For Women, A Court of Last Appeal

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A hundred countries recently came together to participate in the International Criminal Court (ICC). It is the first permanent judicial institution at an international level to deal with individual perpetrators committing the most serious crimes under international law, including war crimes, crimes against humanity and genocide.

While recognising the prerogative and responsibility of states to prosecute offenders within the domestic legal systems, the ICC would only step in when a state is unwilling/unable to do so. The creation of this court acquires added significance in the case of gender crimes committed against women in both conflict situations and peace times. Prosecuting offenders for mass crimes against women has been extremely difficult. Often women’s rights to justice have been bartered away under the pretext of diplomacy or nation building. The lack of political will to make perpetrators answerable for crimes committed against women during Partition, is a case in point. Many countries, including India, do not have the language in their laws to describe the gravest of crimes recognised under international law.

Seen in this context, the integration of gender issues within the Statute establishing a permanent ICC is unprecedented. Some acts defined as crimes against humanity in the Statute include torture, rape, sexual slavery, forced pregnancy, enforced prostitution, enforced sterilisation, and persecution against any identifiable group or collectivity on the ground of gender.

Efforts have also been directed at promoting women’s access to justice through procedural guarantees such as in-camera proceedings, recording of evidence by electronic means and the establishment of a Victims and Witnesses Unit. Evidentiary rules have been overhauled. Victims’ testimony does not require independent corroboration. Evidence related to the sexual conduct of the victim prior to, or subsequent to, the crime cannot be used to infer her character/credibility. The ICC cannot infer consent from the conduct of the victim where the crime took place in a coercive environment.

Structurally, the bench of 18 judges provides for a fair representation of male and female judges—its first Bench has 7 female and 11 male judges. Expertise on crimes of sexual and gender violence is a requirement for the staff of the ICC, including its judges.

Similar to the national courts, the International Criminal Court is not intended to stop all crimes or punish all wrongdoers. However, the existence of a supranational machinery to prosecute offenders will lead, hopefully, to a degree of deterrence. In situations where
national courts are unable, or unwilling, to prosecute offenders, the ICC will act as a safety net to end impunity for serious crimes, including violence against women.

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