can agree that there are lots of provisions for woman in the Constitution even in The Criminal Procedure Code but what is the used of that thing when you don’t know how to use it. Due to lack of awareness women are unable to use their rights and facing violence in each and every stage of their life. I just want to conclude with words of Swami Vivekananda; “The best thermometer for the nation's progress is the treatment of women”.

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