
Constitution of Jammu & Kashmir & Women Rights: Perception on Violation of Women Rights in District Baramulla of J&K

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Abstract

The purpose and objective of this study are to explore and examine the provisions under the Constitution of Jammu and Kashmir (J&K) which have direct relevance to the rights, equality, liberty, and justice of women folk in the state. This study makes a detailed analysis of perceptions about the violation of women rights in district Baramulla of J&K. The research participants in this study are categorized into two groups working and non-working women. The nature of this study is exploratory and is largely based on the data collected from primary sources in the field with a well-structured interview schedule. The results indicate that the majority of research participants have witnessed various forms of violences including domestic violence, sexual harassment at the workplace, and discrimination in inheritance rights. The results of this study will be helpful for policymakers in drafting the policies and securing women from various forms of violence's. This study will also be very helpful for women to get a detailed outlook and awareness of rights contained under the various provisions of the J&K Constitution.

Keywords: Baramulla, J&K Constitution, Violation, Women Rights.

Article Classification: Research Paper

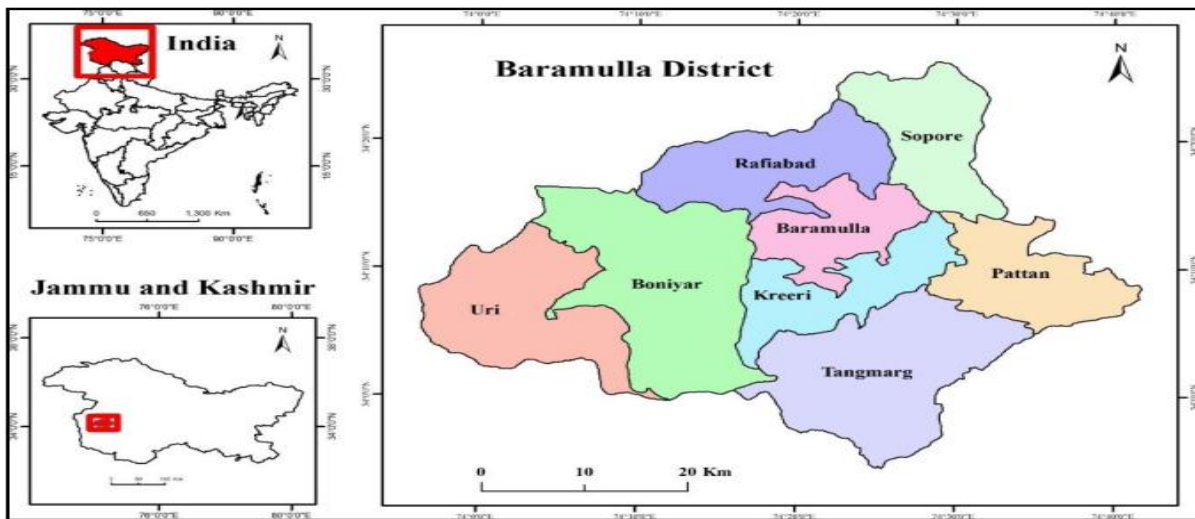
INTRODUCTION:

The state of Jammu and Kashmir is the only state under the union of India which has a Constitution of its own. The state thus acquires a distinct position under Indian union of having a separate Constitution for the administration of the state in place of the provisions of Part VI of the Constitution of India which governs all other states of the union (Basu, 2013, 275-276). The Constitution (Application to Jammu and Kashmir) Order, 1950 was promulgated by the President of India on commencement of the Indian Constitution. This promulgation restricted the full authority of Parliament on the state of Jammu and Kashmir to the matters which were specified in the Instrument of Accession. Consequently, the Government of India amended the Indian Constitution by insertion of article 370 and the Constitution (Application to Jammu and Kashmir) Order, 1950. With the time these developments led to Delhi Agreement of July 1952 which was given formal shape in a Constitution (Application to Jammu and Kashmir) Order, 1954 superseded the Constitution Order of 1950. This order now regulates the relation between the state of Jammu and Kashmir and Union of India (Sharma, 2011, 33).

Right from the very opening of the J&K Constitution preamble serves the purpose and enshrines the objectives of liberty, equality, and justice. This constitution contains a significant number of provisions which has direct relevance to the rights of women. The Constitution of J&K makes justice meaningful when it fosters equality of status and of opportunity by prohibiting discriminations on the grounds of religion, caste, and sex, etc. while examining the provisions related to women rights under J&K Constitution it is depicted this Constitution promotes dignity of an individual with reason and Conscience irrespective of men or women.

Violence is a violation of women’s basic rights often with devastating consequences. Violence against women has become a prominent topic of discussion throughout India in recent times. The spread of social evil is on the verge in India like dowry deaths, child marriage, domestic violence, rape, sexual harassment at workplace, humiliation, kidnapping, molestation, torture, wife beating, etc and have grown significantly. In order to understand the actual condition of women rights and their violation in Kashmir valley, this study is accordingly carried in one of the 22 districts of the state in district Baramulla.

Fig. 1: Location of Study Area (Baramulla)



JAMMU & KASHMIR CONSTITUTION & WOMEN RIGHTS:

Some of the important provisions of Jammu and Kashmir Constitution where women enjoy equal footing without any discrimination along with men are discussed below:

The preamble of Jammu and Kashmir Constitution: The preamble contains the ideas and aspirations of the people. The preamble is an introductory to an act and is very valuable in understanding the policy and legislative intention. It states in nutshell the objectives which the constitution seeks to achieve. The Preamble is a key to open the mind of the constitution makers (Berubari Union, 1960). The Preamble of the J&K Constitution clearly states the nature of the state in terms of equality and justice to its residents without any discrimination on the basis of caste, creed, colour, sex, etc. The J&K constitution Preamble reads:

“WE, THE PEOPLE OF THE STATE OF JAMMU AND KASHMIR, having solemnly resolved, in pursuance of the accession of this state to India which took place on the twenty-sixth day of October, 1947, to further define the existing relationship of the state with the Union of India as an integral part thereof, and to secure to ourselves—

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith, and worship;

EQUALITY of status and of opportunity; and to promote among us all;

FRATERNITY assuring the dignity of the individual and the unity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this seventeenth day of November 1956, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION” (Sharma, 2011, 71).

The Preamble outlines the objectives of the whole Constitution:

Social Justice as specified in the Preamble means to abolish all sorts of inequalities which may result from inequalities of wealth, opportunity, status, race, religion, caste, title, sex and the like. Social Justice is a dynamic device to mitigate the sufferings of the weak, women, poor, tribal's and underprivileged sections of the society and to elevate them to the level of equality to live a life with dignity of the person.

Economic Justice implies equal pay for equal work, that every person should get his just dues for his labour, irrespective of his caste, creed, sex or social status. In other words, distributive justice embraces the whole economic dimension of social justice, the entire problem of the distribution of goods and services within the society (Rescher, 1966, 5).

Equality of opportunity and status envisages the idea that all men are born free and equal, and that should be no discrimination on the basis of religion, race, caste, sex, descent or place of birth. As Laski has rightly said, “The more equality there is in a state, the more use, in general, we can make of our freedom” (Laski, 1954, 52).

Permanent Residents and Right to Property of Women under the J&K Constitution: The Part III, Section 6 of the J&K Constitution deals with the permanent residents. It enables the state legislature to make any law defining the classes of persons who are or shall be permanent residents of the state. The permanent residents of the state are entitled to certain rights and privileges by virtue of the fact that they are state subjects of Class I or Class II in terms of Notification No. I-L/84, dated the twentieth April 1927, read with state Notification No. 13-L, dated twenty-seventh June 1932. Both these notifications constitute citizenship law of the state and the citizens were known as State Subjects. Under Notification No. I-L/84 of 1927, Note-III reads as, “The wife or widow of a State Subject of any Class shall acquire the status of her husband as State Subject of the same class as her husband, so long as she resides in the state and does not leave the state for permanent residence outside the state” (Sharma, 2011, 94).

The above stated Note-III was given the interpretation that on marriage with a non-permanent resident of the state, the women who were otherwise the permanent resident of the state would lose her status as a permanent resident. It was blatant gender discrimination and created a lot of resentment among those females who married non-permanent residents. Even the Jammu and Kashmir High Court could not undo such discrimination in *Prakash v. Mst Shahni* (AIR-1965).

Rights of the Permanent Residents: Under section 10 of Part III of the J&K Constitution the permanent residents enjoy all the rights guaranteed to them under the Constitution of Indian Part III Fundamental Rights. This was made applicable to the state of Jammu and Kashmir through Constitution (Application to Jammu and Kashmir) Order, 1954. A glance under this Order shows that the amendments introduced in Part-III of the Indian Constitution have not been made applicable to the state of J&K. Say for example Right to Property is still a fundamental right in Jammu and Kashmir which was omitted from Fundamental rights category under 42 Amendment Act, 1978 (Nabi, Nazir, & Wani, 2018, 746).

Directive Principles of State Policy and Women Rights under the J&K Constitution: The Constitution of Jammu and Kashmir has a separate part of the Directive Principles of State Policy. Part-IV, from section 11 to 25 of this Constitution deals directly with Directive Principles of State Policy. These principles are based on the manifesto of the National Conference entitled “Towards New Kashmir” (Ganaie, 2016, 566). There are certain sections under this part which have vital relevance to the rights of women. The sections which correspond to women in this part are elaborated below (Sharma, 2011, 167-168):

i) Right to Work and to Public assistance in Certain Cases, Section-19:

This Section of Part-IV of the J&K Constitution has the following clauses which ensure gender equality at the workplace read as:

- (a) That all permanent residents, men, and women equally, have the right to work, this is, the right to receive guaranteed work with payment of labour in accordance with its quantity and quality subject to a basic minimum and maximum wages established by law;
- (b) That the health and strength of workers, men and women and the tender age of children are not abused and that permanent residents are not forced by economic necessity to enter avocations unsuited to their sex, age or strength.

ii) Rights of Women, Section-22

This section is of vital importance so far this study is concerned. The framers of the J&K Constitution were aware of the fact that women in every society face stern discriminations and devoted a separate section to this cause. This section has clearly stated that the State shall endeavor to secure to all women—

- (a) The right to equal pay for equal work;
- (b) The right to maternity benefits as well as adequate medical care in all employments;
- (c) The right to reasonable maintenance, extending to cases of married women who have been divorced or abandoned;
- (d) The right to full equality in all social, educational, political and legal matters;
- (e) Special protection against discourtesy, defamation, hooliganism and other forms of misconduct.

The above-stated directives are mentioned in the manifesto of National Conference titled ‘New Kashmir’. Women of the state were given political, social, economic, legal and cultural rights for maintaining just and rightful place in the society. This manifesto has covered almost all aspects of women rights and lawfully was incorporated into the constitution of Jammu and Kashmir to secure women rights (Director, KBI, 41-44).

iii) Section 25 and Duty of State to Foster Equality

The directive envisaged in this section enjoins the state to foster equality and brotherhood and equality among all. The concept of equality envisages the idea that all men and women are born free and equal and there should be no discrimination on the basis of religion, race, caste, sex, color, or creed. H. Laski has rightly said that “the more likely they are to be able to utilize their freedom in realms worthy of exploitation.....the more equality there is in a state, the more use, in general, we can make of our freedom” (Laski, 1954, 52).

Representation of Women in State Legislature: Part-VI under section 47 deals with the composition of the Legislative Assembly. In this section clause (1) states that “The Legislative Assembly shall consist of [one hundred and eleven] members chosen by direct election from territorial constituencies in the state: provided that the Governor may if he is of the opinion that women are not adequately represented in the Assembly nominate not more than two women to be members thereof (Sharma, 2011, 221). Thus this move is considered a prelude to giving women an appropriate opportunity in the decision making of the state.

Thus, the Constitution of Jammu and Kashmir has many provisions that secure the rights of women. From the very beginning, Preamble highlights the aims and aspirations of the J&K Constitution where social, political, economic justice and liberty of the individual is admired. In the part of the Directive Principles of State Policy, there is a separate section dealing with the rights of women. These sections are mere directive in nature but have a great significance in the governance of the state. In short by having an insight over the J&K Constitution we come to analyze that these sections and provision promote and secure gender equality and at the same equity.

MATERIALS & METHOD:

One of the basic requirements to carry out research is to design a methodology for the problem chosen. The research methodology is a systematic way to find solutions to selected problems. The central aim of research methodology is to give work plan of research.

Objectives of this Study: This research broadly aims at studying the constitutional rights of women under the provisions of the J&K Constitution with main focus on district Baramulla in Kashmir Valley with parameter violation of rights. The main objectives of this study include:

- i) To ascertain the constitutional position of women under the provisions of the J&K constitution.
- ii) To examine and analyze the areas of violation of women rights.

The hypothesis of this Study: In concurrence with the aforementioned objectives, the following hypothesis has been formulated for authentication and confirmation:

- i) No doubt women are constitutionally safe, but a violation of their rights is at the extreme.
- ii) Working women are more explicit to crimes than non-working women.

Area of this Study: This study is based on constitutional rights of women under the provisions of the Constitution of Jammu and Kashmir with a case study of district Baramulla of Kashmir valley. Baramulla is one of the 22 districts of J&K with a population of 1015503 persons as of 2011 census. The administration of Baramulla district rests on 16 tehsils and 26 blocks.

Sample of the Survey: A serious effort was made by the researcher to give representation to all relevant variables such as age, education, income, occupation, marital status. The sample of the survey done is of representative type and all the variables were selected consciously. The core aim of the survey is to get the maximum information and data on specific themes of the topic. The sample of this study is based on female respondents composed of 400 research participants. This sample is divided into two groups working women which comprised of 200 respondents and non-working women with 200 respondents. Further, this sample is a collection of employed and unemployed, married and unmarried, educated and illiterate women.

Data Collection: The data was collected during the field survey with a structured interview schedule. The responses of research participants were individually recorded in a separate interview schedule. The group of working women was contacted during their working hours in lunch break at their place of work. Sufficient care was the utmost necessity during the interview of which enumerator was well aware so that there would be no bias in answers. For the group of non-working women, the data was randomly collected through a household survey and some of the respondents were telephonically contacted. In order to record the responses of the respondents, their cooperation and willingness were satisfactory.

Data Analysis: Data collected through interview schedule was tabulated in order to determine clear frequency & percentage of responses recorded according to the nature of answers given by each research participant. Quantitative analysis was done by grouping the data in terms of independent variables placed in the interview schedule. The data were analyzed with a separate mention of frequency and percentage during tabulation.

ANALYSIS OF DEMOGRAPHIC VARIABLES & FIELD INVESTIGATION:

Usually, the demographic analysis includes things that allow us to measure the dimensions and dynamics of populations. Accordingly, in the same way, the purpose of field survey in social science research is to describe the observation of people, places, and events and to analyze that observation data in order to identify and categorize common themes in relation to the research problem underpinning the study. As already stated in the methodology section of this paper the care was utmost urgency while selecting the appropriate units of study. Accordingly, two groups of working and non-working women were taken and in order to arrive at a certain conclusion, representation of all relevant variables such as age, education, income, occupation, and marital status was kept into consideration.

Tab. 1: Socio-Economic Profile of Research Participants

Variables	Working Women		Non-Working Women		
	No.	%age	No.	%age	
Age Group	16-26	60	(30)	50	(25)
	27-37	70	(35)	90	(45)
	38-48	52	(26)	40	(20)
	49 above	18	(9)	20	(10)
Marital Status	Married	75	(37.5)	62	(31)
	Unmarried	82	(41)	96	(48)
	Divorced	23	(11.5)	26	(13)
	Widowed	20	(10)	16	(8)
Income	Less than 4000	20	(10)	71	(35.5)
	5000-10000	42	(21)	69	(34.5)
	11000-15000	62	(31)	25	(12.5)
	16000-20000	36	(18)	15	(7.5)
	21000 Above	22	(11)	11	(5.5)
Qualification	Up to 8 th	30	(15)	40	(20)
	Matriculate (10 th)	25	(12.5)	15	(7.5)
	Higher Secondary	30	(15)	21	(10.5)
	Graduate	70	(35)	64	(32)
	Post-Graduate/above	45	(22.5)	60	(30)

In order to understand the intensity of violation of women rights, this survey was carried out to persuade covet of the selected study area. Violence against women is a problem, globally occurring to a greater or lesser degree in all countries, regions, cultures, and societies. There are various forms of violence's against women which include sexual abuse, dowry related violence, marital rape, sexual harassment, domestic violence, and forced prostitution, etc. The following statements/Questions were posed to determine the authentic position:

Q.1: *Have you ever witnessed any form of violence at home or outside the home?*

Response	Working Women		Non-Working Women	
	Frequency	Percentage	Frequency	Percentage
Always	13	6.5	17	8.5
Often	62	31	66	33
Sometimes	53	26.5	48	24
Seldom	33	16.5	22	11
Never	39	19.5	47	23.5

Source: *Primary Data*

Among the group of working women 31 percent of respondents have witnessed violence often, 26.5 percent sometimes and 19.5 percent never, 16.5 percent responded seldom and 6.5 percent of respondents have faced

violence always. Among the group of non working women 33 percent of respondents have faced violence often, 24 percent sometimes, 23.5 percent never and 11 percent seldom, and 8.5 percent always.

Thus from the analysis of data, it is revealed that the majority of women of both groups have witnessed various forms of violence's at home or outside very often. Therefore the hypothesis of this study "No doubt women are constitutionally and legally safe but a violation of their rights is at the extreme" is accepted and confirmed by the data perceived.

Q.2: Have you ever faced domestic violence?

Response	Working Women		Non-Working Women	
	Frequency	Percentage	Frequency	Percentage
Always	14	07	19	9.5
Often	38	19	32	16
Sometimes	62	31	59	29.5
Seldom	49	24.5	51	25.5
Never	37	18.5	39	19.5

Source: *Primary Data*

The above table reveals that Among the group of working women 31 percent of respondents have faced domestic violence sometimes, 24.5 percent seldom, 19 percent often, 18.5 percent never, and 07 percent always. Among the group of non working women, 29.5 percent of respondents have faced domestic violence sometimes, 25.5 percent seldom, 19.5 percent never, 16 percent of respondents often, and 9.5 percent of have faced domestic violence.

Thus from the analysis, it is evident that the majority of women have faced domestic violence sometimes. Therefore a part of the hypothesis of this study "Violation of women rights are at the extreme" is again accepted and confirmed.

Q.3: In your opinion are women sexually harassed/molested at the workplace?

Response	Working Women		Non-Working Women	
	Frequency	Percentage	Frequency	Percentage
Always	13	6.5	23	11.5
Often	64	32	51	25.5
Sometimes	46	23	52	26
Seldom	47	23.5	43	21.5
Never	30	15	31	15.5

Source: *Primary Data*

From the above table it is revealed that among the group of working women 32 percent of respondents affirmed that women are sexually harassed at the workplace often, 23.5 percent seldom, 23 percent sometimes, 15 percent never, and 6.5 percent of research participants responded with always. Among the group of non working women 26 percent of respondents believed that women are molested or sexually harassed at workplace sometimes, 25.5 percent often, 21.5 percent seldom, and 15.5 percent never, and 11.5 percent of respondents responded with always.

Findings revealed that the majority of women among both groups affirmed that women are sexually harassed at the workplace very often.

Q.4: Are your inheritance rights violated?

Response	Working Women		Non-Working Women	
	Frequency	Percentage	Frequency	Percentage
Yes	86	43	66	33
No	74	37	54	27
No Response	40	20	80	40

Source: *Primary Data*

From the above table it is revealed that among the group of working women 43 percent of research participants were given the inheritance rights, 37 percent were not given these rights partly or wholly, and 20 percent did not respond to our question either due to lack of knowledge or social stigma. While analyzing the responses of non-working women we come to know that 40 percent respondents were not able to reveal the actual position as already stated this was because of either social stigma or did not know about the inheritance rights, 33 percent were given these rights, and 27 percent were denied these rights partly or wholly.

CONCLUSION

In conclusive remarks, the state of Jammu and Kashmir enjoys a significant position under the union of India by having its own constitution. After going through the examination of women rights under various provisions of the constitution of J&K it is observed that the constitution firmly has a stand to defend the rights of women in the state. Despite all these constitutional provisions, the rights of women in the state are violated extremely either partly or wholly. This context has created a grim depiction of women rights. After going through the analysis of data collected during the field survey it is revealed that women in Baramulla district suffer discriminations and violation either by family members or by a colleague with whom they work. Moreover, it is found that a good portion of women in Baramulla district is denied inheritance rights. Thus the domination of women continues and the need is to foster women rights, equality, and justice with spirit and courage.

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