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**Course
On**

Gender Justice and Workplace Security

by

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Lecture 08: Constitutional Perspectives (Contd.)

Welcome to the course on gender justice and workplace security. In the last lecture we started the discussion with regards to the constitutional guarantees with regard to protecting the rights of women. We have seen that the constitution guarantees rights to equality, equality before law and equal protection of the laws whereby there cannot be any discrimination based on grounds of religion, race, caste, sex, etc.


So therefore, between man and women there cannot be any form of discrimination. However positive discrimination for women and children is permissible within the contours of article 153 of the Indian constitution.

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Right to Freedom

- Art 19-
 - Freedom of Speech & Expression
 - Freedom of Assembly
 - Freedom to form Associations
 - Freedom of Movement
 - Freedom to reside & settle
 - Freedom of Profession, occupation, trade or business
 - Subject to reasonable restrictions

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Next the right to freedom which guarantees speech and expression, assembly, association, movement to all persons, these are freedoms guaranteed to all persons and everyone is entitled to reasonable enjoyment of each of these freedoms.

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The right to marriage of choice

- Freedom to marry a person of one's choice
- The right to marry a person of one's choice, if he is a major, outside one's caste is guaranteed under Article 19 of the Constitution. (Ashok Kumar Todi v. Kishwar Jahan 2011)
- A young woman, 27 years and graduate, left her brother's house and got married to one Brahma Nand, a businessman. The brothers lodged a case of abduction, upon which the sisters of Brahma Nand were arrested. The brothers on hearing of inter-caste marriage went to house of BN and beat him up, locked him, took forcible possession of the crops and illegal possession of the shop. (Lata Singh v. State of UP (2006))

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LATA SINGH V. STATE OF UP (2006)

When spoken in the context of gender it can be seen through the various cases which have been decided, just for example right to marry a person of one's choice. There are various instances when we come across news indicating that a girl having married a person of the lower caste or of a different religion and then being subjected to various types of coercion, trauma by her family in order to come out of that marriage or many times even penile actions being taken against the other person.


Every person who is an adult has the freedom to marry a person of one's choice, these emanates from article 19 of the Indian constitution. And as laid down in Ashok Kumar Todi verses Kishwar Jahan 2011 is the right to marry a person of one's choice if one is a major outside once caste is guaranteed under article 19 of the Indian constitution. And there cannot be any sort of coercion, any sort of abuse or any sort of criminal offence which can be perpetrated against a person for having exercised the one's right to choice.

Similar was the case of Lata Singh versus state of UP 2006 who went on to marry a person of her choice and later on a case of abduction was made out against the husband with whom she married and he was also subjected to beating by the family of the girl. Now this invites criminal actions and it is definitely violative of the constitutional right to freedom and liberty which has been laid down.


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Freedom of Profession/choice/expression


- Bombay Police Act prohibited holding of dance performance of any type in beer bars/eating houses, other than 3-5 star hotels. Challenged as being violative of Art 19.(Indian Hotel and Restaurants Assn. v. State of Maharashtra 2013)
- Sec 30 of the Punjab Excise Act prohibited the employment of women in hotels and bars serving liquor.(Anuj Garg v. Hotel Assn. of India 2008).




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Similarly everyone has a right to choice of profession, occupation which one wants to pursue and there cannot be any unreasonable restrictions which can be put on such right if one intends to exercise it. So this was a question in the Indian hotels and restaurants Association vs. State of Maharashtra 2013 where a Bombay Police Act which prohibited the holding of dance performance of any type in beer bars eating houses other than 3 to 5 star hotels was challenged it was challenged as being violative of article 19 of the Indian Constitution because everyone has a right to the freedom of profession.

And if such if such dance performances are permissible in 3 to 5 star hotels it could be permissible in other types of eateries or restaurants as well, now one of the arguments or depositions which was put forward was that when it comes to these star hotels there were better protection mechanisms which can be put in place for the security of women but in case of other type of hotels when such performances are allowed many times it leads to the exploitation of women the perpetration of different forms of violence against such women.

And therefore a better way to ensure this security of women was to see that they are not employed in such eateries or hotels however such an argument was not accepted by the court because the court said that this would be a sort of a unreasonable restriction or you know of a sort of a discrimination and a sort of a differentiation which is being made between these categories of hotels, if a dance performance is allowed in certain classes of hotels there is no reason why it should not be allowed in certain other classes of hotels.

And in case the question is one of security that it is the responsibility of this state to ensure that such practices or any type of abuses or exploitation which is being feared such practices or such activities do not happen whereby these such a dance performances should still be allowed so the responsibility of the state to ensure the safety and the security of the women in all the places where women are employed and sort of a difference in a sense of a star hotel and a non star hotel cannot be maintained whereby women are refused in one category of organizations or institutions.

And while they are being allowed in other category of institutions a similar issue came up with regards to the employment of women in hotels and bars serving liquor, so same was the situation that in employment of women in such hotels and bars there was a serious question of the safety and security of women and therefore women should not be allowed in these in the employment of in such hotels and bars, however that is not permissible because that is there a sort of a prohibition which tries to discriminate against women and everyone has a choice of the profession.

So if one wants to be in a dance part or if wants to be in a bar serving liquor etcetera the women are free to get employed in those places as well and it is for the state to ensure the protection of women but any sort of unreasonable discrimination which affects the women in terms of their professional choice cannot be allowed by the state.

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The right to live with dignity

- Art 21- No person shall be deprived of his **life** or **personal liberty** except according to procedure established by law.
- The terms are of widest amplitude and covers a variety of rights which go to constitute the personal liberty of a person.
 - Right to live with human dignity
 - Right to livelihood
 - Right to Privacy
 - Right to Education etc.
- Guarantees against arbitrary action of the State.

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So therefore in various through various provisions through various constitutional guarantees the Constitution has tried to uphold the rights of women and in this regard one of the articles which is integral to the issue of women her right to live with dignity is article 21 of the Indian Constitution. It lies at the core of fundamental rights because it speaks of life and it goes onto say that no person shall be deprived of his life or personal liberty except according to procedure established by law. So therefore every person right to life and personal liberty is assured to every person by the state.

It is somewhat same as declared in the Universal Declaration of Human Rights that everyone has a right to life and personal liberty because it relies at the core of human existence however any restriction of such life or personal liberty is permissible in cases where only there is a procedure established by law and such procedure in order to qualify the requirements has to be just fair and reasonable.

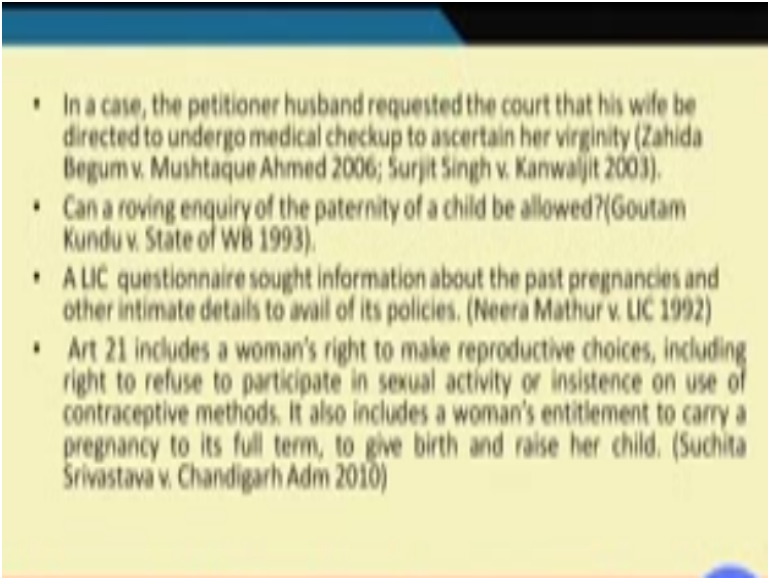
So only on established procedure which is just fair and reasonable can a restriction of such life and personal liberty be allowed other than that in all cases what so everybody has a life to live and in live to the ultimate realization of a enjoyment of his freedoms and rights which have been guaranteed to him or her, now the turn this article has been has been interpreted by the court to include a variety of rights.

And all aspects whether it relates to living with human dignity whether it relates to livelihood or it relates to privacy or education in many situations all have been read as an integral part of right

to life under article 21 of the Indian constitution, so it has been laid down that where we are speaking of life we do not mean mere animal existence it is much more than a mere animalistic existence which is based on the minimal necessities of life.

But all such freedoms and rights which are necessary for the for the for living and living with human dignity that would come within the scope of article 21, even in case of privacy everyone has a right to privacy such privacy is not expressly mentioned in the provisions of the Indian Constitution but it can be read in article 21 that everyone has a privacy and such privacy should be respected by the state and there cannot be any unreasonable or arbitrary interference by the state against such a privacy of a person.

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- In a case, the petitioner husband requested the court that his wife be directed to undergo medical checkup to ascertain her virginity (Zahida Begum v. Mushtaq Ahmed 2006; Surjit Singh v. Kanwaljit 2003).
 - Can a roving enquiry of the paternity of a child be allowed? (Goutam Kundu v. State of WB 1993).
 - A LIC questionnaire sought information about the past pregnancies and other intimate details to avail of its policies. (Neera Mathur v. LIC 1992)
 - Art 21 includes a woman's right to make reproductive choices, including right to refuse to participate in sexual activity or insistence on use of contraceptive methods. It also includes a woman's entitlement to carry a pregnancy to its full term, to give birth and raise her child. (Suchita Srivastava v. Chandigarh Adm 2010)

Even in many instances it has been held that right to compensation has been held to be an integral part of right to life under article 21, in one of the cases the petitioner husband requested the court that his wife be directed to undergo medical check-up to ascertain her virginity that was Zahida Begum versus Mushtaq Ahmed 2006.

And another case of 2003 however that was held to be a bad unreasonable and an interference with the privacy of a woman and therefore infringing her right to life under article 21 of the Indian Constitution, similarly where it relates to the paternity of a child whether can a roving inquiry be allowed to into allowed or to determine the paternity of a child and there it was said

that merely for the purposes of curiosity or other part issues a person cannot go in for a test for a paternity test.




Whereby the child would become illegitimate and the woman or the mother may be held unchaste of by the determination of such tests, so therefore in Gotham Kundu versus state of West Bengal 1993 there were parameters laid down as to when such paternity tests can be allowed and this has more to do with the interests of the child that in no case what so ever the child should be made to suffer by reasons of such paternity tests are there is the case of Meera Mathura versus LIC 1992 where the LIC questionnaire sought information about past pregnancies and other intimate details to avail of its policies.

Now this was also held to be unreasonable and an infringement of the right to life where no such personal questions about the intimate details with regard to a person can be sought. Article 21 includes a woman's right to make reproductive choices including the right to refuse to participate in sexual activity or insistence or use of contraceptive methods it also includes the woman's entitlement to carry a pregnancy to its full term to give birth and raise her child so that was the case of Srivastava verse Chandigarh Administration 2010 where the court respected the choice of the woman to carry her pregnancy to the her full term and give birth to her child.

Because the court recognized the fact that it is the exclusive right of the woman to decide as regards hard sexual and reproductive choices and whether she wants to have a child or not have a child and it would be included within her right to life under article 21 of the Indian Constitution. (Refer Slide Time: 15:44)

- Even a prostitute has a right to privacy under Article 21, and no person can rape her just because she is a woman of easy virtue. (State of Maharashtra v. Madhukar Narayan Mardikar 1991)
- A Bangladesh national was raped in Railway Yatri Niwas by employees of the Indian Railway. The question was whether she was entitled to compensation for violation of her 'life' and 'dignity'. (Railway Board v. Chandrima Das 2000).
- Victims of 'rape' are often subjected to a test, popularly known as 'two finger test' to determine whether she has been subject to physical violation.

Lila @Rajesh v. State of Haryana AIR 2013 SC 1784- the two finger test and its interpretation violates the right of rape survivors to privacy, physical and mental integrity and dignity. Medical procedures should not be carried out in a manner that constitutes cruel, inhuman, or degrading treatment and health should be of paramount consideration while dealing with **gender**-based violence.

Similarly in several other cases the courts have gone on to uphold the right to life in cases it has been held that even a prostitute has a right to privacy and no person can rape her just because she is a woman of easy virtue. In case of compensation as I said compensation has been held to be an integral part of right to life and in the case of Chairman Railway Board versus Chanramadas of 2000 where a Bangladesh in national was raped in the Railway Yatri Niwas the Indian Railways was held liable and an amount of 10 lakh of rupees was directed to be paid in compensation as for the violation of her life and dignity which had happened because of the rape which had been committed against her.

Similarly in case of victims of rape where there are many times medical tests which are held such medical tests being in violation of the dignity of the woman it has been held that in 2013 that where it relates to defeat to finger test such tests invade the privacy of a woman and they are cruel inhuman or degrading treatment and should not be allowed being violative of article 21 of the Indian Constitution.

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The right against exploitation

- Art 23- Prohibits traffic in human beings and begar or any other form of forced labour
- Traffic refers to the selling and buying of men and women like goods.

Sec 370 IPC defines it as the recruitment, transportation, harbouring or receiving a person for the purposes of exploitation. It is effectuated by threat, force, inducement, fraud, abuse of power etc.

- Exploitation includes physical exploitation, sexual exploitation, slavery, servitude or forced removal of organs.

In spite of that if one looks into one finds the existing situation as we have referred through the statistics in the previous lectures of the position of women in Indian society one finds that even in spite of article 21 which goes on to guarantee life and human dignity even in spite of such guarantees there is a alarming fact with regard to fewer female population, in terms of literacy rate for women, declining sex ratio or then sex selective abortions being taking place in India then different types of harassment of women whether sexual harassment at workplace eve-teasing, instances and incidents of violence including rapes which are taking place day in and day out.

So therefore if one looks into these existing ills which are there prevailing in this society one understands that the guarantee of article 21 has still not been fully realized the right to life with human and dignity which has been assured to every individual including a woman is still to be achieved because in many spheres whether education whether even in matters of birth whether in matters of employment in all matters whatsoever she is somewhere you know she left behind and therefore the full realization of her right is as yet her dream. Coming next to another article which is there's article 23 which speaks of the right against exploitation, now this article prohibits trafficking in human beings and beggars or any other form of forced labor.

So therefore human beings cannot be cannot be trafficked or made to for perform any type of forced labor because it goes against the basis of dignified living in society. Now when we speak of the word traffic it basically refers to the buying and selling of men and women like goods the

word trucks has been further defined in section 370 of the Indian Penal Code and it involves recruitment transportation harboring or receiving a person for the purpose of exploitation. It is effectuated by threat force inducement fraud abuse of power etc and such exploitation includes physical exploitation sexual exploitation slavery servitude or forced removal of organs.

So any such type of exploitation is not permissible within the contours of article 23 of the Indian Constitution, even in spite of the prohibitions we are aware of the fact that there are there is the existence of bonded labor in society there is the existence of human trafficking of women in huge numbers where we may not trafficked from different states from different nations and are utilized in one of the other activities which are illegal so whether it relates to the sex market or the labor market or other forms of exploitation.

So therefore this is very much in existence in spite of the constitutional prohibition which prohibits any such type of traffic inhuman beings, when we refer to the work beggar the word means

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- Begar means involuntary work without payment.
- Forced labour refers to making a person to render service against his will or consent whether with or without payment. It implies compulsion.
- Bonded labour, slavery, immoral trafficking are all included in this category and Parliament is authorized to make appropriate laws to penalize these Acts.
- So far as women are concerned, Prostitution, commercial sexual exploitation, domestic labour, Devdasi system are included in this category.

Involuntary work without payment, so no human being can be coerced or made to do work without payment being given to the person. Similarly forced referred refers to making a person to render service against his will or consent whether with or without payment it involves compulsion bonded labor slavery immoral trafficking are all included in this and the Parliament is authorized to make appropriate laws and to penalize these acts.





Now generally when we eat concerns women we see the existence of prostitution as we said commercial sexual exploitation this system of Devdasi which is still existent in some parts of the country and employment of women in domestic labor, we often come across various reports of placement agencies having illegally procured women from poorer regions maybe of the of the northeast or some other tribal regions and being made to work illegally in cities and metros in many, many times these children are given over by the parents in a layer of good money being paid to them however at after a period of time it is seen that there is no money which is involved or and the child has been put to work as domestic labor in houses without any money being paid to them.

And in additionally being subjected to various types of abuse by these by the families in which they are working so these type of violations are absolutely prohibited by the Indian Constitution and, and their article 23 is towards that effect however these two practices are a reality in Indian society.

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Directive Principles of State Policy

- Fundamental rights cater to individual rights, while the directive principles of state policy cater to social needs.
- These provisions are contained in Part IV of the Constitution.
- Though these principles are not enforceable in any court of law, they are fundamental in the governance of the country and provide for the welfare of the people, including women.

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Now therefore these are some of the relevant fundamental rights there are many others but within the scope of gender justice article 14 article 15 16 article 19 article 21 23 are some of the relevant fundamental rights which are there and these fundamental rights are essential for the securing the rights of women and they lie at the core of human existence and specifically the protection of women in society.

Now these rights as we said are enforceable and one of the important relevant articles in this regard is article 32 which speaks of right to constitutional remedies so anyone whose right is violated can move to the Supreme Court under article 32 and the consequent article for the High Court is article 226 where not only for fundamental rights but for violation of any other legal right any citizen can move to the High Court or the Supreme Court by appropriate proceedings for the enforcement of the rights which are guaranteed in part 3 of the Indian constitution.

So therefore on that ground there has been several litigations which have been instituted mainly in the form of public interest litigation to take care of the various issues which are facing women and whether with real whether relating to unequal wages or relating to immoral traffic or sale of minor girls or bonded labor there have been several such petitions before the Supreme Court of India as well as the high court's in order to uphold the fundamental rights of the people and for the court to pass appropriate directions to see that there has been an appropriate enforcement of each of these rights and consequently such discriminatory and arbitrary and abusive practices which are existing in society can be stopped.

