

## Obligations of States

By accepting the Convention, States commit to undertake a series of measures to end discrimination against women in all forms, including:

- ☐ to incorporate the principle of equality of men and women in their legal system, abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women;
- ☐ to establish tribunals and other public institutions to ensure the effective protection of women against discrimination; and
- ☐ to ensure elimination of all acts of discrimination against women by persons, organizations or enterprises



## DECLARATION ON THE ELIMINATION OF VIOLENCE AGAINST WOMEN, 1993

- International human rights instrument to exclusively deal with the issue of **violence against women**.
- It affirms that violence against women violates, impairs or nullifies women's human rights and their exercise of fundamental freedoms



# Violence

- “Any act of gender based violence that results in, or is likely to result in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.”
- Violence against women encompasses-
  - ☐ Physical violence
  - ☐ Sexual Violence
  - ☐ Psychological Violence

Both inside and outside the family- rape, sexual abuse, trafficking, sexual harassment and intimidation in workplace, battery, female genital mutilation & other practices harmful to women.



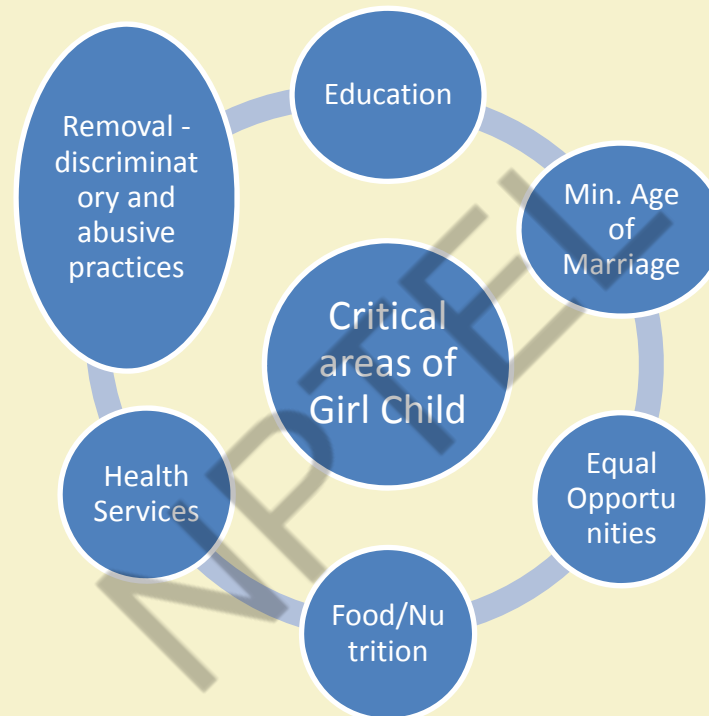
- The Declaration also enumerated the rights of women:
  - The right to life;
  - The right to equality;
  - The right to liberty and security of person;
  - The right to equal protection under the law;
  - The right to be free from all forms of discrimination;
  - The right to the highest standard attainable of physical and mental health;
  - The right to just and favourable conditions of work;
  - The right not to be subjected to torture, or other cruel, inhuman or degrading treatment or punishment.
- Directions to the State to condemn violence against women and take appropriate measures for eliminating violence.



# Beijing Platform for Action, 1995

- The Platform for Action reaffirmed the fundamental principle set forth in the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights, that
  - ☐ the human rights of women and of the girl child are an inalienable, integral and indivisible part of universal human rights.
  - ☐ Protection and Promotion of the full enjoyment of all human rights and the fundamental freedoms of all women throughout their life cycle.
  - ☐ Violence against Women is a Violation of Women's Human Rights and fundamental freedoms





## United Nations Millennium Charter 2000.

Certain fundamental values be essential to international relations:

- **Freedom** – Men and women have the right to live their lives and raise their children in dignity – free from hunger, fear of violence, oppression or injustice.
- **Equality** – The equal rights and opportunities of women and men must be assured.



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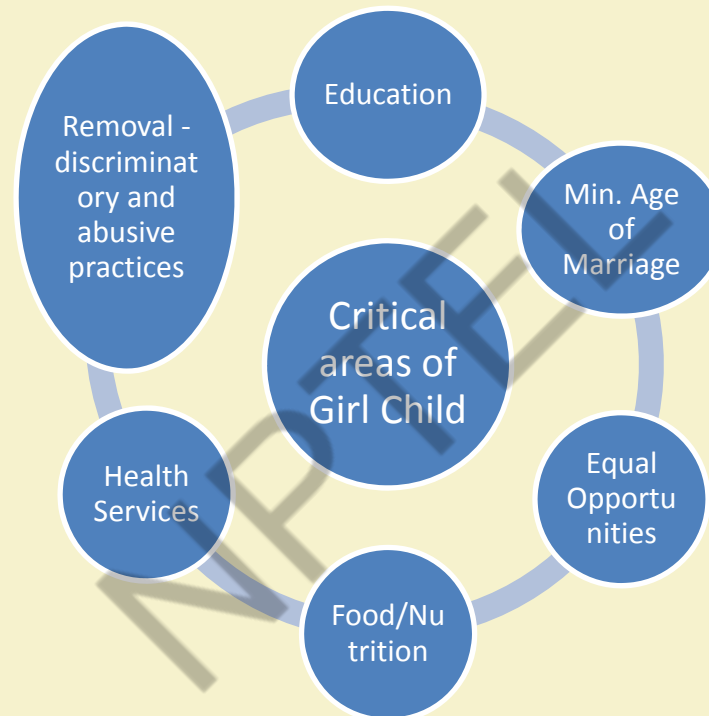
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# Constitutional Guarantees

- Constitution is the basic document of the country, having a special sanctity , which sets the framework and principal functions of the Govt. and declares the principles governing their operation.
- Preamble – Reflects the ideals and aspirations of the people of the country. Starts as “We, the people of India...”. Source traced to Men and Women , irrespective of caste, community, religion etc.
- Ideals or Values identified in Preamble- Justice, Liberty, Equality



# Fundamental Rights

- Basic rights or Human rights which are the entitlement of every man, woman and child because they are human beings.
- These are enforceable in Courts of Law.
- *Valsamma Paul v. Cochin University* (1996), SC held that human rights are derived from the dignity and worth inherent in human beings. The human rights of the girl child are inalienable, integral and indivisible part of universal human rights. The full development of personality and fundamental freedoms of women and their equal participation in political, social, economic and cultural life are concomitants for national development, social and family stability and growth- culturally, socially and economically.





- Art 14- EQUALITY BEFORE LAW AND EQUAL PROTECTION OF LAWS
- Art 15- STATE NOT TO DISCRIMINATE ON GROUNDS OF ..SEX...
- Art 16- EQUALITY OF OPPORTUNITY FOR ALL RELATING TO EMPLOYMENT
- Thus, these articles ensure equality and prohibit gender discrimination.
- Art 15(3)- Allows positive discrimination in favour of women to make special provisions to ameliorate their social conditions and provide political economic and social justice.



# Art 14- Equality

- Does not mean that all laws must be general in their character or application.
- The varying needs of different classes of persons may require separate treatment.
- Test of reasonable classification.- intelligible differentia & have a rational relation to the object sought to be achieved.
- Cannot be arbitrary, artificial or evasive.



# Illustrations/cases

- Lady, C.B. Muthamma IFS, denied promotion. Infact she was discouraged from joining foreign service and had to give an undertaking that if she married she would resign from service. IFS Rules 1961.( *C.B. Muthamma v. Union of India* 1979)
- An air hostess challenged the Air India regulations which required her to retire at the age of 35 or on pregnancy in case of marriage(whichever occurred earlier). (*Air India v. Nargesh Mirza* 1981)
- Charu Khurana, a make up artist and hair stylist wanted to get a card from the Federation of Western India Cine Employees Assn.. She was refused the same as make up artist since only male members are allowed that job. (*Charu Khurana v. Union of INDIA* 2014).



- Sec 497 IPC allows the husband to bring action against another man for adultery with his wife but does not allow a woman to bring action against another woman. (Sowmithri Vishnu v. Union of India 1985)
- Reservation of seats for women to the extent of 30% made in State services by AP Govt. is valid. (Govt. of AP v. P.V. Vijayakumar 1995). The State can also establish educational institutions only for women.



# Right to Freedom

- Art 19-
  - ☐ Freedom of Speech & Expression
  - ☐ Freedom of Assembly
  - ☐ Freedom to form Associations
  - ☐ Freedom of Movement
  - ☐ Freedom to reside & settle
  - ☐ Freedom of Profession, occupation, trade or business
    - Subject to reasonable restrictions



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# Right to choose partner

- The right to marry a person of one's choice, if he is a major, outside one's caste is guaranteed under Article 19 of the Constitution. (*Ashok Kumar Todi v. Kishwar Jahan 2011*)
- A young woman, 27 years and graduate, left her brother's house and got married to one Brahma Nand, a businessman. The brothers lodged a case of abduction, upon which the sisters of Brahma Nand were arrested. The brothers on hearing of inter-caste marriage went to house of BN and beat him up, locked him, took forcible possession of the crops and illegal possession of the shop. (*Lata Singh v. State of UP (2006)*)



## Freedom of Profession/Expression

- Bombay Police Act prohibited holding of dance performance of any type in beer bars/eating houses, other than 3-5 star hotels. Challenged as being violative of Art 19. (Indian Hotel and Restaurants Assn. v. State of Maharashtra 2013)
- Sec 30 of the Punjab Excise Act prohibited the employment of women in hotels and bars serving liquor. (Anuj Garg v. Hotel Assn. of India 2008).





## The Right to Live with Dignity

- Art 21- No person shall be deprived of his **life** or **personal liberty** except according to procedure established by law.
- The terms are of widest amplitude and covers a variety of rights which go to constitute the personal liberty of a person.
  - Right to live with human dignity
  - Right to livelihood
  - Right to Privacy
  - Right to Education etc.
- Guarantees against arbitrary action of the State.



- In a case, the petitioner husband requested the court that his wife be directed to undergo medical checkup to ascertain her virginity (Zahida Begum v. Mushtaque Ahmed 2006; Surjit Singh v. Kanwaljit 2003).
- Determining the paternity of child & questioning the character of mother Goutam Kundu v. State of WB 1993).
- A LIC questionnaire sought information about the past pregnancies and other intimate details to avail of its policies. (Neera Mathur v. LIC 1992)
- Art 21 includes a woman's right to make reproductive choices, including right to refuse to participate in sexual activity or insistence on use of contraceptive methods. It also includes a woman's entitlement to carry a pregnancy to its full term, to give birth and raise her child. (Suchita Srivastava v. Chandigarh Adm 2010)



- Even a prostitute has a right to privacy under Article 21, and no person can rape her just because she is a woman of easy virtue. (State of Maharashtra v. Madhukar Narayan Mardikar 1991)
- A Bangladesh national was raped in Railway Yatri Niwas by employees of the Indian Railway. The question was whether she was entitled to compensation for violation of her 'life' and 'dignity'. (Railway Board v. Chandrima Das 2000).
- Victims of 'rape' are often subjected to a test, popularly known as 'two finger test' to determine whether she has been subject to physical violation. The two finger test and its interpretation violates the right of rape survivors to privacy, physical and mental integrity and dignity. (Lillu @Rajesh v. State of Haryana 2013)



# The Right against Exploitation

- Art 23- Prohibits traffic in human beings and begar or any other form of forced labour
- Traffic refers to the selling and buying of men and women like goods.

Sec 370 IPC defines it as the recruitment, transportation, harbouring or receiving a person for the purposes of exploitation. It is effectuated by threat, force, inducement, fraud, abuse of power etc.

- Exploitation includes physical exploitation, sexual exploitation, slavery, servitude or forced removal of organs.



- Begar means involuntary work without payment.
- Forced labour refers to making a person to render service against his will or consent whether with or without payment. It implies compulsion.
- Bonded labour, slavery, immoral trafficking are all included in this category and Parliament is authorized to make appropriate laws to penalize these Acts.
- So far as women are concerned, Prostitution, commercial sexual exploitation, domestic labour, Devdasi system are included in this category.



# Directive Principles of State Policy

- Fundamental rights cater to individual rights, while the directive principles of state policy cater to social needs.
- These provisions are contained in Part IV of the Constitution.
- Though these principles are not enforceable in any court of law, they are fundamental in the governance of the country and provide for the welfare of the people, including women.



# Directive Principles

- Art.39: Certain principles of policy to be followed by the State-
  - a) that the citizen, men and women equally, have the right to an adequate means of livelihood;
  - d) that there is equal pay for equal work for both men and women;
  - e) that health and strength of workers, men and women, are not abused and that citizens are not forced by economic necessity to enter vocations unsuited to their age or strength;
- Art.42: Provision for just and humane conditions of work and maternity relief.



# Uniform Civil Code

- Art 44 directs the State to secure for its citizens a UCC applicable throughout the territory of India.
- Necessitates uniformity in the application of civil laws relating to marriage, succession, adoption, divorce, maintenance etc.
- K.M. Munshi of the Constituent Assembly remarked, “if the persona law of inheritance, succession is considered a part of religion, the equality of women can never be achieved.”





## Women's representation in local bodies

- Art 40-Organisation of village panchayats. – The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.
- The 73<sup>rd</sup> and 74<sup>th</sup> Amendments to the Indian Constitution, effected in 1992, provide for reservation of seats for women in elections to panchayats and municipalities.
- Reservation of seats for women in panchayats and municipalities have been provided in Articles 243-D and 243-T of the Indian Constitution. Parts IX and IX-A have been added to the Constitution popularly known as the Panchayati Raj and Nagarpalika Constitution Amendment Acts, with Articles 243, 243-A to 243-D and 243-P to 243-ZG.



# Fundamental duties

- Part IV-A, which consists of only one Article 51-A, was added to the Constitution by the Constitution (42<sup>nd</sup> Amendment) Act, 1976.
- Article 51-A( e) is related to women.
- It states : 51-A Fundamental duties – It shall be the duty of every citizen of India.
  - To renounce practices derogatory to the dignity of women.



# Thank You!!



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# Gender Justice and Workplace Security

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# Protection of Women at Workplace

Module 3

NPTEL



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# Women as part of Workforce

- Breakdown of barriers
- Women invading spaces traditionally reserved for men
- Challenge to the patriarchal mindset where the man is seen as the bread earner (valued) and woman as homemaker (devalued)
- Gender Bias/ Discrimination at Workplace



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Power Relationships



Patriarchal social relations

Myths



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# Labour Legislations

- Contain the principles of social justice, social equity and social security.
- Aim to provide a better working place to the millions while safeguarding their rights and interests.
- Labour Laws-
  - Industrial Disputes Act 1947
  - Equal Remuneration Act 1976
  - Maternity Benefit Act 1961
  - Factories Act 1948
  - Unorganised Workers' Social Security Act 2008





# Sexual Harassment at Workplace



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# No woman shall be subjected to sexual harassment at any workplace



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# What is

- Speaking generally, “sexual harassment is a behavior with a sexual connotation that is abusive, injurious or unwelcome.”
  - Has a **sexual** connotation
  - Is **unwelcome**
- **Impact** matters, **Intention** of the harasser is irrelevant.
- May or may not entail **economic losses**.



# Illustrations

- Pinching
- Touching
- Grabbing
- Brushing
- Leering at a woman's body
- Showing Indecent Pics/cartoons
- Singing Indecent Songs
- Requesting Sexual favours for promotion
- Threatening termination on refusal to do a sexual act
- Comments about woman's personal life



# Types

- **Quid Pro Quo**- “This for that”; Where an employer makes tangible job related consequences such as promises of promotion, higher pay, academic advancement etc. conditional upon obtaining sexual favours from an employee.
- **Hostile Environment** – Occurs when unwelcome sexual conduct unreasonably interferes with an individual’s job performance or creates a hostile , intimidating or offensive work environment even though it may not result in tangible or economic job consequences.
- ❑ **Sexual Harassment is wrong** not because of the economic losses sustained or adverse environment created but because **it is a demeaning practice, one that attacks the dignity and self respect of the victim as an employee and as a human being.**



# Illustrative Cases

- Supervisor during a business trip invited the complainant to join him in hotel lounge, which she felt compelled to accept because he was her superior. He made comments on her breasts which she did not encourage. Then he told her “loosen up” and warned her he could make life “very hard or very easy” at the company.
- At the promotion interview, the supervisor expressed reservations saying that she was not “loose enough” and reached over and rubbed her knee. The complainant however received the promotion.
- On another occasion, the woman called him for permission on business related issue, he responded “I don’t have time for you...unless you want to tell me what you are wearing.” Again, he commented, “Are you wearing shorter skirts yet...because it would make your job a whole heck of a lot easier.”
  - Perpetrator played a role in promotion
  - Veiled threats and demeaning comments were never carried out (Burlington v. Ellerth 1998)

