

# An analytical study on women's sexual and reproductive rights in India special reference to Jaisalmer, state of Rajasthan

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**Abstract:** The human rights of women is relating to sexual and reproductive rights which include their right to have control over and their power to decide freely and responsibly on matters relating to their sexuality and reproducing of offspring's. It must be without any type of coercion, discrimination, forcible act and violence. Sexual rights are those rights which are given to women where she must be able to take and give consent to decisions around their bodies and lives. Reproductive rights are those rights of women to decide whether to reproduce and not facing any type of obstacles in their reproductive health. The research paper examines women's right to sexual and reproductive health especially to the district of jaisalmer in the state of Rajasthan. The people of jaisalmer district are under the perception of early marriages of a girl and the ultimate goal is to beget a child at a younger age. Though the mind and the body is not mature enough to have a better sexual life and carry a child without having proper knowledge, planning and facilities.

This research paper gives a bird eye view to identify the nature of rights that suits the need of women in jaisalmer by providing free medical facilities, free doctor consultancy and a proper mindset among the people of jaisalmer by organising nukkad natak, legal awareness camp by legal aid central distribution of pamphlets, establishment of NGO's, sex education in schools describing about the rights relating to sexual and reproductive system. Moreover, there is a need for proper legal framework to address and recognize the promotion and protection of reproductive and sexual rights of women in the district of jaisalmer.

**Keywords:-** Sexual and Reproductive Rights, District of jaisalmer, Legal aid centre, Legal framework, Reproductive health, proper planning and facilities.

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## I. INTRODUCTION

The constitution of India has granted equal rights to the men and women. According to article 14 which states that State shall not deny to any person equality before law or the equal protection of laws within the territory of India And Article 15 states that State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. But today, it seems that there is a wide gulf between theory and practice. The women in India have always been considered subordinate to men. Though the articles contained in the constitution mandates equality and non – discrimination on the grounds of sex, women is always discriminated and dishonoured in Indian society. Although various efforts have been taken to improve the status of women in India, the constitutional dream of gender equality is miles away from becoming a reality. Though, Human Rights are the minimum rights which are compulsorily obtainable by every individual as he/she is a

member of human society. But it has been found that each and every right of the women is being violated in one or another way. The crimes against women in India are increasing at a very fast pace. The National Crime Records Bureau (NCRB) had predicted that growth rate of crime against women would be higher than the population growth by 2010, which was found to be true.

The Research paper examines women's rights to sexual and reproductive health. Firstly, Human rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education and many more. Everyone is entitled to these rights without discrimination. International human rights lay down the obligations of government to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups. We know that sexuality is a core dimension of being human. For sustainable development, women and girls must have the freedom, the power, and the support to demand and access their sexual and reproductive rights. There is a need to discuss the rights of the women separately as women represents more than half the population of India, yet she is discriminated and violated in every sphere of her life. Only women are a prey to crimes such as rape, dowry, bride burning, sexual harassment, selling and importation, prostitution and trafficking etc. Have you heard the men as a victim to all these crimes? The answer is "NO". This year there has been 20% increase in women trafficking, procurement of minor girls accounted for 19.8%, importation of girls accounted for 4.9% and buying of girls for prostitution accounted for 2.3% approx. Then how these Human Rights are beneficial to women? Though government is taking a number of steps to improve the condition of women in India, but there is a long way to go. The paper is divided into four sections. The section I focus on women's sexual and reproductive rights in Indian court. Section II focus on the important rights for women related to their sexuality. Section III focus on condition of women in Jaisalmer, State of Rajasthan.

## II. WHAT IS LEGAL REASONING

Legal Reasoning is often identified with the intellectual processes by which judges reach conclusions in deciding cases. It is about human faculty of reason or rationality in decision-making process. Legal Reasoning is a unique approach of a lawyer or a Judge in resolving disputes and determining laws.

Hence,, in short, Law + Logic = Legal Reasoning.

## III. TYPES OF LEGAL REASONING

***Inductive Reasoning:*** This involves the identification of the similarities and differences of the facts in the precedent and the case to be determined. After the identification, then deciding whether the case to be determined is similar or different from the precedent in the important aspects with regard to the matter being decided. Following the findings, the case precedent may then be followed or distinguished. It is important to

note that there are peculiar situations where both of the above methods will not suffice in determining a case, and the judge may then rule according to personal preference.

**Deductive Reasoning:** This is a means of drawing out ruling from another judicial opinion, or existing constitution, legislative provision and applying it in another case. The rule statement is mostly broad rather than narrow when using deductive reasoning. This approach is mechanical and is therefore effective only in ideal situations and often unsatisfactory.

The approach faces many challenges among them being:

- A. Semantic difficulty — Due to various meanings that words hold, it is often impossible to attribute one particular meaning to a specific word and so to be understood by all parties.
- B. There may arise unenumerated circumstances that would demand a different legal treatment.
- C. That occurrence of obstacles preventing the upholding of previous rule statements.
- D. Rules based on ontological principles being insufficient to determine between conflicting interests.

#### **IV. COMPONENTS OF LEGAL REASONING**

##### **Adjudication**

Legal Reasoning is all about judicial adjudication. Adjudication is a process before the judiciary. The aim of adjudication is to decide:

- A. Facts — material facts.
- B. Framing of issues — identify points of contention from material facts. Contentious points are known as issues in Civil Law. Meanwhile, it is known as framing of charge in criminal law.
- C. Collect evidence.
- D. Legal Reasoning

The integration of establishing material facts, framing of issues and collecting evidence is known as legal reasoning. Hence, the integration of facts, law, evidence and reason is legal reasoning.

##### **Judicial Precedent**

Judicial precedent means the process whereby judges follow previously decided cases where the facts are of sufficient similarity. The doctrine of judicial precedent involves an application of the principle of stare decisis i.e. to stand by the decided. Stare decisis is the principle that once a court has decided a matter, that decision

shall stand, and all courts of inferior jurisdiction must follow that decision. Stare decisis is the principle of not overturning previous rulings to maintain predictability and stability in the law.

In practice, this means that inferior courts are bound to apply the legal principles set down by superior courts in earlier cases. This provides consistency and predictability in the law.

### **Ratio decidendi and obiter dictum**

The decision or judgment of a judge may fall into two parts: the ratio decidendi (reason for the decision) and obiter dictum (something said by the way).

**Ratio Decidendi:** Ratio Decidendi is the genesis of legal reasoning. The ratio decidendi of a case is the principle of law on which a decision is based. When a judge delivers judgement in a case he outlines the facts which he finds have been proved on the evidence. Then he applies the law to those facts and arrives at a decision, for which he gives the reason (ratio decidendi). Hence, Ratio Decidendi = Facts + Reason.

**Obiter Dictum:** The judge may go on to speculate about what his decision would or might have been if the facts of the case had been different. This is an obiter dictum.

The binding part of a judicial decision is the ratio decidendi. An obiter dictum is not binding in later cases because it was not strictly relevant to the matter in issue in the original case. However, an obiter dictum may be of persuasive (as opposed to binding) authority in later cases. A difficulty arises in that, although the judge will give reasons for his decision, he will not always say what the ratio decidendi is, and it is then up to a later judge to “elicit” the ratio of the case. There may, however, be disagreement over what the ratio is and there may be more than one ratio.

## **V. LEGAL REASONING AND THE ABILITY OF A JUDGE**

Legal Reasoning is based on the ability of a judge to decide cases without any biases while he used legal knowledge and logic while that judge analyses material facts, issues and interprets its rule/law. The conclusion arrived at after doing the aforementioned is called legal reasoning.

Therefore, these are the certain abilities required by a judge to arrive at a conclusion:

- A. Ability to understand and interpret the case in a right manner.
- B. Ability to integrate facts, issues, rule, analysis and holding.
- C. Discretion - The discretion of a Judge can be seen in the analysis of a case.
- D. Qualification - The Judge should have the appropriate qualities to hold the position that he currently holds.

## VI. THE PROCESS OF LEGAL REASONING

Legal Reasoning is a process where the judges and lawyers think alike about a legal problem i.e. a case. The ability of a Judge holds great importance in the entire process of legal reasoning. The stages of the legal reasoning process are:

1. Facts - Establishment of Material Facts is the first stage of the legal reasoning process.
2. Issues - Identify points of contention from material facts. Contentious points are known as issues in civil law. Meanwhile it is known as framing of charge in criminal law.
3. Rule/Law - The rule or law governing or applying on the particular issue has to be determined.
4. Analysis - Case is Analyzed on the basis of the law/rule applied on the issues.
5. Holding - The Judge's decision of the case is known as a holding. It is the verdict by the Judge.

## VII. EXAMPLES OF LEGAL REASONING

### *Maneka Gandhi v. Union of India (1978) SC AIR 578*

**Facts:** Maneka Gandhi was stopped at the airport from traveling abroad and her passport was seized so she could not travel abroad. She filed a case challenging these acts of passport authority.

**Issues:**

- A. Whether passport can be seized?
- B. Whether the person can be stopped from traveling abroad?

Her passport could be seized because of security purposes.

**Rule/Law:**

Law 1: Article 21 was invoked by Maneka Gandhi.

Law 2: Passport Act was invoked by government.

**Analysis:**

Two new things were found out after the analysis:

1. The Supreme Court ignored Judicial Precedent of A.R. Gopalan v. State of Madras.
2. Procedure established by law should have a logic behind it. Due process was not involved.
3. Maneka Gandhi was not given a chance to make her case.

**Holding:**

Due process should take place while giving a judgement.

## VIII. EXAMPLE OF FALLACY IN LEGAL REASONING OR DEDUCTIVE LEGAL REASONING

### *Uday Gupta v. Ayesha (2013)*

Justice Karnan was the Judge who decided this case. He abused the Chief Justice Of India without any evidence. This case was in Madras High Court. The same case was overturned due to fallacy in legal reasoning in the Supreme Court.

#### *Legal Reasoning Process of this case in Madras High Court:*

##### **Facts:**

1. Consummation happened before the marriage took place.
2. The couple concerned in this case were in a live in relationship.
3. A child was born out of this relationship.

##### **Issue:**

1. Legality of marriage.
2. Legitimacy of child.

##### **Rule/Law:**

1. Section 114 of Indian Evidence Act.
2. Applicable marriage act.

##### **Analysis:**

The judicial precedent that was referred to in this case was that of Madan Mohan Singh v. Rajinikanth (2010) where the couple stayed together for 10 years and their behaviour and time period of being together led them to be assumed to be married.

##### **Holding:**

Physical relationship occurred with the intention of getting married in the future.

Hence premarital sex is equal to marriage. Because the party in this case was not satisfied with the verdict. So this case was referred to the Supreme Court.

#### *Legal Reasoning Process of this case in Supreme Court:*

##### **Facts:**

1. Consummation happened before the marriage took place.
2. The couple concerned in this case were in a live in relationship.
3. A child was born out of this relationship.

**Issue:**

1. Legality of marriage.
2. Legitimacy of child.

**Rule/Law:**

1. Section 114 of Indian Evidence Act.
2. Applicable marriage act.

**Analysis:**

The Supreme Court found a fallacy in the legal reasoning done by the Madras High Court. The Supreme Court found the judicial precedent from Madan Mohan Singh v. Rajnikanth was wrongly applied to the facts in this case and hence the analysis by the Madras High Court was also wrong.

**Holding:**

The verdict of Madras High Court was overturned by the Supreme Court and it was declared that the judgment by the Madras High Court can't ever be used as a precedent in future cases.

**IX. CONCLUSION**

There is a great scope for judicial activism when a law for a particular case doesn't exist, or when a law doesn't fulfill the current need of the society. Judicial activism is not recognized by the Indian Constitution. The active role of the judiciary cannot be forgotten. Especially in Maneka Gandhi case where Article 21 of the constitution was expanded to such a level that it became a boon for the individual. However, there are still some areas where reforms are required for the efficient working of judicial activism. The Indian Supreme Court should also decide cases on the basis of its own philosophy. Indian judiciary often gets influenced by a ruling party. The A.D.M. Jabalpur case shows how weak the court could be against the executive. Sometimes the Government does not actively respond to the decision of the judiciary (M.C. Mehta Case). So all these defective parties should be reformed for the better function of judicial activism in India.