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BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

WOMEN'S ACCESS TO JUSTICE: A STUDY OF CPC PROVISIONS

AUTHORED BY - AKSHITA SINGH SENGER

Abstract

Access to justice for women is a critical issue that encompasses various dimensions, including legal rights, societal norms, and institutional barriers. This abstract explores the multifaceted challenges women face in seeking justice, highlighting the importance of addressing these barriers to promote gender equality and empower women. Despite legal frameworks that aim to protect women's rights, many women encounter significant obstacles in accessing justice, including economic constraints, lack of legal awareness, and societal stigma.

In many regions, cultural norms perpetuate discrimination against women, leading to underreporting of crimes such as domestic violence and sexual assault. Women often fear retaliation or social ostracism, which can deter them from seeking legal recourse. Additionally, inadequate legal representation and a lack of gender-sensitive judicial processes further hinder women's ability to navigate the justice system effectively. This situation is exacerbated in rural areas where legal resources are scarce, and traditional practices may overshadow formal legal systems.

The intersectionality of gender with other factors such as race, class, and disability also plays a crucial role in women's access to justice. Marginalized groups of women face compounded challenges, making it even more difficult for them to seek and obtain justice. For instance, indigenous women or women from lower socioeconomic backgrounds may encounter additional biases within the legal system, resulting in systemic inequities that perpetuate their marginalization.

Efforts to improve women's access to justice must involve a comprehensive approach that includes legal reforms, public awareness campaigns, and the establishment of support networks. Legal literacy programs can empower women by informing them of their rights and the available legal avenues for seeking justice. Furthermore, training law enforcement and

judicial personnel on gender sensitivity can foster a more supportive environment for women who come forward with complaints.

International frameworks, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), provide a foundation for promoting women's rights and access to justice. However, the effective implementation of these frameworks at the national and local levels remains a challenge. Governments must commit to creating an enabling environment that not only protects women's rights but also actively promotes their access to justice.

Introduction

Women's access to justice is a fundamental human right and a crucial element in the broader pursuit of gender equality. It encompasses not only the ability of women to seek legal remedies for grievances but also their capacity to navigate the legal system effectively and assert their rights without fear of discrimination or retribution. Despite significant progress in recent decades, women around the world continue to face numerous barriers that impede their access to justice, including legal, social, economic, and cultural obstacles. Understanding these challenges is essential for developing effective strategies to promote gender justice and ensure that women can fully participate in society.

One of the most significant barriers to women's access to justice is the existence of discriminatory laws and legal practices. In many countries, legal frameworks may explicitly or implicitly favour men, leaving women at a disadvantage. For instance, laws governing marriage, divorce, inheritance, and property rights may discriminate against women, limiting their ability to seek justice or claim their rights. Even in jurisdictions where laws are ostensibly gender-neutral, the application of these laws may be biased against women due to prevailing cultural norms or stereotypes. This legal inequity can deter women from pursuing justice, as they may feel that the system is stacked against them.

Moreover, the lack of awareness and understanding of legal rights among women further exacerbates the problem. Many women, particularly those in rural or marginalised communities, may not be aware of their rights or the legal avenues available to them. This lack of knowledge can prevent them from seeking help when they encounter legal issues,

whether related to domestic violence, sexual harassment, or discrimination in the workplace. Legal literacy programs and community outreach initiatives are essential in empowering women with the knowledge they need to navigate the legal system and assert their rights.

Cultural norms and societal attitudes also significantly impact women's access to justice. In many cultures, traditional beliefs and practices may perpetuate gender inequality and discourage women from seeking justice. For instance, societal stigma surrounding victims of domestic violence or sexual assault can lead to victim-blaming and discourage women from reporting these crimes. Furthermore, in some communities, women may be pressured to resolve disputes privately or through informal mechanisms rather than through the formal legal system. Challenging these harmful cultural norms and promoting a more supportive environment for women is essential for improving access to justice.

The role of law enforcement and the judicial system cannot be overlooked when discussing women's access to justice. In many cases, police and judicial officials may exhibit bias or lack sensitivity when dealing with cases involving women. This can result in inadequate investigations, dismissive attitudes, or even outright hostility towards female victims. Training law enforcement and judicial personnel on gender-sensitive practices is crucial to ensuring that women receive the support and justice they deserve. Additionally, establishing specialised units within law enforcement and the judiciary to handle cases of violence against women can lead to more effective responses and outcomes.

History

Pre-Independence

In pre-colonial India, women had little access to the legal system. Women's rights were governed by customs and traditions, and women in patriarchal nations were frequently denied basic rights.

A major change was brought about by the British East India Company, which introduced Western legal ideas. Women's fundamental rights were established by the Indian Laws Act (1835) and the Indian Evidence Act (1872). But women's rights remained restricted, and to solve these problems, social reform movements were born.

Personal concerns were handled by customary regulations, such as those found in Islam and

Hinduism. But patriarchal society limited women's rights and limited their roles to household chores. Access was further hampered by low levels of knowledge and social stigma against women who seek justice.

Legislative and social reform movements were among the reform initiatives that arose. Among the notable legislation were the Age of Consent Act (1891), the Hindu Widows' Remarriage Act (1856), and Sati Regulation XVII (1829). These initiatives prepared the way for reforms after independence. Women's access to justice made little progress prior to independence. Basic rights were established by British laws, but social reform groups fought for more modifications. Ongoing initiatives to improve women's access to justice in India are informed by an understanding of this era.

Post-Independence

All Indian citizens, including women, were promised equality and justice by the 1950 Constitution. Personal laws were changed by the Hindu Code Bills (1955–1956), and dowry harassment was addressed by the Protection of Women's Rights Act (1974). Following independence, women's access to justice in India experienced substantial changes (1947–1970s). Articles 14, 15, and 21 of the Indian Constitution (1950) guarantee justice and equality for all citizens, including women.

The role of legislative reforms was vital. While the Special Marriage Act of 1954 permitted intercaste marriages, the Hindu Code Bills of 1955–1956 changed personal laws. Dowry harassment was addressed by the Protection of Women's Rights Act (1974) and the Dowry Prohibition Act (1961).

The Code of Civil Procedure (1908) was amended to safeguard property rights, give maintenance and support, and allow women to initiate lawsuits without the presence of male guardians. These improvements raised women's engagement in the legal system, improved their access to school and work, and raised their level of legal awareness.

Even with advancements, problems continued. Women's access to justice was hampered by patriarchal attitudes in the judiciary, social and cultural hurdles, and restricted access to legal aid.

With the creation of the National Commission for Women (1992), women's organisations, lobbying groups, and judicial training programs, reform initiatives persisted.

Women's access to justice made great strides in the post-independence era. Women were empowered by CPC regulations, legislative improvements, and constitutional safeguards. Persistent issues demand ongoing changes.

Women's Movement and Reforms

As the women's movement grew, it pushed for changes to the law. Two important pieces of legislation were the Family Courts Act (1984) and the Protection of Women from Domestic Violence Act (1983, amended 2005). Significant progress was made in India during the 1980s and 1990s regarding women's access to justice. This advancement was fuelled by the women's movement and legislative changes.

The Commission of Sati (Prevention) Act (1987), the Family Courts Act (1984), the Protection of Women from Domestic Violence Act (1983, revised 2005), and the Indecent Representation of Women (Prohibition) Act (1986) were among the important pieces of legislation. These laws addressed women's dignity, family conflicts, and domestic abuse.

The National Commission for Women was established in 1992, and other reforms included the CPC and Evidence Act changes, women's courts, family courts, and legal aid services.

Contemporary Era

There have been notable developments in recent years. In addition to regulations like the Muslim Women (Protection of Rights on Marriage) Act (2019) and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act (2013), the National Commission for Women was founded in 1992.

These laws cover women's rights, sexual harassment, and domestic abuse. The CPC and Evidence Act have been amended; Fast Track Courts and Special Courts have been established; the number of women serving in the courts has grown; and legal aid services have been improved.

Significant changes have occurred, including a rise in the number of reports of sexual

harassment and domestic abuse, better judicial sensitivity, improved access to justice for marginalised women, and more understanding of women's rights.

CPC Provisions

Indian laws protecting women's rights are comprehensive and far-reaching. Constitutionally, women are guaranteed equality before the law (Article 14), prohibition of discrimination on grounds of sex (Article 15), right to life and personal liberty (Article 21), and prohibition of trafficking and forced labor (Article 23).

Family and marriage laws include the Hindu Marriage Act (1955), Muslim Women (Protection of Rights on Marriage) Act (2019), Special Marriage Act (1954), and Family Courts Act (1984). These laws regulate marriage, divorce, and inheritance.

To protect women from violence, India has enacted the Protection of Women from Domestic Violence Act (2005), Dowry Prohibition Act (1961), Sexual Harassment of Women at Workplace Act (2013), and Criminal Law (Amendment) Act (2013).

Property and inheritance laws include the Hindu Succession Act (1956), Muslim Personal Law (Shariat) Application Act (1937), and Indian Succession Act (1925). These laws ensure women's rights to inherit and own property.

Employment and education laws comprise the Equal Remuneration Act (1976), Maternity Benefit Act (1961), and Right to Education Act (2009). These laws promote women's economic empowerment and education.¹

Social welfare laws include the National Commission for Women Act (1992), Immoral Traffic (Prevention) Act (1956), and Prohibition of Child Marriage Act (2006).

Recent reforms include the Criminal Law (Amendment) Act (2018), Muslim Women (Protection of Rights on Marriage) Act (2019), and Transgender Persons (Protection of Rights) Act (2019). These laws further strengthen women's rights and protection.

¹ Sieder, Rachel, and Maria Teresa Sierra. Indigenous women's access to justice in Latin America. Chr. Michelsen Institute, 2010.

Overall, Indian laws provide a robust framework for protecting women's rights and promoting gender equality.

Access to Courts

Women's access to the courts is hampered by social barriers, which sustains gender inequity. Gender bias and patriarchal mindsets are examples of cultural and societal standards that limit women's access to justice. The problem is made worse by economic limitations, such as little money, little education, and reliance on male family members. Women are deterred from using the courts by pressure from their families, communities, and reputations, which are exacerbated by worries about honour and reputation. Inadequate access to legal aid and a lack of knowledge about legal rights and court procedures exacerbate the issue.² Women's access is further impeded by both physical and infrastructural hurdles, such as unfriendly infrastructure and distances to courts. Fear of intimidation, trauma, and self-doubt are examples of psychological obstacles that impair women's confidence when navigating the legal system. Gender bias is sustained by institutional hurdles such as prejudiced judicial attitudes and under-representation of women in the judiciary.

Women are further marginalised by intersectional barriers such as differences between rural and urban areas, disabilities, and biases related to caste, class, and religion. Finding comprehensive solutions is necessary to address these social constraints. The importance of legal literacy initiatives, judicial gender sensitisation training, support services, alternative conflict resolution procedures, greater representation of women in the judiciary, and policy changes cannot be overstated. To close the gap between women's rights and access to justice, cooperation between governments, civic society, and international organisations is required.

CPC provisions facilitating women's access

The Code of Civil Procedure (CPC) contains several provisions that facilitate women's access to justice. Section 9 enables women to institute suits, ensuring their right to initiate legal proceedings. Section 35 allows women to claim maintenance, providing financial security.³

² Bedner, A. and Vel, J.A., 2010. An analytical framework for empirical research on Access to Justice. *Law, Social Justice and Global Development Journal*, 15(1), pp.1-29.

³ Bedner, Adriaan, and Jacqueline AC Vel. "An analytical framework for empirical research on Access to Justice." *Law, Social Justice and Global Development Journal* 15.1 (2010): 1-29.

Section 125 of the CPC mandates courts to order maintenance for wives, children, and parents, ensuring financial support. Section 127 enables modification of maintenance orders, adapting to changing circumstances. Section 128 empowers courts to enforce maintenance orders, ensuring compliance. The Family Courts Act (1984) establishes specialised courts for family disputes, providing a supportive environment. Order XXI, Rule 32 permits women to execute decrees through court officials, protecting them from harassment. Section 89 promotes mediation and conciliation, encouraging amicable dispute resolution. Section 106 enables women to seek temporary injunctions, preventing harm or irreparable loss. The CPC's provisions collectively aim to safeguard women's rights, facilitate access to justice, and ensure a supportive legal environment.

Protection Orders (PWDVA, 2005)

Section 12 enables victims to seek protection orders, restraining perpetrators from committing violence. Section 18 appoints Protection Officers to assist victims.

Maintenance and Support (CPC, 1908)

Section 125 ensures financial support for wives, children, and parents. Section 127 allows modification of maintenance orders, adapting to changing circumstances.

Execution and Enforcement (CPC, 1908)

Order XXI, Rule 32 protects victims from harassment during decree execution. Section 128 enforces maintenance orders, ensuring compliance.

Custody and Residence (PWDVA, 2005)

Section 21 grants custody rights, prioritising children's welfare. Section 22 protects women's right to reside in shared households.

Gender Bias in Judicial Process

In India, the quest for justice and gender equality has long been an issue since women encounter many obstacles while trying to obtain the legal system. The 1908 Code of Civil Procedure (CPC) is a key document that helps women access the legal system.⁴

⁴ Addario, Lisa. Getting a foot in the door: Women, civil legal aid and access to justice. Ottawa, ON: Status of

In addition to addressing domestic abuse, maintenance and support, custody and housing rights, and execution and enforcement procedures, the CPC offers a framework for legal remedies and protections. Even with laws that are progressive, women still have a very difficult time navigating the legal system.

The CPC provisions that are especially meant to address women's access to justice are examined in this paper. Through a critical review of statutory provisions, case laws, and empirical data, this research intends to analyse the efficacy of CPC provisions in enhancing women's access to justice.

Challenges faced by Women in Accessing Justice

Gender bias in the legal system is a widespread problem that sustains discriminatory practices and unfair treatment of people based only on their gender. This prejudice, which can be institutional, tacit, or explicit, influences how cases turn out and undermines public trust in the legal system.

Stereotyping, victim-blaming, and double standards are examples of gender bias. These prejudices are frequently exacerbated by social beliefs, a lack of diversity in the judiciary, and inadequate training provided to attorneys and judges.⁵

Gender prejudice has far-reaching effects, including upholding damaging gender stereotypes, denying justice, and maintaining inequality. Sensitisation campaigns, more diversity, and structural reforms are needed to address these biases.

Language and vocabulary, as well as homogenous judiciaries and patriarchal customs, are some of the factors that contribute to gender bias. To counteract these prejudices, it is imperative to implement measures such as gender sensitisation training, monitoring and accountability procedures, and encouraging female participation in the legal profession.⁶

Women Canada, 1998.

⁵ Terry, G., 2009. No climate justice without gender justice: an overview of the issues. *Gender & Development*, 17(1), pp.5-18.

⁶ Rhode, Deborah L. "Access to justice." *Fordham L. Rev.* 69 (2000): 1785.

Gender prejudice is to be eradicated through international initiatives like the Beijing Platform for Action and the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Gender equality is being promoted in India through programs like the National Commission for Women, the Protection of Women from Domestic Violence Act, and judicial training courses.

It is crucial to advance diversity, put anti-bias measures into place, and maintain accountability in order to combat gender bias. Through acknowledging and mitigating these prejudices, we can strive towards a more just and equal legal system.

In the end, removing gender prejudice from the legal system necessitates a multi-pronged strategy involving civil society groups, lawmakers, and attorneys. Justice and dignity for everyone can be guaranteed by working for gender equality.

Conclusion

Women's access to justice is a critical issue that reflects broader societal inequalities and systemic barriers. Despite advancements in legal frameworks aimed at promoting gender equality, many women still face significant obstacles when seeking justice. These challenges include societal stigma, economic barriers, lack of awareness about legal rights, and inadequate support services.

To enhance women's access to justice, it is essential to implement comprehensive legal reforms, provide education about rights, and ensure that support systems are in place to assist women throughout the legal process. Additionally, fostering a societal shift that challenges stereotypes and promotes gender equality is vital for creating an environment where women feel empowered to seek justice.

Achieving effective access to justice for women requires a multi-faceted approach that addresses both legal and societal barriers. Only by ensuring that women can navigate the justice system without fear or hindrance can we hope to achieve true equality and protection under the law.