CONSTITUTIONAL AND LEGAL PROVISIONS FOR WOMEN, 
SCHEDULED CASTES AND SCHEDULED TRIBES

The women, Scheduled Caste and Scheduled Tribes in the Hindu Social 
hierarchy exposed to them to ill treatment, several social disabilities, and 
derprivation of educational, social, economical, cultural and political 
opportunities. In India, there are many Constitutional and legal provisions to 
safeguard the interest of women, Scheduled Castes and Scheduled Tribes. The 
framers of the Constitution were also aware of the prevailing miserable and 
appalling conditions of these weaker sections that had remained for behind and 
separated from national and social life. The women, Scheduled Castes and 
Scheduled Tribes are worst sufferers from many decades. For the purpose of 
protect the interest of women, Scheduled Castes and Scheduled Tribes the 
Constitutional framers (Especially Dr. Ambedkar) incorporated many provision 
in the Indian Constitution. The Constitution of India guarantees some of the 
privileges to these sections of people. The privileges include, Justice, social, 
economic and political, liberty of thought, expression, belief, faith and worship 
and equality of status and opportunity. Some additional privileges in respect of 
education, employment and political participation are provided to these 
sections of society.

After Independence, the legislature took a more positive attitude in the 
matter of law reform and undertook to enact some of the measures. Various 
laws have been enacted to deal with the personal matters like, marriage, 
divorce and succession etc., of the women. In order to prevent the violence 
against women, to combat the evil of the dowry and to curb the immoral 
activities and anti social activities certain criminal laws has been enacted. 
Number of labour and Industrial laws provide for the protection and welfare of 
the women, which include, maternity benefit, prohibition of employment of 
women in dangerous activities of working women.

So far as, the Scheduled Castes and Scheduled Tribes are concerned, to 
protect their Civil Rights. Prevent the atrocities on them and eradicate the 
bonded labour system, etc., certain legislations are passed by the parliament.
PART –A
Constitutional and Legal Provisions for Women

4.1 The Constitutional Provisions for Women:

The Preamble of Indian Constitution:

The preamble to the Constitution envisages certain objectives to be achieved which is as following:

*We the people of India, having solemnly resolved to constitute India into a sovereign, socialist, secular, Democratic, Republic*¹ and to secure to all its citizens:

**Justice**, social, economic and political

**Liberty** of thought, expression, belief, faith and worship

**Equality**, of status and of opportunity and to promote among them all Fraternity assuring the dignity of the Individual and the unity and Integrity of the Nation.²

The preamble contains “the ideals and aspirations of the people of India”. One of the golden ideals is “the equality of status and of opportunity”. This objective has been achieved by and large, by providing equality clause in the Constitution of India. The equality clause expressly prohibits discrimination on the basis of race, religion, caste, sex and place of birth and guarantees equality before the law and equal protection of laws irrespective of race, religion, caste, sex etc., Thus the Indian Constitution has ensured equal status to all i.e., not only between men and men, women and women, but also between men and women.³

4.2. Right to Equality:

Indian Constitution states that “the state shall not deny to any person equality before the law of equal protection of the laws.”⁴ This provision

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¹ 42 Amendment Act of Constitution, 1976
² Ibid.
³ Articles 14 and 16 of the Constitution of India.
⁴ Article 14 of the Indian Constitution.
guarantees to all persons, including women, the right to equality in law. Article 14 of the Constitution of India prohibits class legislation but permits reasonable classification. The classification must be based on some “Intelligible differentia” and should have a “rational nexus” with the object sought to be achieved by the act or legislation “women” can be treated as a class and special laws can be made in their favour. Various provisions have been declared valid and with in the frame work of the Constitution of India, where women have been given a special treatment. Such provisions of law have been declared by the courts as “Permissive Classification” not violating the principle of equality under Article 14 of the Constitution provided the classification is not arbitrary, artificial or evasive” but must be based on some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the legislation.

An article 14 of the Constitution recognizes “women” as a class. The Supreme Court has declared that women as a class were different from men as a class, and for this, the legislature had merely removed the disability attaching to women by passing the Hindu succession Act, 1956.

4.3 Prohibition of Discrimination on the grounds of Sex, Caste etc.

Constitution is more specific instance to right of equality which prohibits the state from making discrimination “against any citizen on grounds only of religion, race, sex, and place of birth or any of them”. This right is available against any individual being subjected to discrimination in matters of rights, privileges and immunities. To effectuate equality between men and women the Constitution of India prohibits the state to make any kinds of discrimination on the basis of sex specifically. Not only this but the Constitution has gone further and empowered the state to a positive act where is it is needed, by giving “Preferential Treatment” in favour of women. There can be no discrimination in general on the ground of sex, but special laws can

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6 Jogindra Singh v. s Kehar Sing, AIR 1965 Pun 407.
7 Article 15 of the Constitution
be made in favour of women. The reason is that woman’s physical structure and the performance of maternal functions places her to a disadvantage in the struggle for subsistence and her physical well-being becomes an object of public interest and care in order to preserve the strength and vigour of the race.

Discriminate on the ground of sex is violation of Article 15, because the Constitution prohibits the discrimination on the ground of sex, refused the admission to the college on the ground of sex it is violation of the Article 15 of the Constitution of India. The Calcutta High Court in another case, observed that, discrimination on the ground of sex alone it is violation of Article 15 of the Constitution. Constitution states that “Nothing in this article shall prevent the state from making any special provision for women”. This provision enables the state to make special provisions in favour of women. So, this 15(3) provision has been described by Constitution experts as ‘protective’ discrimination for women.

This is intended to give an initial advantage to women so that they could compete with men in various fields effectively. Since women were suppressed for a very long period, they lost their initiative, confidence in their capacity to face problems and opportunity to equip themselves for various types of professions and avocations. It is because of these facts the Constitution makers considered them weaker sections of the people who required some definite help and initial advantage to compete with men in all spheres of life. Therefore, this provision has been described by various writers as “Protective discrimination”.

4.4. Special provision for women.

Article 15 to ensure equality between men and women and a provision must be appended to it enable the state to make special provision for women. The latter view finally prevailed and clause (3) of Article 15 was the result. The framers of the Constitution took a pragmatic view in incorporating this

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8 University of Madras v. Santa Bai, AIR 1952 Ma 57
10 Article 15 (3) of the Constitution of India.
clause because the expected that this provision might compensate the loss of opportunities suffered by women during the last several centuries. So, Article 15 (3) of the Constitution may be described as a compensatory provision for women.

The provisions in Article 15(3) has enabled the state to make special provisions for women, for example, separate educational institutions exclusively for women, reservation of seats or places for women in public conveyances and places of public resort. Under Article 15(3) the state could discriminate in favour of women against men, but it, could not discriminate in favour men against women. Accordingly reservation of seats for women in election valid and protected by Article 15(3) of the Constitution of India.12 Providing facilities in favour of female as Constitution that may be educational, job or voting facilities, etc.13 it is valid under Article 15(3).

4.5 Equality of Opportunity in Matters of Public Employment:

Another specific example of equality of status is the right to equality of opportunity for citizens of India provided under Article 16 of the Constitution of India. Constitution provides that there shall be equality of opportunity in matters relating to employment or appointment to any office under the State.14

This right to equality is only in employment or appointment under “the state” that is in matters of recruitment, promotion, wages, termination of employment, periodical increments, leave, gratuity, pension, age of superannuation, etc., But this equality envisaged under Article 16 of the Constitution is the equality amongst equally placed persons equality amongst the same class of persons and not amongst different classes of persons. The Constitution lays down specific grounds on which citizens are not to be discriminated against each other in matters of opportunity and officers under the state. These are religion, race, caste, sex, decent, place of birth, residence or

12 Dattaraya Motiram Vs State of Bombay, AIR 1953 Bom. 842.
14 Article 16 (1) of the Constitution of India.
any of them.\textsuperscript{15} Discrimination on the basis of sex has been specifically prohibited under the Constitution so as to bring women at par with men. Sex shall not be the sole ground of ineligibility for any post. Denial of promotion to a woman in employment that is discrimination on ground of sex, which is violation Article 16 of the Constitution\textsuperscript{16}. Equality of opportunity has been demonstrated and emphasized by the supreme court of India in the case of C.B. Muthamma Vs. Union of Indian.\textsuperscript{17} Discrimination cannot be made on the basis of sex in state services; the principle of equality in matters of employment has been illustrated in the case of Air India Vs. Nergesh Meerza also.\textsuperscript{18}

\textbf{4.6 Prohibition of Traffic in Human Beings and Forced Labour.}

The Constitution of India “Prohibits Traffic in human being and begar and other similar forms of forced labour”.\textsuperscript{19} Begar and “Other forms of forced labour” are prohibited by the Article, 23. Begar means involuntary work without payment. What is prohibited by this clause is the making of a person to render service where he was lawfully entitled not to work or to receive remuneration of the services rendered by him. This clause does not prohibit forced labour as a punishment for a criminal offence, compulsory service for public purposes an in imposition such services the state.

“Traffic in human beings” means selling and buying men and women like goods and includes immoral traffic in women and children for immoral or other purposes. For the purpose of prevent these kinds immoral trafficking the parliament passed the “Suppression of Immoral Traffic in Women and Girls Act, 1956.”\textsuperscript{20}

Bonded labour is an instance of forced labour with in the meaning of Article 23. The parliament in order to prevent the bonded labour, passed the

\textsuperscript{15} Article 16 (2) of the Constitution of India.
\textsuperscript{16} AIR 1977 Ker LT 677 (682)
\textsuperscript{17} AIR 1979, SC 1868
\textsuperscript{18} AIR 1981 SC 1829.
\textsuperscript{19} Article 23 of the Constitution of India
Bonded labour system (Abolition) Act 1976. 21 Even labour taken from prisoners without paying proper remuneration was “forced labour” and violation of Article 23 of the Constitution. 22 But, under Article 23 (2) the state is empowered to impose compulsory service for public services for public purposes. But in imposing such compulsory service the state cannot make any discrimination on the ground of the religion, race, caste, or class, sex or any of them. For example, police service, Military Service, or social service can be imposed because they are neither beggar nor traffic in human beings. 23

4.7 Equal pay for Equal work for both men and women:

The Constitution of India has provided in part IV the Directive principles of state policy. These principles lay down certain economic and social goals to be achieved by the various Governments in India i.e., the central Government and the State Governments. These directives impose certain obligations on the state to take positive action in certain directions in order to promote the welfare of the people.

The Constitution proclaims “Equal pay for equal work for both men and women”. 24 It is another manifest declaration of the Constitution to achieve equality of status is a directive under Article 39. The principle underlying this provision is “equal wages for equal work” irrespective of “Sex”.

In furtherance of these principles suitable provisions have been included in various laws passed from time to time. For example, The Equal Remuneration Act, 1976, The Factories Act, 1948, The Mines Act, 1952, The Workman’s Compensation Act, 1923, The Plantation Labour (Amendment) Act, 1981 and several other legislations. In this regard various International Labour conventions, recommendations of the InternationalLabour Organization 1951, which provided kept in view. For example, Equal Remuneration convention 1951, which provided for equal remuneration for

21 Bandu Mukti Morch Vs. Union of India., AIR 1984 SC 802.
22 Deena Vs. Union of India, AIR 1983 SC 1155
24 Article 39 (d) of the Constitution of India.
work of equal value regardless of “Sex”, was ratified by India in the year 1958 and consequently, The Remuneration Act was passed in 1976. “Equal Pay for equal work though not a fundamental right” is certainly a Constitutional goal and capable of enforcement through Constitutional remedies under Article 32 of the Constitution. Article 39(d) of the Constitution of India proclaims “equal pay for equal work for both men and women” as directive principle of state policy, means equal pay for equal work for every one and as between the sexes. This principle has also been reiterated by the Supreme Court in Bagwan Das Vs. state of Haryana and R.D. Gupta Vs. Lt. Governor, Delhi Administration.

4.8 Provisions for Just humane conditions of work and Maternity:

The Constitution of India provides some other principles of state policy to improve the status of women and for their protection. Among the principles one of the principles is, “the state shall make provisions for securing just and humane conditions of work and for maternity relief”. Under this provision state is obligation to provide by suitable legislation just and humane conditions in various industries and maternity benefit to woman. For implementing this provision the central Government passed the maternity Benefit Act, 1961. This obligates the employers to provide maternity leave for 6 weeks each before after the delivery of the child. In order to protect the health of the mother and the child, it is necessary that she should be made free from being in work during this period. Women are naturally, physically weak, women require extra and special care during advanced state of pregnancy, confinement and post-natal period. Therefore, these clauses provisions are very require.

Article 42 of the Constitution is an important provision of the Constitution, which provides social justice to the women before their pregnancy and after their pregnancy. The same right has also been provided in

25 D.S. Nakara Vs. Union of India AIR 1983 SC 130
26 Randir Sing Vs. Union of India AIR 1982 SC 871
27 AIR 1987 SC 2049
28 AIR 1987 SC 2986
29 Article 42 of the Constitution of India.
the International Covenant. The framers of the Constitution have not only provided the right to work in the directive principle of state policies, but also provided the right to secure just and humane conditions of work. They have been influenced by various International Covenants, which provide these rights.

In B. Shah Vs. Labour court, Coimbatore, the Supreme Court of India has observed that, in interpreting the provisions of the Maternity Benefit Act, 1961 beneficent rule of construction should be adopted by the courts which would enable the women workers not only to subsist but also to make upper dissipated energy, nurse her child, preserve her efficiency as a worker and to maintain the level of her pervious efficiency and output.

4.9 Uniform Civil Code for all Citizens:

There are many situations in which women belonging to a particular community are discriminated women like, Hindu, Muslim, Christian, Parsi and Jew women cannot be treated alike in the Matters of Marriage, divorce, inheritance, Maintenance and adoption etc., only for the reason that they belong to particular community and their the objectives enshrined in the preamble to our Constitution cannot be achieved. The Indian Constitution, in its part IV under the directive principle of state policy provides that, the state shall endeavor to secure for its citizens a uniform civil code through out the territory of India. The Object of this Article appears to be to achieve gender justice. This article has been framed for the achievement of the objectives of enshrined in the preamble to the Constitution.

The Chairman of the drafting committee Dr. B.R. Ambedkar stated that in our country there is practically a civil code, uniform in its content and applicable to the whole of the country. He cited many instances like uniform, Criminal law, Transfer of property and Negotiable Instruments Act which are

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30 Article 10 (2) of the International Covenant on Economic, Social and Cultural right.
31 Ibid.
32 AIR 1978 SC 12
33 Article 44 of the Constitution of India
applicable to one and all. However he conceded that the only province, the civil law has not been able to invade so far as Marriage and Succession. He also dispelled the arguments of certain Muslim members that the Muslim law is immutable and uniform thought India. He cited the example of the North – West frontier province which was not subject to the shariat out law prior to 1935 and until then followed the Hindu law in the matter of succession etc., 34

Dr. Ambedkar also opined that it is perfectly possible that the future parliament may make a provision by way of making a beginning that the code shall apply only to those who make a declaration that they are prepared to be bound by it, so that initial stage, the application of the code may be purely voluntary. 35 The foregoing discussion clearly establishes that the framers of the Constitution were aware of the gender injustice and sexual inequality of women and they incorporated Article 44 in the Constitution hoping that it would be introduced in future at the appropriate time. It is really unfortunate that even after 60 years of Independence; the state did not find it necessary to make any efforts to honor this Constitutional commitment.

The Supreme Court is also regretted that Article 44 remained as a dead letter and extended section 125 of Criminal Procedure Code to Muslim women divorces. Palpably to undo the effect of Shah Bano the Muslim Women (Protection of Rights on Divorce) Act, 1986 was passed. Reading down the section 3 of the Act in Daniel Latifi, 36 the Supreme Court ruled that a Muslim husband is liable to make provision for maintenance of the divorced wife even after the iddat period. In Sarala Mudgal Vs. union of India 37 and Jorden Diengdeh Vs. S.S Chopra, case 38 the court emphasized the need to have Uniform Civil Code in the country in the overriding social interest.

34 CAD Vol. 111 P. 550
35 CAD Vol. 111 P. 551
36 AIR 2001 SC 3958
37 AIR 1995 SC 1531
38 AIR 1985 SC 945 (1985 2 Sec. 556)
4.10 Legal provisions for women:

Some enactments may be intended to exclusively women to uplift the dignity and status of women in Indian society. Following are the enactments made for the protection and safeguarding the Indian women they are,

1. The Factories Act 1948
2. The Employees State Insurance Act 1948
3. The Mines Act 1952
4. The Hindu Marriage Act 1955
5. The Hindu Succession Act 1956
6. The Suppression of Immoral Traffic Act, 1956
7. The Maternity Benefit Act 1961
8. The Dowry prohibition Act 1961
9. The Beedi and Cigar Worker’s Act 1966
10. The Equal Remuneration Act 1976
11. The Commission of Sati Prevention Act 1987

4.10.1 The Factories Act, 1948:

The Factories Act, 1948 is the most important legislation which ensures welfare and safety of women workers in various industrial units. In Industries women are employed to do both skilled and unskilled work. The main objective of this legislation is to protect all workers including the women workers from being subjected to unduly long hours of bodily strain or Manual labour. No women or child should be employed in any part of a factory for pressing cotton in which a cotton opener is at work. 39 The employer of an Industry should provide sufficient latrine and urinal accommodation for female workers where there is adequate lighting and ventilation. The accommodation

39 Section 27 of the Factories Act, 1948.
Constitutional & Legal Provisions

provided should be maintained in a clean and sanitary condition.\textsuperscript{40} Where in a factory more than thirty women workers are employed, the employer should provide suitable room or rooms for such children who are under the age of 16 years are brought by their Mothers to the work place.\textsuperscript{41} This is Mandatory to protect the interests of the children of women workers. Under the factories Act 1948, the state Government is empowered to make rules providing facilities for washing and changing their cloths. Besides rules may also be made to provide free milk or refreshments for the children. In order to feed their children intervals must be provided to the mothers.

The women workers are also prohibited from working near or on dangerous Machine which is in motion as risk of injury is more probable.\textsuperscript{42} The Factories Act 1948 also imposes some restrictions on the employment of women\textsuperscript{43} such as;

a. Women workers should not be compelled or allowed to work in any Factory before 6 A.M and after 7. P.M. This shows that, they are required to work only between the hours of 6 A.M. and 7 P.M.
b. The employer should not change the shifts except after a weekly holiday or any other holiday.

Besides, the State Government is authorized \textsuperscript{44} to make rules for prohibiting or restraining the employment of women, children in manufacturing process or operation carried on in a factory, which exposes them to risk or bodily injury. The women workers have the right to obtain information from their employer relating to their health and safety measures.

4.10.2 The Employee’s State Insurance Act, 1948:

Another Most important Social Welfare legislation for the protection of women workers as well as all workers in any factory is the Employee’s state Insurance Act, 1948. Under this Act, the insured women workers are entitled

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\textsuperscript{40} Section 19 (1) of the Factories Act, 1948 \\
\textsuperscript{41} Section 48 of the Factories Act, 1948 \\
\textsuperscript{42} Section 22 (2) of the factories Act, 1948 \\
\textsuperscript{43} Section 66 of the Factories Act, 1948 \\
\textsuperscript{44} Section 87 (b) of the Factories Act, 1948 \\
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for many benefits like sickness benefit, disablement benefit, dependent’s benefit, Medical benefit and funeral expenses as well as maternity benefits. The Maternity benefit is normally provided for confinement, Miscarriage, sickness arising out of pregnancy confinement, premature birth of a child or miscarriage or death\(^{45}\).

4.10.3 The Mines Act, 1952:

This is another legislative development to protect the women workers working at Mining operations. According to the Mines Act, 1952 no women worker should be employed in any part of a mine, which is below the ground. If they are employed in any part of a mine above the ground, they are to work only between the hours of 6 A.M. and 7 P.M\(^{46}\). The central Government may also vary such time but employment of women between the hours of 10 P.M. and 5 A.M. is strictly prohibited. In order to protect the safety and interests of women, employment of women workers in a mine which is below the ground is prohibited as the mining activities are so hazardous, which might injure the health of the women. The Mining process is basically a dangerous process where in the dust created would harm the health and damage the body of women workers. Therefore, their employment in mines which are below the ground is prohibited.

4.10.4 The Hindu Marriage Act, 1955:

Marriage is the basic institution in all progressive societies which has been ordained for the protection of the society from foul and immoral acts on the one hand and continuance of the chain of the society itself on the other. Fundamentally, marital relations regulate human behaviour between persons of opposite sex. Norms set up for regulating the marital behaviour are different from place to place and from society to society. So far as the Hindu Society

\(^{45}\) Section 46 of the Employee’s State Insurance Act, 1948

\(^{46}\) Section 46 of the Mines Act, 1952
was concerned, it once was closely connected with religious ordinances and hence the impact of religious element had more effect than any other element. Amongst the Hindus, Marriage was considered to be holy union and the purpose behind this union was to attain spiritual benefits, for that reason the Marriage was a religion necessity.

The position of Hindu woman under the Hindu Marriage Act 1955 is improved, in a family she has the place of honour, a Hindu can not have more than one living wife. It was the first codified Hindu Law even to the Marriage the parties should be sound mind, a minimum of 18 years for the girl and 21 years for the boy. Registrations of the Marriage are equally applicable to the bride and bridegroom. The fundamental purpose of Marriage was to unite both the parties, it was ultimately the right of the husband as well as of the company of the other and the concept of society included type of conjugal obligation which was expected from a husband to wife and vice versa.

The Hindu Marriage Act, 1955 permits divorce to both parties: a. living in adultery. b. Conversion c. Insanity. d. Communicable leprosy e. Veneral disease, f. renunciation g. disappearance for seven years or more h. failure to comply with decree for restitution of conjugal rights. A wife has two additional grounds. a. if the husband has another living wife: and b. if he has been guilty of rape, sodomy or bestiality. It is recommended that cruelty and desertion should be included as ground for divorce. The Marriage is solemnized as per the customary ceremonies prevalent in the community to which the bride and bridegroom belong.

4.10.5 The Hindu Succession Act, 1956:

The Hindu Succession Act, 1956 made some radical changes, the most important being equal rights of succession between male and female heirs in the same category (brother and sister, son and daughter). It also simplified the

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47 Section 5 of the Hindu Marriage Act, 1955
48 Section 8 of the Hindu Marriage Act, 1955
49 Section 9 of the Hindu Marriage Act, 1955
50 Section 13 of the Hindu Marriage Act, 1955
51 Section 7 of the Hindu Marriage Act, 1955
law by abolishing the different system prevailing under the Mitakshara and Dayabhaga Schools. This Act made radical changes in the rights of a Hindu Women to Succeed to both movable and immovable property acquired by female Hindu by inheritance or device or at a partition or in lieu of Maintenance or by gift from any person, before or after her marriage.\textsuperscript{52}

This is the first statutory provision dealing with succession to the property of female Hindu. For the purpose of succession a female Hindu’s property is divided into three categories. 1. Property inherited by a female from her father or mother 2. Property inherited from her husband or father in-law and 3. Property which she herself required any other manner from any other source as her absolute property.\textsuperscript{53} Its greatest progressive feature is the recognition of the right to women to inherit and abolition of the life estate of female heirs.

An analysis of the various provision of the Act makes it clear that the position of women has improved considerably, as compared to the Pre-Act position in the matter of succession. The class I heirs of a man who take the property in equal shares as absolute owners are the widow the mother, son, daughter, widow of a predeceased son and sons and daughters of predeceased sons or daughters. All these female class I heirs take their shares on part with their male counter parts as per the scheme of distribution.\textsuperscript{54} However, a female heir, not being an unmarried daughter is entitled to reside in the dwelling house. A deserted wife or a female separated from her husband or widows are entitled to a right of residence in the dwelling house.\textsuperscript{55} A share in a dwelling house cannot be claimed by married daughter.

4.10.6 The Suppression of Immoral Traffic Act, 1956:

The Act has incorporated several provisions for the protections of women who are sexually exploited for commercial purposes. In India there is a

\textsuperscript{52} Section 14 of the Hindu Succession Act, 1956
\textsuperscript{53} Section 15 of the Hindu Succession Act, 1956
\textsuperscript{54} Section 10 of the Hindu Succession Act, 1956
\textsuperscript{55} Section 23 of the Hindu Succession Act, 1956
Constitutional prohibition of traffic in human beings. Constitution lays down in very clear terms that traffic in human beings is prohibited and any contravention of this provision will be an offence, punishable in accordance with law.\footnote{Article 23 of the Constitution of India}

The Suppression of Immoral Traffic Act, 1956 has been amended twice in 1978 and 1986 with the objective of making the penal provision in the act more stringent and effective. The main purpose of this act is to punish brothel keepers, pimps and persons who live on the earnings of prostitution or are involved in the trafficking of persons for the purpose of prostitution. However, these provisions of the act are not much used. The provisions most used are those which punish prostitutes, as prostitution with in or in the vicinity of the public place and soliciting or seducing for the purpose of prostitution are prohibited.\footnote{G.B. Reddy “women and Law” Gogia Law Pub. Hyderabad . 5th Edn. 2006, P.137.} The legal provisions have not been effective in eradicating prostitution. Prostitution itself is not a legal offence, but its practice in near public place makes it an offence. Where woman is engaged in prostitution who is said to be the offender and not the men visiting her. There are many loopholes in implementing the law such as, the façade of decent houses for prostitution, inadequate punishment and provision demanding witnesses from the locality. Women continue to get sold and bought in the country. Rehabilitation facilities for the prostitutes are almost non-existent and life for “rescued” women often turns into a night mare.

\textbf{4.10.7 The Maternity Benefits Act, 1961:}

Another Significant legislation confining to women workers before and after child birth is Maternity Benefit Act 1961. The Main objective of this legislation is to provide some benefits for women relating to their Maternity. This is also a social welfare legislation to secure social justice for women workers in Industrial Units. The Maternity Benefit Act provides every woman to claim all kinds of Maternity benefits and employer is obligated to pay the
same at the rate of average daily wages for the period of her actual absence. Where a woman who is entitled to Maternity benefit or any amount dies before receiving such benefit or amount, the amount should be paid to her nominee or where no nominee is indicated, then the same should be paid to her legal representative\textsuperscript{58}. Spouse a pregnant woman is subjected to miscarriage or Medical termination of Pregnancy, under such circumstances, on production of proof; she is entitled for leave with wages at the rate of Maternity benefit\textsuperscript{59}. Where a pregnant, who has undergone tubectomy operation is also entitled for leave with wages at the rate of maternity benefit for period of two weeks immediately following the day of her tubectomy operation\textsuperscript{60}. For the purpose of claiming Maternity Benefits a woman who is a pregnant or has delivered a child or has undergone Miscarriage or Medical termination of pregnancy or subjected to tubectomy operation or where she is suffering from any illness arising out of pregnancy, delivery or premature birth of a child or miscarriage should produce a proof for that purpose from a competent Medical practitioner.

### 4.10.8 The Dowry Prohibition Act 1961:

One of the burning problem of the Indian Society is the dowry demand and commission of cruelty and atrocity by the husband or in-laws in case when the woman brings insufficient dowry. Greedy families demand and expect a very huge dowry. It is because of the fact that some families acquired huge wealth through fair or unfair means and have started purchasing well-placed bridegrooms for their daughters. They purchase them by hammering highest bids. It created an unfair competition of demanding and giving heavy amount of dowry. If a bride does not bring sufficient dowry according to the expectations of her husband’s family, she suffers atrocities and brutality in husband’s home. There were thousands of cases of daughter-in-law’s plight and predicament in their in-law’s homes, high incidents of criminal assault,

\textsuperscript{58} Section 7 of the Maternity Benefit Act, 1961.
\textsuperscript{59} Section 9 of the Maternity Benefit Act, 1961.
\textsuperscript{60} Section 9 (A) of the Maternity Benefit Act, 1961.
criminal brutality and bride burning. Every morning in the newspapers sickly reports of “Dowry deaths and criminal cruelty on women”, to realize that conditions of women in India are pitiable and pathetic. They are still treated play things by their male counter parts.

Dowry is the payment in cash or kind by the bride’s family to the bridegroom’s family along with the giving away of the bride. Dowry consisting of a large sum of money, farm animals, furniture and electronic goods. In India dowry originated in upper caste families as the wedding gift to the bride from her family. The dowry was later give to help with marriage expenses and it became a forum of Insurance in the case that her in-laws mistreated her. In order to prohibit dowry in marriage, the Dowry prohibition Act, 1961 was passed and amended in 1984 as well as in 1986. Under the act giving and taking dowry is an offence\(^{61}\). Now the offence of dowry is treated as cognizable and non-billable, giving and taking dowry is prohibited, cruelty of others to be woman driving her to suicide is punished\(^{62}\). Inquires are made into any woman’s suicide or death in suspicious circumstances with in seven years of marriage\(^{63}\). Indian Evidence Act a presumption against the husband or relative about abetment in case of commission of suicide with in seven years from the date of marriage may be constructed\(^{64}\).

Unfortunately the law has remained a paper tiger unable to curb the violence against women in their own homes. The legal technicalities and loopholes in the laws which delay the process, the reluctance of the woman and her parents, relatives in taking legal action and social prejudices are the very purpose of the progressive legislation\(^{65}\). The failure of the legal provisions indicates a close connection between dowry and economic dependence and inheritance rights. Many instances of dowry harassment do not reach the judicial realm for reasons such as family prestige, police collusion, economic

\(^{61}\) Section 3 of the Dowry Prohibition Act, 1961
\(^{62}\) Section 498 (A) and 304 (B) of the Indian Penal Code
\(^{63}\) Section 174 of Crpc, 1973
\(^{64}\) Section 113-A and 113-B of the Indian Evidence Act, 1872
hardship to indulge in legal battles, fear for social security outside the family etc.

4.10.9 **The Beedi and Cigar Workers Act, 1966:**

This is another welfare legislation enacted by the Central Government to safeguard the interests of the women workers and children employed in beedi and Cigar Making Industries. The employers in these industries exploit the labour of women and children by compelling them to work throughout the day for low wages. In order to regulate and restrict the inhuman treatment towards women and children at these industries, The Beedi and Cigar workers Act, 1966 was enacted. Under this Act, no women or children should be required to work in any industrial premises where beedi and cigar are manufacturing, between 8 P.M. and 5 A.M. This clearly shows that the above law allows the women and children to work in cigar and beedi manufacturing industries only during day time. Employment of women and children during night time is strictly prohibited.

4.10.10 **The Equal Remuneration Act, 1976:**

This is also an important legislation which provides social justice in securing equal pay for equal work for both Men and Women. The Main object of this act is also reflected in part IV of the Indian Constitution relating to Directive principles of state policy among other provisions towards securing equal pay for equal work for both men and women. This act also obligates the employer not to make any discrimination against women workers while recruiting them for the same work or work of a similar nature. Besides, while giving promotion, training or transfer also discrimination against women is strictly prohibited. However, there is an exception to this general rule that when providing reservation for Scheduled Castes or Scheduled Tribes or giving priority to ex-servicemen, retrenched employees, discrimination against women

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66 Section 25 of the Beedi and Cigar Workers Act, 1966.
67 Article 39 of the Constitution of India.
can be done in the matter of recruitment to the posts in an establishment or employment\textsuperscript{68}. The act also does not apply to cases affecting the terms and conditions of a woman’s employment in complying with the requirements of any laws giving special treatment to women\textsuperscript{69}.

4.10.11 The Commission of Sati Prevention Act, 1987:

Religious and traditional customers have controlled the lives of women around the India. Like the practices of honour killings and genetic multiliation. Sati system is also a form of domestic violence which has its roots in cultural convictions. The cultural practices of Sati (Self immolation by widow) is peculiar to India has enacted the commission of Sati ( prevention) Act, in 1987. This Act substitutes the various legislations that have been operative in different parts of the country with central law that seeks not only to prevent and punish the commission of the act itself, but also to make an offence any glorification of the act of Sati\textsuperscript{70}. Any person guilty of the abetment of the commission of Sati shall be liable to punishment to death or of imprisonment for life\textsuperscript{71}. Glorification of Sati is prohibited and the Government has been empowered to remove certain temples or other structures and to seize certain properties\textsuperscript{72}. Special courts are to be convened for the trial of offences under this act, equivalent to session’s courts with judges of equivalent powers\textsuperscript{73}. Though the enactment of the law is a good step taken by the Indian Government to curb the Sati system.

4.10.12 The National Commission for Women Act, 1990:

The important legislation relating to protect the women is National Commission for women Act 1990. For the purpose of prevents the problems of dowry deaths, sexual harassments, torture, bride burning, discrimination in all

\textsuperscript{68} Section 5 of the Equal Remuneration Act, 1976.
\textsuperscript{69} Section 15 of the Equal Remuneration Act, 1976.
\textsuperscript{70} Section 5 of the commission of sati prevention Act, 1987.
\textsuperscript{71} Section 4 of the commission of Sati prevention Act, 1987.
\textsuperscript{72} Section 8 of the commission of sati prevention Act, 1987.
\textsuperscript{73} Section 9 of the commission of Sati prevention Act, 1987.
fields, institutions like devadasi, sati and prostitution, this act is came into force. Under this Act National women commission is functioning.

The Main objective of the National Women Commission are to review the Constitutional and legal safeguards for women, recommend remedial legislative measures, facilitate redressal of grievances and advise the government on all policy matter affecting women. The commission can process the complaints received oral, written or Suo Moto. The complaints, may be regarding domestic violence, harassment, dowry, torture, desertion, bigamy, rape, refusal to register FIR, cruelty by husband, deprivation, gender discrimination and sexual harassment at work place.

National commission for women has all powers of a civil court trying a suit and in particular powers of summoning and enforcing the attendance of any person and examining him on oath, requiring discovery and production of any document, receiving evidence on affidavits, requisitioning any public record or copy there of from any court or office, ensuring commissions for the examination of any witnesses and documents, any other matter which may be prescribed. National women commission has powers to intervene in court matters also. It can conduct surprise visits to prisons to ensure fair treatment of women prisoners. Any how, national commission for women has brought new hopes on millions of women in the country.

4.10.13 The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994:

One of the most heinous wrong committed by the people in the Indian Society is discrimination against female child and female foeticide. Though India is fast developing country in the world and fore runner in the field of science, technology and medicine, yet we find killing of female unborn child in the womb of the mothers. In India, the population of female children is drastically decreasing and leading to gender imbalance in the country. It is unfortunate that the practice of female foeticide still prevails in the Indian

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74 Section 10 of the National Commission for Women Act, 1990.
society, despite we have various laws regulating such acts. Perhaps, the reasons could be the marriage problems faced by the parents coupled with dowry demands by so called educated and rich people who are well placed in the society.

Some times, the advanced Medical Science is also misused to kill a girl child before its birth. Many qualified and unqualified medical parishioners abort of fetus of the girl child for the sake of earning money by using modern technology and violating the Medical Pregnancy Act. As a result, the problem of female foeticide is still in vogue in many parts of India. For the purpose of protecting the female children, to prevent the killing of unborn female child and to regulate sex determination of sex selection the Parliament of India has enacted a legislation called pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994. The very object of the act is to prevent the misuse of such techniques for the purpose of pre-natal sex determination leading to female foeticide. Although the act came into force from 1st January 1996 yet the act is not implemented seriously by the central Government as well as the State Governments.

Pre-natal Diagnostic techniques can be used only to detect some of the abnormalities such as, Chromosomal abnormalities, genetic metabolic disease, hemoglobin apathies, Sex – linked genetic diseases, congenital anomalies etc.\textsuperscript{75} The diagnostic techniques can be used only by qualified medical parishioners. The act also prescribes the certain conditions to be fulfilled to use pre natal diagnostic techniques, they are the age of the pregnant women is above 35 years. The pregnant woman has under gone two or more spontaneous abortions or foetal loss, where the pregnant woman has been exposed to potentially tratogenic agents like drugs, radiation, infection or hazardous chemicals, where the pregnant woman has a family history of mental retardation or physical deformities like spasticity or any genetic diseases\textsuperscript{76}. Any person or relative or

\textsuperscript{75} Sec. 4 (2) of the P.N.D.T Act. 1994.  
\textsuperscript{76} Sec. 4 (3) of the P.N.D.T Act. 1994.
husband of the pregnant woman should not encourage or seek any pre-natal diagnostic techniques on her except for valid reasons mentioned in the act.

Under this act, before conducting pre-natal diagnostic procedure by any qualified person on pregnant woman, he should explain all known side and after effects of such procedures to the pregnant woman concerned, he must obtain the written consent from the pregnant woman to under go such pre-natal diagnostic procedure, a copy of such prenatal diagnostic procedures, a copy of such written consent should be given to the pregnant woman. Communication to the pregnant woman or relatives regarding the sex of the foetus, either by words or signs or in any manner is prohibited. Genetic counseling centre or Genetic Laboratory or Genetic Clinic should not use pre-natal diagnostic techniques (like ultra sonography) for determining the sex of the foetus. The act also prohibits the use of pre-natal diagnostic techniques including Ultra Sonography for the determination of sex of a foetus by any person. The act also provides for the Constitution of the central supervisory board to lay down certain norms for using the prenatal diagnostic techniques. The central supervisory board can conduct the functions like, it advises the Government on policy matters relating to the use of pre-natal diagnostic techniques, it can review the implementation of the Act and the rules and can make recommendations for changes to be made by the central Government to the act as well as the rules. It can create public awareness against the practice of pre-natal determination of sex and female foeticide, it can also lay down of conduct to be observed by such persons working at Genetic counseling centres, Genetic laboratories and Genetic Clinics. If any person, organizations, Genetic counseling centres, Genetic laboratories or Genetic clinics make advertisements relating to the facility of pre-natal determination of sex in their centers, laboratories or clinics are strictly prohibited. Contravention of this would attract imprisonment, which may be extended to 3 years with fine, which

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77 Sec. 5 of the P.N.D.T Act. 1994.
78 Sec. 6 of the P.N.D.T Act. 1994.
79 Sec. 7 of the P.N.D.T Act. 1994.
80 Sec. 16 of the P.N.D.T Act. 1994.
may be extended to Rs. 10,000\textsuperscript{81}. Any medical practitioner (including Medical geneticist, gynecologist, and any person who owns Genetic centre or clinic) who violates any of the norms laid down in the act, the name of such practitioner would be removed from the register of the medical council for a period of 2 years for the first offence and permanent removal for subsequent offences\textsuperscript{82}.

In center for Enquiry into Health and allied Themes and others V.s Union of India and others\textsuperscript{83} in this case, the centre for enquiry a research centre based in Pune and Mumbai filed a writ petition under Article 32 of the Constitution for issuing proper directions to the union and state Governments for the implementation of the PNDT Act. In many states in India, the Genetic counseling centre, Genetic laboratories or Genetic clinics were conducting pre-natal sex determination tests without being registered. No action was initiated against such clinics and centres.

The Supreme Court issued directions to the Union Government as well as to the State Government to implement the provisions of PNDT Act immediately. It also directed the appropriate authorities to prosecute the offenders for violating the act. The court also directed the authorities to go for search and seizure of those modern technologies and records used for sex determination and aborting female foetus illegally. The court also directed the Central Government to frame rules for selling ultra sound machines to various clinics and directions were also issued not sell the machines to unregistered clinics. Later the PNDT Act was amended and renamed as ‘The pre conception and pre-natal Diagnostic Techniques (Prohibition of sex selection) Act, 2002.’

\textbf{4.10.14 The Domestic Violence Act, 2005:}

Another most important legislation for the protection of women in India is, Domestic Violence Act 2005. It protects a woman against violence in a domestic relationship i.e., a relationship either by marriage or birth or

\textsuperscript{81} Sec. 22 of the P.N.D.T Act. 1994.
\textsuperscript{82} Sec. 23 of the P.N.D.T Act. 1994.
\textsuperscript{83} AIR 2003 SC 428
consanguinity or custom or cohabitation\textsuperscript{84}. The Act defines domestic violence ‘as any act’ Omission or conduct which is of such nature as to harm or has the potential of harming or injuring the health, safety or well being of a women. Such violence could be physical, sexual, verbal, mental or economic\textsuperscript{85}. 

Women can approach the court by filling a petition listing out the details of her case and asking for the orders that would protect her from violence. Women can obtain an order even in a pending suit or criminal case, such as divorce case or a criminal case of cruelty\textsuperscript{86}. The aggrieved women can insist that a court while granting bail to the respondent impose conditions, which would protect her from violence. Incase for any reason she is unable to move the court, a petition may be brought by a person authorized by her or any NGO or a protection officer\textsuperscript{87}. 

Under the Act, aggrieved person can obtain the orders like, protection order, residence order, monetary relief order, temporary child custody order, a protection order\textsuperscript{88}. Prohibits the respondent from committing acts of domestic violence, helping some one else commit such acts, entering the office or house of the person aggrieved, communicating with the person aggrieved, selling of property or emptying bank lockers and accounts, causing violence to people assisting the person aggrieved.

By a Residence order\textsuperscript{89}, the court may pass orders in relation to the “Shared household” such as, helping the person aggrieved to remain in the house, preventing her from being removed from the house, prohibiting the respondent from selling or giving the house away, restraining the respondent from giving up his right or claim in house, directing the from finding an alternative house for the person aggrieved.

\textsuperscript{84} Sec. 2 (f) of the Domestic Violence Act, 2005.
\textsuperscript{85} Sec. 3 of the Domestic Violence Act, 2005.
\textsuperscript{86} Sec. 36 of the Domestic Violence Act, 2005.
\textsuperscript{87} Sec. 12 of the Domestic Violence Act, 2005.
\textsuperscript{88} Sec. 18 of the Domestic Violence Act, 2005.
\textsuperscript{89} Sec. 19 of the Domestic Violence Act, 2005.
A Monetary relief order entitles the person aggrieved to meet the expenses incurred by her in meeting her needs and needs for her children, if any including money to meet, loss of earnings, medical expenses, maintenance, including for the children, if any, loss on account of damage or removal of property, compensation for the domestic violence inflicted upon her. An order is valid for two years and may be renewed thereafter. Breach of an order is a cognizable and non-bailable offence punishable with imprisonment up to one year or fine, which may extend to Rs. 20,000 or both.

The significance of the Domestic Violence Act 2005 is that it had pulled out the issue of domestic violence from the private domain and kept public domain. Domestic violence is widely prevalent in all times. However, in the earlier times the issue domestic violence was stated purely has private and personal issue. But, now it has been brought into the public domain so that the evil of domestic violence no longer remains to be a personal issue. It has now become issue of state concern of course; the issue of marital cruelty is dealt under section 498 of IPC. Violence constituting mental cruelty is therefore, dealt by the penal law. Civil law however does not address this issue. Domestic violence covered up this deficiency. Also domestic violence is dealt in more comprehensive manner because the act can be invoked in cases of domestic violence. Arising not only of the relationship of marriage but also has this relationship, blood or adoption also women who do not stand in lawfully wedlock relation but nevertheless similar relationship also will be able to enjoy the benefit of the act. By virtue of this act women no longer has to yield to the threat of having to leave the residence if she is not prepare to tolerate the domestic violence.

It also important to note that, the apprehensions expressed about the possible Misuse of Domestic Violence Act by wives to pressurize the innocent husbands or their female relative also should not be totally brushed off. The

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90 Sec. 2 (K) of the Domestic Violence Act, 2005.

91 Sec. 31 of the Domestic Violence Act, 2005.
social groups should be vigilant to identify fake complaints and discourage the same and such vigilant attitude would enhance the societal conviction about the useful role of the Domestic Violence Act for the betterment of the society.

PART-B

Constitutional and Legal Provisions for SCs and STs

4.11 Constitutional Provisions for SCs and STs

The Constitution of India aims at the establishment of a just and equitable social order. It has established the supremacy of law. It is itself a fundamental law. Our Constitution is full of ideals of liberty, equality and justice in social and political matters. Truly speaking, the Constitution of India is an excellent peace of social engineering. It provides special safeguards in favour of the SCs and STs with a view to maintain proper balance in the society and guarantee social equilibrium and to serve as an effective instrument of social engineering. The state has been put under obligation to strive hard to promote the welfare of the depressed classes and secure a stable social order in which social, economic and political is provided to them all on equal footing with other sections of society. The rights of the SCs and STs are sought to be preserved first, through the fundamental rights. These rights apply generally to all citizens as well as to SCs and STs, but this is not at all. A number of specific provisions have also been incorporated in the Constitution, safeguarding specifically the social, economic, educational and political rights of the SCs and STs.

For safe guarding various socio-economic interests of the SCs and STs, that remained backward, exploited, under developed and to protect them from exploitation and atrocities, provisions have been made in the Constitution, giving certain benefits to these communities, to enable them to catch up with the rest of the society in all walks of life.
4.11.1 Preamble

Preamble provides that India is a sovereign, Socialist, Secular, Democratic, Republic. At the time of Constituent Assembly debate question arose that what is the meaning of Sovereignty and to whom it will lie in future? Babasaheb Ambedkar gave answer of this question in the declaratory part of the preamble consisted of the statements.

“We the people of India, in our Constituent Assembly, this day, do hereby adopt enact and give to ourselves this Constitutions”, he asked whether it did into mean clearly that the sovereignty vested people? On the basis of this argument Baba Saheb Ambedkar proved that sovereignty lies on the people of India.

He takes support of American Constitution to proving the concept of Sovereignty in India. In this connection he said that in United States of America representatives of 13 states assembled in a small conference in Philadelphia passed a Constitution and said that what they did in the name of the people, representing the country in their representative’s capacity could not say that they were enacting in the name of the people of India. Regarding the apprehension that the sovereignty might not be located else where or bartered away he assured the house that no body desired that there should be anything in the Constitution which had there remotest semblance of having been derived from the sovereignty of the British parliament, he added that the association of India with British common wealth did not in any away derogate from the sovereignty of the people as it was already entired in to between two sovereign countries. Beyond doubt, the preamble embodied the desire of the numbers of the House that Constitution should have its roots in the people and drive authority and sovereignty from the people\(^{92}\).

\(^{92}\) The Preamble of the Constitution by K.C. Markandan, 1984, pp.61-62
The above Constitutional debate of Dr. B.R. Ambedkar established that there is sovereignty lies in the people of India. It means people of India are politically supreme within the territory of India, because according to Austin Sovereign region should be political supreme, indivisible, unlimited and illimitable.

The preambular conception of equality of status and opportunities, justice, social, economic and political, fraternity and individual dignity, principle of equality and amelioration of Scheduled Castes and Scheduled Tribes through the protective discrimination policy, the scope for reasonable restrictions upon liberties and freedoms under part III of the Constitution and to implement various socio-economic goal values under part IV of the Constitution can be considered as providing a Constitutional drive and thrust for social advancement. The preamble of the Indian Constitution sets out the aims and aspirations of the people of India and these have been translated into the various provisions of the Constitution.

4.11.2 Equality before the law

Article 14 says, “The state shall not deny to any person equality before law or equal protection of the laws. This Article makes clear that there will be equal treatment of all people in every walk of life in the application of laws of the state. In other words, the guiding factor is that all person and things similarly circumstanced are to be treated alike both in privileges conferred and liabilities imposed; there is no favouritism or discrimination. Every person whether natural or artificial, whether he is a citizen or an alien, is entitled to the protection of this Article. This clearly shows that the principle of equality is to be applied to all people irrespective of their caste or creed. This is the rule of law contemplated under the Constitution of India.

The framers of the Indian Constitution have deliberately included “equality provisions” in the Constitution to treat all people equality irrespective their, race, caste, religion, sex, language and place of birth. When Article 14 was being drafted the main thrust was given to secure equality to the Scheduled
Castes and Scheduled Tribes who were subjected to inequality, discrimination and degradation in the caste system prevalent in the Hindu social system.

The expression the equal protection of the laws indicates that equal protection shall be provided to all persons including Scheduled Caste and Scheduled tribe with in territory of India. Besides the importance of Article 14 is that all persons and things similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. “Equality before law means that amongst equals the law should be equal and should be treated alike”. This indicates that article 14 forbidden the discrimination between persons who are substantially in similar circumstances and conditions. But this article allows different treatment of unequal.

In this regard at the time of Constituent Assembly debate Dr. B.R. Ambedkar expressed his views that “All of us desire that this unfortunate class could be entitled to the same privileges as members of the other communities without any let or hindrance from any body.” He retreated that if any community or person will violate this provision it will impose duty on the state to stop such violation through the law because the Constitution contains ample provision and nothing more is really necessary.

4.11.3 No Discrimination on the basis of Caste:

Article 15(1) provides that, 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(2) provides that no citizen shall, on ground, only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction, or condition with regard to.

(a)Access to shops, public restaurants, hotels and places of public entertainment, or

93 Sir Iver Jennings – ‘Law of Constitution; P.94.
94 CAD Volume VII, P.661
95 Article 15 of the Constitution
(b) The use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of state funds or dedicated to use of general public.

Clause (1) forbids discrimination against the citizen in all matters; clause (2) deals only with cases discrimination as regards to the use of or access to public places mentioned therein.

The objects behind the clause 2 of article 15 are to guard against the menace of discrimination which can possibly be practiced, in a country like India on a vast scale and in a relentless manner. The purpose is to eradicate the evil of the Hindu caste system, under which a section of Hindus, the SCs were considered untouchables and were prohibited the entry to public places. Besides, the Constitution has prohibited the state from making any sort of discrimination against the members of SCs and STs, solely on the ground of caste which leads to the fact that the interests of the SCs and STs are well protected.96

4.11.4 State can make the Special provisions for the SCs and STs.

Insertion of article 15(4) is another step designed to remove inequality. It must be remembered that it has to determine who the socially and educationally backward classes are.

Baba Saheb Ambedkar opposed Prof. K.T. Shah’s amendment that in Article 15 (3) there should be added ‘Scheduled Castes’ and ‘Scheduled Tribes’ along with woman and children Dr. Ambedkar said I am afraid it may have just the opposite effect.97

He elaborated this objection as: “The object which all of us have in mind is that the Scheduled Caste and Scheduled Tribes should not be segregated from the general public, for instance, none of us, I think would like that a separate school should be established for the Scheduled Caste when there is a general school in the village open to the children of the entire community. If

96 Article 15(4) of the Constitution of India
97 Article 9 of the draft Constitution of India
these words are added, it will probably give a handle for a state to say “well, we are making special provision for the scheduled castes”. To my mind they can safely say so by taking shelter under the article, if it is amended in the manner the professor wants it. I therefore, think that it is not a desirable amendment”.

The above opinion of Dr. Ambedkar indicates that he was a man who wants real justice in favour of schedule caste and Scheduled Tribes within the Indian Society. Although in Article 15 (4) there is a provision that “Nothing in this Article or in Clause (2) of the Article 29 shall prevent the state from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes and scheduled Tribes”. No doubt the works used scheduled castes and Scheduled Tribes in Article 15 (4), however this provision of Article 15 (4), is quite different from the Article 15 (3) because according to Article 15 (4) the state can make special provision for the Advancement of Scheduled Caste and scheduled Tribes. In Article 15 (3) there is no such type of provision as in Article 15(4). On the basis of this difference Dr. Ambedkar opposed the amendment proposed by Prof. K.T. Shah.

This provision merely confers discretion on the state to make special provisions. “specially provision for advancement is wide expression and may include not only reservation of seats in the colleges but also by the way of financial assistance, free medical, educational and hostel facilities, scholarships, free transport, concessional or free housing, exemption from requirements insisted upon in the case of another classes.

In a case the Supreme Court upheld the test of backwardness which was solely based on caste. The court observed that “It must not be forgotten that a caste as a whole is socially and educationally backward, reservation can be made in favour of such caste on the ground that it is socially and educational backward classes of citizens with in the meaning of article 15 (4).

98 CAD Volume VII, P.661
4.11.5 Special provision for SCs and STs in public employment.

Article 16 says that “there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state”.

(i) No citizen shall, on grounds only of religion, race, caste, sex, decent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of any employment or office under the state.

(ii) Nothing in this article shall prevent the state from making any provision for the reservation of appointment or posts in favour of any backward class of citizens, in the opinion of the state, is not adequately represented in the services under the state.

The general principle adopted as regards services in India is merit and open competition. However, it was felt that strict adherence to merit would put the weaker section of the society at a disadvantage. Therefore, for the promotion and advancement of the socially and educationally backward classes, the provisions for the reservation of post under the government have also been incorporated. The reason for the incorporation of article 16(4) was that the people who were socially, economically and educationally backward will not be able to compete on an equal footing with people who are better qualified. The aim was to strike a balance between the fundamental rights of the individuals and social justice to the backward classes. Besides, the Constitution has also provided certain protections and privileges to the members of SCs and STs in providing public employment to meet requirements of justice to this sections of the society.

Besides the fundamental objective of Article 16(4) is to ensure reservation to Women, SCs and STs in public employment only. This shows

99 Article 16(4) of the Constitution of India
that large number of enterprises and private sections are not bound by the Constitutional reservation of public employment. More generation of employment is found in public sector rather than private sectors, the recent trend is public sectors converting to private sectors. It is to retrograde step in ensuring social justice to the Women, SCs and STs. There is urgent need to amend the provision of Article 16(4) for the inclusion of the reservation benefits available even in the private sectors also. There are sum important Constitution bodies like, Higher Judiciary, Rajyasabha and State legislative councils, the Constitution reservation is not being enforced.

Because Scheduled Castes and Scheduled Tribes has suffered, socially, economically, and culturally, educationally. The object of reservation permissible under articles 15 (4) and 16 (4) remove these handicaps, disadvantages, sufferings and restriction to the Scheduled Castes and Scheduled Tribes, and was sought to bring them in the mainstream of the nation life by providing the opportunities and facilities.

4.11.6 Abolition of Untouchability

The Constitution of India has completely abolished the long standing existence of social evil like, untouchability. The enforcement of disability arising out of untouchability is also considered as an offence punishable under the existing law.

Article 17 deals with peculiar problems of our country. How so ever praise worthy the caste system in its origin might have been , it certainly proved to be a disgrace to humanity, a threat to unity and a serious hindrance to social, educational and economic progress of our country. Parliament is authorized to make a law prescribing the punishment for this offence, in exercise of this power, parliament has enacted the untouchability (offence) Act 1955, now it is amended in 1976 and named as Protection Of Civil Rights Act, 1955. In 1989 the Scheduled Castes and Scheduled Tribes (prevention of

\[100\] Valsamma Paul Vs. Cochin University, AIR (1996) S.C P.545-563.
\[101\] Article 17 of the Constitution of India
atrocities) Act has been passed by parliament to prevent the commission of offences of atrocities against the members of SC and ST\textsuperscript{102}.

The Constitutions makes an attempt to remove Untouchability, at this place, it would not be proper to examine what has been existing in practice since Independence. However, such declaration of removing untouchability could be said to be a landmark in the history of India. At least, nobody openly defends untouchability\textsuperscript{103}. Several social reforms were made to eradicate untouchability, but they had their own limitation. Despite the Constitutional abolition of untouchability, this social evil still persist and exist in the Indian social order.

Dr. B.R.Ambedkar recongnised untouchability as crime under this article. The concept of untouchability has not only thrown millions of Indian population into the dark abyss of gloom and despair, shame and disgrace, out, it has also eaten into the very vita city of our nation. Article 17 of the Constitution must be read with article 35. This confers upon parliament the exclusive power to make laws prescribing punishment for those acts which are declared to be offence under part III. Article 35 is important for the purpose of parliamentary power to legislate the law for implementation of fundamental rights\textsuperscript{104}.

In this regard Dr.Ambedkar retreated that under article 35 of the Constitution parliament is under obligation to make laws declaring such interference to be offence punishable by law\textsuperscript{105}. The reason why such power is given to parliament is because it is felt that any offence deals with the fundamental rights should be uniform throughout the territory of India, which would not be the case if this power was left to the different states and provisions to regulate as they like\textsuperscript{106}.

\textsuperscript{102} Atrocities and untouchability against SCs and STs by Prof.V.Narayanawamy, M.J.S. Publications, 2006, Bangalore.
\textsuperscript{103} Constitutional Law of India, by G.S.Pande, Prof. of Law, Punjab University, Chandigar, pioneer publications, P.363.
\textsuperscript{104} Dr.Mono Mohan Dass, CAD vol.VII,P.666
\textsuperscript{105} CAD vol. VII, P.661.
\textsuperscript{106} Article 46 of the Constitution of India
4.11.7 Special care for promotion of educational and economic interests of SCs and STs.

The Constitution of India has obligated the state to take care of the certain section of the society through special programmes. For example, article 46 of the Indian Constitution provides that “the state shall promote with special care the educational and economic interests of the weaker section of the people, in particular, of the Scheduled Castes and Scheduled Tribes shall protect them from social injustice and all form of exploitation.\(^{107}\)

This article imposes an obligation on the state to make all possible means to promote the standard of educational and economic interests of the Scheduled Castes and Scheduled Tribes. With a view to promote the standard of educational and economic interests of the Scheduled Castes and Scheduled Tribes. With a view to promote the Scheduled Castes and schedule Tribes and weaker sections of the society educationally, for the first time the state of Madras through its communal government order, reserved seats in the state medical and engineering colleges for different communities in certain proportions on the basis of race, caste and religion. This communal government order was challenged by the petitioner in state of Madras Vs. Champakam Dorairajan.\(^{108}\) The state of Madras defended its government order on the ground that state is permitted, under Article 46 of the Constitution, to promote with special care the educational and economic interests of the weaker sections of the people including Scheduled Castes and Scheduled Tribes and to promote the social justice to some section of the society as required under article 46 of the directive principles of state policy. The Supreme Court struck down the communal order of Madras government as unconstitutional and held that ‘the

\(^{107}\) AIR 1951 SC 226.
\(^{108}\) Jagwant Kaur v.s state of Bombay, AIR 1952, Bombay.
directive principles of state policy cannot override the fundamental rights guaranteed under article 15 of the Constitution.

In a case, the state government of Bombay ordered for the requisitioning for the construction of Scheduled Caste colony. This was challenged by the petitioner as violating his fundamental right under article 15 (1) of the Constitution. But the government defended its action on the ground of protecting the interest of the Scheduled Castes and Scheduled Tribes provided under article 46 of the Constitution. But the Bombay high court struck down the act of Bombay government and held to be void under Article 15(1) of the Constitution. Consequently these two decisions, the parliament amended the article 15 by the Constitution in first time, and incorporated clause (4) to article 15. Now article 15 (4) enables the state to make special provisions for the educational, economic or social advancement of socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes. After this amendment, now the state is empowered to put up a Scheduled Caste colony in order to advance the interests of the weaker sections of the society including Scheduled Castes and Scheduled Tribes.

To give effect to this Article, after amending the Constitution (first amendment) Act, 1951, it will be now possible for the state to make a special provision, for example to build a colony, for the habitation of SCs, not with standing the bar against discrimination on the ground of caste. The Article embodies the concept of “distributive justice” which connotes, the removal of economic inequalities and rectifying the injustice resulting from dealings or transactions between unequals in society. This may be achieved by the state by lessening of inequalities by distribution of property owned by one to many who have none by imposing ceiling on holdings\textsuperscript{109}. From this it is imperative that the state can take any measures for the promotion of education and economic interest of the members of SC / ST and ensure Constitutional justice contemplated under the preamble.

\textsuperscript{109} “Constitutional Law of India” By Narendra Kumar. Prof. of Law, Punjab University, Chandigar, pioneer publications, P.363.
However, though the Constitution has provided reservation in education institution for providing education to Women, SCs and STs, the same has not been extended to private unaided education institution as well as the Central government institutions.

Under the Constitution the reservation of seats strictly confined to state owned institutions or government institutions or institutions which are directly or indirectly under control of the government.

### 4.11.8 SCs and STs Representation in Legislature.

Under articles 330 and 332 of the Constitution, seats are reserved for Scheduled Castes and Scheduled Tribes in the Loksabha and state legislative Assemblies in proportion to their population\(^{110}\). This concession, initially for a Period of 10 years from the commencement of the Constitution, has been extended through amendment up to 25\(^{th}\) January 2000. Parliamentary acts provide for such reservation in the union territories having legislatures. There is no reservation of seats in Rajyasabha and vidhan parishads. The Constitution (79\(^{th}\) Amendment) Act, 2000, has extended it up to 25\(^{th}\) January 2010. It may be noted that the seats reserved under article 330 and 332 shall be in addition to any general seats, which the SCs and STs may contest. Thus Article 330 and 332 do not debar these classes from contesting on general seats\(^{111}\).

The Constitution provided reservation of seats in legislature for the reason that the SCs and STs were in the disadvantageous position and they could not have competed with the advanced section of the society on the footing of the equality. They had neither the resources nor the experience for entering in to an open competition for participation in the political process. Therefore, they have been given guaranteed representation because they suffered social handicaps.

### 4.11.9 National Commission for SCs and STs:

\(^{110}\) Article 330 and 332 of the Constitution of India.

The commission plays vital role in the protection of the interest of the members belonging to SCs and STs in order that safeguards and other measures provided for the Scheduled Castes and the Scheduled Tribes are effectively implemented. Article 338, provided for the appointment by the president of a special officer for these Castes and Tribes.

It was felt that a high level five member commission would be a more effective arrangement in respect of the Constitutional safeguards for the Scheduled Castes and the Scheduled Tribes than a single officer. Accordingly, Article 338 was amended by the Constitution (65th Amendment) Act, 1990. The amended article 338 provides for the appointment, by the president of a National commission for SCs and STs

4.11.10 The National Commission for Scheduled Castes:

The National Commission for SCs and STs consists of a chairperson a vice-chairperson and five other members, to be appointed by the president by warrant under his hand and seal. The conditions of service and tenure of office of these members shall be such as the president may, by rule, determine. Parliament may make law regulating these matters. The Commission shall have the powers to regulate its own procedure.

Article 338 (5) provides for the duties of the commission they are as follows.

a) To investigate and monitor all matters relating to the safeguards provided for the SCs under this Constitution or under any other law for the time being in force or under any order of the government and to evaluate the working of such safeguards.

b) To inquire into specific complaints with respect to the deprivation of rights and safeguards of the SCs.

c) To participate and advice on the planning process of socio-economic development of the SCs and to evaluate the progress of their development under the union and any state.

112 Article 338 of the Constitution of India
d) To present to the president, annually and at such other times as the commission may deem fit, reports upon the working of those safeguards.

e) To make in such reports recommendations as to the measures that should be taken by the union or any state for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the SCs;

f) To discharge such other functions in relation to the protection, welfare and development and advancement of the SCs as the president may, subject to the provisions of any law made by parliament, by the rule specify.

The annual reports of the commission will be submitted to president and he shall cause such reports to be laid before each house of the parliament\textsuperscript{113}.

4.11.11 The National Commission for Scheduled Tribes.

Article 338(A) was inserted in the Constitutional Amendment Act 2003\textsuperscript{114}, earlier to this amendment the interest of the Scheduled Tribes were protected in the Article 338 it self, however to give them special privileges a separate article is inserted to create a separate commission. The powers and Functions of the commission are same as discussed above for the commission for Scheduled Castes. The only difference is wherever the word SCs is Present shall be read as STs.

4.12 Legal Provisions for SCs and STs

Following are the enactments made for the protection and safe guarding the members of SCs and STs.


\textsuperscript{114} 89th Constitutional amendments.

4.12.1. The protection of civil Rights Act, 1955:

Basically, the rights of the members of SCs, STs and the protection thereof are comprehensively covered under the protection of civil rights act. This act prohibits all kinds of discrimination and injustice done to SCs/ STs in the society.

Besides, the PCR Act provides for penalties for refusing admission to hospitals, educational institutions or hostels, for refusing to sell goods or render services, for preventing the exercise of any rights under Article 17 for demanding unlawful compulsory labour relating to untouchability like, scavenging, sweeping, removal of carcass, flaying animals or removing the umbilical cord or any job similar in nature. The act provides that for reprisal or revenge against a person for exercising a right under article 17, where the offence is punishable with imprisonment under the Indian Penal Code for a term exceeding two years, it shall be punishable under the Protection of Civil Rights Act for a term which shall not be less than two years and also with fine. The act also provides for cancellation and suspension of licenses, assumption of suspension of grant and imposition of collective fine. Subsequent convictions carry higher penalties. Every offence punishable under the act shall be cognizable. Every such offence except where it is punishable with imprisonment for a minimum term exceeding three months may be tried summarily.

4.12.2 The SCs and STs (Prevention of Atrocities) Act, 1989:

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115 Section 5 of the protection of civil rights Act, 1955.
116 Section 6 of the protection of civil rights Act, 1955.
117 Section 7 of the protection of civil rights Act, 1955.
118 Section 8 of the protection of civil rights Act, 1955.
119 Section 9 of the protection of civil rights Act, 1955.
120 Section 10(A) of the protection of civil rights Act, 1955.
Scheduled Castes and Scheduled Tribes (Prevention Atrocities) Act, 1989 which came into force on 30 January 1990, specifies offences, which are considered as atrocities and provides deterrent punishments for commission of the same. Comprehensive rules were also framed under this Act in 1995 to provide relief and rehabilitation of the affected persons. All the states and union territories (except Arunachal Pradesh and Nagaland) have specified special courts for trial of offence under this act. Under the Centrally sponsored scheme for implementation of the Act, state governments are funded on 50:50 basis and union territories are given cent percent assistance.

This act specifies the atrocities which are liable to penalties under the Act. Those are, forcing the eating of obnoxious substance, dumping waste matter on land, denudation, wrongful occupation of land, dispossession, bonded labour, intimidation during voting, mischievous litigation, false information, public humiliation, outraging modesty, sexual exploitation, fouling of water sources, obstruction of entry into a place of public resort, eviction from habitation, mischief with explosives, destruction of buildings and suppression of evidence. These offences under the prevention of atrocities act carry heavier penalties than similar offences under the I.P.C. The offence of custodial rape, highway robbery and house breaking by night which carry a minimum punishment of 10 years under the I.P.C. are punishable with imprisonment for life and with fine under the prevention of atrocities act. The act also provides for forfeiture of property, exterminate and collective fine.

4.12.3 The Bonded Labour System (Abolition) Act, 1976:

As we are all aware, the Hindu social structure is based on Castes and communities which create walls and barriers of exclusiveness and proceed on the basis of consideration of superiority and inferiority. So there was social inequality. This social inequality assumes a particularly reprehensible form in

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Footnotes:

121 Section 3 of the scheduled castes and scheduled tribes (prevention of Atrocities) Act , 1989.
122 Section 14 of the scheduled castes and scheduled tribes (prevention of Atrocities) Act , 1989
123 Section 3(2) of the scheduled castes and scheduled tribes (prevention of Atrocities) Act , 1989
124 Section 7 of the scheduled castes and scheduled tribes (prevention of Atrocities) Act , 1989
relation to the SCs which are treated as untouchable and is the problem of social justice as well as economic justice in India is needed urgently.

The main reason for this is poverty; it includes lack of education, lack of capital, exploitation of caste society, lack of economic motivation and lack of social mobility due to economic motivation and lack of social mobility due to outmoded social system. The people under this line are mostly landless laborers and unemployed workers. The Scheduled Castes suffer from dual curse of economic inequality and social inequality. They constitute a large class labourers who are treated as untouchable by the rest of the community who have no house to live, no good clothes to wear, who do not get good food to eat and sometimes even decent drinking water is beyond their reach. So these people alternatively converted as bonded labourers due to eradication of their poverty\textsuperscript{125}.

The system of bonded labour has been prevalent in various parts of the country. The system based on exploitation by a few socially and economically powerful persons. This system under which one person can be bonded to provide labour to another for years and years until on alleged debt is supposed to be wiped out which never seems to happen during the lifetime of the bonded labour. It is not only an affront to basic human dignity but also constitutes gross and revolting violation of Constitutional values. The appalling conditions in which bonded labourers line, not as humans but as serfs. The emptiness of ages on his face and on his back the burden of the world. They are non-beings, exiles of civilization, living a life worst than that of animals. For the animals are at least free to roam about as they like and they can plunder or grab food whenever they are hungry. But these SCs are held in bondage, robbed of their freedom and they are consigned to an existence where they have to live either in hostels or under the open sky and be satisfied with whatever little wholesome food they can manage to get in adequate though it be to fill their hungry stomach. Not having any choice, they are driven by poverty and hunger

\textsuperscript{125}The Bonded Labour System (Abolition) Act, 1976 and Constitutional law of India –H.M.Seervai 3\textsuperscript{rd} Edn.
into a life of bondage a dark bottomless pit from which in a cruel exploitative society, they cannot hope to be rescued\textsuperscript{126}.

A large number of bonded labourers particularly belonging to the SCs have been liberated. As per the report of the labour department of the Central Government in 1983 about 1.13 lakhs bonded labourers out of a total of 1.61 lakhs were liberated from their bondage with the Governmental assistance.

So this system of bonded labour was abolished through the country with effect from 25\textsuperscript{th} Oct. 1975 under Bonded Labour System (Abolition) Act 1976. This was the first step in generating hopes for this section, the lowest among the rural SCs. For the purpose of abolition of bonded labour with a view to preventing the economic and physical exploitation of members Scheduled Caste, the parliament enacted the Bonded Labour System (Abolition) Act 1976.

\textbf{4.12. 4 The Minimum Wages Act, 1948.}

This act was enacted with a view to prevent exploitation of sweated labourers or agricultural labourers. It provided for revision of minimum rates of wages\textsuperscript{127}, fixation of hours of work, overtime wages\textsuperscript{128}, etc. Besides providing penalties for offences\textsuperscript{129}, the act provided for appointment of inspectors to ensure payment of wages other benefits available under the act and claim authorities\textsuperscript{130}, to here and decide claim arising out of non-payment or less payment of wages. However, the act also fixed the number of hours for the workers\textsuperscript{131}. The arrangement of working day of an adult worker is to be made in such a way that it should not exceed twelve hours on any day inclusive of the intervals for rest.

The state government was allowed to carry out the fixation of minimum wages in agriculture profession in a phased manner. Though the act is not success due to various discrepancies in its implementation, for example,

\begin{itemize}
  \item \textsuperscript{126} Interpretation and enforcement of Fundamental rights By D.J.De, P.1046
  \item \textsuperscript{127} Section 5 of the minimum wages Act, 1948.
  \item \textsuperscript{128} Section 14 of the minimum wages Act, 1948.
  \item \textsuperscript{129} Section 22 of the minimum wages Act, 1948.
  \item \textsuperscript{130} Section 20 of the minimum wages Act, 1948.
  \item \textsuperscript{131} Section 13 of the minimum wages Act, 1948.
\end{itemize}
poverty and illiteracy of agricultural labourers, the scattered nature of the agricultural farms, casual nature of employment and unorganized character of agricultural labourers, hampered the success of the act in its true spirit. However, the provision of this act checked exploitation of agricultural workers by regulating payment of wage, the hours of work, overtime payment and daily rest and weekly off.

The act lacked certain provisions which should be added in it, for example, the provisions for the Scheduled Caste and Scheduled tribe workers like working hours and interval etc. The role of inspectors should be made more effective by their special training and better pay section 20 and 20(b) of the act should be changed while apply it in agricultural sectors.

4.13 Conclusion

In this chapter the Constitutional provisions and legal provisions are provided for women, Scheduled Caste and Scheduled Tribes have been discussed. The Constitution of India in its preamble provided ideals and aspirations of the people of India. The one of which was the equality of status and of opportunity. Article 14 of the Constitution partly incorporated the Dicecy’s principle of equality before the law and partly the American concept of equal protection of laws. The equality clause expressly prohibits discrimination on the basis of race, caste, religion, sex and place of birth and guarantees equality before the law and equal protection of law irrespective of race, religion, caste, sex etc. Article 15 (3) empowers the state to make any special provision in favour of women. Under this provision government either central or state can make laws and can checkout the various programmes and policies really it is worth to the women section. Article 16 provides for equal opportunities in the matter of public appointment for all citizens. But state is giving the priority to women it is considerable point. Article 39 mentions that the state shall direct its policy towards women and men equal pay for equal work, should not discriminate between men women regarding their wage, work nature etc. Article 42 directs the state to make provisions for ensuring just and
humane condition of work and maternity relief. Under this government is taking so many protective measure to the women, it is very significant change in society. Article 44 provides that uniform civil code for all citizens throughout the territory of India. Regarding this provision state did not take any too much initiative. Thus the Constitution has ensured equal status to all i.e not only between men and men, women and women but also between men and women, this Constitutional spirit found a distinct place and recognition in various legislations passed by the parliament.

So for as, Scheduled Castes and Scheduled Tribes are concerned, constitutionally and legally all the opportunities are available, but caste society does not allows them to enjoy. Even after the declaration of the 60 years of Constitution, all government, state machinery, courts and administrative posts are in the clutches of the upper Castes. Instead of the Scheduled Castes and Scheduled Tribes they always act in favour of the upper Castes. All the upper caste people dominating government have intentions to change the Constitution instead of implement it. Therefore, all the Scheduled Castes and Scheduled Tribes must organize politically, dominating the governments and implement the Constitution, as well as the laws. Then only can fulfill the objectives of the Constitution and laws to protect the interest of Scheduled Castes and Scheduled Tribes, bring them into the mainstream of the society.