



GENDER JURISPRUDENCE IN CRIMINAL JUSTICE SYSTEM

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Abstract--Mother Nature had divided human beings who are considered to be the torch bearer of any civilization mostly into male and female groups with their intrinsic physical and psychological characteristics. Accordingly the rights and duties of both the gender were determined by the law framers on the basis of the role played by both the gender in their day to day life. In primitive society women were mostly the victims of crimes and there were rare instances when they had to be put behind the bars. The most possible reason behind it was that the women were mostly confined in their household duties i.e. taking care of the family, bearing and raising children etc. Accordingly, mostly all the laws especially the criminal justice system prevalent worldwide failed to identify and adopt the outlook which would have given equal importance to the needs of the women. This paper is an attempt to analyze the position of women in the prevalent criminal justice system.

Keywords: *Gender Justice, Criminal Justice System, Gender equality, Right to equality, Gender discrimination.*

INTRODUCTION

Gender jurisprudence is unheard of in the realm of criminal justice system. In fact, it is continuously at discord with social norms that are enforced by the biases of the criminal justice system. While there is a preconceived notion that the criminal justice system primarily revolves around men, as men are predisposed to violence, women do not even garner support as victims in this system. Unjust and biased laws have turned the justice delivery system into a travesty of itself. The laws governing any society mirror the cultural, moral and ethical norms prevalent amongst its members; it is thus inevitable that a patriarchal society will have sexist laws. Masculinity asserted through violence is characteristic of patriarchy, with much of it directed at women under the pretext of maintaining family honour.

The country's criminal justice system has failed to deter perpetrators of honour killings, domestic violence, forced marriages, rape and family feuds. Judiciary at the lower levels and sometimes even at the higher levels, tends to reinforce discriminatory customary norms, rather than securing constitutionally-guaranteed gender equality.

The interpretation of law can never be completely detached from the specific cultural context in which it is enacted; norms and accepted practices profoundly affect the application and interpretation of law. The justice system, therefore, predisposed to the notion that women victims of rape have a morally casual attitude. Regardless of what the law says, at the end of the day, the law is interpreted by societal norms, which can result in the miscarriage of justice.

There have been instances when the lower judiciary especially has interpreted the law through the lens of social, cultural and sexual bias. It has assumed, for instance, that women are incapable of deciding for themselves and need a guardian to validate their marriage. This has resulted in many women imprisoned in cases of adultery, instituted by relatives not approving of her right to marry at will and invalidating her lawful marriage. In cases of honour killings, mitigating factors are often taken into account for men but not for women, because men are assumed to be guardians of 'family honour'.

In cases of domestic violence, women are forced to reconcile with the perpetrators of violence, often the husband. Even if the matter reaches the court, the general attitude is that there should always be reconciled, leaving the victims without legal protection and at the mercy of their violent relatives and abusive partners.

The general attitude of the justice system needs a major change in order to do away with the gender-biased mindset. Gender sensitisation can do little in the face of societal pressures. Specific gender policies will need to be initiated to tackle the core issue. Only then can women litigants and victims of crime be confident that they will be heard and justice will be served. Meanwhile, judges should be specifically trained to adjudicate upon gender issues. They must understand the sensitivity of rape, for instance, and should allow complete privacy to



the victim, who has been brave enough to stand up for herself. These victims should be allowed to remain anonymous to protect their identity and life. Judges should be trained to adjudicate by looking beyond the existing social customs and norms, to uphold and safeguard the rights of women.

Suspicion and contempt for female victims of sexual violence permeates the criminal justice system. A victim of rape or molestation, for instance, must pass the test of the 'good Indian woman', and the 'good woman' cannot be one who wears revealing clothes or goes out late at night. Certain forms of sexual violence against women are still not prohibited, proscribed, penalized or even condemned. An attitude of suspicion and contempt for the victim/survivor of sexual violence permeates the criminal justice system. One readily castigates the police for their biased and sloppy investigation, but there is very little comment on how lawyers or the judiciary respond to this issue. Perhaps this is because not many people are conversant with the actual functioning of the legal system and the conduct of trials.

A woman victim is likely to find it less intimidating to narrate her evidence before a woman judge during the trial. However, a woman judge is not necessarily more sensitive or cognisant of the dynamics of sexual violence. Despite judgments of the Supreme Court to the contrary, judges of the trial court, including women judges, look for injuries on the victim's body as signs of non-consensual sexual intercourse. It is extremely difficult to get a conviction in a case of date rape or where the woman or her conduct does not conform to that of the 'good woman'. The test that the survivor of sexual assault has to pass is not that of a 'reasonable woman' but rather that of the 'good Indian woman'.

It is not only that the ingredients of offences laid in criminal law are gender biased but the trial continues to the criminal procedural laws also. As for example the bail provisions regarding the amount of bond and other requirements fails to meet with the needs of women. Because most of the time the female offenders are either abandoned by their families or are not financially sound. So, special provisions should have been included in the bail procedures. Likewise, even after conviction the corrective methods should be more gender sensitive.

Hence, the question arises whether the biased criminal justice system is fair enough to render justice to women? Given the deep and abiding biases women face within the criminal justice system, it is only to be hoped that the government shows seriousness in addressing them.