



A Global Prospective of Gender Based Violence Courts

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ABSTRACT

Gender Based Violence (GBV) is a pervasive global issue that demands urgent judicial attention. Specialized Gender-Based Violence Courts (GBV courts) have been established worldwide to address these crimes effectively. This paper explores the global landscape of GBV courts, focusing on their evolution, legal frameworks, and impact in various jurisdictions. Countries such as Australia, the United Kingdom, Malaysia, India, Bangladesh, and Pakistan have implemented specialized courts to provide swift and survivor-centric justice. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) serves as a foundational framework guiding national policies against GBV. Many nations have strengthened their legal systems by enacting laws that ensure victim protection, expedite case proceedings, and improve conviction rates. The pioneering GBV court was established in Chile in 1993, inspiring other countries to develop similar judicial mechanisms. Australia, for instance, has integrated electronic monitoring systems to enhance offender accountability, while the UK has emphasized survivor support through trauma-informed legal processes. In Bangladesh and India, GBV courts have played a significant role in addressing workplace discrimination and child labor

exploitation.

Keywords: Gender based violence courts, Convention on the Elimination of All Forms of Discrimination against Women, Child Registration Certificate, Gender-Based Violence (GBV), Domestic Violence, Sexual Assault, Victim-Centered Justice, International Legal Framework.

INTRODUCTION

The Notion of Gender-Based Violence under “CEDAW”

Gender-Based Violence against suppressed classes of society, including women, is considered a gross infringement of women's human rights and portrays discriminatory behavior against them, which is strictly forbidden under international human rights law as enshrined in CEDAW (Assembly, U. G. 1979). CEDAW is an abbreviation of the “Convention on the Elimination of All Forms of Discrimination against Women.” The United Nations General Assembly adopted this international treaty in 1979, and it became effective on September 3, 1981. Another international treaty, the “Vienna Declaration and Programme of Action,” particularly addresses GBV-related issues against women of all member states, including sexual harassment, domestic violence, and cultural prejudices (Soledad Larrain, 2009). Additionally, it calls for stringent legal action against violating individuals through the enactment of domestic laws by member states (Afrin, 2017).

As per Article 1 of CEDAW, discrimination is defined as any sort of exclusion, hindrance, or distinction exclusively based on gender. Article 2 of CEDAW mandates the member states to make legislative frameworks safeguarding women against GBV within the workplace, family, public areas, society, and all other walks of life (Kaur, 2018). Article 16 of CEDAW obligates member states to ensure the participation of women in every area of life, including education, healthcare, economic growth, employment, inclusion of rural women in the development of the state, equal rights in marriage and family life, and equality before the law (Besson, 2005; Haq, 2012).

Establishment of Pioneer Gender Based Violence Court

In 1993, Chile became the first country to establish a specialized court exclusively dedicated to adjudicating GBV cases. This court was structured in the city of Viña del Mar and is commonly known as “Tribunal de Familia de Viña del Mar” (Soledad Larrain, 2009). The primary objective of establishing this court was to cater to the needs and fears of GBV victims and to make justice more accessible. The creation of the GBV Court in Chile proved to be a significant initiative by the government to curb the alarming rate of GBV cases and provide an accessible redressal within the justice system (Pender, 2018). Various other states, following in Chile's footsteps, also formed GBV courts, including Australia, Malaysia, the UK, Bangladesh, India, and Pakistan.

Australia

In 1999, South Australia established the first dedicated GBV court at Elizabeth. Domestic abuse, sexual assault, harassment, and other types of gender-based violence

are all effectively covered by Australia's extensive legal framework. Federal and territorial laws play a vital role in deterring and prosecuting these kinds of crimes. Several Australian jurisdictions formed GB courts dedicatedly for handling domestic abuse. These courts provided a well-tailored method for resolving domestic and gender targeted violence matters.

Support programmes have been established in Australia for victims of gender-based violence. These services include legal aid, counselling, and shelters for victims of domestic abuse. To raise public awareness of gender-based violence and to promote reporting, a number of community awareness initiatives and campaigns are carried out therein. These initiatives also aim to combat the cultural beliefs and practices that fuel violence.

A coordinated strategy for preventing and encountering gender-based violence has been outlined in “Australia's National Plan to Reduce Violence against Women and their Children”. The community, non-governmental organizations, and government agencies work together on this strategy. In order to improve the protection of survivors, certain Australian jurisdictions have put in place technology-based programmes. One such project is the deployment of electronic monitoring devices, which follow the activities of offenders and send out real-time warnings to them.

Judges, public prosecutors, advocates and police officers are among the legal professionals who receive training on how to tackle situations pertaining to gender-based violence with empathy and compassion. Understanding the power and control dynamics present in said situations is part of this training.

The remarkable precedent encapsulating the most highlighted GBV case of Australia is *Queen v Kilic* (2016). The crux of the case is that the victim wife was twelve weeks pregnant when accused husband set her on fire, seriously injuring her. She decided to abort her pregnancy after the incident because her injuries were incurable. The GBV court imposed a 15-year prison sentence on accused. Following the accused's appeal, the Court of Appeal reduced the defendant's punishment to ten years and six months imprisonment, finding that this was “manifestly excessive” in comparison to prior cases of serious fire injury. The High Court of Australia ruled that appellate court erred in reducing the sentence and hence maintained the punishment of appellant/convicted as awarded by GBV Court.

Malaysia

Malaysia's first GBV Court was formed in 1999 in Kuala Lumpur. Malaysia has enacted laws, such as the “Domestic Abuse Act of 1994” and “Sexual Offences against Children Act of 2017”, to combat various forms of gender-based abuse. The purpose of these laws is to shield people from sexual offences and domestic abuse. GBV Courts were founded in Malaysia with the purpose of handling cases pertaining to domestic and gender based violence and offering a more targeted approach to treat such situations.

Legal aid services are provided by Malaysian justice system to victims of gender-based abuse. Support services are provided to offer help and protection, such as counselling and victim shelters. There have been campaigns to break down social norms that support violence, increase reporting, and upgrade public awareness of

gender-based violence. Collaborations between NGOs, community organizations, and government agencies are common in these programmes.

Judges and prosecutors are among the legal professionals that receive training in handling instances involving gender-based violence. A survivor-centric approach, awareness of power dynamics, and sensitivity to the needs of survivors are a few examples of this subject that may be covered under such training. To make it easier for victims of gender-based violence to report incidents, hotlines and reporting systems have been set up. These services connect survivors with appropriate support services and offer them urgent assistance and guidance. Malaysia has looked into using technology to combat gender-based violence. Examples of such programmes include online and mobile platforms that offer reporting tools, information, and support.

One of the landmark cases adjudicated by Malaysian GBV courts is “Lee Lai Ching v Lim Hooi Teik (2017)”, in this case, a mother claimed that it was in the child's best interest to find out who his biological father was, and she applied to the GBV Court to force the defendant to take a DNA test in order to establish paternity. The GBV Court reasoned that, when necessary, courts have used international conventions and treaties, to which Malaysia is a signatory to settle disputes. Paternity tests have been mandated in Canada, France, Germany, China, the United

Kingdom, and the United States (US), according to the GBV Court. The GBV Court determined that Article 7 of the CRC guarantees a child's right to know and receive care from his or her parents. and was applicable in this instance since it complied with the Federal Constitution, national legislation, and national policies of the Malaysian government.

United Kingdom

Leeds became home to the first specialized Gender Based Violence Court in England and Wales in 1999. The United Kingdom possesses a strong legal system that tackles gender-based violence. Notable laws include the “Domestic Abuse Act, 2021”, which enhances victim safeguards and establishes a legal definition of domestic abuse²⁷. The UK has Family Courts and dedicates domestic/gender violence courts that deal with matters involving domestic abuse. These courts are intended to give survivors a more concentrated and encouraging setting.

For victims of gender-based violence, the UK provides a variety of support services, such as hotlines, shelters, and counselling. Groups like Refuge and Women's Aid strive to support and help those who are victims of domestic abuse. Judges and prosecutors are among the legal professionals that receive training in handling instances involving gender-based violence. A survivor-centered approach in court proceedings, trauma-informed practices, and an awareness of the dynamics of power and control are few of such examples.

National Action Plans have been created by the UK government to reduce violence against women and transgender. These plans stress a coordinated response from all sectors and include efforts for prevention, protection, and care for survivors. In order to raise public awareness of gender-based violence and to promote reporting, the UK runs campaigns and community awareness programmes. The goal of these efforts is to question cultural norms that support violence. Technology-based solutions

to improve survivor support have been investigated in the UK. This covers the provision of information, support, and reporting channels through the use of helplines, mobile apps, and internet platforms. In the UK, survivors of gender-based violence can access legal aid assistance as well. This guarantees that people will be able to obtain legal counsel and assistance during the legal process.

One of the remarkable cases decided by GBV court is “The State of New South Wales v Amery (2006)”. In this case, the New South Wales Department of Education and Training's policy and practices limited the temporary teachers' pay scales at level 8, so excluding them from the highest level of compensation. Thirteen female temporary teachers filed a lawsuit, claiming that there was a gender gap/discrimination between temporary and permanent teachers and that only permanent personnel were eligible for the highest pay rates. Out of the thirteen female teachers, eleven accepted temporary jobs instead of permanent ones because of their family obligations, and the other two applied for permanent jobs but were limited in their areas of work due to family matters. The GBV court reasoned that while it would be challenging to develop and implement the second option, paying extra awards to people who had family responsibilities, making extra awards to women alone would be discriminatory against men. The court concluded that there was no indirect discrimination as a result.

Bangladesh

Bangladesh, like a lot of other nations, has realized that gender-based violence must be addressed through an effective legal system. In order to define and punish particular GBV-related offences, legislative amendments were put into place, which laid the groundwork for the operation of specialized courts. Bangladesh started the process of establishing specialized GBV courts in 2009, in accordance with international initiatives. These courts are intended to entertain gender-based assault claims with an emphasis on efficiency and sensitivity.

To adjudicate GBV cases, judges, prosecutors, and court employees in these specialized GBV courts usually receive special training. This training program covers issues including cultural sensitivity, legal knowledge, and the psychological effects of gender-based violence. In Bangladesh, GBV courts frequently incorporate victim support services into their daily operations. To help survivors through the legal process, this involves offering them counselling, legal aid, and other forms of support.

One of the most important aspects of GBV court in Bangladesh is judicial processes that guarantees the safety and protection of survivors. Efforts are made to avoid intimidation or retaliation, and procedures are put in place to protect survivors' and witnesses' security and privacy.

In Bangladesh, GBV courts usually cooperate with social services, law enforcement, and other pertinent organizations. The goal of this unified approach is to expedite the legal procedure and offer survivors all-encompassing help. In Bangladesh, initiatives are undertaken to increase public knowledge of the existence and functions of GBV courts. Campaigns for public education aim to teach the public on the legal options open to survivors and to promote the reporting of incidents of gender-based violence. Monitoring and assessment of GBV courts' efficacy are

common practices. This entails evaluating case results, gauging survivors' contentment with the legal system, and pinpointing areas in need of development.

A remarkable GBV case law decided by Bangladeshi GBV Court is “Bangladesh National Women’s Lawyers Association v Government of Bangladesh and others (2011)”. In this case, The Bangladesh “National Women's Lawyers Association (BNWLA)” filed a petition before the GBV Court of Bangladesh under Article 102 of the Constitution to address the abuse and exploitation of the young girls in Bangladesh who work as domestic servants. The BNWLA said that girl child domestic workers are denied an education, subjected to physical and psychological abuse, and exploited economically; all in violation of their basic constitutional rights. It included numerous accounts of severe mistreatment experienced by juvenile domestic servants to bolster these claims. The GBV Court examined Bangladesh's existing legal framework in resolving this matter, including the Labor Act, 2006, which does not provide labor rights to "domestic workers," including minors, and is not adequately implemented or enforced. The National Elimination of Child Labor Policy 2010 must be implemented, the Labor Act, 2006 must be applied to domestic workers, and children under the age of 12 cannot work in any capacity, including domestic settings. The GBV Court ordered the government of Bangladesh to take immediate action to strengthen its protection of the fundamental rights of girl child domestic workers. In addition, the GBV Court ordered the government to enforce mandatory health examinations, keep track of and prosecute cases of violence against child domestic workers, establish a registry of domestic workers and their locations in order to prevent human trafficking, and fortify the laws pertaining to child domestic workers.

India

The “Protection of Women from Domestic Violence Act, 2005”, the “Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013”, and amendments to the Indian Penal Code, 1860 to address crimes like rape and dowry harassment are just a few of the laws that India has put in place to address gender-based violence. West Bengal state hosted India's first GBV court, which opened its doors in 2013 to tackle crimes against women. These courts, led by two female judges, are the first in a planned series and also have all women staff including judges, lawyers and court employees. The goal of GBV courts is to provide survivors of gender-based violence with a more effective and considerate legal process while also accelerating trial times.

These special courts' judges and staff members are well-trained to handle cases of gender-based violence sensitively. Understanding the psychological effects of such violence, cultural sensitivity, and the subtleties of the pertinent legal rules are all covered in this training. A lot of work has gone into incorporating victim support programmes within the court system. In order to help survivors deal with the aftermath of gender-based violence and navigate the legal system, this involves offering them counselling, legal aid, and other forms of support.

Survivor protection measures are frequently incorporated into GBV courts and legal procedures. This could entail protecting the privacy of witnesses and survivors as well as taking precautions against intimidation or reprisal. In order to effectively

combat gender-based violence, cooperation between the judiciary, law enforcement, and social services is essential. The goal of this unified approach is to expedite the legal procedure and offer survivors all-encompassing help.

Public knowledge of the legal protections and resources available to victims of gender-based violence is worked to increase. Campaigns for public education aims to educate the public about legal options and reporting procedures. It is necessary to monitor and assess how well specialized GBV courts and legislative measures are working to combat gender-based violence.

This entails evaluating case results, gauging survivor satisfaction, and pinpointing areas where the judicial system needs to be improved.

The prominent Indian Case law dealing with gender based violence includes “Mackinnon Mackenzie and Co. Ltd v. Audrey D’Costa and Another (1987)”, in this case, while interpreting a national law, the Supreme Court of India took into account European jurisprudential practice in the same sector as well as Convention No. 100 of the International Labor Organization. It was discovered that Ms. D’Costa had been paid significantly less than her male coworkers who had done work of equal importance. The absence of a man in the same position within the company did not matter because the equal compensation principle stipulated that workers who performed similar jobs as well as those who performed different work that was deemed to be equally valuable should receive the same compensation. The Supreme Court ruled, “It is necessary to set out the relevant legal provisions governing the case before dealing with the contentions of the parties”. The Indian Constitution states in Article 39(d) that the State shall, among other things, focus its policy on ensuring that men and women receive equal compensation for equal effort.

Pakistan

The gender-based violence courts are the courts in which legal principles extracted from international law and domestic law are applied in gender-based violence cases to cope with gender-based violence crimes in the society. The establishment of Special Courts for Gender Based Violence (GBV) has been authorized according to Section 3 of the Anti-Rape (Investigation and Trial) Ordinance, 2020. The first court of this kind in Pakistan was opened in Lahore by the Lahore High Court's Chief Justice Syed Mansoor Ali Shah in the Lahore Judicial Complex. The Chief Justice of Pakistan made an announcement regarding the establishment of over 1,000 specialized courts aimed at addressing the issue of violence against women in the country.

The specialist District and Sessions Court in a specific province or region is designated as a Gender-Based Violence (GBV) Court. Upon receipt of the Challan charge sheet, the court is vested with the jurisdiction to implement the precise measures defined in the General Protections Orders.

This development highlights the recognition of the urgent attention required for addressing gender-based violence and provides legal safeguards for these existing courts. The implementation of special procedures at 'gender-based violence courts', aims to lessen the obstacles and difficulties victims encounter in their pursuit of justice,

In accordance with the 'Practice Note for the Model Gender-Based Violence Court', as approved by the Lahore High Court, it is imperative for a court to consider protective orders while issuing summonses to victims or witnesses. The presiding court may potentially issue a direction inquiring about the necessity of police security. The process server is advised to promptly contact the appropriate superintendent of the police cell and is further directed to provide the court with any updates regarding the arrangements made. In order for the protection orders to be effectively enforced, it is imperative that the superintendent of the police cell ensures their enforcement.

CONCLUSION

GBV courts have been established to overcome the issue of violence against women and transgender individuals. These courts have developed in response to long-term and continuous criticism of the criminal justice system, particularly regarding its treatment of women and transgender individuals. It is acknowledged that the primary victims of GBV are predominantly women, who frequently refrain from reporting instances of violence perpetrated against them due to concerns of retaliation, embarrassment, societal stigma, and damage to their reputation (King & Batagol, 2010). The GBV courts operate under special procedures, ensuring a victim-centric approach. This includes accompanying victims with a female support officer, providing electronic courtrooms, enabling private testimonies, and ensuring swift trials. The comprehensive examination and cross-examination of the victim's evidence are conducted within a single day (Prashanth, 2022). The implementation of such measures significantly enhances the victim's ability to seek justice and deters gender-based crimes (Anderson, Bagaric & Murphy, 2023).

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