



THE CRUCIAL ROLE OF THE JUDICIARY IN SAFEGUARDING WOMEN'S RIGHTS IN INDIA: A FOCUS ON CRIMINAL LAWS

Hemlata Ninoriya¹

*LLM (Student),
Rama University,
Kanpur*

Mr. Rahul Singh²

*Assistant Professor,
Faculty of Judicial Sciences,
Rama University, Kanpur*

Abstract- This research delves into the pivotal role played by the judiciary in safeguarding women's rights in India, particularly concerning criminal laws. Despite legislative measures and policy interventions, women in India continue to face various forms of discrimination and violence. The judiciary, through its interpretative role and enforcement of laws, has emerged as a crucial protector of women's rights. This paper examines landmark cases and legal developments that have shaped the jurisprudence surrounding women's rights, highlighting the challenges and progress made in addressing gender-based violence and discrimination. By analyzing the judiciary's approach to interpreting and applying criminal laws, this research elucidates the evolving landscape of women's rights protection in India.

Keywords- Judiciary, Women's Rights, India, Criminal Laws, Gender-Based Violence, Legal Interpretation

1. Introduction:

Women's rights have been a subject of considerable concern and debate in India, a country characterized by a diverse cultural, social, and economic landscape. The protection of women's rights within the realm of criminal law stands as a cornerstone in the pursuit of gender equality and justice. With women disproportionately affected by various forms of violence, discrimination, and exploitation, the judiciary's role in interpreting and enforcing criminal laws becomes paramount. From addressing cases of domestic

violence and sexual assault to combating gender-based discrimination in public spaces, the judiciary plays a crucial role in upholding the rule of law and safeguarding the rights and dignity of women. In this context, examining the judiciary's approach to women's rights within the criminal justice system offers insights into both the progress made and the challenges that persist in ensuring gender equality before the law.

Objectives:

1. To examine the evolution of women's rights protection by the judiciary in India
2. To analyze the role of legislative reforms in advancing women's rights
3. To analyze the protection of women's right provided by the Constitution of India
4. To evaluate the impact of judicial activism and legal interpretation on women's rights
5. To identify challenges and barriers to women's access to justice
6. To explore emerging trends and future directions in protecting women's rights

Research Methodology:

The research methodology employed a multi-faceted approach combining literature review, case analysis, legislative analysis, and exploration of emerging trends to provide a comprehensive understanding of the judiciary's role in protecting women's rights within the criminal justice system in India.

2. Historical Context:

The historical context for the protection of women's rights by the judiciary in India is complex and multifaceted, reflecting the evolving social, cultural, and legal landscapes over time. From colonial-era laws to post-independence reforms, the journey towards gender equality has been marked by both progress and setbacks. Traditionally, women in India were subject to patriarchal norms and practices that relegated them to subordinate roles within the family and society. However, significant milestones can be observed throughout history, where judicial interventions have played a pivotal role in advancing women's rights. For instance, landmark cases such as **Rukhmabai v. Dadaji (1887)** challenged prevailing norms regarding marital rape and the autonomy of women within marriage. The subsequent enactment of legislations such as the Hindu Succession Act (1956) and the Dowry Prohibition Act (1961) furthered the cause of women's rights, albeit with limitations. Landmark cases such as **Mathura rape case (1972)** and **Vishakha v. State of Rajasthan (1997)** have highlighted the need for judicial activism in addressing gender-based violence and discrimination.

Over the years, judicial interpretations and pronouncements have gradually expanded the scope of women's rights, addressing issues ranging from property rights to workplace discrimination and violence against women. While progress has undoubtedly been made, challenges such as institutional biases, societal

attitudes, and gaps in implementation continue to shape the landscape of women's rights in India, underscoring the ongoing need for vigilant judicial activism and legal reforms.

3. Mapping Women's Rights Violations in India

Various forms of women's rights violations persist in India, spanning multiple areas:

- i. **Missing of Girl Child:** The term "missing women" was coined by Prof. Amartya Sen to highlight the disproportionately low number of women compared to men in several developing countries, a trend mirrored in some Indian states. This disparity often stems from cultural biases leading to the trafficking of girls, particularly prevalent in regions with imbalanced sex ratios. Additionally, instances of women disappearing from their marital homes contribute to this issue.
- ii. **Dowry Deaths:** The incidence of dowry-related deaths among women in India has surged dramatically. Disputes over dowry payments pose a significant challenge, with thousands of newlywed brides reportedly killed annually for dowry. Despite legal provisions such as Section 498A of the Indian Penal Code criminalizing marital cruelty and dowry transactions, the practice persists due to inadequate enforcement of laws like the Dowry Prohibition Act.
- iii. **Domestic Violence:** Despite legislative measures like the Protection of Women from Domestic Violence Act 2005, domestic violence remains pervasive in India. Rooted in patriarchal societal norms, domestic violence often manifests as physical and psychological abuse inflicted by husbands. Legal recourse exists, including provisions under the Dowry Prohibition Act and Section 498A of the Indian Penal Code, yet effective implementation remains a challenge.
- iv. **Sati:** Although outlawed by social reformer Raja Ram Mohan Roy in pre-colonial India, instances of sati continue in post-colonial India. The enactment of the Sati Prevention Act in 1987 criminalized this practice, yet challenges persist due to resistance from certain segments of society citing religious freedoms.
- v. **Child Marriage:** Despite legal prohibitions outlined in the Child Marriage Act 2006, child marriages persist across India. Early marriage deprives girls of crucial developmental years and exposes them to spousal violence, including sexual abuse. Cultural practices like Akas Teej in Rajasthan perpetuate this issue.
- vi. **Female Foeticide:** Female infanticide, foeticide, and sex-selective abortions remain prevalent, exacerbated by advancements in technology facilitating prenatal sex determination. Despite legal restrictions, such practices persist, particularly in northern states like Haryana, Rajasthan, and Punjab.
- vii. **Education:** While Article 21 of the Indian Constitution mandates free education for all, women's education rates remain low, especially in rural areas. Socio-economic factors, including parental expectations, seasonal labor demands, and gender biases, contribute to high dropout rates among girls.
- viii. **Forced Evictions and Exclusion:** Widows face eviction and homelessness following the death of their spouses, with women-headed households particularly vulnerable. Legal tenure rights are often contingent upon male relatives, leaving women with insecure housing situations.

- ix. **Sexual Harassment at the Workplace:** Despite legal measures like the Sexual Harassment of Women at Workplace Act 2013, sexual harassment remains underreported and inadequately addressed in Indian workplaces. Discrimination in pay and limited access to credit further compound challenges faced by women.
- x. **Rape:** Instances of rape have risen sharply in India, with reported cases reaching alarming levels. Rape is often used as a tool of power, particularly in rural areas, where caste dynamics exacerbate violence against women.
- xi. **Societal Violence against Women:** Patriarchal norms prevalent in religious, village, and professional communities perpetuate gender-based violence and discrimination against women, hindering efforts to achieve true gender equality.

In essence, addressing these multifaceted challenges requires comprehensive legislative reforms, effective enforcement mechanisms, and concerted efforts to challenge deeply ingrained societal attitudes towards women.

4. Legislative Developments in Women's Rights:

India has witnessed significant legislative developments aimed at promoting women's rights and gender equality. Over the years, legislative development in women's rights has been pivotal in reshaping societal norms and advancing gender equality in various spheres. From landmark laws addressing issues such as dowry, domestic violence, and sexual harassment to reforms in inheritance and property rights, India has witnessed significant strides towards empowering women through legislation. The enactment of laws like **the Protection of Women from Domestic Violence Act 2005**, **the Sexual Harassment of Women at Workplace Act 2013**, **the Dowry Prohibition Act 1961** and amendments to criminal laws to enhance punishment for offenses against women demonstrate the government's commitment to protecting women's rights and ensuring their safety and dignity. Furthermore, legislative measures aimed at promoting women's participation in politics, education, and employment, such as **the Maternity Benefit Act 1961** and the provision of reservation for women in local bodies, have been instrumental in fostering greater gender inclusivity and representation. **The Prohibition of Child Marriage Act of 2006**, the national legislation addressing child marriage, does not recognize consent in the case of minors. It categorizes child marriage as a punishable offense. When a minor's marriage is formalized through force, fraud, deception, enticement, sale, purchase, or trafficking, it is considered void. Other child marriages are deemed voidable, meaning they are considered valid until annulled by a court. Since the law doesn't attribute consent to a child, it implies that all child marriages are conducted under coercive, fraudulent, or illegal circumstances, rendering them invalid.

However, challenges remain in effective implementation, enforcement, and addressing intersectional forms of discrimination faced by women from marginalized communities. Continued legislative reforms, coupled with efforts to enhance awareness and sensitization, are crucial in furthering women's rights and fostering a more equitable and inclusive society. The judiciary plays a crucial role in implementation and enforcement of these laws.

5. Protection of Women's Rights by the Constitution of India

Gender equality is a foundational principle enshrined in the Indian Constitution, empowering the state to implement measures aimed at redressing historical and systemic discrimination against women. The Constitution, as the supreme law of the land, has played a crucial role in ensuring gender justice. Its preamble underscores the commitment to justice, social, economic, and political equality, and dignity for all individuals, including women. Recognizing women as a distinct class, the Constitution allows for the enactment of laws and policies that promote their rights and interests. Various constitutional provisions explicitly advocate for affirmative action to address gender disparities and prohibit all forms of discrimination against women. These measures aim to provide women with equal opportunities in education, employment, and participation in societal affairs. The commitment to gender equality is deeply embedded in India's highest policymaking levels, reflecting a steadfast dedication to advancing the rights and status of women.

The Constitution of India upholds gender equality through its Fundamental Rights, Directive Principles of State Policy, and Fundamental Duties. **Article 14** guarantees women the right to equality, while **Article 15(1)** allows for affirmative action to address discrimination against women. **Article 16** prohibits discrimination in public employment based on sex. These provisions are legally enforceable and reflect the country's legal constitutional history.

In the Directive Principles of State Policy, **Article 38** mandates the state to ensure social, economic, and political justice, striving to eliminate inequalities in status, facilities, and opportunities. **Article 39** outlines policies for securing livelihoods, equal pay for equal work, and protecting the health and strength of workers, regardless of gender. **Article 42** requires just and humane working conditions, including maternity relief, while **Article 46** emphasizes promoting education and economic interests, especially for marginalized citizens, including women.

Additionally, **Part IVA** of the Constitution, introduced through the 42nd Amendment Act, 1976, elevates the renouncement of practices derogatory to women's dignity to a fundamental duty. Laws such as the Equal Remuneration Act, Maternity Benefit Act, Dowry Prohibition Act, and Immoral Traffic (Prevention) Act stem from these constitutional provisions.

The **73rd and 74th** Amendments of 1993 have been pivotal in enhancing women's participation in the democratic process. They mandate a 33.33% reservation for women in elected seats in Panchayats and Nagarpalika institutions, including chairperson positions, facilitating women's empowerment at the local level.

It's crucial to acknowledge that while rights may be enshrined in law, their practical realization can often fall short. Despite legislative efforts, there remains a gap between legal rights and real-world access to justice for women. The persistent historical subjugation of women is evident in the declining numbers of women recorded in each census, a concerning trend. Moreover, crimes against women, including rape, sexual assault, harassment, domestic violence, and deceit, have not only increased in frequency but also in their severity and brutality. Statistics from the Crime Bureau of India highlight these grim realities, although they only capture reported cases, leaving countless others unaccounted for. Additionally, the proliferation of an expanding market economy has led to the heightened objectification of women in advertising and media, exacerbating the challenges faced by women.

Parliament has responded to these issues by periodically amending existing laws or enacting new ones to address these concerns. However, despite legislative efforts, there remains a significant gap between legal protections and the lived experiences of women. This underscores the ongoing need for comprehensive societal changes to ensure the full realization of women's rights and gender equality.

6. Judicial Activism and Legal Interpretation:

The Indian judiciary has consistently championed gender justice and women's rights through a series of significant judgments spanning various legal domains. Landmark judgments, including **Vishakha v. State of Rajasthan (1997)**, which recognized the right to a safe working environment free from sexual harassment, exemplify the judiciary's role in expanding the scope of women's rights protection. Furthermore, the Supreme Court's directives in cases such as **NALSA v. Union of India (2014)** have affirmed the rights of transgender individuals, contributing to a more inclusive approach to gender justice.

In **Suchita Srivastava and Another v. Chandigarh Administration (2009)**, the court affirmed a woman's fundamental right to reproductive autonomy, challenging mandatory pre-abortion approval and emphasizing the right to make decisions regarding one's body. Similarly, in **Joseph Shine v. Union of India (2018)**, the court struck down Section 497 IPC, acknowledging it as a violation of women's dignity and autonomy, underscoring women's equality within marital relationships. Upholding the Pre-conception and Pre-natal Diagnostic Techniques (PNDT) Act in **Federation of Obstetric and Gynecological Societies of India (FOGSI) v. Union of India and Others (2019)** illustrated the judiciary's commitment to combating gender-based discrimination and addressing skewed sex ratios.

Further, in **Lata Singh v. State of Uttar Pradesh and Another (2006)**, the court protected individuals' rights to choose their partners, particularly in inter-religious or inter-caste marriages, reaffirming women's agency in their personal lives. The judiciary's intervention in **Secretary, Ministry of Defence v. Babita Puniya and Others (2020)** expanded opportunities for women in the military, advocating against gender-based exclusions and promoting equality in command assignments. Criticizing trivialization of sexual offenses and challenging gender stereotypes in **Hotel Priya, A Proprietorship v. State of Maharashtra and Ors. (2022)** highlighted the judiciary's role in reshaping societal attitudes towards gender-based discrimination.

Moreover, recent judgments like **Prabha Tyagi v. Kamlesh Tyagi (2022)** and **Arunachala Gounder (Dead) by LRs v. Ponnusamy and Others (2022)** underscored women's rights in domestic relationships and inheritance, respectively, ensuring legal protections for women in various spheres of life. The judiciary's condemnation of outdated practices like the two-finger test in **State of Jharkhand v. Shailendra Kumar Rai and Others (2022)** and affirmation of statutory rights such as maternity leave in **Deepika Singh v. Central Administrative Tribunal (2022)** emphasized the need for modernized legal frameworks sensitive to women's needs and realities.

Further, the judiciary's recognition of the mother's authority in **Akella Lalitha vs Konda Rao and Others (2022)** and advocacy for the inclusion of marginalized women in legal frameworks in **Kamla Neti (Dead) through LRs v. The Special Land Acquisition Officer and Others (2022)** demonstrated a commitment to gender inclusivity and social justice. Upholding the rights of unmarried women to terminate pregnancy in **X v. The Principal Secretary Health and Family Welfare Department, Delhi NCT Government and Another (2022)** and advocating for a safe workplace environment in **Aureliano Fernandes v. State of Goa and Others (2023)** reflected the judiciary's progressive stance in safeguarding women's rights and fostering gender equality. These diverse judgments collectively underscore the judiciary's unwavering dedication to advancing gender justice and safeguarding women's rights across various domains of Indian society, heralding a more inclusive and equitable legal landscape.

7. Access to Justice for Women:

Access to justice is essential for safeguarding women's rights and holding perpetrators of gender-based violence and discrimination accountable. This section examines the barriers faced by women in accessing justice, including socio-economic constraints, legal complexities, and systemic biases. It discusses the role of the judiciary in ensuring equal access to justice for women, including the provision of legal aid, support services, and expedited legal proceedings. It also explores initiatives aimed at enhancing women's participation in the legal process and empowering them to assert their rights effectively.

8. Challenges and Controversies:

The Indian judiciary confronts numerous challenges in safeguarding women's rights amidst a complex societal landscape. Among these challenges are the pervasive backlog of cases, which often results in delayed justice for women seeking redressal for issues such as domestic violence, sexual assault, and discrimination. Additionally, deeply entrenched social stigmas and cultural barriers create formidable obstacles, dissuading many women from reporting instances of abuse or seeking legal recourse due to fear of social ostracization and victim-blaming. Insufficient legal awareness, particularly among marginalized communities, further hampers women's ability to navigate the legal system effectively. Moreover, despite progressive legislation, inadequate implementation and enforcement mechanisms perpetuate impunity for perpetrators and undermine women's access to justice. Addressing these challenges requires comprehensive efforts to enhance access to legal resources, promote gender-sensitive judicial processes, and challenge discriminatory norms that perpetuate gender-based violence and inequality in Indian society.

9. Emerging Trends and Future Directions:

In the realm of the judiciary, emerging trends and future directions in the protection of women's rights are indicative of a dynamic shift towards more progressive and gender-sensitive approaches. One notable trend is the increasing adoption of intersectional perspectives in judicial decision-making, recognizing the unique challenges faced by women from diverse backgrounds and marginalized communities. Courts are also embracing technology to improve access to justice for women, with the use of online platforms for filing complaints, virtual hearings, and digital evidence management systems facilitating smoother legal

proceedings. Moreover, there is a growing emphasis on judicial training and capacity-building programs aimed at sensitizing judges to issues of gender bias and discrimination, ensuring fair and impartial adjudication of the cases related to women's rights. Looking ahead, the future direction for the judiciary in protecting women's rights lies in strengthening institutional mechanisms for gender mainstreaming within the justice system, promoting judicial diversity, and enhancing collaboration with other stakeholders, including civil society organizations and government agencies, to address systemic barriers to gender equality and justice. By embracing these trends and initiatives, the judiciary can play a pivotal role in advancing women's rights and fostering a more inclusive and equitable society.

Recent developments in jurisprudence, including the recognition of marital rape as a form of violence and the expansion of reproductive rights, signal a shifting paradigm in the judiciary's approach to women's rights. However, sustained efforts are needed to address systemic barriers and ensure the effective implementation of legal protections. Strengthening institutional mechanisms, enhancing legal literacy, and fostering community engagement are essential for advancing women's rights in India.

10. Conclusion:

In conclusion, the judiciary's role in protecting women's rights through criminal laws is pivotal in ensuring justice and fostering a society free from gender-based violence and discrimination. As evidenced by landmark judgments and legislative reforms, the judiciary has played a crucial role in addressing systemic barriers and holding perpetrators of violence against women accountable. However, challenges such as backlog of cases, legal loopholes, and societal biases persist, underscoring the need for continued efforts to strengthen the legal framework, enhance judicial sensitization, and promote gender equality within the criminal justice system. By upholding the principles of fairness, impartiality, and gender sensitivity, the judiciary can serve as a beacon of hope for women seeking justice and contribute to building a more inclusive and equitable society where every woman's rights are protected and respected under the law.

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