
THE LEGAL PARADOX ENCOMPASSING EQUALITY

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ABSTRACT

The most fundamental principle of law is to provide equality to circumstantially similar people. Several international organizations aim to globally establish equality and non-discrimination as a governing force. Rule of law has been adopted by several nations now. However, law turns out to be a paradox, not completely succeeding in accomplishing its deliberate aims and objectives. Most laws are women-centric and discriminatory in nature, going against the very notion of equality, which is the key aim of its origin. For instance, men are always assumed to be the perpetrators, and there is no protection of men against violence. Additionally, the LGBTQ+ community is still miles away from experiencing equal treatment.

This paper extensively deals with the principles of equality globally, and how it contradicts itself in numerous instances, thus creating several legal paradoxes.

KEYWORDS: Law, Equality, Violence, Punishment

1) INTRODUCTION

Since the inception of mankind, their slow steps towards ultimate civilization and the establishment of a suitable process which puts in check the functionalities of the society, the key element has always been equality. Initially, when law did not exist, there were several common and frequent occurrences of a magnitude of injustices. The patriarchal society, which is largely driven by forces of chauvinism and misogyny, always believed in the oppression of women. Incidents such as the sati system lays down the basic evidence of injustices in our society.

One could plausibly argue that they are solely based upon religion, but what is turned a blind eye upon is the very fact that these religious beliefs are a primary governing indicator of what one perceives as the ultimate right. According to the natural theory of law, as supported by Socrates and Plato, law is naturally evolved, and is not a product of human creation. Our very ethics, morals and principles sums up law, although, practically, it varies from one mind to another, which would in turn mean billions of unique laws.

To break through the chunks of complexity, to highly plummet the ambiguity, and to promote better and lucid understanding, a "common" law was deliberately framed. These laws differ depending upon the territory, however most of these recorded rules have several underlying common principles. One of these principles is equality.

Equality - definitions: Equality is widely propagated as "The condition of possessing the same rights, privileges, and immunities, and being liable to the same duties"¹. In layman's terms, two people are said to be subjected to equality when they are entitled to do the same things, carry the same responsibilities and duty obligations, enjoy the same privileges and immunities. Equality has always been a fundamentally core notion of the law as it aims on treating everyone the same way. It is only through the establishment and wide acceptance of equality, everyone is subjected to the same rules and laws.

The principle of equality has been adopted as a preventive measure against discrimination. Globally, discrimination takes place due to several differences such as race, caste, gender, etc. In the year 2016, there were several religious and racial discriminatory incidents which had sparked debate on social media. One such incident was that of Bayan Zehlif, wherein a young 17 year old Muslim woman was recorded as "ISIS Philips" (an alternative acronym for DAESH terrorist organization)

¹ The Law Dictionary

in her year schoolbook merely due to the fact she wore a hijab. The hatred towards Muslims has been gaining immensely high attention lately. This is merely an example as to how we are all collectively inclining towards the principles of equality.

1.1 EQUALITY IN THE INTERNATIONAL SPHERE

The principle of equality has been widely adopted by the majority of the countries, and it is also one of the basic ideas of several international organizations in promoting global peace and security. Equality and non-discrimination play the role of the most fundamental elements in international law.

Article 1(1) of International labor organization 111, gives us a clear definition of discrimination. According to the statute, "Any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in the employment or occupation"². From this, it could thus be concluded that equal treatment would translate to equality before the law, completely restricting discrimination. This would alternatively mean, people belonging to similar circumstances would be treated equally both in law and practice. What requires special emphasis here is the very fact that not every distinction or difference in treatment would amount to discrimination. In general international law, a violation of the principle of non-discrimination arises if:

1. Equal cases are treated in a different manner;
2. A difference in treatment does not have an objective and reasonable justification; or
3. If there is no proportionality between the aim sought and the means employed.

These requirements have been expressly set out by international human rights supervisory bodies, including the European Court, the Inter-American Court, and the Human Rights Committee.

The principles of equality hold tremendous emphasis in many international organizations. Article 2 of UDHR, which reads as follows:

"Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis

² Convention No. 111 Convention Concerning Discrimination In Respect Of Employment And Occupation, 1958

*of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.*³

The right to equality and non discrimination is a governing principle and a cross cutting issue of concern and has been discussed in several declarations such as Articles 2 and 26 ICCPR, Article 2(2) ICESCR, Article 2 CRC, Article 7 CMW and Article 5 CRPD . Additionally, two of the major UN human rights treaties are established explicitly to prohibit discrimination, CERD on the ground of race and CEDAW on the ground of gender.

1.2 RULE OF LAW

When we talk about equality, we simultaneously also talk about rule of law. It is a political philosophy which advocates the equal accountability of citizens and institutions before the same laws. The idea of rule of law was first proposed and used by Sir Edward Coke the Chief Justice in James I Reign. The concept of rule of law has ancient roots, with Greek philosophers such as Plato and Aristotle having discussed the concept of rule of law around 350 BC. Plato wrote

“Where the law is subject to some other authority and has none of its own, the collapse of the state, in my view, is not far off; but if law is the master of the government and the government is its slave, then the situation is full of promise and men enjoy all the blessings that the gods shower on a state”. The term ‘Rule of Law’ is derived from the French phrase ‘la principe de legalite’ which implies the principle of legality.

At the United Nations, rule of law is read along with several other independent concepts such as accountability, transparency, equal participation and so on, which shall briefly be discussed further. According to the Secretary-General, *“the rule of law may be a principle of governance during which all persons, establishments and entities, public and private, as well as the State itself, are responsible to laws that are publicly promulgated, equally enforced and severally adjudicated, and which are in keeping with international human rights norms and standards. It needs measures to ensure adherence to the principles of ascendancy of the law, equality before the law, responsibility to the law, fairness within the application of the law, separation of powers,*

³ The United Nations - Udhhr, Article 2

participation in decision-making, legal certainty, shunning of arbitrariness, and procedural and legal transparency.”⁴

Accountability is central to the concept of the rule of law. On the one hand, it means that everyone, no matter how powerful or wealthy, is accountable to the law. On the other hand, it relates to the issue of participation, thus creating an active role for people in supporting these accountability mechanisms. However, the first aspect of accountability also relates to avoiding arbitrariness. Accountability to the law means that applicable laws set the standards by which everyone is held — within a city, a sub-national political entity, or at the international level.

Participation in decision-making is another key side of laws and refers to however they're made. Participation could also be direct or indirect (for example, through elected representatives during a parliament or congress). It's a demand of the legislative method and ultimately guarantees that laws represent the collective will of the people. Furthermore, participation in decision-making may be a substantive right of its own, enshrined in international human rights law.

Transparency supports the rule of law by ensuring people know what the law is, can be expected to act accordingly, and can also support accountability mechanisms by knowing what to expect from others. To understand the rule of law, we need to return to the issue of accountability under the law, more specifically how that accountability is enforced. The concept of the rule of law has two principles that guide the application of the law. The first is equality before the law, which means that no one who could be held responsible is treated differently, regardless of race, sex, language, religion, wealth or other status. Everyone should have equal access to the judiciary and its mechanisms. The second principle is that of justice, which complements equality before the law. Accountability before the law also concerns the judiciary, which has the function of ensuring the validity and fair decision on the application of to determine laws. A key requirement of the judiciary is independence. This ensures freedom from undue interference and this may entail considerations outside of applicable law, ensuring their primacy and ensuring non-discrimination. When decisions are made in accordance with the law, everyone can understand and anticipate the results to be expected not only from the law itself, but also from its interpretation, application and enforcement. This is called legal certainty. For this reason, transparency plays another fundamental role, as it guarantees clarity on how judicial decisions and justifications are made, while allowing accountability and verification of the decisions of the judiciary itself.

⁴ S/2004/616, Par. 6

Hence, it can be positively concluded that rule of law plays a significant role in shaping and molding the right to equality. How effective have countries been in implementing these principles? To estimate this every query, the world justice project carries out surveys through the rule of law index, ranking 140 jurisdictions based upon the extent of easier justice access, and better protection to people. In 2022, Denmark ranked the highest, and Cambodia ranked the least, with India ranking 77th. The survey recorded a decline of justice for the fifth consecutive year.⁵ This is sufficient evidence to prove that we are collectively going against equality.

1.3 RIGHT TO EQUALITY : INDIAN PERSPECTIVE

India, since its steps towards the formation of the constitution, always aimed on encompassing the principles of equality. The then-Article 9 is currently Article 14 and Article 15 of India's current Constitution. Article 14 of the Indian Constitution of 1950 wasn't enclosed within the Draft Constitution of 1948 as a complete article. it absolutely was initially mentioned in Draft Article 15. Article 14 of the Indian Constitution guarantees equality before the law, whereas Article 15 prohibits discrimination on the premise of religion, race, caste, sex, or birthplace.

Article 14 of the constitution reads "*The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth*"⁶. Whereas, article 15 reads "*Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth : The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them*".⁷

The scope of equality under article 14 has been significantly restricted by the 42nd Amendment Act, 1976. The New Article 31-C supplemental by the modification Act provides that laws created by the state for implementing the directive principles contained in clause b or c of Article thirty-nine can not be challenged on the basis that they're violative of Article 14.⁸

2. VIOLENCE AGAINST MEN: WOMEN-CENTRIC LAWS

Women have historically been granted special rights, privileges, and immunities according to several procedures established by law both nationally, and on a global sphere. This gender

⁵ <https://Worldjusticeproject.Org/Rule-Of-Law-Index/Global/2022/Table>

⁶ The Constitution Of India, 1949 - Article 14

⁷ The Constitution Of India, 1949 - Article 15

⁸ Sanjeev Coke Mfg Co. Vs Bharat Coking Coal Ltd

classification has widely been accepted due to the massive injustices, oppression and hatred women have been subject to. The waves of feminism, not merely promotes the equality of men and women, but rather promotes equality amongst all genders. However, this might seem to be a paradox, considering the very fact that there lack laws protecting and ensuring the well being of men. This raises a serious question as to, are laws pro-women? Are women-centric laws beneficial?

There are several laws aimed for protecting and promoting women, few of which are as follows :

1. DOMESTIC VIOLENCE:

Section 498-A of the IPC addresses the subjection of women to cruelty by their husbands and in law. It is a non-bailable and detectable crime. 3 years imprisonment and a fine.

2. DEATH BY DOWRY:

Section 304-B of the IPC is a provision designed to protect a woman from cruelty by her husband and in-laws.

3. FORCED SEXUAL INTERCOURSE:

IPC Section 375, enacted to help women obtain justice when they are forced into sexual intercourse

4. SUPPORT FOR WIFE BY HUSBAND:

Section 125 of the Code of Criminal Procedure 1973 mentions that a person must support his wife, children and parents who are unable to do so to support oneself.

5. RIGHT TO EQUALITY IN THE CONSTITUTION:

The Constitution prohibits all discrimination based on sex under Article 15(1) and under Article 15(3) the The state can make special regulations for women.

In India, and Globally, It has been normalized for men to be the preparators, hence availing special laws protecting women. This would fairly seem reasonable from an ancient perspective, considering the fact women were easy to suppress, and had absolutely no opportunity to grow.

However, it might rather seem irrelevant in the present scenario. Crimes happen against humans, with no emphasis on gender. At home or at the work to avoid punishments or to urge some rewards, men can also be concerned in sexual slavery by force. In many parts of India, a young man with

sensible qualifications and financial superiority is kidnapped and made to marry without his consent. False rape and other charges similar to molestation also are common. Since law and society perpetually historically favor females because they are the weaker sex, many another time, false complaints of sexual abuse/rape are lodged against men. This is often true relating to cases against men below 498A (domestic violence) and false dower cases, and therefore the same was expressed by varied courts throughout their proceedings.

It has been ascertained in a very study that less income, education up to middle class, relatives setup, and also the influence of alcohol were risk factors for violence against men. An earning better half with education up to graduation was found to be the risk factor for two-way physical violence. Caste and socioeconomic standing weren't found considerably associated with violence against men. It has been observed that the couples wherever the spouse is earning and educated up to graduation, the physical violence will be committed by the spouses against each other.⁹

Women also severely suffer from anger management issues and might recklessly take it out on their husbands. They indulge in several, and frequent violent acts. In a male-dominated society, men feel that it's shameful to be overwhelmed by a girl and that they don't report the violence.

The pressure from family also prevents them from taking any legal action, and they also are scared of obtaining treason in false accusation under 498A. Once men report domestic abuse and violence, folks do not believe them. Also, when these men attempt to complain concerning these problems, among marriage and family, nobody takes them seriously. Several men are mortified for talking about their abusive relationship with their wives. The probable reasons for underreporting embrace belief and hope that things would get better, concern of losing social respect and position, protection, love toward their youngsters and family, and fear of getting blamed. Whining by men can also be perceived as “feminine behavior” within the maledominated Indian society.

2.1 EFFECTS OF VIOLENCE

When people are subjected to violence, it takes a major toll on their well being. They are largely affected mentally, physically and emotionally. Their psychological well being declines to a large extent too. It is necessary to fathom all these effects while engaging with victims of violence. However, society deems men can never be traumatized and hence turn a blind eye against it. There are absolutely no laws protecting men. Unreported and neglected violence against men might result

⁹ Malik Js, Nadda A. A Cross-Sectional Study Of Gender-Based Violence Against Men In The Rural Area Of Haryana, India. *Indian J Commu Med.* 2019;44(1):35.

in denial in acceptance amongst the family, divorce, depression, or suicide in extreme cases. It's been observed that suicides were alarmingly high as compared to separated/ divorced men. According to WHO (2002), women ponder over committing suicide, whereas men die by suicide more frequently. This can be conjointly referred to as a gender contradiction in society. WHO also proposes the idea that exposure to violence can increase the chance of smoking, alcoholism, and drug abuse; mental unhealthiness and suicidality; chronic diseases such as heart disease, diabetes, and cancer; infectious diseases appreciate HIV, and social issues.¹⁰

2.2 NECESSITY OF GENDER NEUTRAL LAWS

In cases where men are falsely accused of violence or dowry, there is an urgent need for legislation to address these false allegations. Human rights and gender equality must encompass both men and women. Domestic violence should be treated as spousal violence and should not be differentiated by gender. The domestic violence law in India only applies to women. Studies show that men are also victims of violence by women. Therefore, necessary changes to address violence against men are proposed.

3. HATRED TOWARDS LGBTQ+ COMMUNITY

Lesbian, gay, bisexual, and transgender (LGBT) people in India and around the world continue to face various forms of oppression and discrimination, despite social, legal, and political advances made in an attempt to empower LGBT people to grant basic human rights. Although LGBT individuals and communities have been active in organizing communities and social action since the early 20th century, research on LGBT issues, for the most part, is conspicuously absent from the field of psychology itself. It is explicitly focused on community research. And Action—Community Psychology. The psychological and social effects of oppression, rejection, discrimination, harassment, and violence on LGBT people are examined, and recent advances in LGBT health, public policy, and research are detailed. Recent advances in the field of community psychology in relation to LGBT research and action are highlighted and a call to action offered to share knowledge and skills within LGBT communities with community psychology models for intervention, prevention and social change to better build theory and intervention for LGBT individuals and communities.

¹⁰ World Health Organization. Violence Prevention ; 2019. Retrieved From https://www.who.int/violence_injury_prevention/violence/en/

The Committee of Ministers of the Council of Europe stated in 2010 that “*Lesbian, gay, bisexual and transgender people have been subjected to homophobia, transphobia and other forms of intolerance and discrimination for centuries, including within their families, including criminalization, marginalisation, social exclusion and violence, based on sexual orientation or gender identity.*” It should therefore come as no surprise that LGBT people remained in many Council of Europe member states from and while some limbs are still invisible. It was only in the second half of the last century - and with notable differences between the 47 countries – that LGBT people and their organizations became more visible in society and engaged in debates about human rights.

3.1 SECTION 377 AND ITS EFFECTIVENESS

On September 6, 2018, the Supreme Court of India in *Navtej Singh Johar and Ors. v. Union of India* (the "Navtej Johar Case"), struck down parts of Section 377 of the Indian Penal Code, 1860 ("Section 377"¹¹) which criminalized sexual intercourse against the order of nature. The Supreme Court, effectively, allowed sexual intercourse between consenting adult members of the lesbian, gay, bisexual and transgender ("LGBT") community.

This landmark ruling finally, albeit belatedly, adds India to the list of nearly 150 countries where homosexual activity is legal. The decriminalization of sex between all consenting adults was a long-awaited first step in recognizing the rights of the LGBT community in India. It will be interesting to see if legislators and courts there go further in recognizing other civilians' rights. Human rights, including the right to allow same-sex couples to marry and adopt children and the right not to be discriminated against, particularly in the areas of employment and housing. 46 countries have recognized same-sex marriage and 42 countries have given same-sex couples the right to adopt children. In addition, nearly 100 countries have recognized the importance of material equality and sought to prevent housing and employment discrimination against the LGBT community. Another very interesting perspective on this landmark ruling is that it remains to be seen whether the Sexual Harassment of Women in the Workplace (Prevention, Prohibition and Remedy) Act 2013 will be amended to include it a gender-Neutral right. However, while progressive companies in India have gender-neutral internal policies against sexual harassment, the legislation currently only covers women subjected to sexual harassment in the workplace.

¹¹ Section 377 (Unnatural Offences): "Whoever Voluntarily Has Carnal Intercourse Against The Order Of Nature With Any Man, Woman Or Animal, Shall Be Punished With Imprisonment For Life, Or With Imprisonment Of Either Description For Term Which May Extend To Ten Years, And Shall Also Be Liable To Fine. [Explanation: Penetration Is Sufficient To Constitute The Carnal Intercourse Necessary To The Offense Described In This Section.]"

Finally, while the Supreme Court briefly discussed the civil rights aspect, limited the scope of the judgment to Section 377. Perhaps the whole country is now waiting, hopefully, to see if the LGBT community gets the civil protections that other straight people normally enjoy.

3.2 VICTIMIZATION OF THE COMMUNITY

Hate crimes against lesbian, gay, bisexual, transgender and intersex (LGBTI) people are motivated by prejudice based on a person's sexual orientation or gender identity. In some cases, LGBTI people have been portrayed by the media and politicians as a threatening and inferior group, posing a threat to public health and 'traditional' structures such as marriage and family. LGBTI people continue to experience stigma and a lack of legal protection against discrimination and hate crimes. The ODIHR's annual hate crime report includes reports of physical assaults and murders that pose a particular risk to transgender people. Serious physical assaults by groups, particularly around gay pride marches, are also common features of LGBTI hate crime. Within the LGBTQ community, transgender people and bisexual women face the most alarming rates of sexual violence. Among both of these populations, sexual violence begins early, often during childhood.

3.3 EQUALITY'S BACKLASH

In several countries, authorities have noted a dramatic rise in homophobic and transphobic violence following high-profile legislative advances aimed at better protecting of the rights of LGBT people. It is a phenomenon with historical parallels: previous attempts to eliminate racial segregation and discrimination unleashed a similar backlash against members of racial minorities. It is the responsibility of governments not only to address discrimination, but also to explain to the public why action is needed and to ensure that appropriate action is taken to prevent and respond to violence quickly and effectively.

Henceforth, we can positively conclude that laws in turn promote people to revolt against it, as a way of expressing disapproval. There might be several laws aimed at promoting the rights of the LGBT community, but people are still subjected to violence on a frequent basis.

4. CONCLUSION

There are several principles of equality and non-discrimination adopted by international organizations, as well as domestic laws. However, they contradict the very purpose they serve. They do not completely succeed in achieving their objectives and goals. This is lucidly understood

through the very fact that women do not get penalized for crimes which men would get punished for otherwise. Crimes are crimes, irrespective of the victim's gender. This might be due to society's assumption that men are always the perpetrators. Society has also stigmatized certain behaviors to a particular gender.

Further, irrespective of the measures taken up by the legislators, the LGBT community is continuously being subjected to discrimination and violence. This has drastically contributed to higher suicide rate within the community, as recorded by several mental health institutes.

This serves as evidence as to the paradox of law. Law promotes equality globally, however its practice and application in society is irrelevant. Equality is turning the wrong side, and it is highly proposed that equity should take the upper hand.

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