4.1 INTRODUCTION

In the previous Unit, you have studied about Woman and Partition. The partition of India was witness to a large violence and also the formation of ‘new nations’. In this Unit, we will study a brief overview of the Constitutional debates, and the Constitutional scheme of protections and checks and balances. It also examines how women were able to influence the Constitutional debates and the role women’s organisations played in framing the Constitutional mandate of equality, freedom and liberty.

4.2 OBJECTIVES

After completing this Unit, you will be able to:

- Learn some of the aspects of the Indian constitution and the drafting committee;
- Analyse the balance between fundamental rights and directive principles;
• Explore the role of women in framing the constitution; and
• Women’s associations and political participation.

4.3 INDIAN CONSTITUTION—A COVENANT OF SOCIAL AND ECONOMIC JUSTICE

A Constitution is the fundamental legal document of a democratic country, and lays down the principles for its governance. All laws have to conform to it. Any provision of law or regulation which is inconsistent with it is void. The Indian Constitution, which came into force on 26 January 1950, provides a framework for governance and assigns roles to different institutions such as the executive, legislature, and judiciary. It is also a covenant of social and economic justice.

India’s founding fathers and mothers incorporated in the Constitution the nation’s ideals—national unity and integrity and a democratic and equitable society—and the institutions which would aid the process of achieving them. The new social order was to be achieved through a socio-economic revolution, pursued with a democratic spirit, using Constitutional institutions. The framers of the Constitution perceived unity, social revolution, and democracy as the three interdependent goals which had to be sought together and could not be pursued or achieved disjointedly, which Granville Austin refers to as the three strands of a seamless web (Austin, 2001, pp. ix-x).

Three important documents of the pre-independence period provided the framework for the Constitution,

• The Nehru Report of 1928,
• The Karachi Resolution on Fundamental Rights of 1931, and
• The Sapru Report of 1945.

4.3.1 The Nehru Report

The Nehru Report was produced by a sub-committee headed by Motilal Nehru, father of Jawaharlal Nehru. The impetus for producing this document came from a challenge posed to the Indian leaders by the Secretary of State for Indian Affairs, Lord Birkenhead in the House of Lords in 1927, that they should draft a Constitution which would be acceptable to all communities. The underlying premise of this challenge was that the Indian leaders would not be able to produce such a document. However, after several consultative sessions, a document produced by the sub-committee constituted for this purpose, was approved by the All Party Conference held at Lucknow in August, 1928 (Austin, 2001, p. 55). It was a Declaration of Rights and it proclaimed that the main aims of the Constitution would be to secure for Indians fundamental rights and provide certain safeguards to
minorities. The independence perceived at this time was of a dominion, which would function under the authority of the British, and not total independence.

4.3.2 The Karachi Resolution

The Congress Convention held at Karachi in March 1931, adopted the resolution on Fundamental Rights and economic and social changes. This was both a declaration of rights and a humanitarian, socialist manifesto. The Karachi Resolution, as it came to be known, held that social revolution would have a vital share in shaping India’s Constitution. The provisions contained in this document did in fact become the spiritual and, in some cases, the direct antecedents of the Directive Principles (Austin 2001: x). Credit for drafting the Karachi Resolution has been bestowed upon Pandit Jawaharlal Nehru, the first Prime Minister of Independent India.

4.3.3 The Sapru Report

The Sapru Report, published in 1945 concerned itself mainly with the problems of minority fears which were overshadowing the political scene, vitiated by communal tensions and conflicts. By now, it was becoming clear that India would achieve independence in the near future and the minorities had to be reassured about their security in a Hindu majority state. The Sapru Report declared that Fundamental Rights within the new Constitution would have to include certain safeguards for minorities. The report stated:

That what the constitution demands and expects is perfect equality between one section of the community and another in the matter of political and civic rights, equality of liberty and security in the enjoyment of the freedom of religious worship and the pursuit of the ordinary applications of life (Sapru, 1945, p. 260).

4.4 THE DRAFTING COMMITTEE

The Constitution was drafted by the Constituent Assembly which was formed under the British Cabinet Mission through a process of indirect elections and held its first session in December 1946. Initially it had 207 members including 15 women and was headed by Dr. Rajendra Prasad who later became the first President of independent India. It was approved by the Constituent Assembly on 26 November 1949 and came into effect on 26 January which is celebrated as the Republic Day. Thereafter, until the first elections were held in 1952, as per the guidelines laid out in the Constitution, the Constituent Assembly functioned as India’s first Parliament.

The Constitution Drafting Committee reckoned the inclusion of traditionally marginalised sections to be of prime importance in order to ensure that
their concerns were reflected in the Constitution. The Committee had women representatives, though not in large numbers. Towards the conclusion of the debates, demands for more female elected members were raised. However, this became a contentious issue with several members opposing the demand (Das, Constitutional Assembly Debates, 24 January 1950). The opposition was expressed in veiled terms—firstly, that the initiative of including more female members should have been undertaken at the debate stage itself and secondly, that it should have been at the initiative of members rather than as an external intervention.

**Check Your Progress:**

*Write in your own words about the Nehru Report and Karachi Resolution.*

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*What was the role of drafting committee?*
4.5 EMPHASIS ON HUMAN RIGHTS

The period during which the Indian Constitution took shape coincided roughly with the post Second World War sentiments regarding gross human rights violations using excessive and arbitrary state power by certain states. Hence concerns reflected in the *Universal Declaration of Human Rights* of 1948 regarding protection of life and liberty, are also reflected in the Indian Constitution.

Parts III and IV of the Constitution, the Fundamental Rights and the Directive Principles of State Policy are perceived to be the core values of the nation. The Fundamental Rights are justiceable rights which protect individuals from arbitrary, prejudicial State actions. Equality, non-discrimination, freedom, liberty, and protection to minorities are its primary pillars. In addition, three Articles have been designed to protect the individual against actions of other private citizens. Article 17 abolishes untouchability, Article 15 (2) lays down that no citizen shall suffer any disability in the use of shops, restaurants, wells, roads, and other public places on account of his religion, race, caste, sex, or place of birth, and Article 23 prohibits forced labour.

Although this is a violation practiced many-a-time by the State, it relates more commonly to violations by landowners or zamindars. Thus, the State, in addition to obeying the Constitution’s negative injunctions regarding interference with citizen liberties, must fulfill its positive obligation to protect citizen’s rights from encroachment by other influential members of the society. This concept of Fundamental Rights was introduced to foster a social revolution by creating a society which was egalitarian, in which all its citizens would be equally free from coercions or restrictions by the State or by the society. Liberty would no longer be the privilege of the few.

The Directive Principles contain an even clearer statement about the social revolution. They aim at making the citizens of India free in the positive sense, free from the passivity engendered by centuries of coercion by society, and free from the abject physical conditions that had prevented them from achieving the full human potential. To do this, the State was to apply the precepts contained in the Directive Principles when making laws. These Principles are not justifiable; courts cannot enforce them, but they are, nevertheless, to be ‘fundamental in the governance of the country’ (Constitution of India, Article, 37). The essence of the Directive Principles lies in Article 38 which echoes the Preamble:

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.
To foster this goal, other provisions of the Directive Principles exhort the State to ensure that citizens have adequate means of livelihood, that operation of the economic system and ownership and control of the material resources of the country serve the common good, that the health of workers, including children, is not abused, and that special consideration is given to pregnant women. Workers, both agricultural and industrial, are to have a standard of living that allows them to enjoy leisure and social and cultural opportunities. Among the primary duties of the State is the welfare of the people.

4.6 BALANCE BETWEEN FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES

By establishing these positive obligations of the State, members of the Constituent Assembly made it the responsibility of future governments of India to find a middle way between individual liberty and public good, between preserving the property and privilege of a few and bestowing benefits on the many.

While Fundamental Rights (civil and political rights) are justiceable, the Directive Principles (social, cultural, and economic rights) are non-justiceable and are more in the nature of aspirations than rights. This became a site for contestation within the Constituent Assembly. B.N. Rao, A. K. Ayyar, B.R. Ambedkar, K.M. Munshi, and K.T. Shah who shared a liberal socialist outlook were in favour of making the Directive Principles justiceable (Austin, 2001, p. 77). They felt that within the prevailing social and economic structures, a large segment of the Indian population was poor and illiterate. This segment, according to them, might not be in a position to access the Fundamental Rights if the larger issues of land reforms, re-distribution of wealth, and eradication of illiteracy were not addressed first. Hence, for them issues of social, cultural, and economic rights were far more crucial to ensure a Constitutional democracy and to usher in a new egalitarian social order.

B.N. Rao, Constitutional Advisor to President, Dr. Rajendra Prasad, while suggesting an amendment to render Directive Principles enforceable in a court of law, stated as follows:

It is to make it clear that in a conflict between rights conferred by Chapter III - Fundamental Rights which are for the protection of rights of individuals and the principles of policy set forth in Chapter IV which are intended for the welfare of the State as a whole, the general welfare should prevail. Otherwise it would be meaningless to say that the principles are fundamental and it is the duty of the State to give effect to them in making laws (Tope, 1992, p. 336).
Dr. Ambedkar, who himself belonged to a backward caste, argued that while the Constitution adopted formal equality of all citizens, the social and economic life in India was deeply caught in variegated expressions of equality and that unless democracy became a way of life, political democracy might not endure for long, or at least endure in a robust manner. But the suggestion to make Part IV justiceable was rejected. However, over the years, the judiciary has stepped in and incorporated some of the Directive Principles of State Policy into the domain of Fundamental Rights by expanding the notion of the Right to Life and Liberty (Article 21 of the Constitution). In *People’s Union of Democratic Rights v. Union of India*, (see (1982) 3 SCC 235) the Supreme Court read the right to minimum wages into Article 21. In *Olga Tellis v. Bombay Municipal Corporation*,(see (1985) 3 SCC 545) it was held that the right to life includes the right to livelihood. Landmark judgments such as these have been instrumental in furthering the mandate of social justice as enshrined in the Constitution.

### 4.7 ROLE OF WOMEN IN FRAMING OF THE CONSTITUTION

The Indian Constitution awards equal rights to women and prohibits the State from discriminating against them. This principle, along with the notion of adult franchise, has proven to be one of the basic pillars upon which the notion of gender justice has been pegged in the post-Independence period. While grappling with the notion of inequality at the grassroots and the Constitutional challenges this situation poses, a mere appreciation of Constitutional principles will not provide a complete picture unless we place these milestones within the context of earlier movements and struggles of women to enter into the political domain. While we applaud the gender equality enshrined in the Indian Constitution, it is imperative to acknowledge the more than a century long struggle in which women strived for their right to basic literacy, formal education, and political participation, which in turn laid the foundation for the demand for right of legal equality.

Several social reformers, particularly women reformers, and nationalist leaders focused on issues such as women’s education, discriminatory personal laws, and access to health. Later, some women leaders formed associations to bring women’s concerns into the realm of social reforms. Gandhiji’s call for political participation in the Swadeshi and Non-Cooperation movements gave an additional boost to women. Only from this historical plank could women agitate for their fundamental rights of equality, non-discrimination, protective provisions, adult franchise, and right over their bodies. This section briefly sketches this important political evolution which culminated in gender equality being included as a fundamental right and went further to ensure one-third reservation for women in local bodies through the 73rd
and 74th amendments to the Constitution, which gave a boost to the process of women’s political participation.

4.8 HISTORY OF WOMEN’S EDUCATION

The movement for educating women met with several challenges. The conservatives and revivalists, opposed the attempts by reformers and missionaries to educate women. Some among them viewed it as a way of appeasing the English and as an endorsement of their political agenda. The Hindu revivalist movement, which was committed to the ideal of Hindu ethos and values as enshrined in the ancient scriptures, viewed the campaign for educating women as an encroachment into their religious beliefs. There was also the fear that it would be difficult to control an educated woman because she would challenge her traditional role. For the reformers themselves, the status of women was only an issue of concern due to the relation that it had with the general welfare of society, the upbringing of children, and as a part of the nation-building agenda. As Saraladevi Choudhurani rightly observed:

They are the so called social reformers. They advertise themselves as the champions of the weaker sex; equal opportunities for women, female education and female emancipation are some of their pet objects of oratory at the annual show. They even make honest efforts at object lessons in the above subjects by persuading educated ladies to come up on the platform and speak for themselves. But woe to the women if they venture to act for themselves (cited in Choudhurani, 1911, p. 345).

The 1891 Census recorded male literacy at 11 per cent and female literacy at 0.5 per cent; thus there was only 1 literate woman to every 23 literate men. The wide disparity between male and female literacy rates continued even after Independence. Hence, the Report of the First Backward Classes Commission, 1955 popularly known as the Kaka Kalelkar Commission, recommended that women as a class be treated as backward. One of the factors taken into consideration for classification by the Commission was the percentage of literacy or the general advancement made by them. However, during the period, the report of the Kaka Kalelkar Commission on National Commission for Backward Classes was not accepted by the Central Government. Though some progress was made in the later half of the twentieth century, the disparity persists.

In 1992, in Mohini Jain v. State of Karnataka (see (1992) 3 SCC 666) the Supreme Court held that the right to education has the status of a Fundamental Right and thus belongs in the enforceable Part III of the Constitution rather than in the unenforceable Part IV. In 1993, the Apex
Court expanded this concept further in *Unnikrishnan J.P. v. State of A.P* (see (1993) 1 SCC 645) and held that the right to education flows directly from the right to life and is related to the dignity of the individual. Following these decisions, and in the context of the dismal state of affairs regarding education in the country, the 86th Amendment to the Constitution added Article 21A, making it a duty of the State to provide free and compulsory education to all children from the age of six to fourteen years. This Amendment made right to education a part of the basic right to life under Article 21, which was a great leap ahead. It also amended Article 45, directing the State to provide early childhood care and education for all children till they complete the age of six years.

**Article 21A:** The State shall provide free and compulsory education to all children of the age six to fourteen years in such a way as the State may, by law, determine.

**Article 45:** The state shall endeavour to provide early childhood care and education for all children until they complete the age of 6 years.

As a sequel to this, the Right to Free and Compulsory Education, 2009 was passed which came into effect on 1 April, 2010. After this enactment, every child in India between the ages of four to fourteen is supposed to be in school. Though the Act is not based on a gendered premise, in effect, since literacy rates are lower among girls than boys, it is intended to benefit a large number of girls from rural, marginalised and poverty stricken areas.

### 4.9 WOMEN’S ASSOCIATIONS AND POLITICAL PARTICIPATION

You have read in MWG-001, Block 1, Unit 2 also in this Block, Unit 2 about women’s contribution in political domain. Let us read some of the facts related to this issue. By the end of the 19th century, major battles in the realm of women’s education had been won and the prejudices against women’s education had been reduced. Education of women had become an issue of public concern. The new slogan for social reformers was: ‘educating a girl means educating a family’. The stage was now set for women to enter the political domain. The first step in this direction was the formation of women’s associations.

Pandita Ramabai formed the Arya Mahila Samaj in 1882 in Western India. In the same year, in Calcutta, *Swarna Kumari Debi*, sister of poet Rabindranath Tagore, founded SakhiSamiti. Her daughter, *Sarala Debi Chaudhurani*, started the first all India women’s association, BharatStreeMandal, in 1910 (Basu, 2005, p. 194). After the First World War,
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in 1917, the Women’s Indian Association (WIA) was started in Madras by Annie Besant, Margaret Cousins, and Dorothy Jinarajdas for agitating for the right to vote for women within the new Constitution which was to be introduced by the Montague-Chelmsford Reforms. The announcement on 20 August 1917 by Edwin Montague, Secretary of State for India, regarding the development of self-governing institutions in India and his subsequent visit in November 1917 to ascertain Indian opinion on specific reform proposals, provided the first avenue for women to enter the political domain and initiate a struggle to secure franchise for women.

It is interesting how the colonial administration viewed the women’s delegation which met Montague. When Margaret Cousins and Saraladevi Chaudhurani requested an audience for delegates from their respective organisations to discuss education resulting in social reform, they were informed that only deputations with political agendas would be received. In this context, the issue of political rights for women gained precedence in women’s activism. Later, Margaret Cousins has recorded how the first demand for women’s franchise was born soon thereafter. To quote

“I then circulated a couple of extra sentences about political rights or rather opportunities in the draft of the memorandum. I know that women interested in the deputation believed in being citizens of their country and they wrote agreeing to the condition, so the vote was born”(Cousins, 1941, p. 33).

On 15 December 1917, a 14-member women’s delegation led by Sarojini Naidu met Montague and Chelmsford to present their demands for political rights. Montague’s entry for the day in his diary has the following recording: ‘the women’s deputation assured [him] that the Congress would willingly pass a unanimous request for women’s suffrage’ (Roy, 2005, p. 131). He thought of the deputation as nothing more than ‘interesting’ and the Montague-Chelmsford Reforms did not make any mention of it. His comments were personal in nature — ‘one very nice looking woman from Bombay, Dr. Joshi’, Sarojini Naidu, ‘the poetess, a very attractive and clever woman, but [he believed] a revolutionary at heart’, and Mrs. Cousins, ‘a well-known suffragette from Bombay’ and ‘one of Mrs. Beasant’s crowd’ (Moraes, 1958, p. 91). A WIA publication records that many years later Sarojini Naidu was to recall that the idea of meeting important people such as the Viceroy of India seemed a ‘bold and daring’ adventure to the deputation. The delegates subconsciously spent a lot of time ‘worrying over their appearances’, wishing somehow to reinforce their arguments ‘by a colourful and picturesque appearance’ (Reddy, 1956, p. 8).

In order to get the support of male political leaders, it was important that the demand was framed in a manner which would not threaten them. The women leaders had to project that voting rights for women were congruent
with the language of equality in the political domain and yet in harmony with tradition (Roy, 2005, p. 131). In August 1918, Sarojini Naidu exhorted a large Special Session of the Indian National Congress attended by 5000 delegates, assuring her audience that extending franchise to women was rational, scientifically and politically sound, compatible with tradition, and consistent with human rights (Forbes, 1999, p. 94). Saraladevi Chaudhurani presented the resolution supporting vote for women in the thirty-third session of the Indian National Congress in December 1918 at Delhi. In 1919, a British Parliamentary Committee recommended that female franchise should be considered a ‘domestic’ subject, leaving it to the provincial legislatures to decide the matter (Roy, 2005, p. 132). So, from the 1920s, the focus of the women’s struggle for the right to vote shifted to the provincial level.

Women’s participation in the Swadeshi movement where they learnt to picket shops, march in processions and court arrests, served to redefine traditional roles and helped them to gain entry into active politics, a clear shift from educational and social welfare oriented activities. This was an important development which marked the end of women’s seclusion. This was followed closely by the formation of the All India Women’s Conference (AIWC). The creation of these organisations brought women out of their homes and gave them a consolidated voice, forcing the nation to give due importance to women’s issues and their demands.

### 4.10 ALL INDIA WOMEN’S CONFERENCE

In 1926, when a call was given for an all India women’s conference to discuss women’s issues, little did the organisers envisage that the conference would give birth to a national level women’s organisation by this very name or that its name would be engrained in the political history of the nation and would become synonymous with campaigns for women’s rights. This also proved to be a turning point for women’s groups, marking a shift from the reformist agenda of women’s education to a claim for political participation and legal equality. The organisation, which was formally registered in 1930, boasted of many political stalwarts such as Sarojinidevi Naidu, Kamaladevi Chattopadhyay, Muthulakshmi Reddy, Begum Shah Nawaz, Vijay Laxmi Pandit, Renuka Ray, Rajkumari Amrit Kaur, Hansaben Mehta, Begum Hamid Ali, Lakshmi Menon, and Rameshwari Nehru.

The first meeting of the AIWC was held in Poona in January 1927 and was attended by a large number of social reformers, professional educationists, the wealthy, and the titled. The immediate context within which the AIWC was formed suggests that its basic intent was to organise women to demand reforms in the system of education. The debates within the AIWC reveal that education itself was initially perceived as a kind of panacea for solving
problems of women, family, and society. It started with a conservative agenda—to produce better wives and mothers—but there was also the need to produce better teachers, doctors, professors, and lawyers. The presidential address of Maharani Chimanbai Gaekwad of Baroda reads:

“...Here, with the rising tide of revival of Indian culture, here, at the beginning of what may rightly be regarded as the Indian renaissance, we are assembled to discuss ... those things which are essential for the education and the general well being of the future mothers of the race.... Let us recognize that womanhood should be able to produce not just healthy bodies, but healthy souls...”(Chaudhuri, 2004, p. 118).

The second AIWC, held in 1928 and presided over by Begum Sultan Jahan of Bhopal, focused on educational reforms. The third, held in 1929, was presided over by Rani Saheb of Mandi. As one can note, the women of royal families of Princely States were invited to preside over these gatherings of professional women to bring glamour to the association. Some members like Kamaladevi Chattopadhyaya and Sarojini Naidu were dissatisfied with the agenda of social reform and expressed the desire to move into the political domain. They argued that ‘the burning question of the day is political—such as freedom of the country’ (Chaudhuri, 2004, p.122). But many members felt that the Conference should remain apolitical and persist with its social reform agenda and that there should not be any discussion on ‘controversial topics’. But gradually the voices in support of politics grew louder.

Margaret Cousin’s Presidential address at the eleventh session was decisively in favour of political participation. She raised some probing questions: Can the Indian man or woman be free if India remained a slave? How can we remain dumb about national freedom, the very basis of all great reforms? Has not the political status of the whole country as much to do with the welfare of women and children as the political status of women within an admittedly unsatisfactory new Constitution (Chaudhuri, 2004, p. 123).

Rajkumari Amrit Kaur, in her Presidential address at the 12th AIWC session, asserted:

“Life is an indomitable whole and we cannot separate social and educational reform from political and economic reform any more than we can separate women from men. Our conference is pledged not to take part in ‘party politics’ and I am quite certain that we have never broken this pledge. But if we are to eschew politics altogether we might as well give up all our work in connection with vital matters that pertain to the welfare of our sex...” (Chaudhuri, 2004, p. 123).
Vijayalakshmi Pandit expressed her distress regarding the rigid aloofness of the AIWC from the political life of the country and commented that as long as India is not a free country; no progress in the real sense is possible. There was a gradual change of opinion. For instance, though initially Lady Abdul Qadir considered the exclusion of politics to be critical for the unity of the Conference, she later argued that the franchise of women was a political issue. Yet the Conference could not leave the issue unconsidered as it had an important bearing on education and reform (Chaudhuri 2004: 123). Gradually the AIWC became an integral part of the national movement.

In her Presidential speech at the seventeenth session of the AIWC, Kamaladevi Chattopadhyaya declared, ‘To a subject people, politics is its very life breath. To deny that urge, is to deny life.’

In 1931, the Karachi Session of the Indian National Congress in the Resolution on Fundamental Rights committed itself to women’s equality in the following words:

Resolution on Fundamental Rights

1) All citizens are equal before the law, irrespective of religion, caste, creed or sex.

2) No disability attaches to any citizen, by reason of his or her religion, caste, creed or sex, in regard to public employment, office of power or honour, and in the exercise of any trade or calling.

3) The franchise shall be on the basis of universal adult suffrage.

4) Women shall have the right to vote, to represent and the right to hold public offices.


This declaration was largely the outcome of the mass participation of women in the national movement as well as the activities of several women’s organisations, notably the AIWC, the WIA, and the NFIW (National Federation of Indian Women), who had pioneered the first women’s movement in India (Kasturi, 2004, p. 136).

Later, when the Joint Parliamentary Committee Report, published in 1933, rejected the principal of universal adult franchise, members of the AIWC opposed the same and argued that property and literacy qualifications were contrary to democratic principles. They argued that the requirement of owning property would be meaningless for the vast majority of poor people of India. The literacy qualification would discriminate against the large illiterate population. Both these qualifications would drastically affect women and deny them the franchise.
Several AIWC members have recorded the difficulties they faced in bringing leaders of the Indian National Congress to accept the demands made by them for strengthening women’s rights. Lamenting the plight of women, Captain Lakshmi Menon stated at the 1933 AIWC meet: “The members of the Legislative Assembly who are men will not help us in bringing any drastic changes which will benefit women” (Basu and Rai, 1992, p.46). At the urging of Renuka Ray, the AIWC declared 24 November 1934 as ‘legal disabilities day’.

The AIWC members played an important role, both in the Legislative Assembly and the Constituent Assembly, in foregrounding women’s concerns within broader political debates. In the Legislative Assembly, Renuka Ray, who was appointed as the AIWC representative, raised the demand for Hindu law reforms. She also tried, albeit unsuccessfully, to have a clause incorporated in the draft Constitution to prohibit discriminatory marriage and inheritance laws. Rajkumari Amrit Kaur and Hansa Mehta were prominent members of the Sub-Committee on Fundamental Rights of the Constituent Assembly.

When the Sub-Committee accepted K.M. Munshi’s draft on the freedom of conscience and the right to freely profess and practice religion, Rajkumari Amrit Kaur expressed her apprehension that the clause was defective to the extent that it might conflict with a legislation invalidating anti-social customs which have the sanction of religion. She also sent a letter, on behalf of Hansa Mehta and herself, to the Sub-Committee, voicing their concern over this clause. Their apprehension was that it might create hurdles in introducing any future legislations to wipe out social evils practiced in the name of religion such as child marriage, dedication of girls to temples, prevention of inter-caste marriages, unequal laws of inheritance, polygamy, and seclusion of women. It might even render invalid prevailing legislations like the Child Marriage Restraint Act, 1929 and the Widow Remarriage Act, 1856.

While claiming legal and political equality, there was a concern not to equate the movement with the Western women’s rights movement. Sarojini Naidu, while seconding the resolution on women’s franchise, assured the Congress that Indian women would not transgress the existing gender roles. The dominant discourse on women was marked by a desire to distinguish the more ‘strident’ nature of women’s demands in the West from the ‘legitimate, yet proper’ character of the Indian movement. The AIWC laid emphasis on the non-antagonistic relationship between Indian men and women based on mutual acceptance of gender roles, the positive contribution of women in lending a higher tone to public life, and the imperative for women to take up women’s and children’s issues to help in the progress of Indian society (Chaudhuri, 2004, p.126).
A slight departure from this position can be found in an important document of this period titled, ‘Women’s Role in Planned Economy’ which was brought out by a 16-member, all women sub-committee constituted under the National Planning Committee (NPC), of which Jawaharlal Nehru was Chairman. This was a major attempt to draw up a blueprint for the planned economic development of women in the post independence period. The Report addressed some crucial issues concerning women such as women’s equal right to develop themselves and to improve their unsatisfactory economic status. It highlighted the unremitting labour of women of all classes, women’s economic dependence, and their lack of resources. The sub-committee was of the opinion that one of the objectives of a planned economy should be to relieve women of their great and unequal burden and to provide conditions wherein they might develop their fullest potential through equality, education, and opportunity in all spheres. Emphasis was laid on action at the local level where the need is the greatest.

Among the various issues debated were — the nature of household labour and the need to recognise its value, the rights of the unmarried woman, the irrelevance of legitimacy for determining the rights of children so far as the state is concerned, and ‘identical moral standards’ (Choudhuri, 1996, p. 216). The document, radical not only for its own time but even for ours, disappeared in the years after Independence. It was discussed by the National Planning Committee and some resolutions were passed reiterating the principle of women’s equality, but this major landmark in the evolution of women’s status remained largely unnoticed in the debates in the post-Independence period (Kasturi, 2004, pp. 137-8).

From the struggle for basic literacy, the onward march to higher education, and then on to the formation of women’s associations and political participation in nationalistic struggle, the stage was set for the demand for Constitutional equality and special protection to women. Women members of the Constitutional Assembly were entrusted with the responsibility of transforming the gains achieved through individual struggles during the preceding century into Constitutional claims to safeguard the rights of future generations of women. It is to these women and women’s organisations that we must pay tribute as we examine women’s Constitutional claims. Making women’s equality, non-discrimination, and positive discrimination a part of the basic structure of the Constitution, they have ensured that we do not lapse back into the dark abyss of yester-years.

In the post-Independence period, the Constitution became the benchmark for determining the scope of women’s rights. The provisions of adult franchise, non-discrimination on the basis of sex, and positive discrimination (or affirmative action) in favour of women and children placed Indian women far ahead of many of their Western counterparts. However, in contrast, Canadian women were granted the right of equality in 1982, Swiss women
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were granted the right to vote in 1972, and the United States has not yet endorsed the Equal Remuneration Act. The promise of equality is not just a formal equality but an egalitarian equality. Over the years the Supreme Court has read various socio-economic rights to include them in the realm of fundamental rights, particularly Article 21 of the Constitution guarantees protection of life and personal liberty.

4.11 LET US SUM UP

In this Unit, we have studied constitution debates and the drafting committee in brief and how it has helped us to draw the understanding about Indian society. The constitution also reflects upon the human rights approach for deprived sections in the country such as women, untouchables and so on. Thus, we also explore the women’s participation and contribution in framing the constitution, the history of education and reform’s for women’s education and so on.

4.12 UNIT END QUESTION

1) Describe the Indian Constitution measures to bring the social and economic justice in India.
2) Explain, women’s contribution in framing of the constitution?
3) Examine the balance between the fundamental rights and directive principles?

4.13 GLOSSARY

Rights : It stands for moral and legal entitlements that determine action and the manner in which people are treated in the society. For instance, civil right is different from the human rights.

Justice : It stands for rightness based on varied parameters such as law, religion, society and also gender. It is a nuanced concept that varies across cultures and nation states.

Fundamental Rights : It is a charter of rights within the constitution that guarantees civil liberties to citizens of India. These are justiceable i.e. a violation of these rights is a punishable offence.

Directive principles : These are provisions within the Indian constitution that act as guidelines to the state and centre in the legislative process. These are non-justiceable and therefore are not mandatory.
Human rights: These are norms or standards of human behavior. They are established as fundamental rights accorded to a person on the grounds that he or she is a human being. Human rights are guaranteed to individuals by various national and international laws.

4.14 REFERENCES

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4.15 SUGGESTED READINGS
