

Mexico: Obsessed with Honor

I. IN SHORT . . . WHAT WE FOUND

A. Opportunities

1. BROAD CONSTITUTIONAL GUARANTEES

The Mexican Constitution includes a **broad list of rights**, some established more recently than others. It also recognizes **international treaties** that are ratified by the state as superior to national laws. The **action for unconstitutionality**, although not for general public use, permits constitutional review. Additionally, any individual can petition for the unconstitutionality of laws in specific cases through ***amparo* proceedings**; *amparo* is also used to report actions of public officials that violate rights. It is important to clarify that these **authorities' actions include the decisions of lower courts**, providing a mechanism to **reexamine cases where the rights violation can be attributed to an individual**.

2. THE HIGH COURTS' INVOLVEMENT IN THE CONSTRUCTION OF POPULAR LANGUAGE

Amparo proceedings allow the courts to **intervene at the highest judicial level** in the formation of everyday discourse as derived from constitutional language. Not only are *amparo* proceedings heard by the federal judiciary, but the Supreme Court also has the power to examine the most relevant cases for the purposes of establishing general doctrine on the interpretation of the constitution. The **Supreme Court's decisions** on the rights analyzed here clearly reflect a will to include popular discourse.

3. THE IMPORTANCE OF REAL EQUALITY AND THE SOCIAL COMPONENT OF INTERPRETING THE CONSTITUTION

The Mexican Constitution is a “social” constitution *par excellence* and a product of the revolution. This component has been important in the interpretations of the National Commission on Human Rights, which has insisted on the **actual equality** of women in cases involving the right to work. In such cases it has pointed out that requiring women to demonstrate that they are not pregnant in order to gain public employment violates the right to equality.

*[The constitution] does not require that legislators treat in the same way those who are in different situations among themselves, but give the same treatment to those who are in a similar situation.*²⁸⁶

The Supreme Court has also insisted on its power to protect the right to health based on constitutional guarantees.

*[...] the right to health is not only an individual good, but also a social good.*²⁸⁷

4. VICTORIES

The high courts of the federal judicial branch have protected the **right to health of individuals living with HIV** by ordering that they be provided with the best medical treatment available. They have protected women’s right to **equality** by ordering that **medical benefits** for spouses, whether male or female, be equal, and by equalizing the conditions of the crime of adultery for both men and women. The high courts have also vehemently protected the **right to sexual autonomy** in cases of violence, by placing evidentiary importance on testimony, declaring that the victim’s lifestyle and whether the victim and the assailant had consensual sex in the past are irrelevant. In a sexual violence case a court stated the following:

*The past conduct of the victim is irrelevant because it is presumed to conform to social norms when it is not shown otherwise, and secondly, even if in the past she had adopted “provocative conduct” or even if she had a “bad reputation,” this does not take away from the criminal responsibility of the defendant.*²⁸⁸

The **National Commission on Human Rights** and its federal district division have protected the right to **abortions** that are the result of rape, and **women’s right not to disclose whether or not she is pregnant** as a condition of public employment.

B. Limitations

1. THE ABSENCE OF RIGHTS LANGUAGE

Although the high courts have actively participated in the control of constitutionality through *amparo* proceedings, the way they publicize these decisions does not emphasize rights language. This reduces the potential of the *amparo* proceedings, transposing them into a form similar to cassation (the abrogation or annulment of a law by a higher judicial authority), rather than strict constitutional review. The National Commission on Human Rights has been the only body to develop a rights language, but the non-obligatory nature of its recommendations has made dissemination to other bodies difficult.

2. HONOR AS A SOCIAL GOOD

Although we have applauded the defense of the social aspect of the constitution for its potential in guaranteeing actual equality and broadening the spectrum of rights included in *amparo* proceedings, the **social** aspect has also been key in the active **protection of men’s “honor” as dependent on the “honesty” of women**, which intensifies **control over women’s sexual**

and reproductive lives. “Women’s sexual honor” provides the basis for significantly diminishing the murder of women and authorizing the dismissal of military personnel. Women’s “sexual honesty” continues to be protected by the crime of adultery and the reduced penalty for abductions for sexual reasons, although men can also be convicted of the former.

In a case involving the dismissal of a soldier for having extramarital sexual relations with his superior’s wife, the court considered the following:

[The military honor of the hierarchical superior has been violated because it depends in part on the honor of the soldier’s wife and this consists of] the good reputation that she acquires through virtue and integrity, as well as honesty and modesty, which is the basis of the family.²⁸⁹

C. The Road Still Ahead

The federal judicial branch continues to regard it as its duty to respond to the conditions created by a **patriarchal family system that maintains women in a state of dependence**, rather than to guarantee women’s independence vis-à-vis men. In this way, it has found that women, and not men, should be presumed to need support, that marital goods should be distributed between both spouses and that marriage is the only protected form of cohabitation.

[...] although the Federal District Civil Code agrees with the constitutional principle of equality of men and women, it establishes the rule that both spouses contribute economically to support the home [...] such a ruling should be interpreted to mean that the woman is only obligated to monetary contribution when it is proven that she receives remuneration for her work or income from her assets. When that is not the case, there exists the presumption that she needs support, based on the widely known fact that, within the actual Mexican family, it is the woman who takes care of the home and the children, while it is the man who works to supply economic means.²⁹⁰

On the other hand, a **significant silence** exists on issues related to **sexual orientation, sexual and reproductive autonomy, sexual and reproductive health, and equality in the labor sphere**. This silence may simply be a reflection of a low rate of judicialization of these types of conflicts, which would require a greater social mobilization for the protection of these rights, or it may reflect a **lack of will** on the part of the Supreme Court to review such cases and decide them through a rights perspective.

II. TENDENCIES IN JUDICIAL INTERPRETATION

A. The Judicial System

1. THE JUDICIAL BRANCH

The **judicial system** is composed of the **federal courts**, including the Supreme Court of Justice, the Collegiate and Unitary Circuit Courts, the district courts, and the Electoral Tribunal,²⁹¹ and the **state courts** apparatus, whose organization, structure and responsibilities are delegated by the constitution to the state constitutions and laws.²⁹² The jurisdiction of the federal judiciary branch includes all disputes arising from the following: “1. Laws or acts of authority that violate individual guarantees; 2. Laws or acts of the federal authority that harm or restrict state sovereignty or the Federal District’s competency; 3. Laws or acts of state or Federal District authorities that invade the sphere of the federal authority.”²⁹³

Additionally, the **federal courts** have jurisdiction over the application of federal laws that involve the various states, maritime law, or diplomatic corps and consular law, and in general, review final determinations of the administrative law branch.²⁹⁴ For the sake of the principle of residual competency in favor of the states, all other matters belong to the jurisdiction of the state or federal district judicial branches.²⁹⁵

2. SOURCES OF LAW

The Mexican **Federal Constitution** is the **fundamental basis of the judicial system**,²⁹⁶ under which are found the state constitutions. The principal source of law is both federal as well state **legislation**.²⁹⁷ **Custom** is only referenced when the law directly refers to it. The **general principles of law are referenced for civil matters only**²⁹⁸ and the **customs of indigenous people are referenced only in agricultural matters**.²⁹⁹ **International treaties** are superior to federal and state laws but **inferior to the federal constitution**.³⁰⁰

According to the constitution, **jurisprudence** is the interpretation established by the federal judiciary courts of the constitution, federal or local laws and regulations, and international treaties signed by the Mexican state.³⁰¹ **Jurisprudence can be established in two ways**: five similar decisions not contradicted by a contrary finding, or decisions that clarify contradictions of the Supreme Court chambers or of the Collegiate Courts. The Supreme Court of Justice, in plenary or one of its two chambers, and the Collegiate Circuit Courts have the power to dictate jurisprudence. The jurisprudence established by the Supreme Court of Justice, functioning in plenary or in chambers, is obligatory on the chambers when it decides in plenary, and is obligatory, whether in chambers or in plenary, on the Unitary and Collegiate Circuit Courts, the district courts, military tribunals, common law courts of the states, and the federal district, local or federal administrative and labor courts.³⁰² The jurisprudence established by the Collegiate Circuit Courts is obligatory for all the jurisdictional bodies above, except the Supreme Court of Justice.³⁰³

The **decisions of the Supreme Court of Justice related to actions of unconstitutionality** have a general effect (*erga omnes*), provided they are approved by a majority of at least eight of its eleven judges.³⁰⁴ Its decisions on issues involving **constitutional disputes** also have *erga omnes* effects when “they deal with general state or municipality provisions of law challenged by the federation, municipality provisions challenged by the states” or arise between the executive and federal legislative branches, two entities in the same state, or between two federal district governmental bodies, as

long as the decision invalidates the law and has received the support of eight judges.³⁰⁵

3. CONSTITUTIONAL REVIEW

The system establishes various types of **constitutional review**. The **Supreme Court of Justice** reviews **actions of unconstitutionality** and **constitutional disputes**. The objective of the former is to review possible **contradictions between a general law and the constitution**.³⁰⁶ They can be submitted by members of the senate, of the Chamber of Deputies or of the Federal District House of Representatives, as long as they are ratified by at least 33% of the members, by Mexico's Attorney General, and by the political parties, but the latter only in situations related to electoral laws.³⁰⁷ **Constitutional disputes** are those that arise between different state bodies.³⁰⁸

Another type of constitutional control is exercised through ***amparo* proceedings**, through which rights guaranteed by the constitution are protected. The circuit courts and the district court judges, and the Supreme Court of Justice, have competency to hear *amparo* proceedings, the latter only on review and after they have been ruled upon by a district court judge.³⁰⁹

4. MECHANISMS FOR THE PROTECTION OF RIGHTS

The principal judicial mechanism for the protection of constitutional rights is the ***amparo* proceeding**. Any person whose rights have been violated by a law or the action of a public authority³¹⁰ can bring suit, if the remedies of the ordinary jurisdiction have been exhausted. Once the proceeding is initiated, the effect of the law or the act petitioned is suspended.³¹¹

Outside of the justice system, the main body for the protection of rights is the **National Commission on Human Rights**, which was created in 1990.³¹² Its function is to receive complaints on violations of human rights from any public authority or public servant and, after a proper investigation, attempt mediation or reconciliation between the parties.³¹³ When a solution cannot be reached in this way, the commission can proceed to issue a non-obligatory public recommendation to the responsible authority.³¹⁴

B. Decisions on Sexual and Reproductive Rights

1. THE RIGHT TO HEALTH AND TO REPRODUCTIVE HEALTH

Federal Constitution: “Article. 4. Every person has the right to the protection of health. The law defines the terms and procedures for access to health services [...]”

See also: General Health Law, General Population Law and corresponding regulations.

The Supreme Court has established that the right to **health** includes receiving basic medications for the treatment of illnesses and their administration by an appropriate body or institution. These **state obligations are only satisfied when the best therapeutic alternative is provided**, defined as that which offers the best quality and quantity of life for the patient, **even if that alternative has not been added to the public health establishment registry.**³¹⁵

The Supreme Court has found that **denying a prisoner medical attention violates** the right to health.³¹⁶ It also found that its competency to hear cases of medical negligence by the state derives from the public interest in the right to health as a social right and not only as an individual right.³¹⁷

The **National Commission on Human Rights** recommended that the governor of the state of Michoacán take the **necessary actions to adequately attend to HIV infections and HIV positive people**, and to investigate for medical negligence in the case of a newborn who died in a state hospital center.³¹⁸

2. THE RIGHT TO INTEGRITY AND TO BE FREE FROM VIOLENCE

The constitution does not expressly provide protection for the right to integrity and to be free from violence.

See: State penal codes, Federal District Law of Assistance and Prevention of Domestic Violence.

Sexual Integrity

The federal judiciary has established that the **legal interest** protected in these cases is the **freedom to consent to the sexual act** and not chastity or honesty,³¹⁹ and for that reason whether the victim has consented on **other occasions** does not detract from the existence of the crime.³²⁰ Likewise, the **past conduct** of the victim and even her **provocative attitude at the moment** of the execution of the crime **do not exonerate the perpetrator**.³²¹ As for what constitutes violence, the court has established that the threat of overwhelming physical violence is sufficient.³²² The same is true for moral violence: the central element is that the victim's will is denied.³²³

The victim's past conduct is irrelevant because it is presumed to conform to social norms when it is not shown otherwise, and secondly, even if in the past she had adopted "provocative conduct" or even if she had a "bad reputation," this does not take away from the criminal responsibility of the defendant. ³²⁴

The Supreme Court has established that in these cases the **victim's statement** is of particular importance due to the circumstances in which these crimes generally occur,³²⁵ but it has also indicated that there should be other evidence in support of the victim's statement.³²⁶

Regarding the **rape of minors**, the federal judiciary has established that the **maturity of the victim**,³²⁷ **her consent to the sex act**,³²⁸ and the **use of violence, are irrelevant in establishing the crime**.³²⁹ It has considered these circumstances to be mitigating but not exclusionary grounds for responsibility.³³⁰

Regarding the **corruption of minors** (acts other than intercourse), the federal judiciary has established that the crime has taken place when "a minor is initiated into sexual life or other type of degeneration"³³¹ and that

this occurs when a **minor enjoys or feels pleasure** in a sexual act with an adult³³² (in addition to another set of acts considered corruption such as inciting drinking or begging),³³³ for which reason **the crime cannot be committed by intercourse with children**.³³⁴ The legally protected right here is honesty understood in relation to public morality.³³⁵ In this way the Supreme Court has established that a professor committed the crime of corruption when he made his young female students strip off their underwear and caressed them while uttering obscenities.³³⁶

The federal judiciary has found that categorizing **adultery as a crime**³³⁷ **does not violate the right to sexual autonomy**.³³⁸

The federal district recently reformed its penal code to include the crime of marital rape, thereby annulling a Supreme Court ruling, which found that this type of conduct was merely an undue exercise of a right.³³⁹

Violence Against Women

The **National Commission on Human Rights** established that the 36 cases of rape and female homicide between 1996 and 1997 in Ciudad Juárez, were a **violation of the right to integrity and to be free from violence** when the state is **persistently negligent** in the investigation and prevention of **rape and female homicides**. The commission ordered the governor of Chihuahua to expedite the necessary actions to make amends for these rights violations.³⁴⁰

3. THE RIGHT TO EQUALITY AND TO BE FREE FROM DISCRIMINATION

Federal Constitution: “Article 1. In the United States of Mexico every individual enjoys the guarantees that this constitution offers [...]” “Article 4. [...] Men and women are equal before the law.”

See also: Federal Labor Law, art. 133; Federal District Penal Code, art. 281 bis.; Federal District Civil Code, art. 2.

The court has found that offering **different medical benefits** to the spouses of male and female workers;³⁴¹ **establishing different requisites**

for the crime of **adultery** according to the sex of the spouse;³⁴² and **requiring** that in cases of children born of adultery, the **birth certificate** make note of the **out-of-wedlock** status of the child, violate women's right to **equality**.³⁴³

On the other hand, the federal judiciary has found that establishing **reduced penalties for honor killings**³⁴⁴ or for **kidnapping for sexual purposes**;³⁴⁵ **dismissing a soldier for having sexual relations with a superior's wife**;³⁴⁶ establishing that in cases of separation, custody of **children under the age of seven** should always be awarded **to the mother**;³⁴⁷ or establishing that **a concubine does not have the right to support when one partner of the couple contracts marriage with a third person, do not violate the right to equality**.³⁴⁸ The court has also found that women need not claim necessity to establish support, but men do;³⁴⁹ [the presumption that] marital goods were paid for with **both spouses' money**;³⁵⁰ [or **requiring**] **judicial authorization to execute contracts** regarding marital goods, does not violate the right to equality.³⁵¹

4. THE RIGHT TO CONSENT TO MARRIAGE AND TO FORM A FAMILY

Federal Constitution: "Article 4. [The law] protects the organization and development of the family"

See also: State and federal district civil codes.

The federal judiciary has found that parents of an **emancipated minor** cannot request an **annulment of their child's marriage**, especially when it is evident that the child's spouse is deemed respectable and that the child can provide for his or her family.³⁵²

5. THE RIGHT TO DECIDE THE NUMBER AND SPACING OF CHILDREN

Federal Constitution: “Article 4. Every person has the right to decide in a free, responsible and informed way the number and spacing of their children.”

See also: General Health Law, state penal codes.

The federal judiciary has established that in order to classify the crime of **abortion** in the states of Tlaxcala and Puebla, in accordance with their legislations, it is necessary that the **death of the fetus** occur;³⁵³ the type of method used to achieve the death of the fetus is irrelevant.³⁵⁴ To prove the death of the fetus, however, **it is not necessary to bring the dead fetus to the trial.**³⁵⁵

The federal judiciary has also established that, in accordance with the legislation of Puebla, the mother must be in **danger of losing her life** in order to establish extenuating circumstances to allow the abortion.³⁵⁶

The **National Commission on Human Rights** established that the **health authorities violated** the rights of a 13-year-old minor by pressuring her, without cause, so that she would **not terminate her pregnancy**, which was a result of rape. The commission ordered that criminal and administrative proceedings be initiated against those responsible.³⁵⁷

6. THE RIGHT TO EMPLOYMENT AND TO SOCIAL SECURITY

Federal Constitution: “Article 123. Every person has the right to dignified and socially useful work; to that end, the creation of employment and organization for work will be promoted, in accordance with the law. [...] A. [...] V. During pregnancy, a woman will not carry out work that requires considerable effort and that signifies a danger to her health in relation to her pregnancy; and will enjoy obligatory maternal leave of six weeks after giving birth, paid at the rate of her normal salary, and retain her job and privileges

acquired in relation to her employment. While breast-feeding, she will receive two extra breaks per day, lasting half an hour each, to feed her children; [...] VII. Equal pay will be given for equal work, without discrimination on the basis of sex or nationality.”

See also: Federal Work Law, art. 3; Social Security Law.

The Supreme Court has established that for women to have the right to **social security benefits** related to pregnancy, they must **fulfill the requirement of having paid social security** for at least 30 weeks during the 12 months prior to the pregnancy (Social Security Law, art 102).³⁵⁸ However, if the employer did not enroll the worker in social security, it is his responsibility to pay the benefits.³⁵⁹

The **Federal District Commission on Human Rights** has established that requiring women to **prove that they are not pregnant** in order to contract **work** violates **women’s right to equality**. According to the commission’s investigation, this practice is widespread among public branches of government. The commission reminded those branches that it is their obligation to respect the equality between men and women.³⁶⁰

*[...] to unjustly require that women not be pregnant in order to give them employment is a sexist and discriminatory act that violates the principle of the legal and social equality of men and women. Women’s role in procreation cannot be cause for discrimination, whether by pretext of questionable productivity or by supposed protection.*³⁶¹

7. THE RIGHT TO BE FREE FROM SEXUAL EXPLOITATION

The right to be free from sexual exploitation is not explicitly outlined in the federal constitution.

See: State penal codes.

The court has maintained that the **age of the person furthering the crime** of sex work is **irrelevant**³⁶² and that **sex work** not only affects morality, good habits and public health, but also **violates the sexual freedom** of the exploited person.³⁶³

The court has also maintained that the **decision to close establishments** that tolerate the presence of persons who promote sex work, such as those allowing table dances, is within the **discretion of the administrative authorities**, as long as the closings are in response to public order and social interest.³⁶⁴

*[The court establishes that the effect of subjecting oneself to sex work is] to publicly expose oneself to all types of infamy and sensuality and deliver and abandon a woman to public dishonor.*³⁶⁵

8. THE RIGHT TO EDUCATION

Federal Constitution: “Article 3. Every individual has the right to receive an education. [...] II. The criteria to guide this education will be based on the results of scientific progress, will combat ignorance and its effects, servitude, fanaticisms, and prejudices.”

See also: General Education Law.

The Mexican courts have not issued any rulings on the right to education in relation to sexual and reproductive rights.

9. THE RIGHT TO PRIVACY

Federal Constitution: “Article 16. No one can be deprived of family, home, papers, or possessions, except by virtue of a written order of the competent authority, stating the legal grounds and justification for the action taken.”

See also: State penal codes.

No rulings developing the concept of the right to privacy were found.

