

GENDER INEQUALITY AND WOMEN'S ACCESS TO JUSTICE IN INDIA'S CRIMINAL JUSTICE SYSTEM: A FEMINIST LEGAL ANALYSIS

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ABSTRACT

The question of gender equality continues to pose a serious challenge for women when accessing justice through India's criminal justice system, even when the constitution protects gender equality. The paper will examine some of the factors making it difficult for women to access justice in a patriarchal society. The analysis employs a doctrinal research approach based on feminist legal theories and examines the constitutional underpinnings of gender equality, the importance of feminist jurisprudence in tackling structural inequality, and the laws aimed at protecting women from gender-based discrimination and violence. In addition, the Bharatiya Nyaya Sanhita, 2023, the Criminal Law (Amendment) Act, 2013, the Protection of Children from Sexual Offences (POCSO) Act, 2012, and the Protection of Women from Domestic Violence Act, 2005 will be examined in the paper. Gender equality and sexual harassment in the workplace have also been addressed in previous legislation in India. It also evaluates the revolutionary effect of the Indian judiciary's rulings that advance women's rights. To sum up, the article shows how constitutional protections, activist judges, and legal changes have made a lot of headway. However, much more needs to be done regarding implementing these legal provisions and addressing gender-based issues in a holistic manner.

Keywords: Gender Inequality, Women's Rights, Access to Justice, Feminist Legal Theory, Criminal Justice System, Gender Justice.

1. INTRODUCTION

Gender-based discrimination is a major problem that exists in India till date despite the considerable progress made in education, employment, and politics. The justice system in India is supposed to serve as an effective channel for the protection of rights but in many cases, it reflects the broader structure of society. Discrimination against women makes them vulnerable to oppression within and outside the home. In such a scenario, it becomes very difficult for women to enjoy their legal rights fully.

Access to justice is a basic human right and is an essential element of the rule of law. Not only does access to justice relate to the availability of legal recourse, but it also relates to the capacity of people to exercise these rights within a fair and just system. Access to justice for women can be hindered due to social, economic, and cultural reasons.

Feminist legal theory is a useful paradigm to explain the ways through which laws and legal systems maintain gender discrimination. Feminists contend that throughout history, legal systems have been built based on the experiences of men, with women's unique struggles ignored in the process. This means that having equality in theory does not guarantee equality in reality.

The Indian government has passed many laws and undertaken many policy initiatives aimed at ensuring gender justice. The efforts of the constitution, criminal laws, specific laws dealing with violence against women, legal aid schemes, and judicial intervention have all been instrumental in achieving gender justice in India. However, there are some challenges facing women in accessing justice such as under-reporting of cases, delays in process, blaming the victim, and non-implementation of laws.

In this study, using a feminist legal perspective to investigate gender inequality and women's access to justice in India's criminal justice system. It gives a synopsis of India's constitutional and legal framework, lists barriers to women's access to justice, describes several judicial interventions, and offers suggestions.

2. LITERATURE REVIEW

Tyagi (2021) analyzed the issues confronted by the battered women while trying to obtain justice through the legal system of India. The study considered the role of gender disparity, domestic violence, and economic deprivation in determining whether women could use legal procedures to get justice. The researcher realized that social stigma, dependency on men, lack of legal knowledge, and systemic

problems were some of the factors restricting access to justice for battered women. The study pointed out that gender justice was not merely a legal process; it involved much more than that.

Jassal (2020) explored the linkage between gender, law enforcement agencies, and justice access through an analysis of all-female police stations in India. In the research, the author evaluated whether the deployment of all-female police forces contributed to making women more willing to make complaints and access the services of the law. The outcome of the study showed that the establishment of all-female police stations helped improve women's trust in law enforcement institutions as well as reporting cases related to sexual violence against females.

Zahan and Singh (2020) examined the several barriers that impeded women's access to justice in different social and institutional settings. Some of the barriers pointed out in the paper include cultural norms, gender discrimination, economic dependence, low legal literacy levels, and procedural difficulties among others that are experienced by women seeking legal justice. The authors noted that these barriers made it difficult for women to exercise their rights through the law. This paper underscores the need for legal empowerment, legal aid services, and reform of institutions towards gender inclusivity.

3. RESEARCH METHODOLOGY

A doctrinal methodological approach is utilised in this investigation. The majority of the data comes from secondary sources such as statutes, decisions of courts, official records, reports from law commissions, publications, academic journals, and constitutional provisions. The Indian legal system as it pertains to women's rights has been the subject of a qualitative study. Feminist jurisprudence forms the primary analytical paradigm in order to assess the efficiency of the legal institutions and also identify the structural obstacles to gender justice.

4. CONCEPTUAL FRAMEWORK OF GENDER INEQUALITY AND ACCESS TO JUSTICE

Gender inequality is the difference in status or conditions of treatment between individuals according to gender. Gender inequalities arise in several ways, such as discrimination in education, in the workplace, property ownership, politics, and through legal recourse. Within the criminal justice system, for instance, gender inequality could mean differential treatment of those involved in an event due to gender stereotyping.

Access to justice means the opportunity that individuals have to make use of legal institutions in order to secure redress. Access to justice includes legal consciousness, legal services, the cost of obtaining legal services, court accessibility, process fairness, and remedy effectiveness. In relation to women, access to justice may be affected by several issues, including economic situation, education, culture, family support, and institutional responsiveness.

A significant contribution made by feminist scholars of law is to highlight the importance of not confining access to justice merely to the idea of equal procedure but including substance as well because it allows women to enjoy their legal rights. In other words, gender-sensitive laws and institutions are required for women.

5. CONSTITUTIONAL FRAMEWORK FOR WOMEN'S RIGHTS IN INDIA

The Constitution of India is the foundation on which rights and status of women, and gender equality, stand to be protected and promoted. The Constituent Assembly while formulating the Constitution took cognizance of the discrimination against women and included various measures and provisions that were to guarantee equal status, dignity and opportunities for women. While these constitutional provisions prohibit discrimination and grant remedies for it, they also enable the State to take positive measures and undertake affirmative actions, which promote women's wellbeing and development. A foundation for gender justice for women is provided by the Constitution's core obligations, the fundamental rights given to all citizens, and the directive principles of state policy.

Article 14: Equality Before Law and Equal Protection of Laws

Article 14 states that every individual is equal before the law and is equally protected under the laws of India. This article forms the basis of gender equality, as it ensures that women are provided with the same legal status and protection as their male counterparts. It allows the court to nullify any law or practice that discriminates against women in an arbitrary manner. In recent times, various court decisions have utilized the doctrine of Article 14 to protect the rights of women, as well as to oppose traditions and employment practices that discriminate against women.

Article 15: Prohibition of Discrimination and Protective Discrimination

According to Article 15, the state is not allowed to treat its citizens differently because of their religion, race, gender, sexual orientation, or place of birth. This particular article becomes important with regard to

women's issues, since it directly bars discrimination based on gender. On the other hand, the State is allowed to take special steps for the benefit of women and children under Article 15(3). The reason behind this provision is that merely being equal before the law does not ensure the overcoming of historical and structural disadvantages. Therefore, various schemes for empowerment and protection of women have been created based on the provisions of this particular article. Thus, Article 15 promotes both equality and empowerment by allowing affirmative action aimed at achieving substantive gender justice.

Article 16: Equality of Opportunity in Public Employment

All citizens are guaranteed equal opportunity in employment and appointments to any position under the State under Article 16. When it comes to public employment and positions of authority, the article guarantees women's equal standing and outlaws discrimination based only on sex. This article has served a key function in ensuring increased representation of women in public administration, police, and even the judiciary. The interpretations of Article 16 made by the judiciary have added a lot to the rights of women concerning their employment. Equal participation in public employment is very important for the economic freedom and empowerment of women.

Article 39A: Equal Justice and Free Legal Aid

Article 39A becomes significant within the framework of providing women access to justice. This Article stipulates that the State guarantees that the legal process ensures justice based on equal opportunity, as well as provides legal aid to individuals who do not have means for hiring legal professionals. Most women, particularly those belonging to economically poor backgrounds, face financial constraints in obtaining justice through the legal process. The Article aims at removing any such economic hindrances for accessing justice by means of legal aid, legal education, and schemes.

Fundamental Duties and Article 51A(e)

The Constitution also imposes responsibilities upon citizens to promote gender equality. Article 51A(e), which forms part of the Fundamental Duties, requires every citizen to renounce practices that are derogatory to the dignity of women. This provision reflects the understanding that achieving gender justice is not solely the responsibility of the State but also a collective social obligation. It encourages individuals and communities to reject discriminatory customs, violence, and practices that undermine women's dignity and status. By promoting respect for women, Article 51A(e) contributes to the creation of a more inclusive and equitable society.

6. FEMINIST LEGAL THEORY AND CRIMINAL JUSTICE

The theory of feminist jurisprudence developed as a reaction against the conventional approach that considered law to be an impartial, objective process that applies uniformly to all persons irrespective of gender. According to feminist theorists, legal systems have traditionally operated within the framework of patriarchal societies, creating rules and procedures that were based on male experiences. Women's issues were therefore either sidelined or dealt with inadequately in these legal systems. Thus, the feminist approach in jurisprudence attempts to identify and correct the biases in these legal systems so that laws can address the unique problems that face women. The emphasis in feminist jurisprudence lies not only on formal but also on substantive equality.

Each of the different strands of feminist legal theory has its own take on the question of gender inequality in the legal domain. According to liberal feminism, efforts should be made towards gaining equality for women through laws that do not discriminate against women and grant equal rights before the law. According to radical feminism, there exists deep-rooted patriarchy, which affects society, politics, and the law, leading to gender inequality. Intersectional feminism goes a step further by taking into account that women's lives are affected not only by gender discrimination but also casteism, racism, economic inequality, and religious discrimination. As a result, women from marginalized communities may suffer from compounded discrimination when accessing justice.

In the domain of criminal justice, feminist legal theory points out several structural problems, such as blaming the victim, gender stereotypes, underreporting of crimes against women, and an overall failure on the part of the institution to properly address sexual and domestic abuse cases. According to the principles of feminist legal theory, traditional methods of handling criminal cases are insufficient in protecting the rights of victims and may even aggravate gender inequalities in the process by applying gender-insensitive investigation techniques and procedures during trials. Hence, the feminist legal theory emphasizes the importance of a victim-oriented approach, gender sensitivity in the police, special programs and policies for supporting women, and other relevant issues.

7. WOMEN'S ACCESS TO JUSTICE IN INDIA'S CRIMINAL JUSTICE SYSTEM

Although there exist constitutional guarantees and other reforms intended to secure the rights of women, securing justice is still a problem faced by many women in India. Many factors that act as deterrents

prevent women from accessing justice, making it difficult for them to utilize the criminal justice system. The following section outlines some of the main hurdles that prevent women from accessing justice:

- **Barriers to Reporting Crimes:** One of the biggest problems that women face is the hesitation to file a report about crimes against them. Stigma associated with reporting the crime, threats of social repercussions, and possible retribution can make a woman hesitant to contact the authorities. Sexual assault in particular carries its own set of stigma.
- **Police Response and Investigation:** The police play an important role in ensuring access to justice. Nevertheless, many women experience insensitivity, a lack of willingness to file complaints, and poor investigation processes. Despite changes like the introduction of zero FIR, women's police stations, and online platforms to file complaints, implementation is uneven.
- **Economic Constraints:** Financial dependence and economic insecurity frequently hamper women's access to legal redress. The expenses of hiring lawyers, travel, paperwork, and court proceedings can discourage women from seeking justice.
- **Lack of Legal Awareness:** However, most women do not know about the law and what can be done for them. Legal illiteracy is especially prevalent among women in rural areas and among other disadvantaged groups.
- **Judicial Delays:** The delays associated with investigations, prosecutions, and adjudications greatly contribute to women lacking faith in the criminal justice process. The delay in legal proceedings may worsen the traumatic experience.

8. LEGAL PROVISIONS FOR PROTECTING WOMEN'S RIGHTS

Some legislative provisions have been made by India to counteract gender discrimination and exploitation of women. The laws passed are meant to protect the dignity of women and also guarantee their safety by making provision of legal redress. Over time, there has been significant evolution in the legal system to take into account the evolving societal situation concerning the rights of women. Some of the key laws made for protecting and empowering women are enumerated below:

Protection of Women from Domestic Violence Act, 2005

The Protection of Women from Domestic Abuse Act of 2005 establishes new legal safeguards for women, making it the first of its kind. While criminal laws may take a long time to implement, the Protection of Women from Domestic Violence Act, 2005 offers prompt civil remedies such as protection orders,

residence orders, financial relief, custody orders, compensation, and monetary relief. The Act covers a wide range of forms of domestic violence, including financial abuse, sexual assault, verbal abuse, and physical confrontations. Legal protections are extended to women in the following contexts: marriage, relationships that are substantially similar to marriage, and cohabitation.

Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

The purpose of the Sexual Harassment of Women at Workplace Act of 2013 was to establish safeguards to prevent sexual harassment and assault that may occur in the workplace. The Indian Supreme Court issued the instruction that ultimately resulted in the Act's passage in the case of Vishaka v. State of Rajasthan. Sexually explicit statements, displays of pornographic material, inappropriate physical contact, solicitations for sexual favours, and other forms of aggressive behaviour are all considered forms of sexual harassment. Also, there needs to be a system in place for both district-level and local complaint groups.

Criminal Law (Amendment) Act, 2013

The Nirbhaya gang rape case in Delhi prompted widespread demands for action, which led to the passing of the Criminal Law (Amendment) Act, 2013. This act has provided a robust legal background in respect to crimes against women because now not only the existing definitions have been amended but several other offences like stalking, voyeurism, acid attack, sexual harassment etc have been included under criminal laws. Not only punishment for offences against women has been increased but also some procedures have been adopted to protect the interests of victims.

Protection of Children from Sexual Offences (POCSO) Act, 2012

POCSO Act, 2012, has been introduced as a means to provide adequate protection to children from being sexually abused, exploited, and harassed. This act identifies various kinds of sexual offences committed against children and lays down child-friendly mechanisms of filing complaints and handling the case through investigation, trial, and documentation. One of the objectives behind introducing this act is that the suffering of the child victim must be minimized when dealing with a sexual crime against her/him legally. As most cases of such crime have girls as victims, this act becomes particularly important.

Bharatiya Nyaya Sanhita, 2023

BNS 2023, which has repealed several clauses from the Indian Penal Code, still ensures that offences affecting women continue to be protected while making numerous reforms to ensure a modern approach towards criminal jurisprudence. The law makes provision for strict punishment for offenses such as rape, sexual harassment, stalking, trafficking, and various other offenses against women. It also puts special emphasis on technological advancements, prompt investigations, and a victim-centric approach to criminal proceedings to make the process of criminal litigation faster and more efficient.

9. JUDICIAL CONTRIBUTIONS TO GENDER JUSTICE

The Indian judicial system has been a very significant element in bringing about gender justice through the progressive interpretation of constitutional provisions. Through several landmark decisions of the courts, it has been made possible to curb discriminatory practices and ensure that equality, dignity, and non-discrimination are properly followed.

1. Vishaka v. State of Rajasthan (1997)

A crucial decision came when the Supreme Court formulated the Vishaka Guidelines to address workplace sexual harassment. As a breach of women's basic human rights, it acknowledged sexual harassment as an affront to their equality, dignity, and autonomy in determining their own career path. Lawmakers drafted these regulations in response to the Sexual Harassment Prevention in the Workplace Act of 2013.

2. Shayara Bano v. Union of India (2017)

In a landmark ruling, India's supreme court declared that the practise of quick divorce, often known as triple talaq, was unconstitutional. In its ruling, the Court found that this practice violated the basic rights of Muslim women and was therefore arbitrary.

3. Joseph Shine v. Union of India (2018)

The highest court in India ruled that Section 497 of the criminal code, which dealt with adultery, was invalid. Since it implied that women were their husbands' property, the nation's top court decided that this legislation provision violated women's rights to equality and personal liberty.

4. Secretary, Ministry of Defence v. Babita Puniya (2020)

The landmark ruling levelled the playing field in the Indian Army by allowing female officers to receive permanent commissions on par with their male counterparts. Gender norms cannot be used as a basis to deny women equal rights in public employment, according to the Supreme Court's clarification.

The above judicial pronouncements clearly illustrate how the judiciary has been playing an active role in ensuring that gender justice is upheld, discrimination ends, and women's constitutional rights are strengthened. The contribution made by the courts towards upholding the principle of gender justice is therefore evident.

10. CONCLUSION

This research shows that although there exist strong constitutional protections, progressive laws, and effective judicial interventions, gender inequality still plays an inhibiting role in restricting women from accessing justice within the Indian criminal justice system. There exist many hurdles faced by women in accessing and seeking justice, such as social discrimination, male-dominated mentality, economic dependency, lack of legal knowledge, bias in the legal system, and delays in procedures. The study shows that despite the presence of equal laws for men and women; the achievement of legal equality is still a big challenge as long as there remain deep-rooted socio-cultural disparities. The analysis further demonstrates how the application of feminist jurisprudence helps explain the complexities surrounding the problems in law relating to gender issues. In spite of the various reforms made in laws in order to safeguard the rights of women and promote gender justice, the implementation and effectiveness of such reforms hinge upon proper implementation and public enlightenment.

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