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**Course  
On**

**Gender Justice and Workplace Security**

**by**

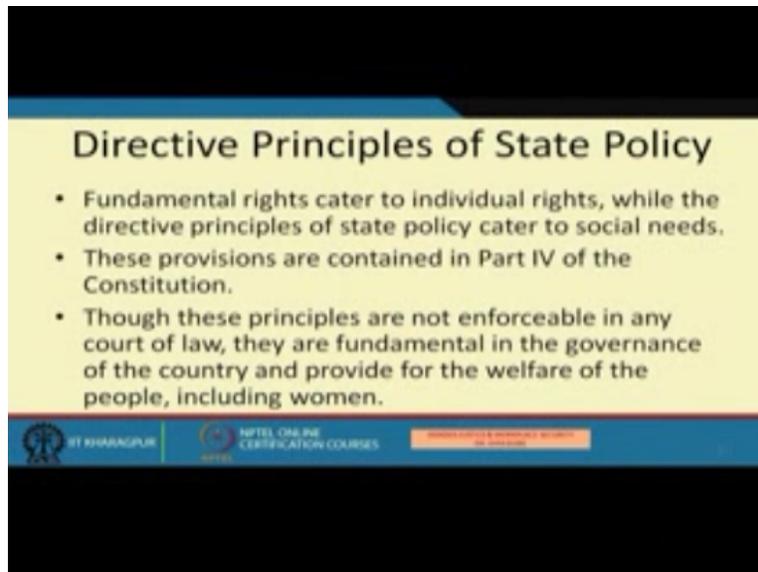
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**Lecture 09: Constitutional Perspectives (Contd.)**

In this lecture we will continue with the constitutional perspectives with regards to gender justice.

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**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.

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On the one hand we have seen that the preamble enumerates certain ideals and values with regards to the constitution and which the state has to uphold. And the other part we have seen that there are certain fundamental rights guaranteed under part III of the Indian constitution,

these fundamental rights are heralded as the basic human rights which are important for every individual to live and live well in society.

In this regard there are the right to equality, right to freedom, right against exploitation, right to life with human dignity which lies at the core of gender rights in a sense of upholding women rights and eliminating any form of discrimination against women. All these rights are enforceable and one can move to the course of law for any violation of these rights and it is the duty of the courts to ensure that these rights are upheld by the courts.

We next come to part IV of the Indian constitution which lays down the directive principles of state policy. These are included in the part IV as I said of the Indian constitution in a way that they differ with the fundamental rights are, whereas fundamental rights cater to individual rights, the directive principles of state policy cater to the social needs. So the directive principles of state policy are basically those aspects which these state must uphold in order to realize social justice and social security.

These directive principles are contained in part IV of the constitution. However, they are not enforceable in the courts of law, in a sense as we said under article 32 the fundamental rights are enforceable in the courts of law as against that directive principles do not have any enforceability. They are sort of directions, as now we said or goals which are there before the state which the state should realize over the period of time.

So therefore for any violation of the directive principles one cannot definitely move to the courts of law for the enforcement of the directive principles. However, the significance lies in the fact that the directive principles are also fundamental to the governance of the country, and it is important that the various directive principles which are laid down must be realized by the state from time to time for the meeting the needs of the society and the state at large.

Now there are number of directive principles which are aimed at the welfare of people including women. So whether it relates to equal remuneration, equal pay for equal work for men and women, or it relates to giving maternity benefit to women, there are several directive principles which have been laid down and which tends to achieve the welfare of the women and to see that this state makes necessary endeavor towards that end.

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## 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."



Now in this regard one of the fundamental directive principles which I would mention there are other you can refer to article 39 etc which speaks of the other directive principles of state policy one specifically which comes under discussion and is much under deliberation in recent times is article 44 of the Indian constitution.

Now this article 44 of the Indian constitution directs the state to secure for each citizens are uniform civil code applicable throughout the territory of India in what if we can remember in what sense it has been in deliberation in recent times is on the issue of triple Talaq there has been a petition which is there in the supreme court and there are arguments going on in which it has been held that the triple Talaq is somewhere discriminatory to the cause of women because there are 100 and 1000's of women who are a part of that religion and have subjected to the pronouncement of triple Talaq by the husband and they have been left to themselves and these women in the absence of any economic resources etc...

Are left to fend for themselves and their children creating a serious problem for them to there for their life and there well being, so therefore the issue of triple Talaq has been challenged in the courts of law now why are the issue of uniform civil code becomes relevant here because the civil code or uniform civil code speaks in terms of uniformity in the application of civil laws and application of civil laws speaks in terms of marriage, succession, adoption, divorce, maintenance etc...

Now in India if we know that in each of these aspects which relate to the personal law of party we are governed by our individual laws so based on religion so whether somebody is a Hindu, somebody is a Muslim or somebody is a Christian, so on and so forth we have individual personal laws which governed the aspect of marriage the aspect of divorce adoption etc...

In other matters let us say which regard to contract with regard to property etc there are uniform laws throughout the country even in matters of criminal law there is a sort of there is a uniformity in terms of the Indian penal code the code of criminal procedure etc being uniformly applicable for all persons however the only variation is personal laws where if one is a Hindu he will be governed by his home laws of marriage and divorce if somebody is a Muslim he would be governed by his own laws and therefore people who follow the religion of Islam are governed by their own laws where this issue of triple Talaq is has a legal recognition and therefore the question of triple Talaq in the discussion of uniform civil code becomes important and relevant.

So this issue is that article 44 of the directive principles has laid down these the necessity of this state to laid down a uniform code when it comes to the personal matters of individual however as I said this is only a directive and it depends on the state as to when it wants to implement that and over the years till date we have been we have not been able to make sufficient effort towards that end just to court came Munshi of the constituent assembly who had remarked that if the personal law of inheritance, succession is considered a part of religion.

The equality of women can never be achieved, now we have to understand the significance because each of the personal laws or in many of the personal laws there are many practices there are many systems which are in existent which are derogatory to the cause of women, so just as we stated the example of triple Talaq similarly there has been the issue of convergence of person in order to contract a second marriage.

Similarly there has been issue of maintenance of women and whether a person can claim maintenance under the regular law or under the code of civil, criminal procedure there have been this issues which have consistently come up before the codes of law, many of you may be knowing the Shah Bano case and Sarla Mudgal case in which the twin issues of maintenance of a women after divorce and the issue of convergence of a man to Islam in order to contract a second marriage came up in question.

Now in each of these issues it was seen that the woman was at the receiving end because the woman in case of divorce is as we said is left all by herself is deserted many times do not have the economic resources for her well being and has to depend only on the maintenance which is payable from the husband, however Muslim law allows for maintenance till the period of in that which is a stipulated period under Muslim law.

But beyond that there is no such responsibility on the part of the husband, now that called in that was called in question as it was found that some who were weakened the position of human and forced here to living a life of at here poverty, desperation, neglect etc. Subsequent to that subsequent to the issue there was an act which was passed with protection of women on dissolution of marriage act which was passed which tried to ensure that some where the concern of women is effectively addressed.

However even after that there have been numerous cases which have come up in the codes of law Daniel lathifi extra where repeatedly the issue as to whether section 125 CRPC can be invoked by a Muslim woman against her husband to make her to pay maintenance has being repeatedly petition in the courts of law. So here we see one situation where women have found herself completely deprived completely in a situation of pantry and the personal laws have somewhere come in the way of her well being and her dignified living.

Similarly, there was this case of Sarala Muthgal where the husband converted himself to Islam embraced Islam in order to contract a second marriage, because according to Islam a man can marry up to four times and have four wives at the same time. So that was brought in question and the man who was a Hindu till then the question for the wife was how does she stand now visave her husband who had gone on to convert himself to Islam and there by contract a marriage, does the marriage stand visave her husband or the marriage stands dissolve and whereby she has, she feels you know whereby she has been deprived and her interest has been affected as a result of the act of the other person.

So here also the issue came up again of personal laws which the supreme court try to say that such conversations which are made only for the purpose of contracting a second marriage cannot be said to be valid and visave the first wife he would still be governed with the religion that he previously belong to and therefore if that religion did not permit a second marriage he would be liable for an offence of bigamy.

So therefore, the article 44 lies at the, you know at the core of the women's right somewhere because it has a tremendous effect in terms of the various practices and the various rules which has been in existence in personal matters of individuals which have somewhere had a negative impact for women and has always considered women as a secondary being and therefore not effectively address the cause of the women.

If the personal laws undergo a change or amendment in terms of the prevailing times the chances which have come over a period of time there is no difficulty with regard to the same. But the same is not true for all religions as maybe we can take the example of even cession laws which earlier were there and which were somewhere different when it came to men and women in matters of divorce where the women had to plead more grounds in order to seek a divorce from a man.

But the man had to plead one or the other a single ground in order to go for a dissolution of the marriage that was said aside and there was the new change which was brought in whereby such discrimination between a man and woman has been done away with, so somewhere article 44 of the Indian constitution in terms of directing the state towards the uniform civil code tries to establish also through it the equality of women because it lies at the core of such you know such change however till date somewhere it has not been achieved.

And that where the directive principles we may not see it is direct implementation or immediate implementation, however this as we said these are fundamental in the government of our country these are key goals before the state and the state must take necessary and effective measures to see that these are achieved in the long run. So if not today over the period of time these maybe gradually achieved by this state and it may also mention that there have been several cases where the courts have tried to reading the directive principles within the fundamental right.

So what do we said that fundamental directive principles do not have any enforceability against the fundamental rights the supreme court as try to read in many of the directive principle and therefore in direct way try to include it within the scope of fundamental rights which is there, and thereby further the cause or the constitutional guarantees further the constitutional guarantees for the protection of the individual in this state.

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**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 by the 73<sup>rd</sup> and 74<sup>th</sup> Amendments, 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.

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In accordance with the change there has been a change with regards to women's representation in local bodies so article 40 which speaks of directive principles this state shall take steps to organize village Panchayats and endive them with such powers and authorities has maybe necessary to enable them to function as units of self government. Now in this regard they has been the 73<sup>rd</sup> and 74<sup>th</sup> Amendments which has been effected in 1992 where by reservation of seats for women in Panchayat and Municipal.

Municipalities have been provided in articles to 43d and 243 T, of the Indian constitution and therefore there has been a significant change with regard to reservation of seats and so that women find and effective voice in the decision making process. So this is also significant change which has been effected by way of constitutional amendment.

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## 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.

Lastly in the constitutional aspect we come to the fundamental duties which have been added in part 4 A, of the Indian constitution and this has been inserted by way of amendment and these are fundamental duties of the people of the country the citizens of the country and where they must ensure that just as they have rights they must absorb certain duties for the betterment and the well being of the state and the nation or as a whole. Now with regard to women there is one specific fundamental duty which has been included in 51 AE which is related to women and it states that it has be the duty of every citizen of India to renounce practices they derogatory to the dignity of women.

So this one aspect speaks volumes in terms of the responsibility of every individual of the country to ensure that equality of women is established and to ensure that discriminated practices are abolished and into see that there are no situations of violence against women which happens in the society so therefore every Indian citizen is are under obligation to see that renounce practices which are derogatory to the dignity of women.

So whether we speak in terms of sexual harassment sexual abuse domestic violence or we speak of prostitution or such practices which are presently existing in the society then we see that these are all violate of the responsibility are sort of obligation which has been imposed on citizens of the country.

They are to renounce such practices and to see that dignity of women is maintained how about it may again be mentioned here that this fundamental duties do not has such have any enforcement

they are nearly laid down as a part of good behavior and practices which should be maintained or which is expected of every citizen of the country.

And it is important that these citizens on their own ensure that they abide by these fundamental duties which are laid out but other than that there are no such obligations in terms of enforcing it in course of law unless the court once to read this fundamental duties within one or the other constitutional provision which is their thereby try to establish that has the applicable in the court of law.

However the constitutional responsibility or the constitutional mandate is quite clear it speaks of the equality of the sexes it speaks of any absence of discrimination between persons just on the ground of sex and at the same time it speaks of positive approach what are the positive actions from this part of the states to ensure that effective measures are taken for the promotion and protection of the women effective laws are replaced derogated practices and humiliating practices are abolished while at the same time it promoting the cause of women to various means and mechanisms and therefore all these measures have gone in long way in making the laws and implementation of the laws which we will see in the next lecture.