UNIT-13: GENDER, LAW AND HUMAN RIGHTS

UNIT STRUCTURE

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13.1 LEARNING OBJECTIVES

After going through this unit, you will be able to –

- know the Constitutional Guarantees, and Constitutional Amendment meant to protect the women
- know about Women's Rights

13.2 INTRODUCTION

The principle of gender equality is enshrined in the Indian Constitution. The Constitution not only grants equality to women, but also empowers the State to adopt measures of positive discrimination in favor of women. Within the framework of a democratic polity, our laws, development policies, Plans and programmes have aimed at women's advancement in different spheres. India has also backed various international conventions and human rights instruments committing to secure equal rights of women. The most important among them is the ratification of the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) in 1993. In this unit we will discuss different laws and rights that ensure gender equality.

However, in this unit we will focus more on the laws and rights to uplift women, as from the previous units we have come to know that due to several historical factors women in India have been exposed to different kinds of discrimination and violence

13.3 LAWS, CONSTITUIONAL GUARANTEES, AND CONSTITUIONAL AMENDMENT FOR THE WOMEN

As mentioned above the Constitution of India not only grants equality to women but it also empowers the State to adopt measures of positive discrimination in favor of women for addressing the cumulative socio-economic, educational and political disadvantages faced by them. Fundamental Rights, among others, ensure equality before the law and equal protection of law; thereby prohibiting discrimination against any citizen on grounds of religion, race, caste,sex or place of birth, and guarantee equality of opportunity to all citizens in matters relating to employment.

Some of the Articles included in the Constitution in this regard are 14, 15, 15(3), 16, 39(a), 39(b), 39(c) and 42.

Below are the Constitutional provisions to safeguard the rights of women

- Equality before law for women (Article 14)
- The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them (Article 15 (i))
- The State shall make any special provision in favor of women and children (Article 15 (3))
- There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State (Article 16)
- The State shall direct its policy towards securing for men and women equally the right to an adequate means of livelihood (Article 39(a)); and equal pay for equal work for both men and women (Article39(d))
- There shall be promotion of justice, on a basis of equal opportunity and to provide free legal aid by suitable legislation or scheme in any other way to ensure that opportunities for securing justice are not

denied to any citizen by reason of economic or other disabilities (Article 39 A)

- The State shall make provision for securing just and humane conditions of work and for maternity relief (Article 42)
- The State shall promote with special care the educational and economic interests of the weaker sections of the people and to protect them from social injustice and all forms of exploitation (Article 46)
- The State shall raise the level of nutrition and the standard of living of its people (Article 47)
- There shall be promotion of harmony and the spirit of common brotherhood amongst all the people of India and to renounce practices derogatory to the dignity of women (Article 51(A) (e))
- There shall be not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat to be reserved for women and such seats to be allotted by rotation to different constituencies in a Panchayat (Article 243 D(3))
- There shall be not less than one- third of the total number of offices of Chairpersons in the Panchayats at each level to be reserved for women (Article 243 D (4))
- There shall not be less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality to be reserved for women and such seats to be allotted by rotation to different constituencies in a Municipality (Article 243 T (3))
- There shall be reservation of offices of Chairpersons in Municipalities for the Scheduled Castes, the Scheduled Tribes and women in such manner as the legislature of a State may by law provide (Article 243 T (4))

- **Legal Provisions**

In order to uphold the Constitutional mandate, the State has enacted various legislative measures intended to ensure equal rights, to counter social discrimination and various forms of violence and atrocities and to provide support services specially to working women. Although women may be victims of any of the crimes such as 'Murder', 'Robbery', 'Cheating' etc., the crimes, which are directed specifically against women, are characterized as 'Crime against Women'. Such crimes against women are broadly classified under two categories such as:

- The Crimes Identified Under the Indian Penal Code (IPC)
  - Rape (Sec. 376 IPC)
  - Kidnapping & Abduction for different purposes (Sec. 363-373)
  - Homicide for Dowry, Dowry Deaths or their attempts (Sec. 302/304-B IPC)
  - Torture, both mental and physical (Sec. 498-A IPC)
  - Molestation (Sec. 354 IPC)
  - Sexual Harassment (Sec. 509 IPC)
  - Importation of girls (up to 21 years of age)
- The Crimes which are identified under the Special Laws (SLL)

Although all laws are not gender specific, the provisions of law affecting women significantly have been reviewed periodically and amendments carried out to keep pace with the emerging requirements.

Some of the acts that have special provisions to safeguard women and their interests are

- The Family Courts Act, 1954
- The Special Marriage Act, 1954
- The Hindu Marriage Act, 1955
- The Hindu Succession Act, 1956 with amendment in 2005
- Immoral Traffic (Prevention) Act, 1956
- The Maternity Benefit Act, 1961 (Amended in 1995)
- Dowry Prohibition Act, 1961
- The Medical Termination of Pregnancy Act, 1971

- The Contract Labour (Regulation and Abolition) Act, 1976
- The Equal Remuneration Act, 1976
- The Prohibition of Child Marriage Act, 2006
- The Criminal Law (Amendment) Act, 1983
- Indecent Representation of Women (Prohibition) Act, 1986
- Commission of Sati (Prevention) Act, 1987
- The Protection of Women from Domestic Violence Act, 2005

- **Special Initiative for Women**

- National Commission for Women : In January 1992, the Government set-up this statutory body with a specific mandate to study and monitor all matters relating to the constitutional and legal safeguards provided for women, to review the existing legislation to suggest amendments wherever necessary, etc.
- Reservation for Women in Local Self -Government: The 73rd Constitutional Amendment Acts passed in1992 by Parliament to ensure one-third of the total seats for women in all elected offices in local bodies whether in rural areas or urban areas.
- The National Plan of Action for the Girl Child (1991-2000) : The plan of Action is to ensure survival, protection and development of the girl child with the ultimate objective of building up a better future for the girl child. Further, National Policy for Children-2013 was adopted by the Government of India on 26thApril 2013. Besides, National Plan of Action for Children 2016 is in Draft Format.
- National Policy for the Empowerment of Women, 2001: The Department of Women & Child Development in the Ministry of Human Resource Development has prepared a “National Policy for the Empowerment of Women” in the year 2001. The goal of this policy is to bring about the advancement, development and empowerment of women. Further, National Policy for the Empowerment of Women, 2016 is under draft stage.

- **73rd And 74th Constitution Amendments and Reservation for Women**

In Parliament, meaning of an amendment is a change to a bill (a proposed law). Amendments allow for bills to be improved or altered as they progress through the Parliament.Article 40 of the Indian constitution directs the government to establish panchayats to serve as institutions of local self-government. Most of the states implemented this directive principle along the lines of the recommendations of the Balwantarai Mehta Commission Report.The commission recommended a 'three-tier' system of Panchayati Raj institutions (PRIs), viz. the popularly elected village council (gram panchayat) as the village level basic unit. Block (block is the larger sub unit of a district) council at the Block level, and the district council (or the ZillaParishad) at the district level. Introduction of PRIs was hailed as one of the most important political initiatives in India.

The panchayat raj system has been experiencing ups and downs over the years. The activities of these institutions are broad based but its resource base is very weak. In view of this, the PRIs constituted in various states could not live up to the expectations of the people. Deficient in funds and authority, the panchayats in most states were largely inactive until late 1970s.

Some of the major problems and shortcomings that adversely affected the functioning of these institutions are:

- Elections not being held regularly;
- Lack of adequate transfer of powers and resources;
- Lack of power to generate their own resource; and
- Non-representation of women and weaker sections in the elected bodies.

In the year 1989, the Government of India took two major initiatives to enhance the role of panchayats. Firstly, it initiated the Jawahar Employment Plan (JawaharRozgarYojana) which provided funding directly to village councils to create jobs for unemployed through public works.

Secondly, it also proposed the 64th Constitution Amendment Bill to make it mandatory for all states to establish a three-tiered system of

Panchayats such as village, block and district in which representatives would be directly elected for five-year terms. Panchayats were to be given expanded authority and funding over local development efforts. Despite the popular appeal of transferring power to panchayats, the 64th amendment bill was rejected by Rajya Sabha.

- **Significance of 73rd and 74th Constitution Amendments:**

Given its far-reaching consequences, the 73rd Amendment (together with the 74th) is rightly called 'a silent revolution' for various reasons. First of all, the PRIs no longer operate at the whim of state governments and their laws. They are now a part of the Constitution and enjoy the status of institutions of self-government, as parliament at the federal level and legislative assemblies at the state level.

The amendment prescribes regular elections every five years and election within six months of the dissolution of any PRI. In order to ensure free, fair, and timely elections there is a provision for the setting up of state election commission. The most revolutionary provision is the reservation of one-third of the seats for women in local bodies, along with reservation of seats for scheduled castes and scheduled tribes in proportion to their regional populations.

The amendment also lays down 29 functions to be entrusted to the PRIs. In order to maintain a democratic ethos, popular accountability, and transparency, the amendment emphasises the need for periodic meetings of the gram sabha, composed of all adults in each village. These meetings will thus approve ongoing programmes and financial allocations. In brief, the amendment visualises the allocation of funds, functions, and functionaries to these bodies to ensure genuine and effective democratic decentralisation.

The Constitutional Amendment Bill with regard to panchayatiraj came into effect from April 24, 1994. Principally, it provides:

- The panchayats constitutional status (previously panchayat matters were considered as state subjects);
- An institionalised three tier system at village, block and district levels;

- The amendment stipulated that all panchayat members be elected for five-year term in the elections supervised by the state election commission.

- **Women's participation in local governance:**

There were already some women in local government prior to the passing of the 73rd and 74th Amendments. But they were few. In most cases the state laws prescribed at least one or two seats for women in the old-style PRIs. Seldom these seats were filled though nomination.

Mostly, the nominees, invariably, were members of elite families belonging to higher castes and owning substantial land, thus enjoying high status in terms of family, caste, and class. These women were usually related to established political leaders. As symbols of tokenism, they rarely took active interest in the functioning of the PRIs. The new system of reservation and competitive elections based on adult franchise changed this situation radically.

When the provisions for reservations of seats for women were being debated in parliament, several members were doubtful that such large numbers of women would come forward to contest these seats. But these doubts proved to be wrong.

In total, for over one million seats reserved for women in all the local bodies, more than five million women candidates contested. Thus, on an average, there were five women candidates contesting each seat. Moreover, some women won unreserved or general seats, defeating their male rivals. Of course, such cases were not many, but they were no less significant.

The reservation of seats for women (and for SCs and STs) concerns not only to be members but also for office-bearers. Thus, not only one-third of elected members but one-third of sarpanches or chairpersons have to be women.

As per official estimates, in the country as a whole, there are 231,630-gram panchayats (village councils). Over 77,210 of them now have women as sarpanches. At the intermediate level, there are 5,912 taluka (or block/ mandal) panchayatsamitis. More than 1,970 of them have women sabhapatis or heads and of the 594 zillaparishads" (district councils) 200

have women presidents. Thus, in terms of female proportion, about one million women now occupy positions as members or heads in rural and urban local government bodies.

There are variations among states in terms of Women's representation. While most states manage to meet the constitutional target of 33 per cent seats for women, in some this proportion has been exceeded. For example, in states like Karnataka, women occupy 43.6 per cent seats in local bodies. This means a large number of women have managed to win general (unreserved) seats, defeating rival male and female candidates. This suggests a highly significant trend for the future.

This statutory reservation for women has provided an opportunity for the formal involvement of women in the development through political process at the grass roots level thereby enabling them to influence the decisions in the local governments.



CHECK YOUR PROGRESS

17.3.1 Fill in the blanks

a. Articles included in the Constitution to protect women's rights are _____

b. The Constitutional Amendment Bill came into effect from_____.

13.4 LAW AS TOOL FOR EMANCIPATION OF WOMEN

Each religion in any society has separate laws with respect to marriage, inheritance, divorce, adoption, succession, etc. This is collectively governed by what is known as Personal Law in India. Personal Law was first formulated by Warren Hastings in 1772, and there are 13 different Acts that govern general matters relating to Personal law, marriage and divorce for different religions/cases in India. Due to prevalence of Personal law not all women have the same rights as men.

In Muslim religion in India, personal law is propagated, applied and dictated by the All India Muslim Personal Law Board (NGO). Apart from

being biased towards women's rights, this board has voiced strong opposition to gay rights, against free education for children (Free and Compulsory Education Act, 2009) and Yoga (Vedic culture in general). The board does, however permits, child marriage, polygamy. Many Muslim women have started speaking out against the board and Muslim law in India.

Under Muslim Personal Law, a girl can be legally married at the age of 15, which is in contradiction to the Child Marriage Restraint Act, 1929 (amendment issued in 2006) that stipulates that a girl must be at least 18 years old to get married.

The very same Personal Law permits polygamy in India, where a Muslim man may have more than one wife, up to a maximum of 4. Polygamy is also legal for Hindus in Goa under the Hindu Marriage Act, 1955.Moreover, Polygamy is illegally practiced by the Adivasis (15%), Buddhists (8%), Muslims (6%) and Hindus (6%) as well. In Christian religion, Personal Law doesn't allow a woman to inherit the property or land of her deceased children. A Christian couple cannot file for divorce until completion of 2 years from the date of marriage, for other communities it is a minimum of one year.

There are set of approach which considers that personal Law is discriminatory and biased and needs to be replaced with a Uniform Civil Code. Alongside, it is also important to understand that legal systems evolve over time to accommodate and represent our changed views.

In this context, a Uniform Civil Code is a proposed set of laws drafted to replace all Personal Laws in India. Historically, a Uniform Civil Code was first proposed by women activists in the early 20th century but was opposed throughout the past century, just as it is facing opposition today. Given this context, one can argue that our society should ideally be shaped on universal principles of equality, liberty, justice and fraternity. In other words a Uniform Civil Code would reflect equal laws for all citizens of India irrespective of race, gender, caste or religion and the same law is applicable to all individuals in a court of law. Goa already has a Uniform Civil Code and a Common Family Law. Currently, there is no formal draft of a Uniform Civil Code proposed for India.

Laws related to women are classified under two major categories:-

- Indian Penal Code
  - Rape (Sec. 376 IPC): A rapist, shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine.
  - Kidnapping & Abduction for different purposes (Sec.363 373): any person who is abducting a minor for purpose of begging or kidnapping minor/women for prostitution or illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.
  - Homicide for Dowry, Dowry Deaths or their attempts (Sec. 302/304 B IPC): Where the death of a women is caused by any burns or bodily injury or occurs otherwise than under
- Special Laws :

Although all laws are not gender specific, the provisions of law affecting women significantly have been reviewed periodically and amendments carried out to keep pace with the emerging requirements. Some acts which have special provisions to safeguard women and their interests are:

- The Dowry Prohibition Act 1961 : It prohibits the request, payment or acceptance of a dowry “as consideration for the marriage”, where “dowry” is defined as a gift demanded or given as a precondition for a marriage. Gifts given without a precondition are not considered dowry, and are legal, per section 3(2).
- The Protection of Women from Domestic Violence Act 2005 : It is an Act of the Parliament of India enacted to protect women from domestic violence. Primarily meant to provide protection to the wife or female live-in partner from domestic violence at the hands of the husband or male live-in partner or his relatives, the law also extends its protection to women living in a household such as sisters, widows or mothers.

13.5 WOMENS RIGHTS AS HUMAN RIGHTS

In common parlance, Women's and girls' rights are human rights. They cover every aspect of life – health, education, political participation, economic well-being and freedom from violence, among many others. Women and girls are entitled to the full and equal enjoyment of all of their human rights and to be free from all forms of discrimination. Women's rights are the fundamental human rights that were enshrined by the United Nations for every human being on the planet nearly 70 years ago. These rights include the right to live free from violence, slavery, and discrimination; to be educated; to own property; to vote; and to earn a fair and equal wage. There are two critical documents for women's rights that have followed the UN declaration. The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), an international bill of rights for women, requires governments to end gender discrimination and affirms women's rights to health services, including family planning. The Beijing Declaration and Platform for Action, adopted in 1995 at the UN's Fourth World Conference in Beijing, was a rallying cry to embed gender equality and women's rights in every facet of life.

13.6 GENDER AND HUMAN RIGHTS

The UN Millennium Development Goals has set specific targets to reduce poverty, including targets for increased gender equality in education, work, and representation. Globally, more women are now in school and work. Yet girls are still more likely than boys to be out of school (particularly at the secondary level). And although the number of women in elected office has risen, they are still only 21.8 percent of parliamentarians. Women's rights remain at risk in many areas. And there is a category of women who are already marginalized because of their race, caste, sexuality, income, or location and see the fewest gains of all.

The new Sustainable Development Goals (SDGs) hold real promise to embed advances in women's rights, and include a specific goal among the set of goals (Goal 5) for gender equality. Goal 5 is more broad-based

than the last gender goal and includes targets on ending gender-based violence, eliminating child marriage and female genital mutilation, and ensuring access to sexual and reproductive health. It also includes equal access to education, expanding women's economic opportunities, and reducing the burdens of unpaid care work on women and girls.



13.7 LET US SUM UP

- The principle of gender equality is enshrined in the Indian Constitution.
- The Constitution not only grants equality to women, but also empowers the State to adopt measures of positive discrimination in favour of women.
- Women's and girls' rights are human rights.
- They cover every aspect of life – health, education, political participation, economic well-being and freedom from violence, among many others.
- Women and girls are entitled to the full and equal enjoyment of all of their human rights and to be free from all forms of discrimination.
- In Parliament, meaning of an amendment is a change to a bill (a proposed law). Amendments allow for bills to be improved or altered as they progress through the Parliament.
- Article 40 of the Indian constitution directs the government to establish panchayats to serve as institutions of local self-government.
- Most of the states implemented this directive principle along the lines of the recommendations of the Balwantarai Mehta Commission Report.
- The commission recommended a 'three-tier' system of Panchayati Raj institutions (PRIs), viz. the popularly elected village council (gram panchayat) as the village level basic unit
- The UN Millennium Development Goals has set specific targets to reduce poverty, including targets for increased gender equality in education, work, and representation.

- UN Women found that progress was uneven. Globally, more women are now in school and work.



13.8 FURTHER READING

1) Bakshi, P.M.(2006), *The Constitution of India*, Universal Law Publishing Co. Pvt.Ltd.,Delhi

2) Chaterjee,Mohini(2004) , "*Feminism and Women's Human Rights*", Aavishkar Publishers, India.



13.9 ANSWER TO CHECK YOUR PROGRESS

a. 14, 15, 15(3), 16, 39(a), 39(b), 39(c) and 42.

b. April 24, 1994.

13.10 MODEL QUESTIONS



A) Write Short notes (Answer within 150 words)

1. Whatare constitutional provisions for women?

B) Long type questions (Answer within 300-500 words)

1. Explain women's fundamental rights as human rights.
2. Explain Uniform Civil Code