

Gender Bias in Legal Systems and Women's Access to Justice

The legal recognition of rights is a vital component in efforts to enable access to justice in relation to human rights abuses. Simply put, it provides the foundation for individuals to claim their rights as entitlements under the law since, where a right is not recognized in law, an individual may not be able to invoke it or achieve justice at the national level for its breach.¹²

In substance and practice however, law tends to reflect the subordination of women in different countries in SEA and worldwide. This subordination is pervasive in almost every sphere of gender relations, both public and private, and is also entrenched in every step of the justice chain. These inadequacies of the law contribute to as well as result in both the cause and effect of women's inequality. Efforts to enable women's access to justice must be cognizant of women's socially constructed disadvantage inscribed in the law and address this.¹³

Barriers that Women Face in Accessing Justice¹⁴

Barriers to women's access to justice are evident in every stage of the legal process starting from the decision by the rights holder to take legal action, to the investigation, prosecution and litigation of the case, until the issuance of a final decision and its enforcement. Gender bias is well entrenched in the legal system and discussed below are some of the significant gaps in legal processes that relate to obstacles that women face to access justice:

At the outset, women lack sufficient knowledge of their rights as well as the applicable legal procedures to seek relief before the courts. Many lack resources and are discouraged by the high costs of proceedings or the inaccessibility of the courts, particular for women with restricted mobility. Social antagonism at women claiming rights or intimidation not to take the dispute outside of the community further discourage women from pursuing any legal action.

Ineffective investigations, especially involving crimes against women, further prejudice women's chances of successfully prosecuting any offence. Insufficient documentation of the cases by the police leaves out important evidence. There are also many instances where the interpretation of evidence by judges favour perpetrators and challenge the credibility of the women victims. In addition, judgments of acquittal or lenient punishment meted out to those convicted of offences, particularly related to violence against women, result in denying women their right to effective remedy before the courts.

12. Comments from the International Commission of Jurists (ICJ) submission to the UN CEDAW Committee, 11 February to 1 March, 2013 as quoted in the presentation of Shanthi Dairiam, Founder International Women's Rights Action Watch (IWRW) Asia Pacific, 4 September 2013

13. Presentation of Shanthi Dairiam, 4 September 2013

14. Ibid.