CHAPTER - III

CONSTITUTIONAL MANDATES
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The Republican Constitution of India constitutes a political system that is vested with the power to transform its social system. Indian nation is a conglomeration of pluralistic religion based social systems. Rights, powers, privileges, immunities, obligations, duties, liabilities and disabilities ascribed and prescribed by these diverse social systems vary from one person to another person. They are neither uniform nor homogenous even within a social system based on religion. The Constitution of India attempts to transform these religion based social systems on the basis of certain underlying constitutional precepts like liberty, equality and dignity. Irrespective of the diversities of the religion based social systems, the position of women has always been inferior to their counterparts, men. In this chapter, the Hindu social system and more precisely the social system of the Hindus in Tamil Nadu alone is analyzed notwithstanding the fact that the Constitution is applicable equally for all throughout India. These concepts are analyzed under three broader perspectives namely, political, economic and socio-religious aspects.

Social system is the mother of all systems. The political system is akin to the nervous system that regulates the entire social system. The economic system can be compared to the body functions regulating the supply of blood to the whole system depending on the needs. Based on the decisions of the nervous system, that is the political system, the economic system carries out its functions. Both political and economic systems are sub-systems, interdependent and part of the larger mother of all systems, namely the society. It is the political system that makes decisions and communicates the same to all the sub-systems of the social system. Political decisions taken by the political system deals with distribution of various essentials that are required to run the society. Correspondingly, such decisions also impose liabilities, duties, disabilities etc. to people, so that smooth and harmonious functioning of the society is maintained. Such a political system is a product of the Constitution of a country.
Indian society more particularly the Hindu social system is known for its structural hierarchy and is holistic and traditional in its outlook. Hindus are traditionally structured in a hierarchical order. This holism is an inherent feature of the traditional Hindu social system.¹

The varna and ashrama systems and the consequent caste system are the basic structures of the Hindu society.² Besides this caste hierarchy, there has been an inherent gender hierarchy. Based on the caste hierarchy, people are considered and classified as inferior and superior. Even within the classifications of caste hierarchy, men are deemed to be superior to women. This inherent hierarchical tradition is antithetical to democratic principles and precepts of the Constitution of India, which contemplates equality.

1. OBJECTIVES OF THE CONSTITUTION

The Indian Constitution is not merely a revolutionary document constituted to satisfy the ephemeral interest of time but a sustainable organic document capable of fulfilling the aspirations of the diverse sections of the society with a foresight. This contemplation has helped to sustain the Constitution even after six decades, while the neighbouring nation’s Constitution is constantly floundering and finding it difficult to survive. The Indian Constitution provides adequate flexibility to assimilate changes that happen around the world as well as adjust with the endemic conflicts that erupt within the nation. Theoretically speaking, there are provisions of the Constitution, which facilitate exogenous sources of change as well as endogenous sources of change. There are safety walls within the system. These are succinctly organized in the Preamble of the Constitution, which aims 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

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¹ Yogendra Singh, Modernization of Indian Tradition, Thomas Press (India) Limited, Publication Division, Faridabad, 1986, p.27.
² http://www.hindupedia.com/en/Varna_Ashrama_Dharma
Fraternity assuring the dignity of the individual and the unity and integrity of the nation.\textsuperscript{3}

It is obvious that the Preamble attempts to secure to all its citizens equality of status and opportunity despite the fact that it was not the spirit of the existing social system in India. The Constitution aims at transforming the society into a liberal society where the citizens enjoy liberty of thought, expression, belief, faith and worship. Liberty of thought and expression contradicts the traditional view of the Hindu society which accords priority to society, caste, family and only after that to individuals, strictly in that order. Hence individual’s interest can be sacrificed for the larger interest of the family and community. Liberty of the individual hangs at the altar of commonhood of the family and community. Women have to give up their rights in the interest of family and caste. A Hindu daughter, wife, mother or widow cannot think or act by giving primacy to her interest over the larger interest of the family.

In this context, the Preamble and the corresponding provisions of the Constitution empower women to come out of the clutches of the traditional moulds of idealism to promote their individuality. The Constitution of India confers basic individual rights and the Preamble is a splendid blend of individualism and idealism. But an incisive perusal of the constitutional provisions reveal that while conferring rights to individuals, it accords equal importance to idealistic principles which emphasize the importance of institutions that are found manifested in Part III (Fundamental Rights), Part IV(Directive Principles of State Policy) and Part XVIII(Emergency Provisions) of the Constitution. It has been prescribed in the directive principles that, “\textit{the state shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political shall inform all the institutions of the national life}.”\textsuperscript{4}

\textsuperscript{3} The Preamble of the Constitution of India.
\textsuperscript{4} Article 38, \textit{Ibid.},
Clause 2 of the same Article inserted by the 44th Amendment in 1978 directs that, “the state shall in particular, strive to minimize the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals, but also amongst groups of people residing in different areas or engaged in different vocations.” From this directive, it is possible to infer that the Constitution contemplates to transform the social order of the society from hierarchy to equality including from gender hierarchy to gender equality. This doctrine is manifested both in the fundamental rights as well as in the directive principles of state policy.

2. FUNDAMENTAL RIGHTS

I. EQUALITY AND SOCIAL INCLUSION OF WOMEN

Part III, while conferring right to equality and freedom, emphasizes that such equality and freedom are respectively subject to reasonable classifications and restrictions. Articles 14 to 18 deal with various rights related to equality. The traditional hierarchical Hindu social system institutionalized inequality of women and brought into vogue innumerable traditions and practices making women subordinate to men in all walks of life. Conditioned upbringing effectively socialized Hindu women to inherit the traits of inferred and ascriptive status. The rights related to equality accorded by the Constitution are revolutionary in nature, but it is confined or limited only to activities of the State.

II. ARTICLE 14 AND GENDER EQUALITY

Article 14 confers equality to all irrespective of nationality and other factors including sex. It states that, “the state shall not deny to any person equality before law or equal protection of the laws within the territory of India.”

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5 Article 38 (2) of the Constitution of India.
6 Articles 14 to 18 of the Constitution of India, deal with Right to Equality
7 Article 14, Ibid.,
This Article has both positive and negative rights related to equality, but it seeks to affect the status of women positively. It guarantees that women of all ages shall be equally protected and there shall be no discrimination imposed on women because they happen to be women. The negative dimension of this right is that the State shall not deny equality before law to any women. This inclusive measure is aimed at nullifying the effects of the traditional exclusive measures that affected and deprived women of their rights and powers, both positive and negative related to their equality of status and opportunity with men.

The paradox of Article 14 lies in the fact that this right to equality of women, whether positive or negative is confined only against the State. It does not proscribe any unequal treatment meted out to women by the society. The continuance of unequal treatment of women through the social and cultural practices remains a grey area. By not extending this equality clause to the social realm, the Constitution is indirectly allowing the perpetuation of gender inequality. The approach of the Constitution is to transform the traditional social structure gradually through political participation where women are given an equal opportunity to decide policies and principles, by giving voting rights, eligibility to contest in all elections and if elected become representatives of people. Political empowerment leads to women occupying decision making posts, by which process, realization of gender equality and true empowerment can occur.

In Part-III of the Constitution, certain rights are provided to women against the State. The State is defined as follows;

In this Part, unless the context otherwise requires, ‘the State’ includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.⁸

⁸Article 12 of the Constitution of India.
This definition is an enumerative definition and thereby all other things do not form a State. This indirectly hurts gender equality since such institutions which do not come under the definition of ‘State’ can discriminate women on account of their gender. In India, family at the micro level, caste and religious denominations at the meso and macro levels respectively are the most powerful socio-religious institutions that can have effective control over persons including women.

These institutions through the sociological processes, of internalization and socialization perpetuate the cultural attitude of obedience and subordination of women to their counterparts, men. These socio-religious institutions are basically and predominantly patriarchal in character. Son preference is the norm, husband is the leader and father is the head of the family. Village and caste panchayats headed by men dominate the entire social system and thereby preserve the social and cultural practices intact for centuries. In this sociological backdrop, the democratic political system based on adult franchise where women are equally vested with the right to vote and also stand for elections can gradually transform and wean away the attitude of the people from a patriarchal to a gender neutral society where no person’s status is either inferior or superior to the other.

These constitutional provisions facilitate women to have better ways for enhanced political participation in the law making process, which in turn would remove the hitherto existing exclusive disabilities and liabilities. Moreover, positively it would enable them to realize their rights and powers and to have equal participation in the political process, which were earlier denied to them in the patriarchal society. Prior to the British, the country was under the monarchical system, which predominantly adopted the law of primogeniture whereby the eldest son alone would be entitled to be the heir apparent. Women in general and daughters in particular were denied that right to inherit the throne. Generally politics was a male bastion and women were excluded from it. This exclusion has been removed in our democratic republican Constitution.
III. PROTECTIVE DISCRIMINATION AND POSITIVE INCLUSION

Articles 15 and 16 are inclusive measures that aim at removing all social exclusions that were in practice *inter alia* on account of sex. However these rights are provided only to Indian citizens. It 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.*\(^9\) Further, *No citizen shall, on grounds 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 (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 the use of the general public.*\(^10\)

A careful perusal of these articles reveals that the State shall not discriminate against any citizen on the ground of sex, besides other aspects. It also says that women shall not be subjected to any disability, liability or restriction or conditions with regard to certain above enumerated places. However, this clause does not seek to remove the practice of social exclusion prevalent in the society. A critical reading of these provisions of the Constitution points out that the State alone shall not discriminate women by subjecting them to any disability, liability, restriction or condition, not in all places or other organizations that are found in the society, but are confined only to selective areas and those that are funded or under the control of the State. It can be inferred that social exclusionary practices have not been removed completely.

The concept of protective discrimination also known as compensatory discrimination that enables women to realize their equal status and opportunity in a speedier manner is provided for in these words: *“Nothing in this article shall prevent the state from making any special provision for women and children.”*\(^11\)

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\(^9\) *Article 15(1)* of the Constitution of India.

\(^10\) *Article 15(2)* of the Constitution of India.

This provision allows the State to enact special provisions for the purpose of promoting and protecting the interest of women, which shall not be construed as going against equality provision as enshrined in Article 14 of the Constitution. But for these provisions, the process of inclusion of women back into the mainstream by working against the millennium old socio-cultural ethos that excluded women from different domains of social life could not have been possible. What is social justice to the weaker sections of the society, is equally applicable to women, who are the weakest of them all. This constitutional provision is like a magic wand that exclusively enables women to achieve gender justice, which is an attribute of social justice. It facilitates women to have several special protective and promotional welfare legislations to realize the goal of gender equality at a speedier rate.

A superficial reading of clauses (4) and (5) of Article 15 may reveal that the reservation provided to “socially and educationally backward classes” of people including those belonging to Scheduled Castes and Scheduled Tribes is gender neutral. But a critical analysis makes it clear that they have a profound effect in enabling gender equality. In the traditional Hindu social system which is based on varna and caste, in each and every section of the hierarchical society, women are treated as inferior to men. Higher the caste hierarchy, higher would be the status and position. Correspondingly, in every hierarchal level, the status and position of women are inferior to men of that particular caste and section. The constitutional mandate of providing special provisions like reserving seats in educational institutions would facilitate persons from such socially and educationally backward classes to make use of such facility. It is this apparent gender neutrality that facilitates women from these socially and educationally backward classes to empower themselves. Education is the key to development. Of all the level players of equality, education is the most potent and effective level player that works in myriad ways. It not only enables women to realize their equal status and opportunity legally, but by exposing them to scientific thought and logical reasoning it encourages them to understand the myths and fallacies of superstitious beliefs, thereby liberating them from a state of mental bondage to breathe the rejuvenating air of freedom.
The State on its part as envisaged in the Constitution encourages and facilitates education for women by opening schools, colleges and at times universities also exclusively for girls and women. Yet the State’s endeavour is not received in the same manner in all places and at all times. In some places it is stonewalled and does not produce the desired results. In some other places it is welcomed heartily allowing benefits to reach immediately. The reasons for this lukewarm response to Government’s inclusive initiatives are due to the continuance of social exclusionary practices still gripping the society and holding back the girls from enjoying the facilities. In the name of protection, a number of restrictions are placed on girls leading to a considerable number of drop outs among them. In many families in the rural areas with working parents, it is usually the eldest daughter who takes care of the younger siblings while performing other household duties. Education is thus denied to them. In some families, once girls attain puberty they are stopped from going to school. Some parents do not send their girl children to schools due to distance from their homes. At times girls themselves refuse to attend school for many reasons like lack of toilets and unclean toilets. They not only create problems but also pose health hazards to menstruating girls. Lack of sanitary napkins also makes it difficult for them to attend school. Eve-teasing, rampant in the patriarchal culture seriously hurts the education of girls. The threat of molestation, physical attacks, acid attacks etc. scares the girl children who prefer to drop out of school at the slightest trouble.

The attitude of parents also matters a lot. Education for girls according to many parents is a stop gap arrangement, giving them time to fix up a proper marriage alliance. Marriage for girls is seen as top priority and education gets the least priority. If a girl is sent for higher education, the chances of interacting with men from other communities and going in for inter-caste marriages may happen, which creates problems for parents. And even otherwise for highly qualified women, the parents have to shell out more dowry to get an equally qualified person or more qualified person than their daughter. Society frowns upon matches where the women are better qualified and are earning more than the men, leading to strained relationships. In the marriage market, women should be inferior to men in all ways except perhaps in wealth. Hence parents prefer to send girls to
educational institutions that impart skills related to arts, home science and sciences. If they are sent for jobs, only some occupations are preferred for them like teaching, medicine, nursing etc. There is a clear segregation in the society on gender specific jobs. Only in the recent past, parents are encouraging girls to go in for higher professional education.

The parents have a choice of spending for girls’ higher education or in giving a fat dowry to secure a good alliance for their daughters. Many cannot afford to spend on both, so education especially higher education gets the beating. Spending on a boy’s education is a good investment for parents, as a good education and an equally good job is reflected in the dowry he gets. The higher the education and pay, the higher would be the dowry he can get. So higher education for girls or women is sacrificed at the altar of marriage. In the patriarchal society, merging of wife’s identity with her husband is the force that shapes parental attitudes. Early marriage and early motherhood affects girls’ education the most.

In Tamil Nadu, the recent trends in the pass percentage and toppers in school education reveals that girl students are securing higher pass percentage and more girls than boys are emerging as toppers. But as they go up the ladder into higher education, the number of girls to boys is comparatively less. More parents prefer to send boys than girls to foreign countries for higher education due to monetary reasons and also due to security concerns. They have to spend huge amounts of money at the time of marriage. After marriage the parents of girls are not entitled to receive any part of their salary. The wife needs her husband’s and in-laws permission to give a part of her salary to her parents. Hence spending huge amounts on higher education for girls is not a viable investment for parents. Going for higher education after marriage is not possible for many women. It is considered a very selfish thing for a wife to develop her own abilities especially if her husband is not so educated and the time she spends for her own development is to be minimized as she is expected to spend her time in taking care of her children and other family members and their needs. Her individuality is completely suppressed.
In this traditional society, enforceable legal rights are mere paper tigers, unless they are accepted by the society. Sensitizing and enlightening the people about the relevance and necessity of higher education and better employment for women is the need of the hour as that alone can transform legal equality into social equality. Article 15 strikes at the root of these problems.

Article 16 of the Constitution provides equality of opportunity in matters of public employment. It is an inclusive provision wherein the social exclusion of restricting women from participating in the remunerative employment in general and political administration in particular is removed. As pointed out earlier, women were unfavourably excluded from participating in the policy making decisions at the higher level and in governance, for which men alone were favourably included. Striking at the inequality of opportunities due to unfavourable exclusion of women and favourable inclusion of men, this provision stipulates that, “there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state.”

‘All citizens’ includes women citizens also and this gender neutral language in one stroke unyokes women from centuries of bondage and exclusion, bringing in a level playing field for all on an equal footing. The lofty declaration in the Preamble of securing its citizens equality of opportunity is thus manifested as a fundamental enforceable right. The Article further states that, “no citizen shall on grounds only of ... sex... be ineligible for, or discriminated against in respect of, any employment or office under the state.”

Articles 15 and 16 are both potent inclusive measures attempting to bring women into the mainstream by striking at many deep rooted social exclusionary customs. While women’s right to education is ensured by Article 15, equality of employment opportunities is guaranteed by Article 16. Further the State is empowered to provide reservations in employment for the upliftment of backward class citizens in these words,

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12 Article 16 of the Constitution of India.
13 Article 16(2), Ibid.,
nothing in this article shall prevent the state from making any provision for the reservation of appointments or posts in favour of any backward class or citizens which, in the opinion of the state is not adequately represented in the services under the state.14

Despite this being an inclusive provision seen from the women’s perspective, it falls short of expectations. Provisions similar to those given in Article 15(3) ought to have been incorporated in Article 16 mandating the State to reserve seats for women in all appointments till parity is reached. In India it cannot be denied that as a group women constitute the most backward class of citizens, cutting across religion, race, caste or place of birth. This is also the universal truth and insertion of such a provision would have been an effective inclusive one that removed speedily and effectively most of the social exclusionary practices. According protection to personal laws in the Constitution negates and nullifies many fundamental rights given to women. It stands in the way of conversion of women’s rights into powers, leaving most of the gender rights only on paper. By permitting religious freedom, the Constitution is directly allowing the continuance of gender discriminations as practiced by religious groups.

Clauses 4A and 4B of Article 16 empowers the State to make provision for reservation in matters of promotion for people belonging to the Scheduled Castes and Scheduled Tribes. The Preamble of the Constitution contemplates to secure to all its citizens, inter-alia social justice. Gender justice is an essential component of social justice. While the Constitution is highly sensitive in realizing social justice, the same degree of sensitization is found missing as far as gender issues are concerned. Article 15(3) facilitates the State to make special provisions for women and children. But corresponding reservation provisions analogous to women of Scheduled Castes, Scheduled Tribes and other backward classes is found missing in the case of women. In India including in Tamil Nadu, women are the weakest and the most marginalized sections of the society, since they are the lowest of the lower classes.15 It further stipulates that,

14 Article 16(4), Ibid.,
nothing in this article shall affect the operation of any law which provides that the
incumbent of any office in connection with the affairs of any religion or
denominational institutions or any member of the governing body thereof shall be
a person professing a particular religion or belonging to a particular
denomination.\textsuperscript{16}

This clause facilitates the continuance of exclusionary practices adopted by the
society in connection with religious affairs. A critical reading of the provision reveals that
in religious affairs, men are having traditionally a stronger hold and a dominant position.
Almost all heads of religious denominations are men and the patriarchal hegemony is
strictly followed in the top administrative hierarchy of religious denominations. This
blatant practice of favorable inclusion of men and unfavorable exclusion of women is
allowed to continue by this clause. Behind the gender neutral and gender friendly
exterior, the patriarchal core which directs the other aspects of society are left unchanged
in the name of five thousand year old legacy and our rich cultural heritage. There is a
marked duality in the approach of the Constitution. On the one hand it is gender sensitive
and proclaims equality and on the other it leaves the personal laws of citizens to be
governed as per their tradition and culture in which male superiority and inferiority of
women is the practice. This professed policy of non-interference in the religious affairs of
the people by the government, is a Himalayan obstacle that stands in the way of gender
equality.

The religious laws of the natives consider women as generally polluting though
recurring month after month, it is temporary in nature. Menstruating women and women
after childbirth are considered to be impure and polluted and are barred from religious
ceremonies and other rituals. This temporary pollution, despite being different from the
practice of untouchability due to caste hierarchy renders every Hindu women irrespective
of the caste hierarchy, an untouchable in her life time. It is recurring in nature and can be
cleansed.

\textsuperscript{16} Article 16(5) of the Constitution of India.
Even today Hindu girls and women are not allowed to go on pilgrimages during the so called polluting days and cannot undergo the 40 day rituals to go to Sabarimala temple in Kerala. Similarly in all popular Saivaite and Vaishnavite temples, women cannot officiate as priests. This again is an explicit illustration of unfavorable exclusion of women. It has wide repercussions on all walks of life, since Hindu society is religion centric. Of course, there are exceptions to such exclusions. But such exceptions are very few and are confined only to some of the Hindu temples which practice shakthi worship, followed in villages. Mostly such village deities and village temples do not follow agama traditions which bar women from entering the sanctum sanctorum even on their so called non-polluting days.

The above constitutional provision enshrined in clause 5 of Article 16 legalizes such exclusionary practices adopted by the society in various religious denominations. Recently, the Supreme Court held that such exclusion may not be deemed as untouchability. In 1971, the Tamil Nadu Government amendment abolished hereditary appointment of priests. That amendment was challenged and the Supreme Court in 1972 upheld the abolition of hereditary appointments, but at the same time it upheld postings as per Agama Sastra.

In May 2006, the Tamil Nadu Government passed a Government Order stating that Hindus having qualification and training can be appointed as archakas irrespective of their caste. In August 2006, an Act was passed by the Government of Tamil Nadu to appoint priests as per agamas. Subsequently 207 people were trained for appointment as archakas. The present Supreme Court judgement was pronounced while deciding a

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19 *The Seshammal case*: Twelve writ petitions were filed alleging that the amendments made in 1971 violate Articles 25 and 26 of the Constitution — Freedom of conscience and free profession, practice and propagation of religion, and freedom to manage religious affairs subject to public order, morality and health. The court upheld the validity of the amendment
21 “SC backs Appointment of Priests as per Agamas”, *The Hindu*, New Delhi, December 16, 2015.
petition filed by Adi Saiva Sivachariyagal Nala Sangam in 2006 challenging the Government Order opening up the job of temple priests to all castes. On December 16, 2015, the Supreme Court gave a landmark judgement on the sensitive socio-religious issue. It held that so long as priests are appointed as per norms of the scriptures, it did not violate the cardinal non-discrimination mandate of the Constitution. Here it is suffice to say that in this judgement the Court held that non-interference of Government in religious practices, in this case appointment of priests, did not mean that the Courts would not or could not decide cases on such issues. From this it can be inferred that as long as Articles 15(5) or 16(5) and other provisions of the Constitution related to religious freedom are prevalent, exclusion of women cannot be removed and whatever inclusive policies are adopted in improving the status and opportunity of women, it would not enable them to realize absolute equality in status and opportunity leave alone social and religious equality.

IV. WOMEN AND UNTOUCHABILITY

The Constitution categorically abolishes untouchability. It prescribes that, “‘Untouchability’ is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of ‘Untouchability’ shall be an offence punishable in accordance with law.”

In this Article, the term ‘untouchability’ is put within quotation to connote that a particular meaning has been ascribed to that term. The social practice of untouchability that was rampant and which excluded the lower caste people from a sizeable chunk of social life stands abolished. But is does not mean the abolition of untouchability in religious practices, since the Government has excluded itself from interfering in this area.

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25 Article 17 of the Constitution of India.
Women of all castes, as discussed earlier, are untouchables periodically in their life time and hence are polluted. Article 17 does not abolish such type of untouchability. The intensity and quality of untouchability varies in the caste hierarchy. Even in the upper rungs of the caste hierarchy, there was a practice of untouchability amongst themselves. When the cadre of caste hierarchy widens, the dimensions and quality of pollution intensifies. Higher the caste hierarchy, lesser the pollution and untouchability, lower the caste hierarchy, more the intensity of pollution and hence strict untouchability is found.

This Article has enabled the State to pass laws making the practice of untouchability a punishable offence like,

a) the Abolition of Untouchability Act, 1955;
b) Protection of Civil Rights Act, 1976;
c) The Prevention of Atrocities over the Scheduled Castes and Scheduled Tribes Act, 1989.

All these Acts make untouchability a cognizable offence. From these enactments, it is inferred that only the form of untouchability that was practiced by the upper caste people over the Scheduled Castes and Scheduled Tribes alone are prohibited and punished. All other types of exclusions due to untouchability prevalent among non-Scheduled Castes and Scheduled Tribes are not prohibited and punished. It is also to be noted that the social practice of untouchability amongst the various castes and sub-castes of Scheduled Castes and Scheduled Tribes are not prohibited and punished. The practice of untouchability against women of the intra and inter castes of Scheduled Castes and Tribes are also not prohibited and hence non-punishable.

V. ABOLITION OF TITLES

In a patriarchal society, as per the law of primogeniture, the eldest son is entitled to inherit the political legacy of monarchy and the throne as the heir apparent. Female legal heirs were deprived of this right and priviledge. As a corollary to this priviledge, titles whether military or academic were conferred only on men and women were excluded from being considered for such titles.
This anomaly has been set right in the Constitution by uniformly abolishing the right to conferment of titles irrespective of sex. It implies that distinctions to enhance the status and position cannot be conferred exclusively on men in order to prevent the assumption of superior status of men over women. On the surface, this article connotes no link to social exclusion. But a deeper analysis makes it clear that this Article negatively equalizes women and men to the same level of status and position by the policy of not conferring any title on any citizen or persons. It prevents the assumptions and acquisition of titles like Knighthood, Sir, Dewan Bahadur, Dewan etc on men alone.

Articles 14 to 18 are related to equality rights and are the manifestation of the declaration of the Preamble that seeks to secure equality of status and opportunity to all the citizens of India. Article 14 as discussed earlier, is applicable to all men and women in India, irrespective of their nationality. This article is an important precept on which the tenets of rule of law is founded. However, rule of law is applicable only in terms of civil and political rights conferred by the Constitution which are against the State. The paradox is that there are different domains wherein women have been negatively excluded especially in the socio-religious sphere. But this Article guaranteeing equality was only in terms of status and opportunity, that too against the State.

Articles 15 and 16 are gender sensitive articles confined only to Indian nationals unlike Articles 14, 17 and 18. Article 15 explicitly states that no Indian woman citizen shall be subject to any disability, liability, restriction or condition only on account of sex among other things. Likewise, Article 16, yet another inclusive article holds that women shall not be ineligible for or discriminated against in respect of any employment of office under the State. These articles no doubt are inclusive but their scope is limited to the State, leaving undisturbed the social arena, the huge factory that has churned out and continues with the traditional exclusionary practices. There is a perceptible duality of approach in according gender equality. The fundamental right of equality guarantees gender equality and in the same fundamental rights concerning religious practices, it is

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26 Article 18 of the Constitution of India.
denied. The traditional social exclusionary practices of a patriarchal society are indirectly allowed to continue citing the Government’s policy of non-interference in the religious rights of the people and they invariably deny equality to women irrespective of religion.

Father is still considered as the head of the family and in important religious bodies, men are appointed as heads. The patriarchal system that has seeped deep into the mindset of the people, both men and women helps in the continuance of the exclusionary practices against women. Similarly, patrilocal customs ensure that after marriage, it is the norm for the newly wedded wife to leave her familiar territory that is her parents’ house and relocate with the husband’s family. She is bound to follow the authority of her husband, her in-laws and others living in that house. She has to strive hard to be accepted as part of the family, but finds that her role is secondary and subordinate. Society mocks at a man who stays in his in-laws house. The feeble voice of the young wife in a new environment is muffled. Hindu religion legitimizes the patriarchal system and patrilocal practices. Succession is also predominantly on that basis. Hindu law of succession is based on the ancient laws. Despite the existence of a multitude of reforms in laws relating to marriage, adoption, maintenance and guardianship, gender equality eludes women to this day. This aspect is discussed elaborately in this chapter under the heading “the right to freedom of religion.”

VI. FREEDOM AND SOCIAL INCLUSION OF WOMEN

Indian society is holistic besides being hierarchical. Yogendra Singh has elaborately analysed it in his book. In such a society primacy is not given to individuals, but to family, caste and community. Hindu social system is idealistic in nature and the concept of liberalism, based on liberty is still far away. The western political systems in general and the British system in particular advocate liberty. In those societies, primacy is accorded to individuals rather than to society. The Constitution of India adopts some of

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27 See heading, infra.,
the principles of liberalism while allowing the existing idealistic principles of Indian society.

The Preamble of the Constitution is explicit and aims to secure to all citizens ‘liberty of thought, expression, belief, faith and worship’. The first two doctrines of thought and expression and their corollaries are transformed into enforced fundamental rights from Articles 19 to 22, subject to reasonable restrictions. The term ‘liberty’ is used in the Preamble, but in the enforceable fundamental right, the term ‘freedom’ is used. In Preamble, the aim is to secure to citizens all that have been enshrined. But in the right to freedoms, excepting Article 19, all other articles are not restricted to ‘citizens’, but open to ‘persons’ like in Articles 20, 21 and 22.

Article 19 has both inclusive and exclusive elements. By declaring that it is for the citizens, it excludes non-citizens. Moreover, the use of gender neutral language makes it an inclusive and protective right for women. This Article has a cluster of six freedoms available to citizens in general. It has to be critically analyzed in the backdrop of Hindu social system. Freedom of speech and expression guaranteed as a right in the Constitution was not available for all in the traditional Hindu social system.29 As it is a religion based society, religious authorities exercised strict control over the society. Free expressions of ideas against the religious and social precepts were not tolerated.

In the Hindu hierarchical society, freedom of expression was not available against the superior to the subordinate. A women in her lifetime was always subordinate to the authority of a male family member, be it father, brother, husband, or son. The Hindu scriptures and the Dharmasastras clearly stipulate that a woman cannot be independent. In such a society, she has neither a choice to select her husband in marriage, nor to have control over having children and on spacing between children. A widow was denied the right to remarry, but a widower enjoyed that right. Hence as far as freedom of speech was concerned, man had better choice of expression, but it once again depended on caste hierarchy. Upper caste men had more choice to freedom of speech than lower castes who had absolutely no voice. The freedom of speech and expression was denied to them.

29 Article 19(a) of the Constitution of India.
The next right is assemblage, i.e. the right to assemble.\textsuperscript{30} This right is available to all citizens irrespective of gender. Assemblage in a traditional society was possible for both sexes only during religious ceremonies and family functions. But to assemble and deliberate in public places was earlier the exclusive privilege of adult menfolk. Right to form associations or trade unions or co-operative societies is yet another vital freedom conferred by the Constitution.\textsuperscript{31} An individual woman cannot fight to remove this disability and inequality, against the social and religious hegemony. The Constitution confers it as a right, and it enables women to start associations or unions. Feminist movement got a stimulus and momentum due to this freedom. In the recent past, Self Help Groups (SHGs) have emerged as popular societies that promote the interest of women by forming co-operative societies. Micro-level financing to facilitate women to pursue economic activities free from the control of men and money lenders, with the help of the government has helped the SHGs to organize themselves economically on a proper footing.

Right to reside\textsuperscript{32}, and move freely\textsuperscript{33} throughout the territory are the two other rights. The most important provision is right to practice any profession or to carry on any occupation, trade or business. Earlier, there was no categorical right conferred on women, but this fundamental right enables women to select their own profession, occupation, trade or business. This right can unshackle women from centuries of exclusion from many economic activities and being confined only to child rearing and bearing.

There are reasonable restrictions to each and every right mentioned above. The State is vested with the right to suspend all the freedoms available under Article 19 when national emergency is declared.\textsuperscript{34} Leaving aside the restrictions, these six freedoms are revolutionary in nature, aiming at removing centuries of oppression and subjugation. It attacks several exclusionary practices at one time.

\textsuperscript{30} Article 19(b), Ibid.,
\textsuperscript{31} Article 19(1), Ibid.,
\textsuperscript{32} Article 19(e) of the Constitution of India.
\textsuperscript{33} Article 19(d), Ibid.,
\textsuperscript{34} Article 358, Ibid.,
Article 20 confers rights on persons and are related to crimes and punishments. In this article, ex post facto criminal legislation is proscribed. Double jeopardy and self incriminatory evidences are avoided. Punishment shall not be given beyond the maximum period prescribed. This is also a gender neutral article that has substantially removed several disabilities attached to women and exclusions women had to face. Several special legislations like the Acts to prevent eve-teasing, sexual harassment etc emanated from Article 20. Their ramifications are discussed in the IV Chapter. The Indian Penal Code, 1860 and the Criminal Procedure Code, 1863 have been validated by this Article.

Article 21 is related to protection of life and personal liberty. In the Preamble, the term ‘liberty’ is used but in Article 21, the terms ‘personal liberty’ is used. Articles 20 and 21 cannot be suspended even during national emergencies. Article 21 has given birth to different generations of human rights, like 1) first generation rights; 2) the second generation rights and 3) the third generation rights. Even fourth and fifth generation human rights are emerging. There are two rights embedded in Article 21. They are ‘right to life’ and ‘right to personal liberty’. ‘Right to life’ has given birth to environmental rights, etc. Right to personal liberty has resulted in the passing of several human rights.

The Supreme Court of India liberally and periodically invokes Article 21. The interpretation of this article has widened its scope in ways no court in the world would have thought. The apex court through various landmark judgments has expanded the horizon of human rights deftly using this potent weapon – Article 21. Gender right is an essential component of human rights and therefore the expansion of human rights has a profound impact on extension of women’s rights and its various dimensions. Landmark gender related judgements are analysed in Chapter VI.

35 “(1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. (2) No person shall be prosecuted and punished for the same offence more than once. (3) No person accused of any offence shall be compelled to be a witness against himself.”
36 “No person shall be deprived of his life or personal liberty except according to procedure established by law.”
37 Article 359 of the Constitution of India.
VII. RIGHT TO EDUCATION AND GIRLS EDUCATION

The constitutional amendment of making education to children compulsory is a means through which both the parents and the State are made liable to give free education to all children including girl children up to the age of fourteen. Right to education has been made a fundamental right through an amendment inserted as Article 21A, which runs as follows. “The state shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the state may, by law determine.”

There are provisions in the Constitution that deal with protection against arrest and detention in certain cases. This Article has two dimensions. The first dimension is related to the rights of arrested persons and the other is related to the rights of arrested persons who have been detained under the preventive detention laws. This article is also gender neutral, but in practice it has given birth to several privileges and protections exclusively for women who are arrested and detained. No woman shall be detained and kept under police custody between 6.00 pm and 6.00 am. Similarly no woman shall be arrested by a policeman without the presence of a police woman. There are several protective measures conferred on arrested women which have been dealt in the other chapters.

Most of the preventive detention laws notwithstanding their gender neutrality have implications against men rather than women. But a critical reading highlights that these rights remove several disabilities, restrictions and conditions that were hampering...
women’s access to equal rights, that existed prior to the Constitution. Moreover, the Central and State legislatures are enabled to expand the rights in order to protect and promote the interests of women. The judiciary on its part interprets the provisions of law innovatively in order to improve the status and position of women in a speedier manner. Explicit expansion of women’s rights, are found in human rights, criminal jurisprudence among other areas.

VIII. RIGHT AGAINST EXPLOITATION

Exploitation of women by men is not peculiar or new to one society alone. It is a universal phenomenon found in all countries and cultures. It is found even in the matriarchal societies that accord the status and position as head of the family to mother and not the father. In such matrilineal societies, the quantum and quality of exploitation may be less but it prevails none the less. Liberal ideas that encourage individual liberty protest against such exploitation. Articles 23 and 24 of the Constitution provide the right against exploitation.

Article 23 prohibits traffic in human beings and forced labour in these words, “traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.”

Traffic in human beings, considered as the oldest profession is prevalent throughout the world. Though both sexes are victims, women are the most affected, especially young women and young girls. The Suppression of Immoral Traffic Act, was enacted in accordance with the provisions of this Article. Similar forms of forced labour are prohibited. But within the four walls of the home, forced labour in doing domestic household chores exists. Families are sustaining and held together due to the work of the homemakers. But, such an important work done by women is not considered as work

43 Article 23(1) of the Constitution of India.
since it is unremunerated. Despite the fact that family structures would disintegrate but for the work of the homemaker, society does not treat it as work and they are considered as duties. The same tendency is shockingly found in the mindset of the Members of the Indian Parliament. The census report tabled and passed by the Indian Parliament has categorised house-wives in the ‘non-workers’ category. Not only that, they are placed in that category along with beggars and prostitutes. In Arun Kumar Agrawal’s case, the judiciary pointed out the existence of this glaring fact in 2001 census and opined that the Government should change this attitude towards homemakers at least in the next census. But it was not considered by the concerned heads of the Government and the Parliament. It is high time wages are fixed to household work so as to calculate the economic value of such labour. Criticizing the gender insensitive approach, the Court said,

categorization of women doing household duties as non-workers clubbing them with beggars, prostitutes and prisoners betrays a totally insensitive and callous approach towards the dignity of labour of women. Census definition of works reflects gender discrimination.

Women are the harbingers and sustainers of human civilization, which they feel is a sacramental duty by bearing children and nurturing them. In a male dominated society, this very important function is also not duly recognized. More and more women are working outside their homes both in the public and private sectors. This can be construed as economic empowerment of women, which is a fact. At the same time it results in double disability for employed women. In this patriarchal society, a woman’s earning is to be given to her husband and normally she cannot give even a share of her income to her parents who brought her up and educated her. Not only that, the household chores are done wholly by women and men very rarely contribute towards it. This is true in India and also in Tamil Nadu. A working mother has to multi-task constantly leaving her fatigued. The traditional gender roles assigned to men and women burdens the women and frees the men from household chores. Article 23 appears to be a gender neutral provision, but it is a highly gender sensitive provision. It prescribes that, “nothing in this

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45 http://censusindia.gov.in/Metadata/Metada.htm#2q
article shall prevent the state from imposing compulsory service for public purposes, and in imposing such services the state shall not make any discrimination on grounds of only religion, race, caste or class or any of them.”

It implies that on grounds of sex, citizens of India shall be protectively discriminated and positively excluded from compulsory service for public services. This provision of the Constitution imposes certain liabilities. Such liabilities may not be imposed against women. It is an exclusionary provision favourably excluding women from compulsory service for public purposes and it is a privilege and immunity accorded to women on account of their sex and hence can be construed as positive exclusion.

The employment of children in factories is prohibited. “No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment.” The term child is gender neutral, implying that including girl child no person below the age of 14 shall be employed. This Article confined such restriction only to work in any factory or mine or in hazardous employment. The Prohibition of Child Labour Act, 1976, further expanded the areas wherein child labour is prevented in the scheduled employment. In a patriarchal society, exclusion is clearly visible in the field of education. For boys, education is considered as necessary, and higher the educational qualifications, higher the dowry. But, for girls that is not true. Excepting wealth, in all other areas like age, education, height, job etc, a girl is supposed to be at a lower position than a boy. If a wife earns more than her husband and is more qualified, it hurts the ego of the husband leading to matrimonial disputes. This again is the result of traditional role assignment and conditioned upbringing.

A girl child especially in the lower rungs of the society is burdened with family responsibilities like taking care of younger siblings, assisting the mother in household chores like fetching water, firewood, cleaning the vessels, sweeping the house, washing, cooking etc. In some families, in case of death of the mother, the eldest daughter assumes

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47 Article 23(2) of the Constitution of India.
48 Article 24 of the Constitution of India.
the responsibilities of running the house. These family responsibilities at such an young age stands in the way of a girl’s education. The dropout rates for girls are higher than for boys. The death of a parent or both parents leaves girls more vulnerable than boys.

Article 24 and the consequent Child Labour Abolition Act, makes the exploitation of children below the age of 14 years as unconstitutional and hence illegal. But neither this constitutional provision nor the legislative enactment can make any inroads into the social exclusionary practices that exploit girl children by making them work at home, in the agricultural fields, in home based industries including cottage industries, and in non-hazardous and non schedule employment. It is referred to as the ‘nimble finger concept’. In home based industries like in rolling beedis and in fireworks, the nimble fingers of the girl children are very useful and so exploitation of the girl child in these areas continues. Though boys are also engaged in such places, more girls are employed because of their nimble fingers.

Girl children also face physical abuse like being sucked into prostitution. Religious prostitution known as the Devadasi system, is a prohibited practice where the girl child is married to a god or goddess. From then on the girl is referred to as the servant of god or devadasi. Families and whole villages help sustain this dangerous custom. After attaining puberty, the girl is deflowered by the highest bidder and then either becomes a prostitute or somebody’s mistress. That system is legally abolished, but it continues discreetly. Such dedicated girls are excluded from marrying.

In this scenario, Articles 23 and 24 greatly assist in emancipating and empowering the girl child and in removing some of the social and religious exclusionary practices. The residual social exclusionary practices continue to persist widely in unorganized sectors including agricultural sector and in home based industrial activities.

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IX. RIGHT TO FREEDOM OF RELIGION

The Preamble of the Constitution aims to secure to all citizens liberty of ‘belief, faith and worship’. Corresponding rights are enshrined under the heading ‘Right to Freedom of Religion,’ as a fundamental right. The Constitution of India through its 42\textsuperscript{nd} Amendment\textsuperscript{52} explicitly declares India as a secular state. But nowhere in the Constitution an operational definition is given either to secularism or to liberty of belief, faith and worship. In Article 25, the term ‘secular activity’ has been used. The Supreme Court from time to time interprets secularism from different dimensions. Recently in deciding a petition by Adisaiva Sivachariyagal Nala Sangam, the judges categorically laid down that scriptures or agamas which follow exclusionary practices in matters related to essential elements of religion are not considered as violating the equality clause of the Constitution. Correspondingly such unequal treatment depriving particular sections of the society in officiating as Archakas or priests shall not be construed as untouchability.\textsuperscript{53} As far as agamas are concerned, it talks only of men who can qualify themselves as priests and women are completely excluded.\textsuperscript{54}

‘Freedom of conscience’, and ‘free profession, practice and propagation of religion’ is also conferred by the Constitution in these words,

\begin{itemize}
  \item \textit{(1) Subject to public order, morality and health... all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion. (2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law— (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice; (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.}\
\end{itemize}

A critical reading of this Article highlights that it is related to equality and freedom, since it provides that, “all persons are equally entitled to freedom of

\textsuperscript{52} The Constitution (Forty-second Amendment) Act, 1976.
\textsuperscript{53} The Times of India, December 17, 2015.
\textsuperscript{55} Article 25 of the Constitution of India.
This Article, a combination of right to equality and right to freedom is applicable only in matters related to conscience, to profess, practice and to propagate religion. It is not only gender neutral, but is also an open and inclusive article applicable not only to Indians but to aliens also. This right is conferred equally to persons of all religious denominations and also to those who follow no religion. Since this right is a blend of equality and freedom especially on a very sensitive issue, there are reasonable restrictions to the enjoyment of this right. It is available subject to public order, morality, health etc, as has been classified for ‘right to equality’. Likewise several restrictions to right to freedom are applicable to this Article also, therefore, all those conditions and restrictions applicable under the fundamental right to equality and freedom as found in Part-III are equally applicable to the right to religion. Clause 2 of the Article stipulates that “nothing in this article shall affect the operation of any existing law or prevent the state from making any law—

(a) Regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice.”56

There are two important terms used here namely ‘existing law’ and ‘any law’. The term ‘existing law’ has been defined in Article 366, thus

‘existing law’ means any law, Ordinance, order, bye-law, rule or regulation passed or made before the commencement of this Constitution by any legislature, authority or person having power to make such a law, Ordinance, order, bye-law, rule or regulation.57

This definition implies that all the existing laws at the time of advent of the Constitution shall not be considered as contradicting the rights conferred by this Article. The Supreme Court brought into force the concept of the ‘doctrines of eclipse’, whereby all those provisions which have been in existence shall be construed to be ultravires of the Constitution if they contravene any of the provisions of Part-III. It implies that those existing rights and liabilities attached on account of essential practices of religion except in matters related to economic, financial, political and secular activity of religion shall be valid.

56 Article 25 (2), Ibid.,
57 Article 366, Ibid.,
Further, this clause provides that, nothing in this Article shall prevent the State from making any law to regulate any economic, financial, political or other secular activity associated with religious practice. It implies that the State is empowered to regulate religious practices excepting its essential elements. A careful reading of these provisions reveal that all the essential elements of religion which have been in practice prior to the Constitution, are allowed to continue and the ‘doctrine of eclipse’ would not be applicable to it. There is a clear bifurcation in the right to freedom that one relates to as ‘essential elements of religion’, which cannot be tampered by the State or the Court. The second relates to ‘other secular activity of religion’, which can be regulated by the State through law and the courts can adjudicate on it.

Further, Article 25 provides that, “nothing in this Article shall affect the operation of any existing law providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.”

Similarly, the State is empowered to make any law providing for the above said social welfare and reform activities of Hindu religion. This clause lays bare two things. Firstly, it deals exclusively with Hindu religious institutions and secondly such religious institutions must be of public character. At the same time “all classes and sections of Hindus” do not mean to include ‘Hindu Women’ since the term ‘irrespective of sex’ or similar gender inclusive language is missing. It can be inferred that these things are not kept open to Hindu women.

An analysis of the clauses of Article 25 reveals that clause (1) and clause 2 (a) are religion neutral, while clause 2(b) is an exclusive one referring only to Hindu religion. Both the clauses are gender neutral. A critical reading of these provisions would highlight the prevalence of two types of Constitution exclusionary provisions; viz. 1) exclusion of the doctrine of eclipse to this article, and 2) the exclusion of State from making any law on matters related to essential elements of religion. However, it does not include matters

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58 Article 25 (2) (b) of the Constitution of India.
related to economic, financial, political and other secular activities of religion. It implies that all those essential elements of religion which have been in existence prior to the Constitution are allowed to continue even after the introduction of the Constitution, which provides several fundamental rights.

Gender implication of Article 25 in general and its application on Hindu women in particular is significant. The traditional Hindu social system and the essential religious elements of gender hierarchy, consider the individual as well as women as instruments for the betterment of the social institutions namely family and caste. In matters of religion and its practices, women are treated as subordinate to men. These religious essential elements continue to exist both in social and religious practices to this day. Notwithstanding the lofty proclamations in the Preamble and in many articles of the Constitution, on equality of status and opportunity and other freedoms, there are several areas where Hindu women still continue to be excluded from many socio-cultural and religious activities.

The following are the areas where Hindu women are still discriminated due to the existence of imposing several liabilities, disabilities and conditions, curtailing her power to utilize her rights effectively. Gender discrimination in personal laws including those related to religion are rampant depriving Hindu women of their rights. Few blatant examples of exclusions in legislative enactments based on personal laws are pointed out here. The Hindu Marriage Act while removing polygamy, prescribes the essentials of a valid Hindu marriage. However, Hindu marriages are not declared as civil contracts, but are still considered as religious sacraments.

The Hindu Succession Act, 1956, accords discriminatory treatment to female Hindu heirs. Woman as a mother, wife, and as a daughter are mentioned as legal heirs and are entitled to inherit both from their father and mother. But in case of spes successionnis, only male legal heirs are entitled to inherit. Stridhana property is

59 The Hindu Marriage Act, 1955
60 see Chapter IV, supra,
exclusively available to women and not to men. In practice however, all these rights remain on paper and female legal heirs are mostly deprived of realizing their equality due to various reasons.\textsuperscript{61}

As per the Hindu Adoption and Maintenance Act,\textsuperscript{62} as long as the father is alive, a Hindu mother is not legally entitled to adopt a child, but is entitled to give consent to her husband’s proposal to adopt a child. Likewise, a Hindu mother does not have the right to give in adoption her child to some person. She is given the right to give consent to her husband’s proposal to give their child in adoption. Hence in personal laws, discriminatory provisions are blatantly visible.

The Minority and Guardianship Act, stipulates that as long as the father is alive, no Hindu mother can be a natural guardian of her minor child or children.\textsuperscript{63} This issue regarding the mother as the natural guardian was decided by the Supreme Court in Gita Hariharan’s case.\textsuperscript{64} The Act did not make any considerable change to consider Hindu mother as the natural guardian.\textsuperscript{65} Nevertheless, in the case of illegitimate children, mother can be a guardian, probably since father’s name is not known or not revealed by the mother. These Acts have been influenced by the fundamental right relating to religious freedom.

The above few examples are proof of the exclusionary practices embedded in the Constitution. Thus the goal of the Preamble to accord equality of status and opportunity is available to Hindu women also, but only in those matters related to the State and political issues. In the case of personal laws including matrimonial matters, discriminatory exclusions imposing conditions against women exists. Abolition of polygamy was a blow to the delicate castle of male chauvinism and dominance. But

\textsuperscript{61} see Chapter IV, \textit{supra.},

\textsuperscript{62} The Hindu Adoption and Maintenance Act, 1956

\textsuperscript{63} The Minority and Guardianship Act, 1956

\textsuperscript{64} Ms. Githa Hariharan and another v. Reserve Bank of India, \textit{AIR} 1999 SC 1149

\textsuperscript{65} see Chapter IV, \textit{supra.},
concubinage was not abolished. Accordingly, notwithstanding illegality of marriages, the offspring of the illegitimate wife is legally entitled to inherit the father’s property.  

Discrimination against women, has another dimension wherein protective discrimination is accorded in certain areas. The minimum age for marriage of girls is fixed as 18 years and for boys it is 21 years. A boy is said to be a minor until his 18th year and till that period is under the guardianship of his parents. For a girl, till marriage, she is under her parents’ guardianship, which baton is passed on to her husband after marriage. Even if the girl is a minor at the time of marriage, her husband assumes the role as guardian of his minor wife. Minor’s marriage is not a void marriage, but a voidable marriage, according to Hindu law. The ‘option of puberty’, clause is available to a married minor girl only for a period of three years after attaining the age of majority to annul that marriage. Consequent to the abolition of polygamy and the continuance of the practice of concubinage, the liability rests with the putative father to maintain his child or children along with his duty to maintain the mother of his illegitimate children.

From the above analysis, it is found that Article 25 of the Constitution perpetuates certain social exclusionary practices that exist in the Hindu social system. At the same time, this Article also empowers the competent legislatures and authorities to introduce and implement certain inclusive provisions to empower and protect women. The split personality or the duality of the Constitution is glaring in this particular Article. While perpetuating certain disabilities attached to Hindu women, this Article attempts to transform the Hindu social system gradually from within. The legislative enactments and judicial pronouncements on gender equality help in this transformation.

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66 “Illegitimate children entitled to ancestral property” The Hindu, New Delhi, April 8, 2011.
67 Section 5(iii) of The Hindu Marriage Act, 1955.
68 Section 2 of The Child Marriage Restraint Act, 1929.
69 See Chapter IV and VI, infra.,
X. FREEDOM TO MANAGE RELIGIOUS AFFAIRS

The Constitution guarantees every religious denomination or any sections thereof the right to manage its religious affairs subject to certain conditions in these words:

*Subject to public order, morality and health, every religious denomination or any section thereof shall have the right –*

a) to establish and maintain institutions for religious and charitable purposes;

b) to manage its own affairs in matters of religion;

c) to own and acquire movable and immovable property; and

d) to administer such property in accordance with law.70

The right to establish and manage institutions for religious and charitable purposes along with the corresponding rights to acquire property and administer the same is enjoined upon every religious denominations by this Article. Though this Article is religion and gender neutral, it has serious negative implications upon the status, position, powers and liabilities of women. These fears are not unfounded as it is Hindu religious denominations that strictly maintain the essential elements of the Hindu religion. Hindu religious practices reek of gender discrimination, which maintains the superiority of men and inferiority of women, in all critical areas of life. Liberty and equality is accorded only for mundane things since it is unable to penetrate the core of Hindu thought and philosophy due to the concrete walls of resistance within the Hindu mind. The cultural traits of ascriptive and exclusionary practices are preserved and zealously protected under the guise of tradition and religion. As long as these Hindu religious denominations exercise their powers and control over its followers, all those exclusionary practices imposed upon Hindu women will continue to prevail edging out the concepts liberty and equality to a distant realm as an elusive dream. Thus as long as Articles 25 and 26 reflecting the classic duality of approach in the Indian Constitution, are not amended, gender discrimination cannot be rooted out since this social reality is legally endorsed.

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70 Article 26 of the Constitution of India.
XI. CULTURAL AND EDUCATIONAL RIGHTS OF MINORITIES AND WOMEN- EXCLUSIONARY PRACTICES

There are two Articles under this category which confer certain rights and privileges to minorities. This is religion neutral and also appears to be gender neutral. It is exclusive and is available only to citizens of India. On the protection of the interests of minorities, the Article says that

(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2) No citizen shall be denied admission into any educational institution maintained by the state or receiving aid out of state funds on grounds only of religion, race, caste, language or any of them.\(^7\)

A cursory reading of this Article reveals that though the word ‘minority’ is used in the margin note, it is conspicuously absent and probably deliberately omitted in the body of the Article. The term ‘minority’ has been swapped for the terms ‘any section of the citizens’. So, any section of the citizens who claim to have a distinct language, script or culture of its own shall have the right to conserve the same. Even among the practitioners of Hindu religion, there are several Hindu religious denominations in Tamil Nadu, and also in other parts of India who claim to be minorities on account of their language, script or culture and its implications on gender equality is significant. It is a known fact that the Hindus in general and the various religious denominations in particular discriminate women. This right empowers the religious denominations to conserve the same policy of gender exclusion. Thus, this ensures that the ascriptive status of women, the discriminations, the liabilities, the disabilities, the unfavourable inclusions and the unfavourable exclusions that affect women’s life in all possible ways, can be legally perpetrated on grounds of protecting one’s hoary cultural legacy intact.

\(^7\) Article 29 of the Constitution of India.
Clause (2) of Article 29, deliberately omits the term ‘sex’. It implies that there shall be discriminations, protective or otherwise in receiving aid out of state funds on account of sex. It is implicit from this Article that there can be discrimination and denial in admission to women in general and Hindu women in particular to educational institutions considered as minority institutions. Cultural and educational rights of minorities coupled with the right to freedom of religion are the constitutional provisions that perpetuate social exclusionary practices. In the name of secularism and religious freedom, the Constitution restricts the State from interfering in the essential elements of religion and in the cultural and educational rights of the minorities. This area is the breeding ground for gender discriminations to continue and even proliferate.

Women in all parts of the world cutting across nationality, race, religion and mother tongue are minorities when compared with men both in terms of population and in controlling the economic and other natural resources. This general picture applies equally to women in India and in Tamil Nadu. In holding of property, women together possess lesser property when compared with men. In political participation and control, despite the political system being a democracy, yet, women do not have equal or proportionate representation according to their population. Therefore they are the single largest minority group not only in India, but in all parts of the world.

3. OTHER INCLUSIVE CONSTITUTIONAL RIGHTS

I. POLITICAL RIGHTS

The republican Constitution of India provides for a democratic political system on the basis of representative democracy. The representatives, who constitute the legislature both at the Centre and the State, have a collective control over the executive. Therefore, the right to contest in the election and eligibility to cast votes to elect representatives are the core features of democracy. The Constitution guarantees adult franchise irrespective of sex. This provision itself is revolutionary and is instrumental in enabling a sustained

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72 Article 326 of the Constitution of India, “Elections to the House of the People and to the Legislative Assemblies of States to be on the basis of adult suffrage, that is to say, every person who is citizen of India
social transformation, whereby the inferred and ascriptive status of Hindu women have been witnessing a gradual transformation in a harmonious and consensual manner to provide an independent and achievement oriented status. This democratic spirit of the Constitution is the golden thread that runs throughout its length and breadth, sustaining and binding it firmly.

Adult franchise is provided and voting rights are given to, “every person who is a citizen of India and not less than [Eighteen years] of age” subject to certain reasonable restrictions. This right to vote is a path breaking right for women, who for the first time have been legally entitled to elect representatives for both the central and state legislatures. Subject to a few exclusions, voting rights are given to all Indian men and women equally. The removal of ineligibilities on account of sex in the inclusion of electoral rolls is directed as follows:

There shall be one general electoral roll for every territorial constituency for election to either House of Parliament or…. Either House of the legislature of a state and no person shall be ineligible for inclusion in any such roll or claim to be included in any special electoral roll for any such constituency on grounds only of religion, race, caste, sex or any of them.

These two provisions of the Constitution removes all exclusionary social practices attached to women which includes Hindu women on account of sex with regard to political participation as well as in representation. It indicates that these provisions remove all incapabilities attached to gender in the political sphere. The trend of women’s participation in voting indicates that women are almost equally and keenly participating in the voting process.

Those women who have completed 25 years of age are given the right to contest elections on par with men for parliamentary seats and for legislative assembly seats.

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73 Article 326 of the Constitution of India.
Similar provisions have been made to contest in the elections of the Council of States and legislative councils for those who have completed 30 years of age.\textsuperscript{75}

Since it is a republican Constitution, women are legally entitled to contest in the elections for the post of President and Vice-President, provided they have completed the age of 35 years.\textsuperscript{76} Women could be appointed as Governors of States subject to their completion of 35 years of age.\textsuperscript{77} In a functional democracy, based on Parliamentary system, the post of Prime Minister and Chief Ministers of States are vital. Despite the fact that these politicians in power are controlled by majority in the ruling parties, they have a telling and substantial effect in policy making. The Constitution lays open the political arena to women also, who can be elected or nominated from the highest level to the grassroot level legislative bodies. Similarly women are entitled to be elected or selected for the post of Speaker and Deputy Speaker of the House of the people,\textsuperscript{78} Chairman and Deputy Chairman to the Council of the States and Legislative Council.\textsuperscript{79} One third reservation of seats to women is yet to be given in the Lok Sabha and in the State legislative assemblies and the bill is pending for several decades.

India is governed by rule of law and the Constitution of India is said to be the embodiment of that principle. This principle ensured that the hitherto existing political stigma and political apathy or disability faced by women that prevented their participation in political affairs from voting to assuming offices has been erased. The Constitution enables women legally to have equal rights along with men to officiate in the highest constitutional posts in this republican system. This right is no mean right and if it is properly utilized by women, the centuries old gender inequality would go for a

\textsuperscript{75} Article 84(b) of the Constitution of India, “(b) is, in the case of a seat in the Council of States, not less than thirty years of age and, in the case of a seat in the House of the People, not less than twenty-five years of age; and”.

\textsuperscript{76} Article 58 (1) and Article 66 (3b) of the Constitution of India.

\textsuperscript{77} Article 157 of the Constitution of India.

\textsuperscript{78} Article 93, Ibid.,

\textsuperscript{79} Article 89, Ibid.,
toss. It is a seminal right from which flows all other incidental political rights that percolate down to include holding of all political posts and be part of decision making.

Democratic decentralization at the district level by introducing Panchayat Raj institutions and Nagarpalikas is a revolutionary attempt to bring in democracy at the grassroot level. The 73rd and 74th constitutional amendments that provide democratic decentralization at the grassroot level, further facilitates women to enjoy political power and control at the district level. In the day-to-day political administration of the districts, the Panchayat Raj institutions are vested with the authority to take care of their own affairs. Interestingly, in the 3-tier system of democratic decentralization, women are given not merely voting power to elect their representatives, but are also entitled to contest for such posts created under the Panchayat Raj institutions. Not only that one-third of the seats are reserved for women, who alone can contest from such constituencies. There is a provision for reserving 1/3rd of the reserved seats for women belonging to Scheduled Castes and Scheduled Tribes.

Provision for reservation of one-third of seats in the Panchayat Raj institutions analogous to the reservation of seats to Scheduled Castes and Scheduled Tribes is even more laudable. In this Article, Part A deals with reservation of seats and clauses (2) and (3) of the Article provide reservation of seats to women. It provides that, “Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.” Likewise it provides that,

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80 Ins. by the Constitution (Seventy-third Amendment) Act, 1992, s. 2 (w.e.f. 24-4-1993). Original Part IX was omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. & Ins. by the Constitution (Seventy-fourth Amendment) Act, 1992, s. 2 (w.e.f 1-6-1993).
81 Article 243-D, Ibid.,
82 Article 243-D(3), Ibid.,
83 Article 243-D, Ibid.,
84 Article 243-D(2), Ibid.,
Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat.\(^{85}\)

This reservation is extended to the officer category of the Panchayat Raj institutions like Chairpersons of Village Panchayats.\(^{86}\) It provides that, “not less than one-third of the total number of offices of chairpersons in the Panchayats at each level shall be reserved for women.”

Part IX – A of the Constitution deals with the Municipalities including reservation of seats to Municipalities.\(^{87}\) The above provisions are inclusive provisions specially aiming at mainstreaming women into the political offices as representatives and in all the vital offices of democracy. It is this political empowerment that would remove all types of discriminations, disabilities, incapacities and other exclusionary practices perpetrated by the society. These provisions are legal inclusive provisions to include women so that such social exclusionary practices can be speedily and effectively ejected out of the society and from the minds of the people.

This democratic decentralization is an inclusive measure that can change the face of gender power relation in India from the hitherto autocratic male dominated Panchayat into a healthy democratic Village Panchayat open for participation to all citizens who were earlier excluded from political participation like women, including women belonging to the Scheduled Castes and Scheduled Tribes.

**II. EQUAL RIGHT TO CITIZENSHIP**

From the constitutional provisions discussed above, that deal with the political rights of women like voting rights, contesting elections equally on par with men and holding political offices, the underlying basic qualification is citizenship. Only those who

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\(^{85}\) Article 243 D (3), *Ibid.*,  
\(^{86}\) Article 243 D(4) and (5), *Ibid.*,  
\(^{87}\) Article 243 T of the Constitution of India.
are Indian citizens are entitled to have these political rights. Prior to this republican Constitution, qualifications for citizenship were not clearly defined and enumerated. Women’s citizenship rights were not clearly defined and was ambiguous. Under the British rule all Indians were treated as British subjects. The Constitution of India clearly prescribed and enunciated the qualifications for being an Indian Citizen. The Indian Parliament is also empowered to regulate the right of citizenship by law in these words:

*Nothing in the foregoing provisions of this part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.*

The Parliament of India enacted the Citizenship Act in 1955 in pursuance to this constitutional provision. Indian Constitution is considered to be gender protective and gender sensitive. Citizenship at the commencement of the Constitution is prescribed as follows.

*At the commencement of this constitution, every person who has his domicile in the territory of India and*

a) *who was born in the territory of India; or*

b) *either of whose parents was born in the territory of India; or*

c) *who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement shall be a citizen of India.*

This Article in one stroke equalizes the gender disparity and dilutes the patriarchal legacy of giving prominence to father since the provision “*either of whose parents*” has been incorporated. Besides in Part II, the terms “*person*”, “*parents*” and “*grandparents*”, fine examples of gender neutral language, have been used. This Article has a wider ramification in enhancing and uplifting the status and individual identity of a woman which was earlier not in existence in the traditional Indian society, including Hindu society.

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88 *Article 5, Ibid.,*

89 *Article 11, Ibid.,*

90 *Article 5, Ibid.,*
From this brief analysis, it can be inferred that in the acquisition of citizenship, basic for enjoying the consequent political rights accorded in the Constitution, women as daughter, wife, mother and grandmother are not deprived, but are equally empowered along with their male counterparts. Moreover the republican Constitution provides democratic system of governance both at the centre and in the states. Democratically elected representatives on the basis of universal adult franchise wherein women are legally entitled to cast their votes and contest the elections on an equal footing with men can lead to the enactment of laws in future, which may gradually wean the society and the people from such exclusionary and discriminatory practices against women.

III. RIGHT TO FORM ASSOCIATIONS AND SOCIETIES

The Constitution was amended in the year 2001 and the term ‘cooperative societies’ was inserted under Article 19(1)(c). This amendment provides all citizens the right inter alia “(c) to form associations or unions or co-operative societies.” The citizens of India shall have the freedom to form co-operative societies as a fundamental right. Corresponding to this right, in Part IX-B, the co-operative societies have been included in the Constitution. This chapter has Articles from 243-ZH to 243-ZT. Interestingly, while dealing with provisions for including women in the co-operative societies, it also directs that in the board of directors, the legislature is empowered to make laws so as to include two seats for women on the board of every co-operative society.91

IV. RIGHT TO CONSTITUTIONAL REMEDIES AND JUDICIAL ACTIVISM

All civil and political rights are considered as part and parcel of human rights. Whenever human rights of women are violated, the victim, or relatives or associates can take the cause of the affected women and approach the human rights courts for remedy. Free Legal Services Authorities Act enable the needy women to avail free legal service. National Women’s Commission, (NWC) and the corresponding State Women’s

91 Article 243-ZJ, Ibid.,
Commissions are made as statutory bodies, empowered to institute cases, summon the offenders and assist the victims in getting gender justice.

Whenever statutory and constitutional rights of women are affected, the affected women victims can approach the High Court under Article 226 for redressal. The affected parties can also approach the Supreme Court under Article 32.\(^\text{92}\) It is a gender neutral Article which empowers those aggrieved persons whose fundamental rights are violated to approach the Supreme Court directly for the enforcement of such rights through various writs. A careful reading of this Article in the backdrop of judicial activism highlights that it has a significant role to play in improving the status and position of women. The Public Interest Litigations (PIL’s) have liberalized the doctrine of *locus standi* and the epistolary jurisdiction of the Supreme Court cognizing and admitting letters addressed to the Supreme Court as writs. The innovative development of issuing writs by socially sensitized judges *suo moto* based on news report accounts have significant repercussions and ramifications in the process of rendering complete justice to women.

The rights of Indian women including their fundamental rights whether in the house, or in the workplace or in the public sphere are frequently violated. Due to the emergence of Public Interest Litigations, women who are marginalized and do not have access to justice either on account of ignorance or poverty are immensely benefitted, that too without wasting time as in normal litigations. It is a double advantage. Therefore quite a large number of Public Interest Litigations centre around alleviation of the grievances of women deprived of their fundamental rights. Similarly, by the expostulatory jurisdiction and judges’ ‘*suo moto*’ cognizance of cases through media,

\(^{92}\)“(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed. (2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part. (3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2). (4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution”.

they are enabled to have access to justice. Therefore this Article though gender-neutral has several advantages for women including Hindu women.

It is interesting to note that in a country with more than three crores of pending cases and an over burdened judiciary, the gender sensitive judiciary liberally and freely extends its arms of justice and delivers gender inclusive judgments. Despite the fact that the legacy of patriarchal patronage continues to dominate in the judiciary, which is still a strong hold of male justices, a ray of hope emerges due to the existence of gender sensitive judges. If half the judges are women, gender justice can be a reality rather than remaining a distant dream. In Tamil Nadu, there is a statutory provision to have one third of women as judicial officers in the subordinate judiciary, which is a welcome move.

4. THE DIRECTIVE PRINCIPLES OF STATE POLICY

Part IV of the Constitution from Articles 37 to 51 stipulates certain principles that are to be followed in the course of governance of the country. These principles are not enforceable by any court, but are fundamental directives for the better governance of the country. The State shall apply these principles in making laws.93 Article 38 directs the State to secure a social order for the promotion of welfare of the people in these words, “The state shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.”94

This Article appears to be yet another gender neutral one. A careful reading reveals that it is gender sensitive to the core as it brings within its fold all the institutions of national life. There is probably no institution without women and hence the scope of this Article is widely inclusive. In this Article, the State is enjoined to secure and protect a social order based on justice, social, economic and political, which means that through

93 Article 37 of the Constitution of India, “The provisions contained in this Part shall not be enforceable by any Court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.”

94 Article 38 (1) of the Constitution of India, [Art. 38 renumbered as cl. (1) thereof by the Constitution (Forty-fourth Amendment) Act, 1978, s. 9 (w.e.f. 20-6-1979)].
its policies and enactments, the State should change the unequal power structure by allowing and ensuring women’s liberty, equality and dignity. It directs the State to protect the welfare of the people and transform the society so that it will have a positive effect on women.

It has a direct implication on women’s welfare because relatively in all sections of the society women are marginalized. Article 38(2) directs that,

_The state shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals, but also amongst groups of people residing in different areas or engaged in different vocations._

The Preamble of the Constitution aims at securing to all its citizens equality of status and opportunity. Corresponding provisions have been made in Part-III under Fundamental Rights from Articles 14 to 18. But except the rights proclaiming the abolition of untouchability and titles, others are confined only within the purview of State. Accordingly, equality of status and opportunity is to be accorded only within the State and by the State and its institutions. They are not available in socio-economic lives of the people leaving untouched all the discriminatory traditional practices. In this context, clause 2 of Article 38 assumes significance as it directs the State to minimize the inequalities in income and makes it a duty upon the State to minimize economic inequality.

Corresponding duty has also been imposed on the State to endeavour ‘to eliminate inequalities in status, facilities and opportunities’. It is relevant to note that the duty imposed upon the State is not limited to ensuring it within the State, but goes beyond its ambit and travels into the society also, to bring change from within it. The wholesome inclusive language of this article is evident in the use of an additional terminology ‘facilities’ along with the Preamble’s stipulation of ‘status and opportunity’. So, the State

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95 Article 38 (2), Ibid.,
is imposed an additional duty of facilitating, which is an expansion of the Preambles’ provisions.

This amended constitutional provision makes it explicitly clear that inequalities in status, facilities and opportunities would be against the individuals’ as well as against groups and they are not only against the State, but against the society also. This provision directing minimizing of inequality in income and eliminating inequalities in status, facilities and opportunities has direct relevance to the removal of exclusionary social practices and discriminations against women.

Article 39 enumerates certain principles or policies to be followed by the State and to direct its policy towards securing,

(a) That the citizens, men and women equally have the right to an adequate means to livelihood;
(b) That the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
(c) That the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.
(d) That there is equal pay for equal work for both men and women.
(e) That the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;
(f) That children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.\(^96\)

Policies listed out in clauses (a), (d) and (e) are explicitly gender sensitive and in the rest are implicit. Not only that, the policies listed out in clauses (b) and (c) have been elevated to the level of fundamental rights by being included in Article 31-C. These principles or policies are directions given to the State which includes all legislative bodies and other constitutional authorities excluding the judiciary, to consider and convert these policies into laws. Policy prescribed in Article 39 (a) stipulated that men and women citizens shall have equal rights to an adequate means of livelihood. In the

\(^{96}\) Article 39 of the Constitution of India.
ascriptive oriented Hindu traditional society, where most of the women were dependant on men for their livelihood, the provision makes it an obligation of the State to enable all women citizens to have adequate means of livelihood on an equal footing.

Several protective and welfare oriented provisions have been made to protect and promote the standard of life of women. The principle laid down in Article 39 (d) is directly applicable to working women. It directs the State to enact laws guaranteeing equal pay for equal work irrespective of gender. Several legislations and other provisions of law have emanated out of this provision. However, even today differences exist in pay for men and women in private and unorganized sectors.

Article 39 mandates that, “health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.”

Women are susceptible to several health issues and irrespective of the issue being serious or otherwise, they are not cared for. This provision focuses on women workers and directs the State to make policies in such a manner as to secure the health and strength of women workers equally with men workers. The remaining provisions, though gender neutral have positive implications on women’s development. It directs that the tender age of children shall not be abused and they shall not be forced due to economic necessities to enter into avocations unsuited to their age or strength. Likewise what is suited for a male worker, may not be suitable for a women worker, even if they are of the same age.

Article 42 of the Constitution is gender sensitive and has wider ramifications to promote the conditions of women. It directs the State to make provisions for securing just and humane conditions of work and to provide maternity relief: “The State shall make provision for securing just and humane conditions of work and for maternity relief.”

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97 Article 39(e) of the Constitution of India.
The Maternity Benefit Act is the manifestation of this Article. In industrial law, the Employee State Insurance Act, has corresponding provisions for maternity relief. Relief measures for women through various delegated legislations have been further expanded. The State is directed to provide living wages among other issues for all workers and to ensure a decent standard of life. The need for Uniform Civil Code was considered and it was accordingly directed that, “the state shall endeavour to secure for the citizens uniform civil code throughout the territory of India.” It is an important Article that would improve the status and condition of women. Despite Supreme Court’s periodical remainders to the Government, it is yet to take off.

Uniform Civil Code would alleviate inequality among women irrespective of religion. Secularism, fundamental right of freedom of religion, cultural and educational rights of the minorities are the impediments, preventing the State from giving effect to this Article, besides vested political interest of political parties. It would also minimize legal inequalities between Hindu men and women on account of the invoking of the essential elements of Hindu religion.

The Directive Principles provide for early childhood care and education to children below 6 years. It directs that the State shall endeavour to provide early childhood care and education for all children until they complete the age of six years. This is also a gender neutral directive, but it has potential implication for the education of girls. Due to social exclusionary practices in vogue, girls were not allowed to pursue education. In 2002, this directive acquired the status of fundamental rights. The 86th Constitutional Amendment in 2002 inserted this right as Article 21A.

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100 Article 43, Ibid.,
101 Article 44, Ibid.,
102 Article 45, Ibid.,
103 Article 21A of the Constitution of India, “The state shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the state may, by law determine.”
Consequent to this amendment, an Act was passed in 2009 on the right of children to free and compulsory education.\textsuperscript{104} This fundamental right enables girl children to avail the educational facility offered. Correspondingly, Article 51(k)\textsuperscript{105} makes it a duty of the parent or guardian to provide opportunities for educating the child. This directive too is gender neutral, but the social implication is that it is a legal obligation on the part of parents to educate their daughters on par with their sons.

Article 46 deals with promotion of educational and economic interest of Scheduled Castes and Scheduled Tribes and other weaker sections. It directs that, \textit{“the state shall promote with special care the educational and economic interest of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.”}\textsuperscript{106}

This Article,\textsuperscript{107} directs the State to provide and promote educational and economic interest of the weaker sections of the people. In the society in general and the Hindu society in particular, irrespective of caste hierarchy, women are the weaker sections of the society. Apart from the liability of the State to protect and promote the economic interest of women, it was also directed to protect women from social injustice and from all forms of exploitation. Social injustice is almost the accepted norm in the Hindu society. Therefore this inclusive policy enjoins the State to vigilantly protect women from all types of exploitation. It also directed that the State shall raise the level of nutrition and the standard of living and to improve public health.

This again is a gender neutral Article, but has a serious concern on nutritional level, standard of living and public health of women. The health statistics reveal that the quantity and quality of nutrition available to women and consumed by them in the Hindu society are inadequate and always lower to men. The living standard of women and the

\textsuperscript{104} The Right of Children to Free and Compulsory Education Act, 2009.

\textsuperscript{105} Article 51(k) of the Constitution of India, \textit{“who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.”}

\textsuperscript{106} Article 46 of the Constitution of India.

\textsuperscript{107} Article 41, \textit{Ibid.},
quality of their health are also equally inferior. Therefore, this Article, though addressed
to the society in general, particularly reaches out to women.

Article 51-A of the Constitution, deals with fundamental duties which have to be
followed by every citizen of India.\footnote{Ins. by the Constitution (Forty-second Amendment) Act, 1976, s. 11 (w.e.f. 3-1-1977).} It imposes on every citizen the duty, “\textit{to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women.}”\footnote{Article 51-A(e) of the Constitution of India.} The above enumerated directives have potential ramifications that enable the appropriate legislatures to enact laws and administrators to make delegated legislations and administer them effectively.\footnote{see Chapter IV and V, \textit{infra.}}

From the above analysis, it is evident that, Part – III of the Constitution confers
several revolutionary rights to Hindu women like equality, freedom, right against
exploitation, constitutional remedies and so on. These rights enable women to realize
their equality of status and opportunity and the freedoms. The inclusion of these
fundamental rights in Part III of the Constitution alleviates to a large extent the social
exclusionary practices against Hindu women solely on account of sex. Despite that,
gender discrimination persists. The secular Constitution and the corresponding inclusion
of right to freedom of religion and cultural and educational rights of minorities, exclude
the State from interfering in certain exclusionary practices adopted by the Hindu society
against women on account of their religion and culture. It is these rights that perpetuate
some of the exclusionary practices.

However, the Constitution gives the State the power to reform or change the
economic, financial, political and secular activities of religions and religious
organizations, leaving the core practices beyond the reach of the Government and the
courts. Hence in Hindu personal laws, women are still considered inferior to men and on
that account are discriminated.

\footnote{Ins. by the Constitution (Forty-second Amendment) Act, 1976, s. 11 (w.e.f. 3-1-1977).}
\footnote{Article 51-A(e) of the Constitution of India.}
\footnote{see Chapter IV and V, \textit{infra.}}