

## Foundation Course

### Semester 3

# **CONSTITUTIONAL PROVISIONS AND LAWS PROTECTING THE RIGHTS OF VULNERABLE GROUPS**

## Introduction

Constitutional and Legal Rights of Scheduled caste and Scheduled Tribes. Prevention of Atrocities Act(against SC/ST)Act,1989 .

The Domestic Violence Act, 2005 Vishakha Guidelines for Preventing Sexual Harassment at Workplace, 1997;

The Child Labour (Prohibition and Regulation) Act, 1986

Persons With Disabilities Act, 1995; Equal Opportunities, Protection of Rights and Full Participation Redressal Mechanisms at the National and State Levels

National Human Rights Commission National Commission for Scheduled Caste and Scheduled Tribes

## INTRODUCTION

A description of the kind and nature of injustice done to certain sections of the Indian society was done in the previous unit and therefore an assessment on the grounds of malpractices and sufferings meted out by the vulnerable sections of the society further narrate a similar story even after more than 65 years of Independence. Mere political independence cannot solve issues in this country.

The present unit will look into specific laws framed for the upliftment of the Scheduled Caste and the Scheduled Tribes and will also analyse the implementation and the success of these, till today.

## CONSTITUTIONAL AND LEGAL RIGHTS OF SCHEDULED CASTE AND SCHEDULED TRIBES.

The Constitution of India contains various provisions which provide for several rights and safeguards for the Scheduled Caste and the Scheduled Tribes .While most of these provisions are common to both ,SCs and the STs , some are exclusively meant for either of these two.

The constitutional rights of the Scheduled Caste and the Scheduled Tribes are as follows:

### 1 Right to Equality

Right to equality is very important in a society like ours. The purpose of this right is to establish the rule of law where all the citizens should be treated equal before the law. It has five provisions (Articles 14-18) to provide for equality before law or for the protection of law to all the persons in India and also to prohibit discrimination on the grounds of religion, race, caste, sex or place of birth.

**Equality before Law:** The Constitution guarantees that all citizens will be equal before law. It means that everyone will be equally protected by the laws of the country. No person is above law. It means that if two persons commit the same crime, both of them will get the same punishment without any discrimination.

**No Discrimination on the basis of Religion, Race, Caste, Sex or Place of Birth:** The State cannot discriminate against a citizen on the basis of religion, race, caste, sex or place of birth. This is necessary to bring about social equality. Every citizen of India has equal access to shops, restaurants, places of public entertainment or in the use of wells, tanks or roads without any discrimination. However, the State can make special provisions or concessions for women and children.

**Equality of Opportunity to all Citizens in matter of Public Employment:** The State cannot discriminate against anyone in the matter of public employment. All citizens can apply and

become employees of the State. Merits and qualifications will be the basis of employment. However, there are some exceptions to this right. There is a special provision for the reservation of posts for citizens belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes (OBCs) Abolition of Untouchability: Practicing untouchability in any form has been made a punishable offence under the law. This provision is an effort to uplift the social status of millions of Indians who had been looked down upon and kept at a distance because of either their caste or the nature of their profession. But, it is really very unfortunate that despite constitutional provisions, this social evil continues even today. Can you find any difference when you see a nurse cleaning a patient, a mother cleaning her child and a lady cleaning a toilet in the illustration? Why do people consider the cleaning of a toilet in a derogatory manner?

### 2 Right to Freedom

You will agree that the freedom is the most cherished desire of every living being. Human beings definitely want and need freedom. You also want to have freedom. The Constitution of India provides Right to Freedom to all its citizens. This Right is stipulated under Articles 19-22. The following are the four categories of Rights to Freedom:

- a. Freedom of speech and expression.
- b. Freedom to assemble peacefully and without arms.
- c. Freedom to form Associations and Union.
- d. Freedom to move freely throughout the territory of India.
- e. Freedom to reside and settle in any part of India.
- f. Freedom to practise any profession or to carry on any occupation, trade or business.

The purpose of providing these freedoms is to build and maintain an environment for proper functioning of democracy. However, the Constitution has authorized the State to impose certain reasonable restrictions on each of them.

### 3 Right against Exploitation

Have you ever thought how many ways exploitations take place in our society? You might have seen a small child working in a tea shop or a poor and illiterate person being forced to work

in the household of a rich person. Traditionally, the Indian society has been hierarchical that has encouraged exploitation in many forms.

Which is why, the Constitution makes provisions against exploitation. The citizens have been guaranteed the right against exploitation through Articles 23 and 24 of the Constitution.

Prohibition of traffic in human beings and forced labour: Traffic in human beings and begar and other similar forms of forced labour are prohibited and any breach of this provision shall be an offence punishable in accordance with law. Traffic in human beings means selling and buying of human beings as material goods. Trafficking, especially of young women, girls and even boys is continuing as an illegal trade. downtrodden sections were made to do work free of charge for landlords and other powerful people. This practice was Begar or forced labour. Prohibition of employment of children in factories, etc.: As the Constitution provides, no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment. This right aims at eliminating one of the most serious problems, child labour, that India has been facing since ages. Some important laws protecting the rights of the vulnerable are:

### THE PREVENTION OF ATROCITIES (AGAINST SC/ST) ACT, 1989

The Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 was enacted by the Parliament of India (Act 33 of 1989), to prevent atrocities against scheduled castes and scheduled tribes. The Act is popularly known as POA, the SC/ST Act, the Prevention of Atrocities Act, or simply the Atrocities Act.

The SCs and STs (Prevention of Atrocities) Act, 1989 with stringent provisions (which extends to whole of India except the State of Jammu & Kashmir) was enacted on 9 September 1989. Section 23(1) of the Act authorises the Central Government to frame rules for carrying out the purpose of the Act. The purpose of the Act was to help the social inclusion of Dalits into Indian society, but the Act has failed to live up to its expectations.

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the said Act') was enacted in order to prevent the commission of

atrocities against members of Scheduled Castes and Scheduled Tribes and to provide for special courts for the trial of offence under the said Act as also to provide for the relief and rehabilitation of victims of such offences —Atrocity|| has been defined under section 2 of the said Act to mean an offence punishable under section 3.

Main provisions of the Act are as under. -

Defines offences of atrocities and prescribes punishment there for, (Section 3).

Punishment for willful neglect of duties by non-SC/ST Public servants (Section 4)

Designating for each District a Court of Session as a Special Court for speedy trial of offences under the Act (Section 14).

Appointment of Public Prosecutors/Special Public Prosecutors for conducting cases in special courts (Section 15).

Preventive action to be taken by the law and order machinery (Section 17).

Salient provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 notified under the POA

Act are as under:-

It defines various types of atrocities against the SCs/STs. These include forcing an SC or ST person from drinking or eating any inedible or obnoxious substance; forcibly removing clothes; parading him/her naked or with painted face or body; compelling to do 'begar' or other forms of forced labour. There are stringent punishments prescribed for such acts of atrocities. Crimes committed by non-SCs or STs are considered as severe offences whereas there is no mention of any crimes done by the SCs or STs themselves. It provides for compensation, rehabilitation and relief for victims of such atrocities. It also makes provisions for setting up a mandatory, periodic monitoring system at the district, state and national levels.

## CONSTITUTIONAL AND LEGAL RIGHTS OF WOMEN

THE DOMESTIC VIOLENCE ACT, 2005

The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Presently, where a woman is subjected to cruelty by her husband or his relatives, it is an offence under Section 498-A of the Indian Penal Code. The civil law does not however address this phenomenon in its entirety.

It is, therefore, proposed to enact a law keeping in view the rights guaranteed under articles 14, 15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect the women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society. The Bill, seeks to provide for the following:- It covers those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage or through a relationship in the nature of marriage or adoption. In addition, relationships with family members living together as a joint family are also included. Even those women who are sisters, widows, mothers, single women, or living with the abuser are entitled to legal protection under the proposed legislation. However, whereas the Bill enables the wife or the female living in a relationship in the nature of marriage to file a complaint under the proposed enactment against any relative of the husband or the male partner, it does not enable any female relative of the husband or the male partner to file a complaint against the wife or the female partner.

(ii)

It defines the expression —domestic violence|| to include actual abuse or threat or abuse that is physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition. It provides for the rights of women to secure housing. It also provides for the right of a woman to reside in her matrimonial home or shared household, whether or not she has any title or rights in such home or household. This right is secured by a residence order, which is passed by the Magistrate. It empowers the Magistrate to pass protection orders in favour of the aggrieved person to prevent the respondent from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any other place frequented by the aggrieved person, attempting to communicate with her, isolating any assets used by both the parties and causing violence to the aggrieved person, her relatives or others who provide her assistance from the domestic violence.

It provides for appointment of Protection Officers and registration of non-governmental organisations as service providers for providing assistance to the aggrieved person with respect to her medical examination, obtaining legal aid, safe shelter, etc.

5

## VISHAKHA GUIDELINES FOR PREVENTING SEXUAL HARASSMENT AT WORKPLACE, 1997

The Supreme Court in the case of Vishakha v. the State of Rajasthan laid down for the first time strictures that aimed at protecting a woman employee by giving her right to a safe/healthy working environment. In the decision, the Court also defined sexual harassment and recognised it to be a paramount violation of human rights. The court thereby laid down certain mandatory and binding guidelines to be followed by all workplaces, belonging to the public and private sectors and made it mandatory for every employer to ensure a safe, harassment free working environment for the women.

### THE VISHAKHA CASE

Bhanwari Devi was a village-level social worker or a saathin of a development programme run by the State Government of Rajasthan, fighting against child and multiple marriages in villages.

As part of this work, Bhanwari, with assistance from the local administration, tried to stop the marriage of Ramkaran Gujjar's infant daughter who was less than one year old. The marriage took place nevertheless, and Bhanwari earned the ire of the Gujjar family. She was subjected to social boycott, and in September 1992 five men including Ramkaran Gujjar, gang raped Bhanwari in front of her husband, while they were working in their fields. The days 22 that followed were filled with hostility and humiliation for Bhanwari and her husband. The only male doctor in the Primary Health Centre refused to examine Bhanwari and the doctor at Jaipur only confirmed her age without making any reference to rape in his medical report. At the police station, the women constables taunted Bhanwari throughout the night. It was past midnight when the policemen asked Bhanwari to leave her lehenga behind as evidence and return to her village. She was left with only her husband's bloodstained dhoti to wear. Their pleas to let them sleep in

the police station at night, were turned down. The trial court acquitted the accused, but Bhanwari was determined to fight further and get justice. She said that she had nothing to be ashamed of and that the men should be ashamed due to what they had done. Her fighting spirit inspired fellow saathins and women's groups countrywide. In the months that followed they launched a concerted campaign for justice for Bhanwari. On December 1993, the High Court said, "it is a case of gang-rape which was committed out of vengeance". As part of this campaign, the groups had filed a petition in the Supreme Court of India, under the name 'Vishaka', asking the court to give certain directions regarding the sexual harassment that women face at the workplace. The result is the Supreme Court judgement, which came on 13th August 1997, and gave the Vishaka guidelines.

The Guidelines issued by the court said that

It shall be the duty of the employer or other responsible persons in workplace or other institutions to prevent or deter the acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.

The rules/regulations of the government and the public sector bodies relating to conduct and discipline should include rules/regulation prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender. Where such conduct amounts to a specific offence under the Indian Penal Code or under any law, the employer shall initiate appropriate action in accordance with law by making a complaint with an appropriate authority.

An appropriate complaint mechanism should be created in the organisation for redressal of the complaint made by the victim. The Complaints Committee will be headed by a woman and not less than half of its members shall be women.

India is rapidly advancing in its developmental goals and more and more women are joining the workforce. It is the duty of the state to provide for the wellbeing and respect of its citizens to prevent frustration, low self-esteem, insecurity and emotional disturbance, which, in turn, could affect business efficacy, leading to loss of production and loss of reputation for the organisation or the employer. In fact, the recognition of the right to protection against sexual harassment is an intrinsic component of the protection of women's human rights. It is also a step towards providing women independence, equality of opportunity and the right to work with dignity.

## CONSTITUTIONAL AND LEGAL RIGHTS OF CHILDREN

### THE CHILD LABOUR (PROHIBITION REGULATION) ACT, 1986

Child Labour (Prohibition & Regulation) Act, 1986 was the culmination of effort and ideas that emerged from the deliberations and recommendations of various committees on child labour. Significant among them are the National Commission on Labour (1966-69), Gurupadaswamy Committee on Child Labour (1979). Sanat Mehta Committee (1984) and others.

The basic objective of the Child Labour (Prohibition & Regulation) Act 1986, is to ban employment of children below the age of 14 years in factories, mines and hazardous employment's and to regulate the working conditions of children in other employments The act:

Bans the employment of children, i.e. those who have not completed their 14th year, in specified occupations and process; Regulates the working conditions of children in occupations where they are not prohibited from working; Lays down penalties for employment of children in violation of the provisions of this Act, and other Acts which forbid the employment of children ;

Brings out uniformity in the definition of "Child " in related laws.

Section 5 of the Child Labour (Prohibition & Regulation) Act 1986, provides for the constitution of a child labour Technical Advisory Committee to advise the Central Government for the purpose of addition of occupations and processes to the schedule of the Act.

More recently ,employment of Children as domestic servants and in dhabas(crude form of hotels) has been banned from October 2006.

## CONSTITUTIONAL AND LEGAL RIGHTS OF PEOPLE WITH DISABILITIES

THE PERSONS WITH DISABILITIES ACT, 1995;

EQUAL OPPORTUNITIES, PROTECTION OF

## RIGHTS AND FULL PARTICIPATION

—The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995|| has come into enforcement on February 7,1996 as an important landmark and significant step in the direction to ensure full participation of persons with disabilities in the nation building. The Act provides, preventive and promotional aspects of rehabilitation like education, employment and vocational training, reservation, research and manpower development, creation of barrier-free environment, rehabilitation of such persons, unemployment allowance, special insurance scheme for the disabled employees and establishment of homes for persons with severe disability etc.

Main Provisions of the Act are:

Prevention and Early Detection of Disabilities:- Surveys, investigations and research shall be conducted to ascertain the cause of occurrence of disabilities. Various measures shall be taken to prevent disabilities. Staff at the Primary Health Centre shall be trained to assist in this work. All the children shall be screened once in a year for identifying —at – risk|| cases. Awareness campaigns shall be launched and sponsored to disseminate information. Measures shall be taken for pre-natal, perinatal, and postnatal care of the mother and child.

Every child with disability shall have the rights to free education till the age of 18 yrs in integrated schools or special schools .Appropriate transportation, removal of architectural barriers, restructuring of curriculum and modifications in the examination system shall be ensured for the benefit of children with disabilities. Children with disabilities shall have the right to free books, scholarships, uniform and other learning material. Special schools for children with disabilities shall be equipped with vocational training facilities. Non-formal education shall be promoted for children with disabilities.

Employment- Suitable schemes shall be formulated for the training and welfare of persons with disabilities. Providing equality in employment is also equally important. Affirmative Action- Allotment of land shall be made at concessional rates to the people with disabilities for House, Business ,Special Recreational Centres, Special Schools and Factories by Entrepreneurs with Disability. Non-Discrimination- Public buildings, rail compartments, buses, ships and air-crafts will be designed to give easy access to disabled people. In all public places and in waiting rooms,

toilets shall be wheel chair accessible. Braille and sound symbols are also to be provided in lifts. All the places of public utility shall be made barrier-free by providing ramps.

Grievance Redressal- In case of violation of rights as prescribed in that act, people with disabilities may move an application to Chief Commissioner for Person with Disabilities in the Centre or Commissioner for Persons with Disabilities in States.