

WOMEN RIGHTS: MYTHS AND REALITY

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INTRODUCTION

Rights are the fundamental normative rules that is allowed of people or owed to people, according to some legal system, social convention, or ethical theory. In other words, Rights are the legal, social, or ethical principles of freedom or entitlement. Rights are those essential elements whose violation is unlawful. Emphasizing women's rights, these are the endeavor to secure equal rights for women and to remove gender discrimination from laws, institutions, and behavioral patterns, these are the rights and entitlements claimed for women and girls all over the world.

There are following fundamental rights provided under Article 19 of the Indian Constitution:

1. Freedom of speech and expression.
2. Freedom of assembly.
3. Freedom to form Associations.
4. Freedom of movement.
5. Freedom to reside and to settle.
6. Right to property.
7. Freedom of Profession, Occupation, Trade, or business.

Issues commonly associated with women's right include- The right to bodily integrity and autonomy, To vote, To be free from sexual violence, To hold public positions and offices, To enter into legal contracts, To have equal right in family laws, To work, To fair wages or equal pay, To have reproductive rights, To have right to education, To own property.

According to article 15(3) of the Constitution of India, discrimination on grounds of religion, race, caste, sex, or place of birth shall not prevent the state from making any special provisions for women and children. Under the constitution, the state has been offered the capacity to make laws identifying with women and children however such laws will not be violative of Article 15 of the Constitution. Article 15(1) prohibits gender discrimination. Article 15(3) lifts that ignominy and permits the state of positively discriminate in favor of women to make special provisions to ameliorate their social, economic, and political condition and accord them parity.¹

EQUALITY OF STATUS

Article 14 of the constitution of India enunciates the general principle of the right to equality and prohibits the state from denying to any person, "equality before the law or the equal protection of the laws".

“Status” refers to her position and rights in different fields of Hindu law, namely property, succession, matrimonial relief, guardianship right, will making powers, power of adoption. A woman status is being raised because now she can practice her privileges freely and for the good

¹ Dr. G.P. Reddy on women is Law, 4th ed., 2000, p.2.

of her own instead of Shastric Law. Status whether restrictive or in any case has been currently the regular result of Article 14 and other unified arrangements of the Indian Constitution. In the past she was stripped of status yet now she has been allowed the equivalent in the household just as in issues of property.

Article 14 of the constitution recognizes "women" as a class. The court has declared that women as a class were different from men as a class; and for this, the legislature has merely removed the disability attached to women by passing the Hindu succession act, 1956². This act has declared in the unequivocal term that the limited rights in the property of a female will now be held by her as an absolute owner, which clearly shows a departure from the shastric Law. Furthermore, Section 8 of the Hindu Succession Act has put female heirs at par with male heirs. In case of division of property after the death of the father, sons, wives, and daughters are entitled to inherit his estate including alienated property.

Here it is worth mentioning that section 23 of the Hindu Succession Act, 1956 appears to be discriminatory against women. It provides that where a Hindu intestate has left surviving male and female heirs of class 1 of the schedule and property includes dwelling house then the right of any of such female heirs to claim partition shall not arise until male heirs choose to divide their respective shares. Thus, the provision treats the female heirs unequal which is against the provision of Article 14 of the constitution of India. Sex is by chance by birth. Thus, the female should not be discriminated against, and section 23 of the Hindu Succession Act, 1956 must be modified in the interest of the Hindu females, because of the number of divorce cases is increasing day by day. Many women are also choosing to remain unmarried.

EQUALITY in EMPLOYMENT

Rule 18(4) of the Indian Foreign Service (recruitment, seniority, and promotion) Rules, 1961, which required permission before marriage and denial of the right to employment to married women for panel employees in the Government was declared discriminatory by the Supreme Court on the ground of sex, and thus violative of Article 14.³The court upholding the principle of equality of status put the female employees at par with male employees.

What is said above about the fair sex similarly applies to a pregnant woman also because pregnancy is not a disability but once of the natural consequences of marriage and is an immutable characteristic of marriage. Thus, any unreasonable restriction based on pregnancy is violative Article 14 of the Indian Constitution. The landmark case on the history of women's rights on this point is *Air India v. Nargish Meerza and Others*.⁴ In this case, some of the provisions of Air India Employees Service Regulations and Indian- Airlines service Regulations were declared against the letter and spirit of Article 14 of the Constitution of India. Regulation 46(1) © of the Air India

² *Kaur Singh v. Jaggar Singh*, AIR 1961 Punj. 489 followed in *Joginder Singh v. Kehar Singh*, AIR 1965 Punj. 407.

³ *C.B. Muthamma v. Union of India*, AIR 1979 SC 1868.

⁴ AIR 1981 SC 1829.

employees service regulations provided that "An air hostess was to resign from her services: (a) upon attaining the age of 35 years or (b) on marriage if it takes place within four years of service, or (c) on first pregnancy whichever occurs earliest. Justice Fazal Ali, while declaring clause (c) of the above provisions, i.e., termination of services on first pregnancy as violative of Article 14, observed that "it seems to us that the termination of services of an Air hostess under such circumstances is not only a callous and cruel act but an open insult to womanhood. Similarly in *Bombay Labor Union v. International Franchises Pvt. Ltd.*,⁵ the supreme court has declared unconstitutional the clause in the regulation of the Corporation which required that unmarried women were to give up service on marriage.

The writ by Miss Muthamma,⁶ a senior member of Indian foreign Services, speaks a story which makes one wonder whether Articles 14 and 26 belong to myth or reality.

In a recent case,⁷ the Apex court held that restricting women from a profession purely on grounds of gender would be unconstitutional clearing the way for employment of women as bartenders. While petitioner Anuj Garg, had challenged the High Court verdict, the Hotel and Restaurant Association had sought removal of the 25 years age bar for employing people in bars. The Supreme Court agreed with the Delhi High Court judgment, which quashed Section 30 of the Punjab excise Act, 1914, that prohibited employment of women and but an age bar of 25 years on men to be employed in bars. The high court had said, "Female touch lends grace and elegance to the hospitality industry" Upholding the High court judgment, an Apex Court Bench comprising justices S.B Sinha and H.S. Bedi also reduced the age limit of 25 years for a person to become a bartender to 21 years. Brushing aside concerns raised by the Delhi government about the security of women working as bartenders, the Apex Court said that if they could join the Armed forces, become pilots and head multinational companies, women could very well handle customers who are served drinks at hotels and restraints.

In the recent case⁸ the Bombay high court said that it is the society's responsibility to ensure that a woman is not hassled if she works till 1 A.M. In a Landmark judgment, the Apex Court has said that housewives are employees and their 'gratuitous' services to their husband and children can't be taken for granted. It has also taken a strong exception to the government clubbing them with prostitutes, beggars, and prisoners in the census. The Hon'ble Supreme court considered the status of housewife higher and better than the prostitutes, beggars, & non-workers, which is correct and appreciable. The Hon'ble Supreme court observed that housewives are employees in the sense that they also serve to husband, children. In this way, they also earn & save funds.⁹

⁵ AIR 1966 SC 942.

⁶ *C. B. Muthamma v. Union of India*, AIR 1979 SC 1868.

⁷ *Anuj Garg & others v. Hotel Association of India & others*, [decided on 6-12-2007 by the supreme court]

⁸, *The Times of India* (Lko) dated 5-07-11 p.9 [Why bar women from working late?]

⁹ *Arun Kumar Agrawal & Another v. National Insurance Co. & others*, [decided on 22-07-2010]

DISCRIMINATION IN FAVOUR OF WOMEN AND ARTICLE 14

Article 14 of The Constitution of India restricts class enactment yet allows sensible order. Having to see characterization and; object of enactment "ladies" can be treated as a class and uncommon laws can be made in support of themselves. Section 354 of The Indian Penal Code which makes assault or use of criminal force with intent to outrage the modesty of any woman, is not invalid as being a violation of the equal protection clause.¹⁰ The classification made in favor of wives and that too deserted by their husbands is also not arbitrary. Because the classification made under section 488 of Criminal Procedure Code 1898(now section 125 of Criminal Procedure code, 1973) aims at preventing starvation of wives deserted by their husbands and provides for the right to maintenance. This cannot be questioned on the ground that the section provides for maintenance of wife and contains no similar provision in favor of men as against wives.¹¹ The Allahabad High Court made it clear that special provision for women as a class can be made, but not to benefit an individual woman.¹²

In *Dattatraya Motiram v. State of Bombay*,¹³ Chief justice of Chagla held that because of the joint activity of Article 15(1) and Article 15(3) the state could separate for ladies against man, however, it couldn't segregate for man against a woman. Likewise, reservation of seats for women in the political race to a region was maintained as secured by Article 15(3) of the constitution of India.

Numerous laws such as The Dowry Prohibition Act, 1961; Maternity benefit Act, 1961; Equal Remuneration Act, 1976; Family courts Act 1984; The Indecent Representation of Women (Prohibition) Act, 1986; The Commission of Sati (Prevention) Act, 1987; The National Commission for Women Act, 1990.

RIGHT TO LIFE AND RIGHT AGAINST EXPLOITATION

The birth of a girl is not considered as a matter of pleasure even today in many parts of India. 105 female infants were killed every month throughout the year in the Dharampur District of Tamil Nadu. In Punjab, every fifth girl child is missing.¹⁴ In U.P. around one lac, female fetuses are killed every year.¹⁵ What is worse, thousands of female infants are murdered in their mother's wombs after determining the sex despite the enactment of Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994. Today India tops in the list in illegal abortions and female infanticide in the world.

¹⁰ *Giridhar Gopal v. State*, AOR1953 Madh. Bharat 147.

¹¹ *Thansee Goundan v. Kanni Ammal* AIR, 1952 Mad. 529.

¹² *Savitri v. K.K. Bose.*, AIR1972 All. 305.

¹³ AIR 1953 Bom. 842.

¹⁴ '*Hindustan Times* (Lko)' dated3-7-2003, p.1[baby girl dug out alive after alive].

¹⁵ '*Hindustan Times* (Lko)' dated22-2-2004, p. 4 [Government turns a blind eye to female feoticide].

In Centre for Enquiry into Health and Allied Themes (CEHAT) & others v. Union of India & others,¹⁶ the supreme court has issued detailed guidelines for the proper implementation of the P.P.N.D.T Act. Not only this, in the month of December 1993, but a father of a minor girl of 16 years of age also filed a writ petition before the Madras High Court under Medical Termination of Pregnancy Act, 1971 for a direction from the court to terminate the pregnancy of his minor daughter. The Hon'ble High Court of Madras dismissed the writ petition and held that abortion cannot be forced on a minor girl when she is willing to bear the child.

PROSTITUTION AND TRAFFICKING IN WOMEN

Article 23 of the Constitution of India provides for prohibition of traffic in human beings and forced labor. Likewise, Article 24 forbids the employment of any child (which incorporates a female child) beneath the age of fourteen years to work in any plant or mine or participate in some other risky employment. A short examination of these arrangements would uncover how much our establishing for fathers were worried about not just ensuring the enthusiasm of ladies and kids yet in addition to improve the states of this part in entirety. Constrained work in any structure remembering homeless person and traffic for people is disallowed and any contradiction of this arrangement has been announced an offense culpable as per law.

The state incompatibility of the above arrangement has authorized, the concealment of Immoral Traffic in ladies and young ladies Act, 1956 (SITA) which has been changed, and now it is known as the avoidance of Immoral Traffic Act, 1986(PITA) in the general public's mentality towards unethical traffic in women and girls.

The status of women can be assessed from the facts that on January 3, 2003, Basanta and Devaki Bai were sold for Rs. 8,00 and Rs. 5000 respectively to bidders by the Bhil Samaj Sudhar Samiti in Goward. 18 others met the same fate. The women concerned were asked to lower their pallus and to stand with stones on their heads so that the libidinous men who bought them could gauge their appearance and gait.

There are laws against trafficking in women, with fines and penalties of three to ten years imprisonment as a maximum depending upon whether the woman is a minor girl or not. However, it is very difficult to pin the charge on pimps or brothel keepers for several reasons. One is that the woman herself protects them. Also, these traffickers have excellent relations with the enforcement personnel and can usually ensure that no charges are preferred against them. In most of the cases, the brothel owners or pimps stand in court as the legal guardians of the women and the women are returned to their custody in the course of law.

¹⁶ (2001) 5 SCC 577.

No law directly criminalizes prostitution. However, soliciting in a public place is illegal. So is the trafficking in women i.e. engaging in the buying and selling of women for prostitution. The law against soliciting makes it impossible for the woman to obtain the client legally. The women who fall into the lower-income brackets obtain clients on the street and public places where they are always being picked up by the police and are vulnerable to all kinds of violence. Usually, the sentences are restricted to a fine with a short prison term besides, for those who have been picked up repeatedly.

There is no law against the client who is an equal participant in the offense. This bias and myth to the rights of innocent women work strongly against them. The threat of arrest, prison term, police, or social violence keeps the women submissive and under control.

A man from Haryana's Fatehabad district allegedly sold his 16 years old daughter for Rs. 50,000 to a man to marry her though she was already engaged to another boy.¹⁷

In one more incident out of Poverty-stricken Orissa that is shocking and disturbing, an ailing mother sold her 1-month old daughter for Rs.10/- though district officer termed it as a case of Adoption. Thus. They are not only deprived of their basic right to education and normal upbringing, but they are also denied the joys of their childhood and youth. According to UNICEF reports, there are more than 65000 child prostitutes in Asia alone of which India's contribution is almost 20%.

RIGHTS OF WOMEN WHEN TAKEN INTO CUSTODY

“The law provides that a woman may not be arrested or taken into custody without the presence of female police. Male police may not attempt to physically restrain or control women. If a woman is to be searched, it must be done by a policewoman in the presence of at least one other. A bodily search may not be conducted in the presence of male officers.

Women prisoners have a right to separate areas for sleeping, washing, and toilet facilities. It is not permissible to separate and a young child in custody, unless the child is old enough to be independent of care. Women prisoners must be supervised by female wardens.

Upon a charge being made, the accused has a right to read and possess a copy of the complaint. The accused also has a right to legal advice and the services of a lawyer before responding to the complaint in any way. In case the accused does not have the financial resources to hire legal services, the state is compelled to provide the same, free of cost. This provision applies also to a

¹⁷ The Times of India (Lko) dated 20-06-2011 p.7 [Man sells daughter for Rs. 50,000]

person engaged in civil litigation being based on the constitutional right to legal representation when the woman is the complainant.”¹⁸

RIGHT TO BODILY INTEGRITY AND AUTONOMY

This paper investigates the associations among body and rights and the intricate and complementary connection between substantial honesty and ladies' strengthening, explicitly in the Indian setting. The various segments of the paper center around the results of the developments for naming and asserting substantial respectability, particularly opposite brutality against ladies, conceptive rights, and issues of sexuality. This paper investigates the key variables impacting and changing the arrangement and its usage and distinguishes territories that should be additionally investigated to empower ladies to enable themselves and continue changes in gendered power relations. 1 Defining Bodily Integrity Bodily trustworthiness incorporates ladies' characteristic option to have control and independence over their bodies. This incorporates the privilege to: - A daily existence liberated from dread of viciousness and living in safe situations. This incorporates ladies' privilege not to be exposed to physical, sexual, or passionate savagery inside the home by private Spatial portability and capacity to settle on choices concerning where they can go, whom they go with, how they travel, and the time or night they can travel.

Care of the Body

Women's health in India is inseparably connected to their lower status. They are required to eat last, leave the best nourishment for the men of the family, and to disregard their diseases while dealing with the whole family unit. This regularly brings about ailing health and is one of the fundamental explanations for the high pace of horribleness and mortality of ladies (hdr South Asia 2000). The intrafamily circulation of food keeps on mirroring the sexual orientation predispositions of society. Because of the family's sexual orientation order and accepted practices fundamental intrafamily unit asset distribution, ladies' prosperity, including wellbeing and sustenance not just gets auxiliary to the endurance of the family, yet additionally to the prosperity of male individuals. Experimental examinations from India recommend that under asset limitations family units are probably going to show unfair practices in the distribution of assets preferring male individuals to the detriment of female individuals [Behrman 1988; Browning and Subramanian 1994].

India has seen a huge change in the recognition and pictures of ladies' body, in the ideas of command over ladies' body, in the manners in which ladies care for their body, in the degree of substantial uncertainty and weakness looked by ladies, and in the battles and developments around ladies' real trustworthiness. The effect of these progressions on ladies and the exemplification of ladies has nor been completely acceptable nor homogeneous. Ladies' bodies have been the site of extreme discussion in the Indian setting. The polarity between their psychological and physical

¹⁸ Dr. Anjani Raut, Law Relating to Women and Children, 3rd ed., 105.

selves and non-acknowledgment of ladies' passionate, mental, mental, profound, and physical articulations endures independent of territorial areas and has prompted a limitation of spaces and steady infringement of their bodies and real trustworthiness. Perceiving the joining between ladies' psyches and physical bodies, there is a need to challenge cultural development of ladies' bodies, viz, ladies' bodies are for reproduction, ladies' bodies are for men's satisfaction, and hence sexual office concerning ladies compromises the social request, and ladies' bodies are for archives of men's honor, connected to the honor/disgrace of the network and society.

DOWRY DEATHS

According to Section 304-B IPC where the death of married women caused by burns or bodily injury or occurs otherwise than under normal circumstances within seven years of marriage and if it is established that soon before her death she was subjected to cruelty by her husband or his relatives, such death of a married woman is treated as "dowry death". Dowry death is the death of a woman because of burns, bodily injury, or any reasons that are not normal and such death must take place within 7 years from the date of marriage. It is the worst form of Domestic violence wherein married women have been killed at their matrimonial home by her husband and relatives out of greed for dowry. It would be pertinent to mention that the charge of Dowry is mostly combined with charges under section 498-A of the Indian Penal Code which deals with the term dowry as defined in section 2 of the Dowry Prohibition Act, 1961 which reads as under;

“Dowry means any property or valuable security given or agreed to be given either directly or indirectly-

- a) By one party to a marriage to the other; or
- b) By the parents of either party to a marriage or by any other person, to either party to the marriage or any other person.
- c) This exchange of property must be for consideration of marriage.

Politicians and media have placed great focus on the issue due to continuously increasing trends from 2008–2012. Dowry death is a murder or suicide of a married woman caused by a dispute over her dowry. In some cases, husbands and in-laws will attempt to extort a greater dowry through continuous harassment and torture which sometimes results in the wife committing suicide.

The majority of these suicides are done through hanging, poisoning, or self-immolation. When a dowry death is done by setting the woman on fire, it is called the bride burning. Bride burning murder is often set up to appear to be a suicide or accident. Dowry is illegal in India, but it is still common practice to give expensive gifts to the groom and his relatives at weddings which are hosted by the family of the bride.

CONCLUSION

The rights given in theory will not suffice. It requires an effective, strong, well-organized body to organize and execute the policy of the Government as incorporated in the Constitution. The will to implement should be a part of the new system

Given the pronouncement discussed above, the following observations may be made:

1. Discrimination in favor of women must be based on facts.
2. Discrimination in favor of women should not be based solely on the ground of sex.
3. Administrative convenience may be a ground for making discriminatory laws in certain circumstances.
4. The unsuitability of women for certain services may be a criterion for discrimination against women.
5. The interest of society may be a good justification for making any discrimination in favor of women.
6. Article 15 (3) should always be a guiding force in all matters covered under article 15(1) of the Constitution.
7. Discrimination and classification are two different concepts. Discrimination is a comparative term, but the classification is a comparative term, but classification classifies persons in unequal positions and having different points in different classes.

The judiciary in its turn has helped in the process of equalization between men and women after independence. However, the most sacred object "The Constitutional mission of equalization" could not be achieved fully due to the following reasons:

1. General Ignorance of law.
2. Indifferent and hostile attitude of the law enforcement agency.
3. Economic backwardness and lack of community support for women seeking justice against discrimination.
4. Ignoring the socio-economic implications of the law.

In the context of Women trafficking and prostitution following suggestions are made:

1. Social organizations must play an effective role;
2. The role of police must be sincere; and
3. The female victims must be educated.

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