



INDIAN BAR REVIEW

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A Refereed Journal

Special Issue on
HUMAN RIGHTS

Editor -in -Chief

DEBI PRASAD DHAL

Executive Chairman-cum-Managing Trustee,
BCIT - PEARL FIRST

Editor

A. RAMI REDDY

Executive Vice-Chairman-cum-Asso. Managing Trustee,
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HUE AND CRY FOR THE HUMAN RIGHTS OF SPINSTERS IN INDIA

Prof. (Dr.) Vaibhav Goel Bhartiya *
Dr. Prem Chandra **

ABSTRACT

Universe is the amalgamation of diverse celestial bodies; & earth is the only planet on which the life can be observed in form of various zoological and botanical species. In the beginning, these species continued to replicate through techniques like fission which gradually evolved into pollination and other methods of reproduction which is also considered the aim of life. Per se, it can be said that the parties involved in the process of reproduction may achieve completeness only after procreation. Here if one failed to achieve the natural cycle of life, he cannot be considered as complete one and he/she may have to face various psychological and hormonal imbalances which may even develop adverse attributes in the body and since woman plays a larger role in this process of reproduction such attributes affects female more. Above all, the society converts such a woman into a 'spinster'. Such women feel restrained from enjoying their lives to the fullest as a consequence of this social stigma. This directly affects their

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Human Rights. Since the so called 'spinsters' constitutes a 'class', the present piece of work is focused on the issues and challenges before such women while highlighting the importance of their Human Rights. The present work will also come up with certain suggestions as a solution to the problem of this special 'class'.

Key Words: Spinster, Human Rights, Social Stigma, Single Women, Psychology.

INTRODUCTION

Woman, who chose to remain single for any reason or cause, be it physical, psychological, social, hormonal or otherwise and decides not to marry, may feel socially and culturally uncomfortable. Traditionally, single women are considered as a burden on the family, or may be the responsibility of her parents and siblings in particular, as the case may be. The fact cannot be denied that remaining single is more acceptable for men than women. When a woman is not married, it is assumed that there is something wrong with the woman either biologically or in her personality. It can be said that personality issues are backed behind non-marring a woman. In this way single women are stigmatized by the society.¹ The reality cannot be overlooked that singlehood is looked down upon in the global society and especially, in Asian societies. In the context of India, during Vedic period the position of single women was comparatively better and they were enjoying a better status in society. The birth of a girl was not regarded to be gloomy or ill-fated. A girl could have waited to find out a suitable or better partner for marriage. In the absence of a suitable partner, she could have taken the decision to remain single in life. Post Vedic era, status of women started to decline due to various factors. Earlier it was only the male dominance or male chauvinism but with advancement of time, women autonomy has become another. This created a wholesome gap between interdependence of man and woman. This resulted in lower status for women, if single; reason what so ever might be. To remain single or unmarried for women was also considered against the religion. Here it is essential to point out that during 1690s the term 'old maid'² became common which was being used negatively for

1. https://shodhganga.inflibnet.ac.in/bitstream/10603/114235/14/14_summary.pdf . Accessed on 20-08-2020 at 9.30 am.

2. <https://www.collinsdictionary.com/dictionary/english/old-maid> accessed at 22.30 hrs at Subharti University Meerut. Here old maid has been defined as a lady who never married and belongs to middle age or above.

virginal and unmarried women to express their social status in society.³ The expression old maid emphasizes the paradox of being old and yet still virgin and unmarried. The earlier women, who were not married, were named as maids or virgins or puella. The term "puella" is Latin word which means "girl". These words denote chastity, virginity or youthfulness and it is presumed for them that they remained single in a small part of their life which is generally known as pre-marriage period. But slowly and gradually the number of unwed women or women who never married grew and new terms like 'spinster' or 'single woman' emerged for them⁴ in around 1870s. In the USA labour force started being dominated by Single women since 1870, which might be because they wanted to use their potential for national service with a better livelihood in order to avoid social pressure. The first period was experienced as the peak for the employment of single women in manufacturing sector and second phase was witnessed as the peak for the employment of women in clerical work after 1870 till 1920,⁵ this is witnessed as era of single women in women labour force. The participation rate of single women was increasing in the economic history of USA. Thus it can be said that the economic history of USA was shaped by single women till 1920 and from 1920 to 1970 it was shaped by married women. John Hajnal, a famous demographer in his work, done in 1960, concluded that in the North- Western countries, people had started a practice to get married late even at 30-40 years of age. It was also observed that most of them never married. Due to the tendency among people, to accumulate a certain amount of wealth to start new married life, couple used to enter into married life quite late. If failed to accumulate enough wealth they opted not to marry at all. The resulted gross decline in marriages, and significantly increase/ of single women adversely affected the population. Consequently, the British government introduced a

3. Berger, David G. & Morton G. Wenger, *Journal of Marriage and Family*, Vol. 35, No. 4 (November, 1973), P. 667, pub; by National Council on Family Relations; Also available at <https://www.jstor.org/stable/350880>.

4. Amy Froide: Spinster, Old Maid or Self-Partnered-Why Words for Single Women have Changed through time on December 2, 2019 2.24pm AEDT. Available on: <https://theconversation.com/spinster-old-maid-or-self-partnered-why-words-for-single-women-have-changed-through-time-126716>. Accessed on 13 -04-2020.

5. Claudia Goldin: The Work and Wages of Single Women, 1870-1920, *The Journal of Economic History*, Vol. 40, No. 1, The Tasks of Economic History (Mar., 1980), Pp. 81-88. Stable URL: <https://www.jstor.org/stable/2120426> Accessed: 02-04-2020

Marriage Duty Tax. It was imposed upon bachelors, and single women that amounted to fine for not being married.⁶

This was time when parents had to pay dowry to marry their daughters and who could not offer dowry kept their daughters unmarried, who had to be looked down in society; resulted unwelcoming mind set towards female birth in the family. In short, unmarried female means loss of wealth in the family and it can be contemplated as starting of adverse status of female in the society.⁷ This is also witnessed that many times, single men and women are not allowed to participate in religious festivities and marriage celebrations because it is considered unlucky, unholy, and inauspicious.⁸ Here it is essential to point out that considering the ultimate goal of life, it was taught to women and they were trained to tolerate and sustain with stress and strains of marital relationships even in presence of maximum possible cruelty or under the worst living conditions.⁹

RESEARCH OBJECTIVES

The objective of the proposed study is to investigate different problems faced by single women in India. The research will also explore reasons of singlehood among women along with the legal provisions for the protection of single women in India. The research will trace out the role of judiciary regarding the protection of various rights of single women and further to suggest as a way out of Human Rights enjoyment by the single women.

STATEMENT OF PROBLEM

Single women in India have observed an increase, day by day. Their growing number is a matter of concern being vulnerability while their rights violation may lead them in to destitution and vagrancy. Today, the society at large is much prejudiced towards a single woman. Even in developed countries women are thought to be the second fiddle to men. A single woman is considered to be a failure, odd woman, a dropout, sexually weak or emotionally neglected in society. Obviously, these issues and questions

6. <https://theconversation.com/spinster-old-maid-or-self-partnered-why-words-for-single-women-have-changed-through-time-126716>. Accessed on 03-04-2020 at 12.30 pm.

7. Deep Shikha: Single Women: Problems & Challenges, A Thesis Submitted for the Award of Ph. D. Degree in Sociology, 2009.

8. https://shodhganga.inflibnet.ac.in/bitstream/10603/114235/14/14_summary.pdf. accessed on 20-08-2020 at 11.30 am.

9. https://shodhganga.inflibnet.ac.in/bitstream/10603/114235/14/14_summary.pdf. accessed on 20-08-2020 at 10.30 am.

are to be studied in the light of the constitutional philosophy of rule of law. The human dignity, respect for women etc. are very core principles of constitutional mandate which are also the core of Human Rights jurisprudence and of this study as well. The proposed research work is confined to the Status of single women and their Rights. It is limited only to single women, their basic rights, problems faced by them and the possible solution thereon. The researcher relies on the secondary data including statutory provisions, legal doctrines, and rules with descriptive analytical model for data testing.

SINGLE WOMEN OR THE SPINSTER

Conventionally the term spinster woman was used for such a woman who never got married. The legal age of marriage for a girl is 18 years. But in modern era women are usually getting married at 22 to 30 years of age. Yet, a woman who does not get married till the age of 30 it is said that she has crossed the age of marriage and as such is socially considered as spinster. They may also be considered as single by choice or by chance. Most of the societies are very prejudiced towards single ladies' status. The worst problem is the way society thinks that a woman cannot be happy without man or manly support. Here the status of single women being divorced is also required to be discussed where specific problems faced by divorced women are totally ignored in India. It is well known that in India a divorced woman tends to face many difficulties and deprivations because of negative societal attitude and social restrictions imposed on them. Many suffer abuse and exploitation within family or in ashrams/old age/refugee homes. In case of a widow, because widowhood is a curse for a woman in our society, she is forced to live an isolated life and her presence at rituals and ceremonies is considered inauspicious. The city of Vrindavan and Varanasi may be referred as the "widows' city" of India.¹⁰ These cities are homes to a large number of widows where these single women can be observed with no Human Rights at all.¹¹

WOMEN' SINGLEHOOD AND HUMAN RIGHTS

There are the reasons for singlehood among women. Some of the reasons are apparent in the preceding fragment. Death of spouse,

10. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3151454/> . Accessed on 31/08/2020 at 12.52 hours, at Subharti University Meerut.
11. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3151454/> Accessed on 31/08/2020 at 12.52 hours, at Subharti University Meerut.

disappointment or broken family relationship, no marriage proposal, narration and instances of others experiences with regard to frustrated family life may also be considered over and above to all. Marriage and procreation are important factors for the respectability of a woman since inception. It is hard to capture the diverse reasons of singlehood among women. But unlikely it is easy to sketch-out the Human Rights violation of such women at all corners. Among women who did not marry or remained single by choice or circumstance, the motivation or compulsion to support old age parents or younger siblings may be one of the reasons.¹² In fact the reasons narrated, possess the core behind the violation of her Human Rights.

It is said that in India the status of women is paramount. In one saying it is written that "yatra naryastu pujante ramante tatra deva"¹³ this means God resides where women are worshiped and wherever they are not worshiped, all actions result in failure. But unfortunately, that every day women are being molested and assaulted! The streets, public places and transport system have become the main spot of crime against women especially when one is known to be single. She fights every single day to live her life with dignity. As single women are a more vulnerable class of society, the issue of their human rights protections arises. One of the most annoying problems is that men have a strong perception in their mind that single women are a class of society which is easily available for them. Single women are observed as a 'chance' for men. Such women face constant pressure from their parents to get married and if remained single, they are considered to have some defect. Getting married is one big pressure and having babies is another pressure from all sides and this hampers their freedom of life with dignity and when society generates a deterrence contradicting the rule of law; violation of their all the constitutional guaranties is done. In case such women opt other options as a 'right to choice' to end their singlehood with the help of IVF, adoption or surrogacy, this is again quite questionable in Indian society.¹⁴

12. Kanchan Gandhi et.all Living Single: Being A Single Woman in India. Available on : <https://www.researchgate.net/publication/301339201> accessed on 12-04-2020 at 1.30 p.m.

13. <https://www.sanskritabharatiuk.org/87/>

Subharti University Meerut at 15.15 H. accessed at Subharti Laws College

14. <https://www.colive.in/> relate-to /

LEGAL PROVISIONS FOR THE PROTECTION OF WOMEN IN INDIA

The Constitution of India being the fundamental and Supreme Law of the land protects women as a special class.¹⁵ It prohibits discrimination on the ground of caste, race, colour etc and ensures the dignity of the individuals irrespective of their sex, race, caste, community and place of birth, enshrining the concept of justice, liberty, equality and fraternity. The preamble being the key to the Constitution of India declares equality of status and of opportunity and to promote it among the all. The fundamental Rights are applicable to all the citizens irrespective of sex. The specific provisions have been made in the Constitution for the protection of the women's rights.¹⁶ But still, the single women are not observed safe and protected in general and happy even at home in particular. The Fundamental rights represent the basic values of the people of India and protect the dignity of an individual. These fundamental rights are the tool through which every individual can develop his personality to the fullest extent.¹⁷ But when the point comes on the practice of such provisions for women protection, the answer is on a pessimistic note.

Single women are categorised broadly under family except in the case of a widow or a legally separated woman. It is believed that the family court by announcing monthly compensation has done its duty for a separated woman. However, a man often gives money for a couple of months and then goes away. The hapless woman has to go back to the court again and again to get her dues," Ms. Srivastava explained. Her organisation has been working on a proposal that wants the family courts to give money to the woman and subsequently recover it from the man.¹⁸ But such provisions are for women who have enjoyed family status at-least once and therefore spinster cannot be kept along with these women.

Explanation (2) of Section 3 of The Medical Termination of Pregnancy Act, 1971, provides that where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the

15. https://shodhganga.inflibnet.ac.in/bitstream/10603/119098/13/13_chapter%203.pdf accessed on 10-04-2020 at 4.00p.m.

16. Constitution of India, 1950 Article 15 (3).

17. *Maneka Gandhi Vs. Union of India* AIR 1978 SC 597.

18. <https://www.thehindu.com/news/national/good-news-for-single-women-in->

mental health of the pregnant woman.¹⁹ The single women cannot get the benefit of this provision because law recognizes this ground only in case of married women. Recently, the health ministry has recommended that failure of contraceptive and unplanned pregnancy should be accepted as a legal ground for termination of pregnancy among all women irrespective of their unmarried status.²⁰

RIGHT TO EQUALITY AND SINGLE WOMEN

Article 14 to 18 of the Indian Constitution guarantees the right to equality to the every citizen of India. Article 14 of the Constitution embodies the general principle of equality and it prohibits the any type of discrimination among persons.²¹ The idea of equality is reflected in the preamble of our constitution too. The concept of equality does not mean the absolute equality amongst human beings which is not possible to achieve at all. It is a concept which denies any privileges on the basis of caste, creed, religion, race, colours, place of birth etc. This concept is equal to the Dicey's concept of rule of law in England. The concept of rule of law requires that no person is above to the law of the land. Further, it means that no person shall be subjected to harsh, uncivilised, unequal or discriminatory treatment.²² The equal protection does not mean that that all laws must be general in character. It does not mean that the same law must apply to all persons who are not in the same position because identical treatment in unequal situations or circumstances would amount to inequality. The rule of law requires that the like should be treated alike and not that unlike should be treated alike.²³ In this respect for the protection of human race and progress of society reasonable classification is required. Single women create a separates class in society and therefore for the better protection of their equality they must be treated separately. Article 15 clause 3 of the Constitution empowers the State to make special provision for the women because physical structure of women and their natural duty to perform maternal function put them in a disadvantageous

19. <https://tcw.nic.in/Acts/MTP-Act-1971.pdf> accessed on 31-08-2020.

20. <https://timesofindia.indiatimes.com/india/Government-plans-equal-abortion-rights-for-single-women/articleshow/55931155.cms> accessed on 31-08-2020.

21. Article 14 of the Constitution of India.

22. Dr. J.N. Pandey, Constitutional Law of India, Central Law Agency, 52nd ed., Allahabad-2015.

23. Dr. V.N. Shukla, The Constitution of India, 5th ed., at 27 as quoted by Dr. J.N. Pandey, Supra Note 25

position.²⁴ Keeping in mind, the idea of equality under Articles 14 and 15 (3) of the Constitution and the concept of reasonable classification which derived from the idea of equality, specific legal mechanism is required for the better and equal treatment of single women. Thus, as under Article 14 of the Constitution reasonable classification for the purpose of legislation is allowed, therefore it is submitted that spinster women should be considered a class for the purpose of legislation.

ROLE OF JUDICIARY REGARDING SPINSTER WOMEN IN INDIA

Discrimination of any kind negatively affects the human capabilities and it must be eliminated or removed from the society.²⁵ Discrimination is a main hindrance for an individual to live a dignified life. Indian judiciary has played a significant role in restoring the justice in all cases of discriminations against women since independence.²⁶ J. Iyer, V.R. Krishna, rightly said that case law how much too it be creative, imaginative or gender friendly but it must be based on logical reasoning and have few own limitations. Judges are not authorised to frame a complete new law. In other words they cannot make law, they have a responsibility to interpret the law. They have to decide the cases, dispute and controversies within certain limitations. In the process of decision making and interpretation of law they make law to fill the gap temporarily. Ultimately, the legislature has a wide function and powers to make the law. So it is necessary to make substantive codification for the protection of rights and fulfilment of the needs of single women in present perspective.

In a case, the High Court of Madras has appreciated²⁷ the initiative taken by Ministry of External Affairs by which some additional columns such as step parents, adoptive parents were added in passport application. In another case,²⁸ a woman who was unmarried filed a petition in court for

24. *Muller Vs. Oregon* 52 L.Ed. 551 as quoted by Dr. J.N. Pandey, supra note 25.

25. https://shodhganga.inflibnet.ac.in/bitstream/10603/127676/18/10_chapter%204.pdf

26. https://shodhganga.inflibnet.ac.in/bitstream/10603/127676/18/10_chapter%204.pdf

27. *Mrs. B.S. Deepa Vs. The Regional Passport Officer*, (Writ Petition No.29105 of 2014) Available on <https://www.womensweb.in/2016/12/courts-aid-single-moms-in-india/> accessed on 16-08-2020 at 05.10 p.m.

28. *ABC Vs. The State (NCT of Delhi)* (Civil Appeal No. 5003 of 2016) Available on <https://www.womensweb.in/2016/12/courts-aid-single-moms-in-india/>

declaration that she is a sole guardian of her child. The Supreme Court directed to the municipal authorities to issue the birth certificate of her child with the name of mother alone. Further, the court observed that the privacy of unmarried mother should be protected. The court held that the father's name is not necessary for getting issued the birth certificate, passport or other schools certificates of child.

In another case, Gujarat High Court has held²⁹ that a single mother, being single parent has the right to use her name as biological natural guardian. But it is traumatic that for such a natural right mother was forced to encounter legal complications just because of her gender as such a case never arises with a single father. Here the idea of family and the equal rights of husband and wife seems paradoxical. The panic situation for the women with fewer resources is beyond imagination while enjoyment of such natural rights considering the same as a part of her Human Rights.

Further, the Delhi High Court has observed³⁰ "*...that mother's name alone is sufficient in certain cases where she is a single parent in passport and that the name of one's biological father is not necessary in all cases. A single woman can be a natural guardian and also a parent*".

Thus single women in India would now be able to claim sole guardianship of their children without naming the father or needing his consent. Her own fundamental right to privacy will be violated if she is compelled to disclose the name and particulars of the father of her child.

CONCLUSION & SUGGESTIONS

According to 2011, census more than 3.6 Crore or 7.4 percentage women are single in India. Married life has its own set of benefits and problems, so has Singlehood. Women in general have more complications with regards to their status and profession than men. There are talks about achieving gender justice with the help of protective mechanism but it is still in its embryonic stage. Though, an individual has complete liberty to live alone or with her spouse, (when a female decides to remain single, it is stigmatized and she is presumed to have given up her all basic rights which

29. *Rashi Yogesh Sadariya Vs. Director & Others*, (Special Civil Application No. 12924 of 2015) Available on <https://www.womensweb.in/2016/12/courts-aid-single-moms-in-india/> accessed on 16-08-2020 at 03.10 p.m.

30. *Shalu Nigam & Another Vs. The Regional Passport Officer & Others*, (Writ Petition (C) 155/2016 & CM APPLs. 684-685/2016) Available on: <https://www.womensweb.in/2016/12/courts-aid-single-moms-in-india/> Accessed on 16-08-2020 at 02.30 p.m.

are necessary to live a dignified life. In a civilised society a complete family is a backbone for nourishment of children. Parents love their children and go to any extent for their best of them. The essence of parenting is understanding, knowledge and experience; that they can take right decision on behalf of their children or loved ones. Parenting is a very tough task and being a single parent is perhaps a toughest one. If she is the main breadwinner, problems are certainly compounded. However, single parenting today is becoming very common, whether by choice or because of divorce, separation or death of a spouse. Whatever the reason, single parent face challenges that require a lot of courage, determination and emotional strength³¹. Low income single women are venerable and victims of the patriarchal structure that deprive them of inheritance and other rights. To overcome these problems adequate steps should be taken by the government to provide better atmosphere to single women as well as the children reared by them to develop their capacities. It is suggested that single women being a separated class should be treated differently and separate law should be enacted for their protection and betterment. There are very few government schemes for single women. Most of the welfare schemes remain out of reach due to very lengthy and cumbersome formalities. A reasonable quota should be fixed for single women in various schemes of the government such as Indira Avas Yozana, Mahatma Gandhi Rural Employment Guarantee Scheme etc. Interest free loan should be given for education of kids of single women. Certain percentage of jobs should be reserved for single women. The status of single women, who choose to remain single by choice should be recognised and accepted in law.

* * *

31. Laveena D_Mello, Dr. B. M. Govindaraju & Dr. Meena Monteiro, "A Study on the Challenges Faced by Single Parent on Teenager Care", International Journal of Law and Technology, Page Number

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New Delhi

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