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Course
On
Gender Justice and Workplace Security

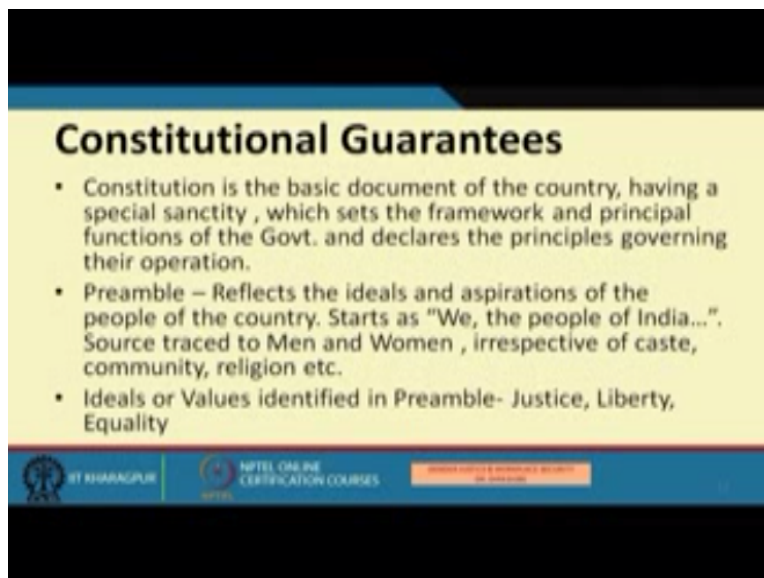
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Lecture 07: Constitutional Perspectives

Welcome dear students, I welcome you to the course on gender justice and workplace security. In the previous lecture we discussed the international developments towards women rights and issues of violence against women. In the backdrop of this international developments it is imperative for us to know the Indian laws and the Indian legal development and judicial perspectives with regards to general justice.

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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

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We start with the constitution of India with the independence of the country, the country adopted enacted and gave to themselves the constitution. The constitution as we say is the supreme law of the land, it is the basic document which has a special sanctity, in that it sets the framework and principle functions of the government and declares the principles governing their operation. The constitution not only grants equality of sexes, but also empowers the state to take protective and discriminatory measures for the redressal of the cumulative disadvantages on account of the strange old of patriotical society and the existing traditions, meets, and beliefs.

The constitution starts with the preamble, the preamble which reflects the ideals and aspirations of the people of the country. It starts with the words, “we, the people of India”, and then it goes on to establish the various ideals and values for which it stands. Now if we see the words, “we, the people of India”, the source can be traced to all the people of the country. Irrespective of caste, community, religion, sex etc.

So therefore, it is the men and women of the nation who have given to themselves the constitution, the supreme law of the land. The ideals or values which have been identified in the preamble have been enumerated as justice, liberty and equality. So it would be the endeavor of the state to ensure that each of these values or ideals are realized in the process of the working of the government.


So that is the basic start of the constitution whereby it tries to realize certain goals and it makes all men and women a partner in the process to whom such justice, liberty, equality are to be ensured and the consequent responsibility of the state towards that regard.

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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.

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Part three of the constitution speaks of fundamental rights. Now these fundamental rights are guaranteed to the citizens and in some cases non-citizens as well of the country. And they are what we call as basic rights or human rights which are the entitlement of every person, every man, women or child being human beings and then it is integral to their existence and to their living.

The important feature of these fundamental rights are that they are enforceable in the quotes of law. So in a sense if there are any violations of these fundamental rights any person can move to the quotes for enforcement of those right, and it is the responsibility of the state to maintain and ensure these fundamental rights.

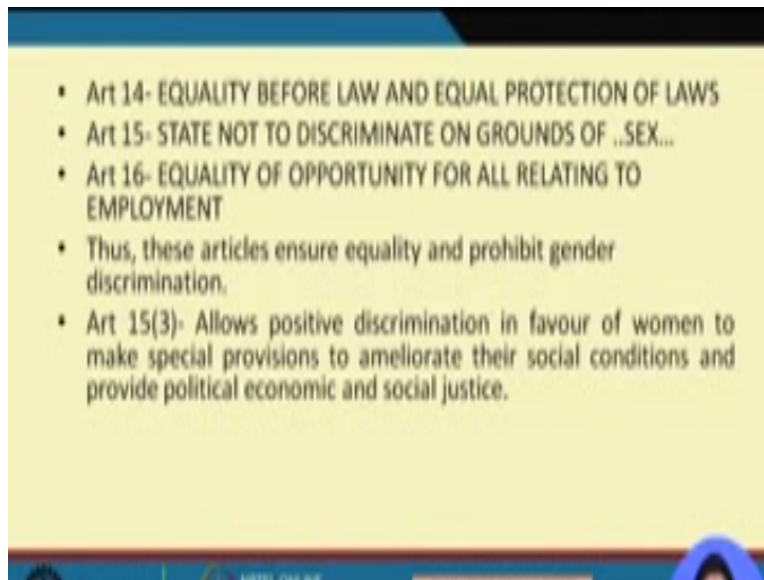
In this reference there has been a case which has been referred of Valsamma Paul versus Cochin University 1996 where the supreme court held that the human rights are derived from the dignity in this reference we have the case of Valsamma Paul Valsamma Paul 1996 where the supreme court held that human 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 concomitains for national development social and family stability and growth culturally socially and economically if one sees this observation one definitely finds reflections of the international developments and

international instruments where the human rights of women have been held to be part of universal human rights.

And the fundamental rights tries to uphold these human rights and to see that these human rights are not violated at any level.

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Now these are some of the basic rights which are there are others that we are coming to later to start with article 14, lays down equality before law and equal protection of the laws, it lays down that the state shall not deny to any person equality of law and equality equal protection of the laws, now there are two concepts that we can see in this regard one is equality before law and the other is equal protection of laws.

The first is an expression which is found in all return constitutions the world over it is a sort of a negative concept implying the absence of any special privilege in favour of individuals the other equal protection of laws is a more of a positive concept which implies the equality of treatment in equal circumstances what article 14 stands for it does not speak of any absolute equality it does not mean that all laws must be general in character or that the same law should apply to all persons.

It means that among equals the law should be equal and should be equally administer and like should be treated alike so therefore if we are speaking of two groups of people and they are at the

same level then the law should apply equally them but if they are unequal then it cannot be the concept of equality cannot be emphasized because they basically stand at a situation where the two groups are not equal to each other.

So therefore what article 14 allows is reasonable classification based on real and substantial distinction bearing adjust and reasonable object sort to be achieved. So therefore to start with article 14 guarantees the right to equality to all persons however such equality is subject to the condition that equals must be treated equally and in situations where permissible there can be a reasonable classification which is allowed, in that regard article 15 of the Indian constitution lays down that the state shall not discriminate against any citizen on grounds of religion, rays, cast, sex, place of birth or any of them.

So therefore article 15 for the emphasizes that there should not be any form of discrimination against citizens and the grounds of discrimination cannot be religion race, cast, sex being one amongst them so the fact that a man and woman they cannot be any discrimination only on that basis of men and women. However section article 15(3) of the Indian constitution allows positive discrimination in favor of women.

Now it says nothing in this article shall prevent the state from making any special provisions for women and children so therefore it allows for a positive discrimination that is the significance here in a sense that this is not violate of what has been stated in article 14, what it stands for is equals must be treated equally but if it is seen in a certain situation that two people are not placed equally given the historical, the political, the social, the cultural, and other conditions put together.

Then in such a situation it would be proper for the state to allow for positive discrimination, such positive discrimination which tends to ameliorate these conditions which are existing for that group of people and therefore special provisions for women and children are permissible in the Indian constitution. Article 16 further speaks of equality of opportunity for all relating to employment thus these are some of the articles which ensure equality and prohibit gender discrimination except for positive discrimination in favor of women.

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Art 14- Equality

- Does not mean that all laws must be general in their character or application.
- Same laws need not apply to all persons.
- 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.


So as we said article 14 does not indicate that laws must be general in character or application or the same laws should apply to all persons, it does not stand for that but it allows for a reasonable classification such as reasonable classification which must be based on an intelligible differentia and has a rational relation to the object sought to be achieved, however that classification cannot be arbitrary, artificial or evasive in nature.


So if a classification is made just for example or one which is a popular example on the color of hair that would be taken more as an arbitrary classification people with black hair and people with brown hair that cannot be the bases of a classification. However, if the classification is based on sound reasons and there is an object sought to be achieved by way of the classification that is for a purpose within the controls of equality as laid out under the Indian constitutional framework.

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Equality

- 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).


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Now there have been a plethora of cases or judicial decisions which have gone on to emphasis or establish this aspect of equality and in many situations whether relate into employment as well as others whether it has been seen that there has been discriminatory practices or policies which are discriminatory or unfavorable for women the courts has invent and courts have said aside such provisions being bad in law or being vitality of the constitutional dictum.

C.B. Muthuamma verses Union of India 1979 is a very, very famous case where the lady was denied promotion or she was even discouraged from joining the foreign service and had to give an undertaking that if she married she would resign from service, if you can recollect the international instruments that one cannot be discriminated against on ground of the miracle status that she is married or she is unmarried cannot be a ground whereby a women is denied something, so here was a condition in the Indian Foreign service which required that she cannot marry and if she marries she has to resign from the service and even the policies where somewhere discouraging of women to join the service, so that was challenged in a court of law and it was said aside as being bad.

Air India verses Nargesh Mirza 1981 and air hostess challenge the Air India regulations which required her to retired at the age of 35 years or pregnancy in case of marriage which ever occurred earlier. So here was also a situation where the laws or where the existing service regulations unfavorably discriminated so far as a women was concerned, so where in case of a

man such marriage of a man extra did not have any impact with regard to his continuous in employment.

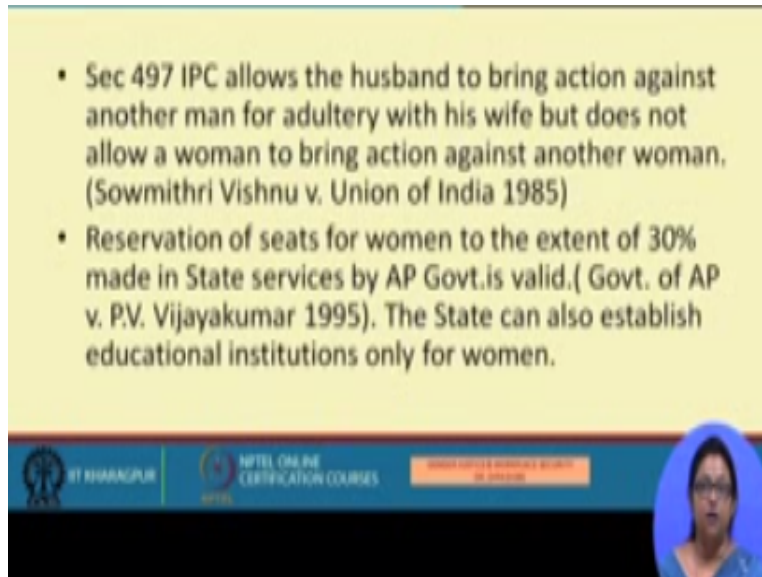
But where it related to a woman and the woman was in the position of an air hostess it required her to resign from service at the age of 35 years or in case of her pregnancy. So these were said aside by the court as being bad in law because such discriminatory policies regulations cannot be allowed to continue because it goes against the basic concept of gender justice or equality of the genders for which the state stands for.

Charu Khurana versus Union of India 2014 she is one of the recent cases which have been there and this lady Charu Khurana she wanted to have a card from the Federation of Western India Cine Employees Association as a makeup artist, these are certain sort of associations or union which exist and which give the necessary permission for a person to register and continue a job whether as a hair stylist, or as a makeup artist. Now she was for a long time making an end ever to get accord as a makeup artist in hair stylist, however it was reported that she cannot given the job of a makeup artist because till then this is quite a recent case till then male members are only allowed that job.

So even 2000, 2010 we have a situation where they are existed or still exist policies in place which are discriminatory of women. So therefore this issue was challenged by the lady in the court of law, that how it is possible that in certain job such as a makeup artist it is only the males who are allowed to take up that job and not women. And one of the propositions which we are given by the federation was that traditionally these roles of makeup artist have only being done by men.

And if women were allowed then this jobs will naturally go as more and worked women will like to take up the profession and it will deprive them of their livelihood, however such argument was set aside by was completely rejected by the supreme court of the country and it said that it is really sad that even after maybe 60 or more year of independence and the constitution being in place we are still having policies still having regulations and rules which discriminate against women and restrict her in terms of the job opportunities that she is entitled to and necessary directions was given to the federation to give her record and to see that necessary arrangements are made whereby there are no differentiation or distinctions made with regard to the sex of a person or the gender who can take up that particular service.

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- 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.

There is section 497 IPC which we speak of often in the context of adultery, now the section is there it allows a man to bring an action for an adulterous relationship against the other man with whom the wife is in such adulterous relationship. However it does not give any consequent right to a woman whose husband has an adulterous relationship with another woman to bring an action against that woman, now this was a case which was challenged in Sowmithri Vishnu versus Union of India 1985, where the section 497 IPC was challenged on the ground that it violates the right to equality established under article 14 of the Indian constitution.

Now in this situation however the arguments of the court were different because there was a definite purpose for which the section in the way that it existed came into being and in the entire scheme of the section 497 movement is seen as being victim and it is to protect the cause of women that the section has not permitted the women to bring the case against the other woman with whom with the husband has an adulterous relationship.

So therefore the court appeals the sections and said that there is definite purpose for which has been made and therefore it is not violative of article 14 of the Indian constitution similarly reservation of the seats for women to the extent of 30% in state services which was made by the Andhra Pradesh government was held to be valid similarly it was held that the states can also establish educational institutions only for the women.

Because that would qualify within article 15th were the states in an entitle to make to take effective steps to ensure that the women and children or the promotion of the interest that course of women and children and the generations of abused generations of denial of rights which are taken place can be some were undone by the way of positive discrimination are allowing for certain opportunities which are specifically for women and not for men and women each general.

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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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So therefore these judicial decisions have gone to reemphasize and establish the concept of equality and in several cases it has also established that the state is completely free to take appropriate steps for the course of women and towards the end they can make special laws or special policies or even go for the reservation of seats for women wherever they feel it is necessary.

Next coming to the right to freedom, freedom and liberty is very important to leave in a civilians society in that respect Article 19 of the Indian constitution lays down six freedoms now they are

freedom of speech and expression, freedom of assembly, freedom to form associations, freedom of movement, freedom of reside and settle, freedom of profession, occupation trade or business so every person living in India cannot be denied the freedom of speech to speak or to express oneself.

In whatever manner one is to assemble peace without harm to or for associations with regard to mobility of persons as where a person wants to go wants to reside and settle as well as the profession or occupation that a person wants to take up however these freedoms are not unrestricted they are subject to reasonable restrictions such restrictions are laid down in Article 19 (2) of the Indian constitution.

So therefore when we speak of these freedoms it necessarily implies in the context of general justice that every woman has a right to speech and expression has a right to assembly to form associations to reside and settle anywhere and to pursue any profession or occupation of her choice and there cannot be any unreasonable restriction on the ground that she is a woman which can be placed for any of these freedoms.