

## RIGHT TO LIFE AND PROTECTION OF WOMEN UNDER CRIMINAL JUSTICE SYSTEM : AN OVERVIEW

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**Abstract:** The Criminal Justice System (CJS) consists of the legal provisions defining offences, providing punishment for those offences, procedures for investigation of those offences, prosecution and trial leading to conviction or acquittal of accused persons. At the same time the law makers have provided number of legislations with various provisions to guarantee the right to life and protection of women in the present system. The right to life is a fundamental human right, central to the enjoyment of all other human rights. International human rights law recognizes this basic right as accruing at birth, and international and regional human rights bodies, as well as courts worldwide, have clearly established that their protections must be consistent with women's human rights. This paper is an attempt to make an overview with regard to the protection of women under present criminal justice system in India.

**Keywords:** Status of women in India, Women and Indian Constitution, Women under criminal justice administration

“Democracy, development and respect for human rights and fundamental freedom are interdependent and mutually reinforcing.” -Vienna World Conference on Human Rights 1993

**Introduction:** India is a multifaceted society where no generalization could apply to the nation's various regional, religious, social and economic groups. Nevertheless certain broad circumstances in which Indian women live affect the way they participate in economy. A common denominator in their lives is that they are generally confined to home with restricted mobility, and in seclusion. Other, unwritten, hierarchical practices place further constraints on women. Throughout history, women have generally been restricted to the role of a home-maker,; that of a mother and wife. Despite major changes that have occurred in the status of a mother and wife. Despite major changes that have occurred in the status of women in some parts of the world in recent decades, norms that restrict women to the home are still powerful in India, defining activities that are deemed appropriate for women. They are, by and large, excluded from political life, which by its very nature takes place in a public forum. In spite of all the efforts have been taken to improve the status of women, the constitutional dream of assuring the protection of women with the enjoyment of right to life is miles away from becoming a reality. In this paper researcher makes an attempt to probe into the quiet few issues related with women and how they are addressed in the justice administration mechanism in India.

**Status of women in India:** Women in India constitute nearly 50% of its population. Women issues in India are a matter of serious concern for the health of women, the fate of humanity, and for the prosperity of a country. There are many issues that women of today are experiencing day in and day out with heavy heart and silent tear. Sadly our government and the stringent policies as well as laws have failed to change the mindset of this man domination world. Since the birth of humanity, time has not changed its course for women. The constitution of India has granted equal rights to the

Even to day women of India put forward to various discriminatory practices like Sati, dowry. Lower literacy levels, higher mortality rates, malnutrition, and Domestic violence. All these women issues are sadly deep rooted in the Indian ethos which is not only affecting the social status of women in India but is also hampering the growth and development of the country. It is distressing that many girls don't even get the freedom to life as they are brutally killed in their mother's womb. This cruel world snatches away the right to life and she fails to breathe freshness of life. And if she becomes successful in living she is burnt to ashes through harshness of life and cruelty of the society. In and case she has to sacrifice her life to fulfil the needs, demands, and desires of men in the society. Starting from her life as girl child till the end of her life as a grandma, she experiences many trials and tribulations that leave a deep impact on her life physically, socially, and lack of care whereas in adulthood she is put to the most distressing social evils of India. It is a fact that the women in India face all this menace even in the presence of the strong constitution which is the fundamental law of the land. The makers of the constitution have given a special focus on women through various provisions

**Women and Indian Constitution:** 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..

men and women. It prohibits the state from making

discrimination between men and women. But today, it seems that there is a wide gulf between theory and practice. Article 14, confers on men and women equal rights and opportunities in political, economic and social sphere[1]. Article 15, prohibits, discrimination against any citizen on grounds of religion, race, caste, sex etc[3]. Article 16, provides for equality of opportunities matters relation to employment or appointment to any office under the state.

Article- 21 provides that "No person shall be deprived of his life or personal liberty except according to procedure, established by law". Article- 21 can be claimed where a person is deprived of his life or personal liberty by the State. The right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings. This is the view of the Supreme Court expressed in Francis Coralie Vs Union Territory of Delhi[2]. Following this decision the Supreme Court in Bandhua Mukti Morcha Vs Union of India[4] laid down that it is the fundamental right of everyone in this country, to live with human dignity free from exploitation. This right to live with human dignity enshrined in Article- 21 derives its life breath from the Directive Principles of State policy and particularly clauses (e) and (f) of Article-39 and Articles-41 and 42 and at least, therefore, it must include protection of health and strength of the workers men and women, and of the tender age of children against abuse opportunities and facilities for children to develop in a healthy manner and in conditions of and humane conditions of work and maternity benefit Article 39(a)(d), mentions policy security of state equality for both men and women the right to a means of livelihood and equal pay for equal work for both men and women the right to a means of livelihood and equal pay for equal work for both men and women. Article 42, Direct the State to make provision for ensuring just and humane conditions of work and maternity relief. But the questions remains to address is that whether the women are able to enjoy the equality at par with men as per the true spirit of the constitutional provisions.

The women in India have always been considered subordinate to men. Though the articles contained in the constitution mandates equality and non - discrimination on the grounds of sex, women is always. Recognizing the importance of arrest of a woman, it has been suggested that a male officer should avoid touching the woman's body while effecting arrest. It has also been suggested that a woman shall not be arrested after sunset and before sunrise[6]. If she is to be arrested, the police officer has to seek prior permission of his seniors. If this is not possible then the arrest can be made but the fact has to be reported to the senior. Recommendations came to be incorporated in the CrPC Bill 1994. And the Law Commission on its Report on

discriminated and dishonoured in Indian society. Although various efforts have been taken to improve the status of women in India, the constitutional dream of gender equality is miles away from becoming a reality.

Though, Human Rights are the minimum rights which are compulsorily obtainable by every individual as he/she is a member of human society. But it has been found that each and every right of the women is being violated in one or another way. The crimes against women in India are increasing at a very fast pace.

**Women under criminal justice administration:** The criminal justice system has to deal with the citizen at several stages. Arrest is one among them. At this stage the freedom of the citizen will be restricted to protect the interest. The provisions for arrest included under Cr.PC aims at various purposes. Sometimes, it helps the arrested from retaliatory assault from the public. Sometimes, it helps the arrested from it is necessary to prevent his person further crimes. And surely arrest helps him to be presented before the appropriate court to stand trial. It is to serve the third purpose that usually a suspect is arrested by the police. While under arrest, the arrested person loses freedom and his normal life in the family. As a consequence of arrest he is generally accused of having deviated from normal behaviour. So the decision to arrest is a very serious one from the point of view of human rights. And this decision is usually taken by a police officer in the criminal law system. Indeed, his decision to arrest is subject to the offences being cognizable. However, the discretion given to the police under the system is very wide. The police thus wields much power and this position often helps the police to violate women's rights with impunity. Efforts have therefore been made within this sphere to make the criminal law more balanced and just

**Protection of Women Under Criminal Procedure Code 1973:** Under the Criminal Procedure Code (hereafter CrPC) a woman can be arrested by male constables, Though in due regard to decency she may be searched by a female officer only[5]. The anxiety of the CrPC to safeguard the interests of women is reflected in the proviso of Section 47 which requires that if an apartment to be searched by the police is in the occupancy of a woman who according to custom does not appear in public then the police ought to serve her a notice to leave the place during the search. This is to avoid intruding on her privacy and causing any embarrassment to her.

officers with reasons for not taking prior permission. The magistrate is also to be informed of this fact. These safeguards have been suggested to afford maximum protection to the woman accused. These recommendations came to be informed of this fact. These safeguards have been suggested to afford maximum protection to the woman accused. These

rape and allied offences[7] had suggested that they can be incorporated in the Code by way of proviso to section

45(1) CrPC in this manner “ Provided that where a woman is to be arrested then, unless the circumstances indicate to the contrary, her submission to custody on an oral intimation’, of arrest shall be presumed and unless the police officer arresting is a female, the police officer shall not actually touch the person of the woman for making her arrest.” The Law Commission of India has made several recommendations for rendering justice to the women and children under Criminal Justice Administration. The need for keeping away the children from the police to the extent possible is felt by all the bodies concerned with law reform.

The National Commission for Women has suggested the inclusion of proviso to section 160(1). Accordingly the police should be allowed to question any male person under the age of eighteen years or a woman at any place other than the place in which such male person or woman resides. The provisions under Cr.PC with regard to the investigation and trial are also subjected for serious consideration in many times. Inclusion of medical examination report under section 177 and in rape cases trial by a court with woman presiding officer for offences under S.376 are the significant recommendations. Law makers have given specific attention to the maintenance of wife from sections 124 to 128 of Cr.PC.

**Protection of Women and Criminal Law (Amendment) Act, 2013:** “The Criminal Law [Amendment] Bill, 2013 was passed by the Lok Sabha on

19th March, 2013, and by the Rajya Sabha on 21st March, 2013. The President of India has accorded his assent to the Bill on 2nd April, 2013 and it will now be called the Criminal Law [Amendment] Act, 2013.” The new laws have provisions for increased sentence for rape convicts, including life-term and death sentence, besides providing for stringent punishment for offences such as acid attacks, stalking and voyeurism. Through the revised Bill, the government has amended various sections of the Indian Penal Code, the Code of Criminal Procedure, the Indian Evidence Act and the Protection of Children from Sexual Offences Act. As per the amended law, a rape convict can be sentenced to rigorous imprisonment for a term not less than 20 years, which may extend to remainder of the convict’s natural life. It also provides for the death sentence to repeat offenders. And for the first time, stalking and voyeurism have been defined as non-bailable offences if repeated for a second time, while acid attack convicts can get a 10-year jail sentence.

**Conclusion:** In spite of all these mechanisms in the justice administration system for safeguarding the rights and protection of women, India holds a sad picture of women status in India. The society has to change the way it looks at women and the way it treats women in our country. Government has to take a strict action against various forms of women issues in India before the essence of life and unconditional love dies from a woman’s heart.

#### References:

1. Constitution of India, Art.14. Equality before law. – The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India
2. Article 15 – (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.
3. AIR 1981 SC 746
4. AIR 1984 SC 802
5. See Section 51. CrPC 1975 and the observations in Kamalabhai v. State of Maharashtra AIR 1962 Sc 1189.
6. The proposed provision runs as follows;  
Except in unavoidable circumstances, no woman shall be arrested after sunset and before sunrise, and where such unavoidable circumstances exist, the police officer shall by making a written report, obtain the prior permission of his immediate superior officer not below the rank of an Inspector for affection such arrest, or if the case is one of extreme urgency and such prior permission cannot be obtained before making such arrest, he shall after making the report, forthwith report the matter in writing to his immediate superior officer with the reasons for arrest and the reasons for not taking prior permission as aforesaid and shall also make a report to the magistrate within whose local jurisdiction the arrest had been made, ‘ Law Commission of India, 135 the report on Women in Custody, Controller of Publications, Delhi, 1989, p.33
7. Law Commission of India, 84<sup>th</sup> Report Rape and Allied Offences; Some Questions of substantive Law Procedure and Evidence, Controller of Publications, New Delhi, 1980, p. 14

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