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HUMAN RIGHTS AND SOCIAL POLICIES

SEMESTER-V

DISCIPLINE : SOCIAL WORK

BLOCK- 2

KRISHNA KANTA HANDIQUI STATE OPEN UNIVERSITY

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BLOCK 2 - INTRODUCTION

In this block, there is detailed discussion of the different aspects of human rights, social policy and planning, the constitutional provisions. The Ninth Unit discusses the challenges for the protection of human rights. The Tenth Unit discusses the challenges of human rights violation in North east India. The Eleventh Unit introduces the concept of social policy. Social Policies are important for the promotion and protection of human rights. The Twelfth Unit discusses the significance of social planning for effective social policy. The Thirteenth Unit highlights the concept of social justice and the significance of the Millennium Development Goals. The Fourteenth Unit analyses the contributions of eminent social activists for social justice. In the Fifteenth Unit, there is explanation on the Social Legislations, the Judicial system and the importance of the human rights commissions.

While going through the units of the block, you will find that unit is further divided into certain sections and sub-sections, wherever necessary, for your better understanding. Again, the units may carry certain activities after a particular section where needed. These "ACTIVITIES" will provide you the opportunity to practically apply your own thoughts based on the knowledge gained from reading the text in a particular section. Besides, in order to give you additional information on certain relevant topics, you will find a category called "LET US KNOW" after the sections in each unit. Another category that has been included at the end of each section of a particular unit is "CHECK YOUR PROGRESS". The purpose of this category is to help you to asses for yourself as to how thoroughly you have understood a particular section. You may then match your answers with "ANSWERS TO CHECK YOUR PROGRESS" given at the end of each unit. The section "FURTHER READING" in each unit contains the names of a few books which you might want to consult if you are interested in learning more elaborately about the concepts discussed in a particular unit. Furthermore, the category called "MODEL QUESTIONS" is intended to give you a hint of the type of questions you are likely to get in the examination.

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UNIT 9 : CHALLENGES IN THE PROMOTION OF HUMAN RIGHTS

UNIT STRUCTURE

9.1 Learning Objectives

9.2 Introduction

9.3 Criminal Justice System

- 9.3.1 Objectives of Criminal Justice System
- 9.3.2 Components of the Criminal Justice System

9.4 Police Behaviour and Judicial System

- 9.4.1 Police Behaviour in Protection of Human Rights
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- 9.5.1 Constitutional Framework of rights

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9.7 Fair and Speedy Trial

9.8 Let Us Sum Up

9.9 Further reading

9.10 Answers to Check your Progress

9.11 Model Question

9.1. LEARNING OBJECTIVES

After going through this unit, you shall be able to

- understand concept of the Criminal Justice System;
- will know the rights of accused
- understand the role of police, behaviour and judicial system in protection of Criminal Justice System
- will understand the protections available against arbitrary arrest and detention
- will understand about the Fair and Speedy Trial

9.2. INTRODUCTION

Every crime reminds us the obligation of the state not only to inflict punishment to the offender under the law but to respect, protect and fulfil the human rights of the subjects. Crime often entails substantive harm to the people and to merely symbolic harm to the social order. As common understanding 'crime is a wrongful act against the victim and society'. In any civilised country, the criminal justice system is directed to protect the rights of individuals safeguarding the interest of the victim and the state against the intentional infringement of the basic social norms by unscrupulous person(s) or criminals. It is done by ensuring punishment to the accused under the law.



In the international viewpoint among others, victims/ accused rights have been also seriously recognised by the UN Declaration on the Basic Principles of Justice for Victims of Crime and abuse of Power, 1985.

In modern day criminal justice system across countries, some core rights for victims have been recognised, such as, the right to be heard and participate in criminal justice process, right to remedies and services, right to protection from intimidation and harassment, right to restitution from the offender and the state, right to speedy trial and right to enforcement of these rights. It is now realised that victims are to be treated with fairness, dignity and respect as they are truly essential part of the criminal justice process more than mere informant/witness for evidence and involves protection in the interest of human rights perspective. In the international viewpoint among others, victims/accused rights have been also seriously recognised by the UN Declaration on the Basic Principles of Justice for Victims of Crime and abuse of Power, 1985[1]. The Republic of India is a signatory to several international human rights instruments such as the Universal Declaration of Human Rights (UDHR)[2], 1948, the International Covenants, viz,. International Covenant on Civil and Political Right (ICCPR). These documents impose on India the obligation of offering an effective criminal justice system to its citizens.

Criminal Justice Administration is to preserve and to protect the rule of law. It implies enforcement of law, maintenance of order, just, fair and speedy trial, punishment of orders, rehabilitation of offenders through correctional system and a solace to victims of crimes.

The principles of fair trial, fair hearing and rights of accused person has been defined by many national as well as International Instruments such as UDHR, ICCPR etc. Human rights constitute a set of rights and duties necessary for the protection of human dignity, inherent to all human beings, irrespective of nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. Even though there are instruments and mechanisms in national and international level to protect human rights, around the world the Criminal justice systems face many challenges.

9.3 INTRODUCTION TO THE INDIAN CRIMINAL JUSTICE SYSTEM

Criminal law entails two elements, substantive law and procedural law. Substantive criminal law outlines what conduct and state of mind constitute an offence and lay out the penalty for the offence. On the other hand, procedural law concerns the functions of the courts, the prosecutors and the police, and the procedure to be followed while dealing with an accused person or suspect, conducting investigation, and during a trial.

The foundation of criminal justice is that the accused is presumed innocent until proven guilty beyond a reasonable doubt after a fair trial. Criminal justice is a process, involving a series of steps beginning with a criminal investigation and ending with the release of a convicted offender from correctional supervision. The concept of Criminal Justice System is related with the concept of crime and norms of the society to control the criminal activities. Criminal Justice Administration system is to preserve and to protect

the rule of law. it implies enforcement of law, maintenance of order, just, fair and speedy trial, punishment of orders, rehabilitation of offenders through correctional system and a solace to victims of crimes. The paramount purpose of speedy trial is to safeguard the innocents from punishments but prolonged pendency has created an endless barrier in that. There is huge number of civil and criminal cases are pending for years together which create mental harassment along with economic pressure on litigants. The main purposes of the criminal justice system is -

1. To protect and supplement the welfare of the state and society.
2. To punish the criminals in the form of retribution, so that the offender must be made suffer for the crimes committed by him and also to make evildoers an example and a warning to all that are like minded with him.
3. To ensure the law and order for the safety of the society.
4. To punish the criminals with the appropriate provisions of the law of the state.
5. To observe or prevent any future occurrence of the criminal activities.
6. To preserve and defend the law of the state.
7. To ensure the rehabilitation of the offenders through the judicial system.
8. To ensure solace to the victims of the crimes.

9.3. 1. Objectives of criminal justice system

Main objectives

a) To reduce the level of criminality in society by ensuring maximum detection of reported crimes, conviction of the accused persons without delay, awarding appropriate punishments to the convicted to meet the ends of justice and to prevent recidivism.

b) To punish the guilty and protect the innocent.

c) he objectives of the criminal justice are prevention and control of crime, maintenance of public order and peace, protection of the rights of victims as well as persons in conflict with law, punishment and rehabilitation of those adjudged guilty of committing of crimes, and generally protection of life and property against crime and criminality

9.3.2. Components of the Criminal justice System

The criminal justice system comprises organizational arrangement. It consists of different components working jointly or individually towards a specific goal. The major components of the Criminal justice System are

A. Police

B. Prosecutor

C. Judiciary

D. Prisons

Under the modern Correctional Philosophy all these are known now as correctional Institutions. Prosecution and Defense Counsel have remained by and lay less knower agencies of the Criminal Justice System. Further, Probation and Parole sub-systems and allied functionaries very important role in the Criminal Justice System.



CHECK YOUR PROGRESS

1. What are the basic objectives of the Criminal Justice System?

.....

2. What are the various components of the Criminal Justice System?

.....

9.4. POLICE BEHAVIOUR AND JUDICIAL SYSTEM

The Police, the public prosecutors, the courts, the citizens are all important actors in India's criminal justice system. The Police Act 1861[3] largely governs Indian police forces, aiming to make them a more efficient instrument for the prevention and detection of crime.

9.4.1 Police Behaviour in Protection of Human Rights

Police Behaviour and Human Rights go hand in hand as it is the primary duties of the police to protect the basic rights of every citizen. Police are the important law enforcement authorities of any state or country. It is the duty of the police to know and apply the international and correct standards for human rights. Any democratic state is founded on the notion of human rights considerations and rule of law. Law enforcement authorities are the very basis for furthering the applications of those notions.

Human rights affect the police behaviours in several ways. A person always goes to the police at first for protection if there is any infringement of their rights. Police, in turn, will record complaints of the people for the violation of their human rights. In this way, they are always in touch with the public. However, police are also bound by certain human rights principles while doing so. In a case, their basic responsibility is the promotion, respect, and protection of the person. Hence, a police officer's behaviour should not affect any individual's human rights.

The police could also impose some restrictions with due justification and logic in certain cases. Furthermore, one should remember that the police themselves are human beings. Thus, they also have the right to be protected and respected. The police behaviour should also be independent and impartial one without the influence of any external factors. It is so that they could render the essential justice to all the individuals along with their trust.

9.4.2. Judicial System in Protection of Human Rights

The judiciary plays a fundamental role in society and for the upholding of social order. Its primary function, in fact, is to resolve conflicts through the application of pre existing norms or, in some cases to follow or to set precedents, issued through legitimate procedures. In adjudicating disputes, judges are subject to the law, meaning that their decisions are based on the application of the law, as issued by the Parliament/or by other legitimate sources provided for by the political system. The law is a product of society and, in theory, reflects community expectations. For these reasons, judicial decisions/precedents can be considered as the product of whole society.

The value of an individual life is best represented through recognition and protection of human rights. It full enables every human being to exercise their rights and enjoy them without any harm to their dignity. There would be no meaning to a human life if they even could not enjoy the naturally inherent basic rights or to adopt the ideologies and notions of someone's else. However, these rights of the individuals would not have any value if was legal system guaranteeing the rights. Society would be lawless with criminals rampant.

In any democratic country, the separation of power exists which specially mentions about three organs of the government. Judiciary is one of them which should be completely neutral and independent. Legislators carefully make laws for protecting the human rights. But, the laws would be completely useless if there is no authority or system for safeguarding or affecting them. Judicial system is vested with the authority and responsibility of enforcing those safeguards which in turn protects the human rights. It is due to judiciary's influence that a human being enjoys all their rights equally along with the efficient functioning of the other branches of the government.

A judicial system sets a good precedent for future disputes while making equitable decisions. Thus, courts are the ultimate place wherein effective protection is received by a human being for the infringement of their rights. A person always moves to court for the protection of human rights. The Constitution of India itself guarantees and protects the same as one of the fundamental rights. Everyone and each person is given a fair trial and hearing. Thus, judicial system is like a shelter for a legally aggrieved person.

9.5. RIGHTS OF ACCUSED

1. Right to know and to be informed of the grounds of Arrest:

Section 50 (1) of Criminal Procedure Code (CrPC) states that, while executing an arrest without a warrent, the police officer or any other person who is authorised must inform the arrested person of the offence for which he or she is being arrested. It is the duty of the police officer and he cannot refuse it. If the offence is bailable, the right to be released on bail must be communicated to the arrested person.

Article 22(1) of the Constitution of India requires that the authorities making arrest must disclose the grounds of arrest must disclose the grounds or arrest to the arrested person and should be informed of his or her right to have access to a lawyer of his or her choice. In Harikrishan vs. State of Maharasthra case, Supreme court stated that, in order to constitutional requirements to be sufficiently complied with, the arresting officers should inform the arrested persons of the grounds for the arrest in a language which he or she understands.

There are detail rules for arrest. Section 50 A of CrPC puts an obligation to police or a person making an arrest to inform of the arrest to any of his/her friends or relative or any other person in his interest. The police officer should inform the arrested person that he

has a right to information about his arrest to the nominated person as soon as he is put under custody. Section 75 of CrPC says that the police officer (or any other officer) executing the warrant should notify the substance to the person arrested and show him a warrant if it required.

2. Right to be produced before the Magistrate without unnecessary delay

Constitution protects individual against arbitrary arrest. In accordance with Article 22 (2), an arrested person must be produced before a Magistrate within a time period of 24 hours of arrest. If the police officer fails to produce before Magistrate within 24 hours, he will be liable for wrongful detention.

However, in cases of arrest without warrant, section 56 of Criminal Procedure Code requires the detenue to be produced before a Magistrate without unnecessary delay. Section 57 incorporates the constitutional safeguard of production within 24 hours. Section 76 of CrPC relates to cases of arrest with warrant and similarly provides for the arrested person. While calculating the time period of 24 hours, it must exclude the time which is required for the journey from the place of detaining to the Magistrate Court. Section 55 of CrPC states that a police officer in case of arrest without a warrant should produce the arrested person without unnecessary delay before the Magistrate having jurisdiction or a police officer in charge of the police station, subject to the conditions of the arrest.

3. Right not to be detained beyond twenty four hours without the authority of Magistrate:

A person who has been arrested can be detained in custody beyond twenty four hours only with the authority of the Magistrate. Thus if there is necessity of detention beyond 24 hours it is permitted only by an order of the Magistrate.

4. Right to defend by counsel of one's own choice:

Right to consult and to be defended by a legal practitioner of his choice is not only guaranteed under Article 22(1) but is also implicit in the right to personal liberty and is an international human rights norm followed in all legal institutions. In Criminal Procedure Code section 303 states that any person accused of an offense before a criminal court, or against whom proceedings are instituted under this Code, may of right be defended by a lawyer of his choice. Section 41D of CrPC ensures the right of the prisoners to consult his lawyer during interrogation. Section 303 of CrPC states that when a person is alleged to have committed an offence before the criminal court or against whom proceedings have been initiated, has a right to be defended by a legal practitioner of his choice.

5. Rights to be released on Bail

Bail against arrest is a legal right. Section 50 (2) of CrPC states that when a police officer arrests any person without a warrant for an offence other than non-cognizable offence; he shall inform him that he has a right to bail and to make an arrangement for the sureties on his behalf.

The classic case that reconfirmed this right to be released on bail is Hussainara Khatoon vs. Home Secretary, State of Bihar, outlined the adverse effects of the bail system. With a view to minimizing the number of undertrial prisoners in India, the Code of Criminal Procedure (Amendment) Act, 2005, mandates that if a person has been detained for one-half of the maximum period of imprisonment specified for the offence under law during investigation, inquiry or trial, he or she should be released by the court on his or her personal bond with or without sureties.

6. Rights to a fair trial

The right to fair trial is the core of the criminal justice system. It encompasses several other rights such as the right to be presumed innocent until proven guilty, the right against self incrimination, the right to a public trial, the right to a legal representation, the right to speedy trial, the right to be preset during trial and examine witnesses, etc.

The right to a fair trial is derived from the Constitution and the various judgments. Article 14 of the Constitution of guarantees *equality for all persons before law and article 21 guarantees right to personal liberty which cannot be taken without due process.*

Right to free Legal Aid

Effective access to justice requires that there is a systematized mechanism of legal aid in place. The right to counsel is available from the time a person is arrested or taken into custody. Right to free legal aid is part of the personal liberty and also guaranteed under Article 21 of the Constitution of India. The provision of legal aid is explicitly enshrined in the Constitution under Article 39A free legal aid for the purpose of securing justice.

Legal aid is required at various stages such as for obtaining guidance, for resolving disputes in courts, tribunals or other authorities. Pursuant to the constitutional directive under Article 39 A, Parliament of India has enacted Legal Service Authorities Act, 1987 with the objective to establishing legal services authorities to provide free and competent legal service to the weaker section of the society. It has wider facets in India and it is provided in criminal, revenue and Administrative and civil cases as well.

In addition to this, in the landmark case of Hussainara Khatoon vs. Home Secretary, State of Bihar, Supreme Court held that the right to legal aid to be ‘an essential ingredient of reasonable, fair and just procedure.

7. Right not to be tortured:

In India Custodial violence by the Police officer during custody is an endemic problem. Both domestic provisions and international human rights instruments impose strict parameters and prohibited torture. However, there is no specific law against torture and rights to compensation are not explicitly mentioned under Indian Law. National Human Rights Commission to issued guidelines from time to time to keep a vigil on torture.

9.5.1 Constitutional Framework of rights:

Protection against Double Jeopardy

The constitution of India under article 20(2) protects an accused person against double jeopardy. The concept of double jeopardy is based on the legal maxim "*Nemo debut bi's punibi prouno delicto*" which means that no one should be punished twice for the same offence or same fault. The constitution of India under this article prohibits prosecution and punishment for the same offence more than once. However, protection under Article 20(2) extends only to prosecutions before a court of Law or a judicial tribunal. The doctrine of double jeopardy explains that if a person is tried for an offence, he cannot be tried for the same cause of action or the same offence before the court of law. According to this principle, if a person has been convicted or acquitted for any offence by the court of competent jurisdiction, any subsequent conviction or acquittal for the same offence would be considered as double jeopardy and violative of Article 20(2) of the Indian Constitution and Section 300 of the Code of Criminal Procedure, 1973.

Protection against Ex-Post-Facto Law

Article 20(1) of the Constitution of India provides protection against ex-post facto laws. Simply it means a person

cannot be convicted for an act which was not a crime when it was committed. If an act of the accused person is not an offence at the time of the commission of it cannot be an offence at the time after its commission. Nor a higher penalty be imposed than that which was prescribed for the offence at the time it was committed. Under Indian Penal Code or any other specific laws, the court has no power to hold the accused guilty of any action when he committed was not an offence. The Universal Declaration of Human Rights, 1948 under Article 11, paragraph 2 also provides freedom from ex-post-facto laws. However, this protection is given to the accused person against conviction or sentence for a criminal offence and not against the trial before the court of law. Thus, if the trial of an accused person is held under a different procedure after the commission of an act cannot be ipso facto and cannot be held unconstitutional.

Right against self-incrimination

The Constitution of India under Article 20(3) states that no person accused of any offence shall be compelled to be a witness against himself. This article protects the rights of the accused, including the right against self-incrimination, also known as 'the right to remain silent'. Thus Article 20(3) embodies the general principles of English and American jurisprudence that no one shall be compelled to give testimony which may expose him to prosecution for crime. During the trial it is the right of the accused person to make any statement or admission voluntary without any fear, undue influence or any coercion. This right of the accused extends to any person charged under criminal law and prohibits all kinds of illegal compulsions to make him a witness against himself.



CHECK YOUR PROGRESS

3. What article 22 state?

.....

.....

4. What is the meaning of double jeopardy?

.....

.....

9.6 PROTECTION FROM ARBITRARY ARREST

Arbitrary arrest is prohibited by the Constitution. Article 21 of the Constitution of India provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. Thus a person can be deprived of life or liberty only in accordance with procedure by law and the procedure, as explained in Maneka Gandhi vs. Union of India case has to be fair, just and reasonable and not be fanciful, oppressive or arbitrary, otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied.

Article 22 provides certain procedural safeguards which must be observed whenever a person is arrested and detained in custody. It constituted within the right to freedom is one of the important elements of the fundamental rights guaranteed under the constitution. Article 22 is covered in two major parts, protection and rights granted in case of arbitrary arrest also known as punitive detention, and safeguards against preventive detention. Any law authorising arrest and detention of person must comply with these procedural requirements prescribed under Article 22.

Article 22 provides four rights:

First, he shall not be detained in custody without being informed, as soon as possible, of the his arrest

Secondly, he shall not be denied the right to consult and to be defended by a legal practitioner of his choice. In other words, he will have right to consult and to be defended by, an advocate of his choice.

Thirdly, he will be entitled to be produced before the nearest Magistrate within a period of twenty four hours of arrest.

Fourthly he shall not be detailed in custody beyond the said period of twenty four hours without the authority of Magistrate.

Under International Law :

In context of Human Rights the right to security of the person and freedom from arbitrary detention is contained in article 9 of ICCPR. Article 9 also provides a number of other rights for persons who are arrested or detained

The rights protected by article 9 of the ICCPR are:

- to liberty and not to be subjected to arbitrary arrest or detention
- to security
- to be informed of the reason for arrest and any charges
- to be brought promptly before a court and tried within a reasonable period, or to be released from detention
- to challenge the lawfulness of detention.

Article 9 of ICCPR also provides that persons should not generally be detained in custody pending trial. Release may be made subject to certain guarantees.

Similarly, article 5 of the Convention on Elimination of Racial Discrimination, article 37 of the Convention on the Rights of the Child (CRC) and article 14 of the Convention on the Rights of Persons with Disabilities (CRPD).

9.7 FAIR AND SPEEDY TRIAL

The concept of Right to Speedy means disposal of cases as soon as possible so as to make the Judiciary more efficient and trustworthy. The main aim of Right to Speedy trial is to inculcate Justice in the society. It is the human life that necessitates human rights. Being in a civilized society organized with law and a system as such, it is essential to ensure for every citizen to live in society with dignified life. Thus, every right is a human right including all fundamental right and basic rights as that helps a human to live like a human being.

9.7.1 THE NEED FOR FAIR AND SPEEDY TRIAL

The major goal and need of the right to a Speedy Trial is to instil justice in society. Human rights are necessary because of human life with dignity. It is vital in a civilised society organised with the law and a system to provide a reasonably dignified existence for every citizen. As a result, every right is a human right since it allows a person to live as a human being. The very basic aim for which every governmental apparatus establishes the court system is to provide justice to victims of crimes. In the Maneka Gandhi case *(1978)*, Justice Bhagwati stated, “The expression ‘personal liberty’ in Article 21 is of the broadest amplitude and it covers a variety of rights that go to constitute a man’s personal liberty, some of which have been elevated to the status of distinct fundamental rights and given additional protection under Article 19.” The Supreme Court held in Sheela Barse Vs. Union of India, in 1986 that if an accused is not tried quickly and his case is pending before the Magistrate or Sessions Court for an unreasonable amount of time, his fundamental right to a speedy trial will be violated unless there is some interim order issued by the superior court or a deliberate delay on the part of the prosecutor. As a result of such a delay, the prosecution could be thrown out.

The Indian Constitution places a high obligation on the judicial system to provide fair administration of justice. The Directive Principles of State Policy enshrined in Articles 38(1), 39, and 39-A of the Indian Constitution, as well as India's international legal commitments, to ensure the prompt delivery of justice. There is no extant law that specifies a timeframe for the conclusion of the trial, and if one is included in a statute, it is just "indicative" rather than "mandatory." The Supreme Court has stated in several decisions that the right to a quick trial is guaranteed under Article 21 of the Constitution.



9.8 LET US SUM UP

- In modern day criminal justice system across countries, some core rights for victims have been recognised, such as, the right to be heard and participate in criminal justice process, right to remedies and services, right to protection from intimidation and harassment, right to restitution from the offender and the state, right to speedy trial and right to enforcement of these rights.
- It is now realised that victims are to be treated with fairness, dignity and respect as they are truly essential part of the criminal justice process more than mere informant/witness for evidence and involves protection in the interest of human rights perspective. In the international viewpoint among others, victims/accused rights have been also seriously recognised by the UN Declaration on the Basic Principles of Justice for Victims of Crime and abuse of Power, 1985



9.9 FURTHER READING

a) Basu, D. D. Constitutional Protection of Civil Rights in India, journal of the International Commission of jurists, Vol. I. No.2 - Commentary on the Constitution of India, Third Edition, Calcutta, 1955

b) M. P. Jain, Constitution of India, Nagpur: Wadhwa and Company , 2003.



9.10 ANSWERS TO CHECK YOUR PROGRESS

1. The foundation of criminal justice is that the accused is presumed innocent until proven guilty beyond a reasonable doubt after a fair trial. Criminal justice is a process, involving a series of steps beginning with a criminal investigation and ending with the release of a convicted offender from correctional supervision.

2. The major components of the Criminal justice System are

   A. Police

   B. Prosecutor

   C. Judiciary

   D. Prisons

3. Article 22 provides certain procedural safeguards which must be observed whenever a person is arrested and detained in custody. It constituted within the right to freedom is one of the important elements of the fundamental rights guaranteed under the constitution.

4. The concept of double jeopardy is based on the legal maxim "*Nemo debut bi's punibi prouno delicto*" which means that no one should be punished twice for the same offence or same fault.



9.11 MODEL QUESTIONS

1. Describe briefly the evolution of the Criminal Justice System.
2. What are the functions of the Criminal Justice System?
3) What are the different components of the Criminal Justice System?
4) What is the role of the police in protection of Human Rights?
5) What are the rights of accused person?
6) What do understand by self incrimination?
7) Define Arbitrary arrest
8) Fair and speedy trial
9) What are the need of speedy trial
10) What are the provision available under International Law against arbitrary detention

*** ***** ***

UNIT 10: HUMAN RIGHTS IN NE INDIA

UNIT STRUCTURE

10.1 Learning Objectives

10.2 Introduction-History of Conflict and Human Rights violations in North East India

10.3 Enactment of Armed Forces (Special Powers) Act, 1958

10.4 Declaration of 'disturbed' area

10.5 The conditions of declaration of disturbed area

10.6 Powers granted in 'disturbed areas'

10.7 Virtual Immunity for the armed forces under AFSPA

10.8 Reviews and Opinions on AFSPA

10.9 Role of mass media

10.10 Role of civil society

10.11 Let us Sum Up

10.12 Further Reading

10.13 Model Questions

10.1 LEARNING OBJECTIVES

After going through this unit, you shall be able to

- Understand the history and nature of conflict in north east India
- acquaint yourself with the context behind the enactment of AFSPA
- know about the various provisions of AFSPA and various decisions by judiciary
- learn about the role of media
- know about the role played by civil society to promotion and protection of human rights

10.2 HISTORY OF CONFLICT AND HUMAN RIGHTS VIOLATIONS IN NORTH EAST INDIA

North East India has been witnessing a low intensity violent conflict since the independence of India. The Indian subcontinent won independence from its British colonisers in 1947 and was divided into India and Pakistan. States comprising the subcontinent were given the choice to join either of them. While tension over territories was germinating much before 1947 due to the Naga's demand to remain independent which the nascent Indian state as well as the British crown were unwilling to grant it. Soon the conflict escalated in 1947 when the Naga tribes declared their independence. The Government of India refused to acknowledge the declaration and clubbed the Nagas under a greater Assam. Before the Indian independence, several states comprised Assam, including princely states of Manipur and Tripura. Subsequently, the region was reorganised giving birth to new states like Nagaland in 1963, Meghalaya in 1972, Arunachal Pradesh in 1975and Mizoram in 1987 were formed out of Assam.

The Nagas were demanding full sovereignty for a long time and also submitted a memorandum during the visit of Simon Commission in 1930s. History indicates that in the early 19th century, the Britishers moved in to check the Burmese expansion into today's Manipur and Assam. The British crushed the Burmese imperialist dream and the treaty of Yandabo was signed in 1828 and Assam became a part of British Empire. At the beginning of the century, the inhabitants of the Naga Hills which extend across the Indo-Burmese border came together under the single banner of Naga National Council (NNC). As early as 1929, the NNC petitioned the Simon Commission, which was examining the feasibility of future of self-governance of India. The Naga leaders were against Indian rule over their people once the British pulled out of the region. The NNC



The British crushed the Burmese imperialist dream and the treaty of Yandabo was signed in 1828 and Assam became a part of British Empire.

proclaimed Nagaland's independence on 14 August, 1947, a day before the Independence of India. As a result an armed struggle ensued. The Armed Forces Special Powers Act 1958 is the product of this tension. The Kingdom of Manipur was also reconstituted after the independence of India as a constitutional monarchy by passing the Manipur Constitution Act, 1947. Meanwhile the King in Shillong allegedly signed a forceful merger agreement with the Indian Union in 1949. This raised dissatisfaction among the people of Manipur and they started demanding their right to self-determination. These areas were declared as 'disturbed areas under the Disturbed Areas Act 1955. The records of the parliamentary debates indicate that the Act was passed with the intention of application of it for one year. But this never happened. The Act is force even today in the states of the North Eastern Region and Jammu and Kashmir. North Eastern region of India was reorganized in 1972 and accordingly the Act was amendment to keep it in force in all the states of North Eastern region.

10.3 ENACTMENT OF ARMED FORCES SPECIAL POWERS ACT

The Armed Forces Special Powers Act (AFSPA hereafter), 1958 was passed in 1958 to control Naga insurgencies. Parliamentary debates indicate that initially it was enacted for one-year application[1] in Assam.North East India was reorganized in 1972 and accordingly the Act was amendment to keep it in force in all the states of North East India. The Act empowers armed forces to arrest without warrant, search and shoot to the extent of killing in aid of civil power to maintain law and order. AFSPA has its genesis in the Armed Forces Special Powers Ordinance of 1942. In order to thwart the Quit India Movement the then Viceroy Linlithgow declared emergency all over the British India and promulgated theArmed Forces (Special Powers) Ordinance, 1942on 15 August 1942[2]. This ordinance conferred special powers

to the armed forces to arrest and use force (even kill) civilians on mere suspicion. Armed forces were also provided with virtual immunity from legal action. India became independent in 1947. Several species of ' disturbed areas" legislation was passed in 1947 to cover Assam, West Bengal, East Punjab and Uttar Pradesh after partition[3]. Let us look at the provisions of AFSPA.

10.4 DECLARATION OF 'DISTURBED AREAS'

AFSPA is applicable in a disturbed area[4]. In accordance to Section 3 of AFSPA together with Disturbed Areas Act 1955, the Governor of a State or the Administrator of the Union Territory, or the Central Government may notify an area as "disturbed". For declaration of disturbed areas the authority only needs to be 'of the opinion that whole or parts of the area are in a dangerous or disturbed condition such that the use of the armed forces in aid of civil powers is necessary'[5]. There is no definition or clarity about what constitutes a 'dangerous or disturbed condition'. Many critics of the Act found that the declaration of 'disturbed areas' resembles a declaration of a *de facto* emergency devoid of the constitutional mandates and protection. Giving his opinion the then Union Home Minister G.B Pant in 1958 argued in the Parliament that ' this is a simple measure. It only seeks to protect the steps the armed forces might have to take in the disturbed areas… …'[6]

The entire state of Assam was declared a "disturbed area" on November 27, 1990**.** Further on 17/09/2001, the areas falling within 20 KM of wide belt in the State of Arunachal Pradesh, Nagaland and Meghalya along the border of the State of Assam was also declared as "disturbed areas[7]".Whole State of Manipur was declared as 'disturbed' in 1980. Later after the agitation in July 2004, it was partially lifted from Imphal city. Once an area is declared 'disturbed' is always

remained 'disturbed'[8]. AFSPA and disturbed area declaration are in force in North East India since 1958.

10.5 THE CONDITIONS OF DECLARATION OF DISTURBED AREA

The conditions of declaration of disturbed area depend on the 'opinion' of the Governor of that State or the administrator of that Union Territory or the Central Government. In IndrajitBarua vs. State of Assam and another[9], it was observed by the Delhi High Court that power conferred on Governor of Assam to declare any area as 'disturbed' is not arbitrary on ground of absence of legislative guidelines. In 'disturbed area' is not defined in either of the two statutes of AFSPA and the Assam Disturbed Areas Act 1955. A disturbed area has to be adjudged according to location, situation and circumstances of a particular case. As the term implies only such area would be disturbed area where there is absence of peace and tranquility. The Court further observed that the term 'disturbed area' was well understood by the legislatures as well as the people of India. Governor of the state cannot be made answerable before judiciary for making a declaration of 'disturbed area' under section 3 of AFSPA. It was observed by Justice Sangma in NPMHR vs. Union of India, (1988) 1 GLR 139 that, ' the role of the security forces in a disturbed area is to assist the civil administration so as to give confidence to the innocent and law abiding people'.

This view was later also accepted in Luithukia vs. RishangKeishing[10]. In this case the Gauhati High Court reconfirmed that the armed forces must act in cooperation with the district administration and not as an independent body.

In People's Union for Democratic Rights (PUDR) vs. UOI, 1991 CriLJ 1935, Gauhati High Court held the expression 'in aid of has been used to mean to supplement or support the civil power, i.e., civil power is to be supplemented or supported by the armed forces. The

armed forces are employed order deployed for limited purpose as provided under Sections 4 and 5 of the Act.

It is often argued that there is no provision of a period review of the declaration of 'disturbed area' under section 3 of the Act. In this regards, in Naga People's Movement of Human Rights vs. Union of India,AIR 1998 SC 431, it was held that section 3 cannot be construed as conferring a power to issue a declaration without any time limit. There should be periodic review of the declaration before the expiry of six months.



Check your progress

1. What were the main objectives for enacting AFSPA?

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.....

2. When north east India was reorganized?

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3. What are the conditions for declaration of 'disturbed area'?

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4. What are the important judgments on 'disturbed area' definition?

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10. 6 POWERS GRANTED IN 'DISTURBED AREAS'

Under Section 4 of this Act any commissioned officer, warrant officer, non-commissioned officer or any other person of equivalent rank in the armed forces may use force even to cause death, destroy any armed dump, prepared or fortified position or shelter from which armed attacks are made or are likely to be made, or any structure used as a training camp for armed volunteers or utilized as a hideout

by armed gangs or absconders, arrest without warrant and enter and search without warrant any premises. Such an arrangement is believed to give rise to extrajudicial executions, arbitrary detention, disappearances, custodial deaths etc rather than protecting civilians. Human rights groups active in north east India argued that capital punishment can be imposed only for a crime for which the death penalty is prescribed by law and the same may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts[11]. The person sentenced to death also has a right to seek pardon. But under section 4(a) of AFSPA gives instant punishment or death penalty on mere suspicion. It is evident that section 4 (a) gives heavier punishment to the suspects than convicts. This violates right to life. It also violates the core principle of criminal justice like presumption of innocence. TheUnited Nations Human Rights Committee (under ICCPR) in 1991 found section 4 of AFSPA and other sections as incompatible with Articles 6, 9 and 14 of ICCPR.

A close reading of the section reveals that any officer even non-commisioned officer can act under this section, force can be used to the extent of causing death of a person if he is or about to act in contravention of any law after due warnings which would depend on the judgment of the executing officer of armed forces.

In Indarjit Barua vs. state of Assam[12], it was held by the Delhi High Court that the conferment of power on non-commissioned officers like a Havaldar cannot be said to be bad and unjustified.

10.7 Virtual Immunity for the armed forces under AFSPA

It is often alleged by the human rights groups and civil society in north east India that there is no accountability for human rights violations under the AFSPA. AFSPA makes the requirement of a mandatory sanction from the central government for any legal

proceeding against the armed forces. Section 6 of the Act says that no prosecution, suit or other legal proceeding shall be instituted without the previous sanction of the Central Government against any person for anything done in exercise of powers conferred by this Act. Undermining of the civil space, that is a direct consequence of immunity extended to the army, this has eroded the available space for democratic and peaceful dissent[13]. India had enacted the Protection of Human Rights Act (PHRA) in 1993 and the National Human Rights Commission (NHRC) was established in 1994 to inquire into the complaints of human rights violations. However, article 19 of the PHRA disempowers the NHRC to investigate *suomotu*, cases of human rights violations perpetrated by the Armed Forces.

A close reading of the section reveals that any officer even non-commisioned officer can act under this section, force can be used to the extent of causing death of a person if he is or about to act in contravention of any law after due warnings which would depend on the judgment of the executing officer of armed forces.

In Indarjit Barua vs. state of Assam[14], it was held by the Delhi High Court that the conferment of power on non-commissioned officers like a Havaldar cannot be said to be bad and unjustified.

In 1997, Supreme Court issued Do's and Don't's which are set of rules to be followed before, during and after the use of power granted under AFSPA in the case of Naga People's Movement for Human Rights vs. Union of India.

The abuse of power under AFSPA is most blatantly visible in Manipur where rampant fake encounter killings and a culture of impunity has become the norm rather than an exception. Widows of victims of fake encounter killings organised themselves as Extrajudicial Execution Victim's Family Association along with Human Rights Alert and have challenged the encounter deaths of 1528 persons in 2012. While conducting a trial in six cases out of these 1528, the Supreme Court appointed Justice Hegde Committee[15] found

that all six cases were, in fact, staged murders and noted legislative failure to tackle insurgency. The committee has methodically exposed the legislation's failure to tackle insurgency in the State in its report in 2013. The final verdict is still awaited.

10.8 REVIEWS AND OPINIONS ON AFSPA

AFSPA came into public debate during 1980s and this debate gained momentum when Amnesty International released its first report on 'Operation Blue Bird" in 1993. The Report was on Disappearance, Summary and Extra-judicial Executions in Manipur. The Supreme Court upheld constitutional validity of AFSPA in 1997 with an addendum in its judgment, which is a list of do's and don'ts while acting under AFSPA. In July 2004, due to massive public protest against the Act following the extrajudicial execution of a female combatant, Ms. Manorama, in Imphal, Manipur, the government of India formed 'Committee to Review AFSPA' headed by Justice Jeevan Reddy to review the Act. The report[16] was not made public officially but was leaked to a newspaper, the Hindu in October 2006. The report recommended the repeal of the Act along with a suggestion of insertion of similar provision in the Unlawful Activities Prevention Act (UAPA, hereafter) as amended in 2004.

In 2007, the Administrative Reforms Commission headed by VerappaMoily recommended the repeal of the Act as well as making amendment in the UAPA, similar that of the previous Committee. The Act again came before the Supreme Court purview through MasoodaParveen. In its May 2007 *Masooda*decision, the Supreme Court undermined its earlier *NPMHR* ruling by accepting very weak arguments from the Central Government excusing the army's lack of cooperation with local police forces[17].

The international treaty bodies also reviewed the AFSPA where government of India is a party and expressed their concern over the dependence of this Law for decades. These bodies are CERD

Committee (May 2007) CEDAW Committee (February 2007 and February 2004), Human Rights Committee recommendations 9August 1997).[18]

In, 1997 when the United Nations Human Rights Committee questioned the Attorney General of India to explain the constitutionality and validity of the AFSPA in terms of Indian constitutional law and international human rights law like ICCPR, he defended it on the sole ground that it was necessary in order to prevent the secession of the northeastern states. The Indian government, he argued, had a duty to protect the states from internal disturbances as per article 355 and that there was no duty under international law to allow secession[19].

The north eastern region has witnessed an increased militarisation in the region which has not been able to steam the discontentment. It can be concluded that

AFSPA has become counter- productive and that the problem of insurgency cannot be solved through military means alone. People of North East India feels that the 'continued enforcement of the AFSPA is nothing else but to systematically execute the policy of genocide in Manipur and other North Eastern states ……[20].

Protection of human rights at any point of time remains the prime responsibility and obligation of a state. But at the same time the insurgent groups or the 'liberation fighters' should take the moral responsibility of respecting human rights. United Nations Counter-Terrorism Committee should declare arbitrary killings by the insurgent groups as 'crime against humanity' and establish their accountability. They cannot wash away their hands with immunity.

The problems of northeast have been misconceived as 'law and order' problems when in fact they are a consequence of unresolved political questions'[21]. A sensible political step is required to solve the problem politically. AFSPA is in force for decades in North East India still the problem is not solved, which indicates that the heart of the issue lies somewhere else.

The Committee to Review the AFSPA established in 2004 in its report observed that 'the Act for whatever reason has become a symbol of oppression, an object of hate and an instrument of discrimination and highhandedness'. Second Administrative reforms Commission observed in its 5th report that, 'the ethnicity, diversity, geography and history of the region demand a comprehensive nation building approach for resolving the complex issues. Fair reconciliation of conflicting interests in the region, adequate local empowerment with accountability, infrastructure development, economic growth, greater economic linkages with neighbouring regions and better governance and democratic legitimacy must together form the foundation of durable peace and prosperity in the region[22].



CHECK YOUR PROGRESS

1. Discuss if section 4 (a) of AFSPA violates rights to life.

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2. Is virtual immunity from legal proceedings provided to armed forces under section 6 of AFSPA?

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3. What the reviews and opinions of international and national bodies on AFSPA?

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10.9 ROLE OF MEDIA

The mass media is an information centre and is a proven means of creating public opinion. Because of its education and informative role, media is called the fourth pillar of democracy. Media plays an important role as watchdog and strengthens human rights

discourse and often support in struggle for justice for human rights violation.

In north east India, print media, electronic media and social media regularly publish reports on issues affecting people and the society as well as engage in analysis and review of current affairs. NGOs are regularly engage in media advocacy and it is a first step for any civil society to raise a social issues or a case of human rights violation. Media campaign builds awareness and that build political pressure to deliver justice. Mass media is an instrument of education.

It can be argued that the media can set the public agenda by reporting one news story in place of another, then, the media can take up the human rights agenda by publishing or broadcasting human rights programmes. Media can disseminate human rights information, mobilize human rights NGOS, strengthen popular participation in civil society, promote tolerance,and shine a light on government activity. The media and human rights NGOs are helpful to each other in the fight against human rights violations. These NGOs serve as monitors and sources of information for human rights stories. The NGOs can use the global media to highlight abuses, which in turn will shame abusers to put an end to their attitude, while information released

10.10 CIVIL RIGHTS SOCIETY IN PROTECTION OF HUMAN RIGHTS

Prevelence of low intensity armed conflict in north east India resulted into formation of local civil society organisations who have been playing an important role in promotion and protection of human rights. Civil society activities have influenced the political events as well as per the experiences in north east India. One of the interesting characteristic of civil society in north east India is that these are ethnic based and often highlight and protect the interests of the ethnic interests and aspirations since colonial period[23]. This reality till today remains unchanged and as an ethnically sensitive region with a high

degree of ethnic politicization, these scenarios generate a more intense mobilization of civil society that actively shapes the nature of politics in the region.[24]

Civil societyorganisationsin North East India are based on the themes of their own tribe, religion, ethnicity, or village. Civil society groups play an important role in peace building and also creating pressures on human rights issues. It has been observed through out north east India that whenever there is a allegation of human rights violation, the local groups forms sort of 'Joint Action Committees' to lobby with the key stakeholders to ensure justice. In Manipur, this practice has become a tradition. They a major role in right based movements and at times come in direct confrontation with the State. These pressure groups have created limitation on the abuse of law like AFSPA.

Civil society organisations also have contrasting agenda and interest. This makes them diverse and confrontative of each other at times. Civil society groups, particularly women groups are an important tradition in North East India. The MahilaSamities of Assam, Mother's Union of Meghalaya, Naga Mothers Association, the MeiraPaibis of Manipur act as vigilant groups on issues such as drug trafficking, alcoholism, violence against women, children etc. Research on women in armed conflict by various women organisations like North East Network (North East India), Women in Governance Network (North East India), Women Leadership and Training Centre (Assam), Centre for Women and Girls (Manipur), Naga Mothers Association (Nagaland), Gun Survivors Network (Manipur) etc has played crucial roles in upholding women rights in the region.



NPMHR became the first organisation to challenge the AFSPA in Gauhati High Court and then the Supreme Court of India

Few important civil society organisations

Naga Peoples' Movement for Human Rights (NPMHR)

In the late 1970s, a group of Naga students at the Jawaharlal Nehru University's campus in Delhi came together to form the Naga Peoples' Movement for Human Rights (NPMHR) in 1978 and their

main aim was to oppose the Armed Forces (Special Powers) Act, 1958 (AFSPA) and make known the atrocities meted out to the Naga people. Over the next decades, the NPMHR investigated and reported on cases of human rights violations in the Naga areas. They were actively supported by the People's Union for Democratic Rights (PUDR) and People's Union for Civil Liberties (PUCL) in India. NPMHR became the first organisation to challenge the AFSPA in Gauhati High Court and then the Supreme Court of India, setting a precedent for other movements that have attempted to question and counter the draconian law.

Though the NPMHR case got a positive hearing in the Gauhati High Court, the Supreme Courtupheld the constitutional validity of the AFSPA with an undertaking for "Do's and Don't's" to be followed by the armed forces during their operation. NPMHR has "tied up ethnic politics with human rights" setting the standard for all human rights movements in the region, which went hand-in-hand with political rights movements.

HUMAN RIGHTS ALERT

Human Rights Alert (HRA) is non-governmental, voluntary organisation of individuals committed to the cause of human rights. Its members are drawn from human rights defenders, journalists, lawyers, academicians, health workers and community workers of Manipur. Its activities includes running a resource centre at Manipur and services the local human rights initiatives with information, advice and guidance. HRA monitors and documents the human rights situation in Manipur and the North East region. (Print & Audio Visual) and conducts grass-root level human rights work-shops in the North East region. It also campaigns on individual cases of human rights violations using the law courts, domestic human rights institutions, international NGOs and the UN human rights mechanisms. HRA networks with the human rights groups in the region and outside.Work

closely with Amnesty International,London; International Service for Human Rights, Geneva; International Human Rights Internship Program, Washington DC. HRA is also a partner of the Witness Program of the Lawyer Committee for Human Rights, New York. HRA along with Extrajudicial Execution Victims and Families, Manipur (EEVFAM) filed a writ petition to the Supreme Court of India challenging the killing of 1528 persons in Manipur by the armed forces, police etc while acting under AFSPA. The case is one of the most important litigation on AFSPA where CBI is investigating multiple allegations and already summoned several state authorities. The case is pending before the Supreme Court.

WING INDIA

Women in Governance – India (WinG-India) is a unique network of women who campaigned and advocated for the repeal of AFSPA and other security laws and policies that are abused to commit violence against women in north east India. WinG chose to bring in Dalit women (erstwhile untouchables) and women affected by conflict, in Northeast India and other parts of the country. The members of WinG-India represent marginalized communities across India and work towards promoting leadership within local governance. Conceived in 2009, WinG-India has emerged as a strong network within civil society in India by raising issues of women-security and governance at various national and international forums. Key focus areas of the network include women security (with focus on the implementation of UNSCR 1325), exploring customary laws and their impact on women's lives. WinG India conducts regular documentation on cases violence against women committed in the armed conflict zones and participated in the UN processes for women's leadership in peace building by using Security Council resolution 1325.



10.11 LET US SUM UP

- The Armed Forces Special Powers Act (AFSPA hereafter), 1958 was passed in 1958 to control Naga insurgencies. Parliamentary debates indicate that initially it was enacted for one-year application[25] in Assam.
- North East India was reorganized in 1972 and accordingly the Act was amendment to keep it in force in all the states of North East India. The Act empowers armed forces to arrest without warrant, search and shoot to the extent of killing in aid of civil power to maintain law and order.
- Civil society organisations in North East India are based on the themes of their own tribe, religion, ethnicity, or village. Civil society groups play an important role in peace building and also creating pressures on human rights issues.
- It has been observed through out north east India that whenever there is a allegation of human rights violation, the local groups forms sort of 'Joint Action Committees' to lobby with the key stakeholders to ensure justice. In Manipur, this practice has become a tradition.



10.12 FURTHER READING

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9. AnjumanAra Begum, 'AFSPA, yet another opportunity for the judiciary', http://twocircles.net/2013aug11/afspa_yet_another_opportunity_judiciary.html



10.13 MODEL QUESTIONS

1. Discuss the history behind the enactment of AFSPA 1958
2. What the provisions of AFSPA and how it violates human rights?
3. What are the Supreme Court's judgments on AFSPA?
4. What are the reviews and opinions of AFSPA?

Discuss the role of media and civil society in promotion and protection of human rights in North East India.(Footnotes)

[1] See, Sanajaoba, Naorem - Revisiting Justice Reddy Report on AFSPA, 1958, Gauhati University Journal of Law, Vol VI,

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2 Prof. Sanajaoba, Naorem- Revisiting Justice Reddy Report on AFSPA, 1958, op.cit, and Manipur Update, December Issue, Volume I Issue I, December 1999.

3 Justice Reddy Report on AFSPA, 1958. These are (Special Powers of Armed Forces) ordinances, 1947; the Assam Disturbed Areas (Special Powers of Armed Forces Ordinance) 1947 (Act of 1947) ; the East Punjab and Delhi Disturbed Areas(Special Powers of Armed Forces) Ordinance 1947 (Act 17 of 1947); and the United Provinces Disturbed Areas (Special Powers of Armed Forces) Ordinance 1947 (act 22 of 1947). These ordinances were replaced by the Armed Forces Special Powers Act 1948 being Act 3 of 1948

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7 AFSPA Review Committee Report, downloaded from the Hindu, October 2006

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[17] *MasoodaParveen* :

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[18] See the Concluding Comments of these bodies available at

www.ohchr.org,

www.wcd.nic.in etc

[19] See NaoremSanajaoba

’s various articles, SanjibBaruah

’s Durable Disorder, SAHRDC

’s A Study in National Security Tyranny etc

supra

[20] *ibid*

[21] NaoremSanajaoba-

'The AFSPA: An Unproclaimed Emergency and Gross Injustice*, supra*

[22] The 2nd

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[25] See, Sanajaoba, Naorem - Revisiting Justice Reddy Report on AFSPA, 1958, Gauhati University Journal of Law, Vol VI, 2006, Manipur Update, December Issue, Volume I Issue I, December 1999,

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UNIT 11 SOCIAL POLICY

UNIT STRUCTURE

11.1 Learning Objectives
11.2 Introduction
11.3 Concept of Social Policy
11.4 Evolution of Social Policy in India
11.5 Values Underlying Social Policy and Planning
11.6 Constitutional Provisions- Directive Principles of State Policy
11.7 Let us Sum Up
11.8 Further Reading
11.9 Answers to Check your Progress
11.10 Model Questions

11.1 LEARNING OBJECTIVES

After going through this unit, you will be able to:

- Discuss the concept of social policy
- Explain the evolution of social policy in India
- Describe the constitutional provisions for social policy in India

11.2 INTRODUCTION

In the previous block of this course we had discussed the concept of human rights. In connection to this, let us discuss the concept of social policy. Social policies are necessary for the restoration and protection of human rights. In this unit, you will be introduced to social policy and planning and the constitutional provisions that ensure the effective formulation and planning of social policies.

11.3 CONCEPT OF SOCIAL POLICY

Social policies are web of related policies, schemes and institutions that are concerned with the social conditions of the citizens and impact of the welfare activities on the state. It refers to the government policies and practices that continuously work for the well-being and empowerment of the members of the society. The idea of social policy rests on the foundations of equality, social justice. Social policies focus on areas such as healthcare, education, social inclusion, human services, criminal justice, equality, rights of the marginalized sections and labour welfare and rights. Social Policies are based on research and adequate groundwork is necessary for its formulation. Therefore, intense research and information on the actual social conditions at the grass root level ensure the chances of framing adequate social policies.

11.4 EVOLUTION OF SOCIAL POLICY IN INDIA

After India's independence, social policy was a state subject. As the country was struggling with large scale poverty and illiteracy, the political leaders could assume that socialist oriented policies are necessary to deal with the socio-economic issues of the society. Therefore, from 1951 to 1990s, India lived under the shadows of socialism. In the four decades, the state had control over not only the economic activities, but also other important aspects of the citizens like healthcare, education and welfare. However, by the late 1980s there was gradual downfall of socialism in India. India's economy was stagnating under the burden of growing fiscal deficit falling exports and stagnant industrial growth. Also, poverty, illiteracy, health, caste problems were co-existing in the Indian society at a very high level. There was no alternative left to deal with these issues, except by reforming the social and economic policies.

In the early 1990s the country introduced economic reforms. The New Economic Policy of 1991 to a large extent led to the government's authoritarian control over India's economy as it introduced LPG- liberalization, privatization and globalization. This in turn had immense impact on the country's social policies. Policies for the scheduled castes, right to education, welfare for labourers and workers, welfare of women, welfare for senior citizens, child rights, rights of persons with disability and other important aspects were given weightage. However, it still has to travel a long path to be more inclusive and sensitive in nature.



Policies for the scheduled castes, right to education, welfare for labourers and workers, welfare of women, welfare for senior citizens, child rights, rights of persons with disability and other important aspects were given weightage.

11.5 VALUES UNDERLINED SOCIAL POLICY AND SOCIAL PLANNING

Values such as equality, social justice, freedom, citizenship and ethical responsibility would be accepted by most people. As such values are translated into practise, they can be defined further as principles which then lead to policies.

Equality: Achieving equality underlies social policies. Resources need to be distributed fairly in order to achieve equality. Equality has different types: equal outcome, equal opportunity, or equal treatment.

Social justice: everyone in society will have equal rights in the face of equal risks. In this way, the inequalities and differences caused by the economic chances are eliminated. All the policies that ensure that everyone has fair opportunities with regard to income, taxes, wages, education, and social security contribute to the development of social justice.

Freedom and rights: There are different types of rights. Civil rights mean the absence of arbitrary arrest and detention but having freedom to discuss any opinion. Social rights mean social welfare and social security, right to education. Political rights include voting and joining political parties and freedom to explain opinion in a democratic way.

The value of solidarity in social policy is practically stating the need for the existence of assistance/support in different levels. From the one side at the planning and decision making levels, and from the other side at the functional and system-efficiency levels. What it means is that common interests which exist as expressions of the common feeling of belonging to the same society, but also as a product of conforming to the same needs, should be regulated on the basis of mutuality for covering the needs of society as a whole

Social policy places more emphasis on the interplay of the state, the market and the family and tries to utilize the already existing relationship between the private sector and the households, while at the same time reducing the extent of state benefits. The outcome of this partnership is the formation of a public space for the expression of personal but also collective responsibility, consisting of non-governmental and voluntary organizations, citizen initiative groups and social movements. What is important in this formation is that any change in the relationship between any of the participants influences the entire mix and at the same time is affected by changes in the degree of responsibility assumed.

11.6 CONSTITUTIONAL PROVISIONS FOR SOCIAL POLICY- THE DIRECTIVE PRINCIPLES OF STATE POLICY

The Indian Constitution reflects the spirit of social and economic justice. The social policies enacted after the independence reflects these values enshrined in the Constitution. The Preamble highlights 3 distinct values- social, economic and political justice. Social justice signifies equal treatment of all citizens without discrimination based on caste, colour, race, religion and sex. Economic justice denotes that citizens should not face any discrimination and removing glaring inequalities in wealth and income from the society is an important objective. Political justice means all citizens should have equal voice in shaping the government and in

execution of political administration. Part III of the Indian Constitution enshrines the Fundamental Rights. It is a charter of rights for the citizens of the country that ensures civil liberty, peace, harmony, justice and equality.

To achieve the purpose of the Constitutional values, certain principles and guidelines are laid down in the Part IV of the Constitution. These provisions are known as- the Directive Principles of State Policy. They are not directly enforceable but they act as guidelines and instructions to the Central and State Governments while framing laws and policies for the country. Indian Constitution has four categories of the directive principles. They are:

i. The economic and social principles
ii. The Gandhian principles
iii. Principles and policies relating to international peace and security
iv. Miscellaneous

Part IV of the Indian Constitution contains the articles from 36 to 51. They can be divided into four sections:

i. Social and political directives
ii. Principles of administrative policy
iii. Socio-economic rights
iv. Principles of international policy



CHECK YOUR PROGRESS

1. What are social policies?

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2. What is the objective of the Directive Principles of State Policy?

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11.7 LET US SUM UP

- Social policy places more emphasis on the interplay of the state, the market and the family and tries to utilize the already existing relationship between the private sector and the households, while at the same time reducing the extent of state benefits.
- The outcome of this partnership is the formation of a public space for the expression of personal but also collective responsibility, consisting of non-governmental and voluntary organizations, citizen initiative groups and social movements
- In the early 1990s the country introduced economic reforms. The New Economic Policy of 1991 to a large extent led to the government's authoritarian control over India's economy as it introduced LPG- liberalization, privatization and globalization.
- This in turn had immense impact on the country's social policies. Policies for the scheduled castes, right to education, welfare for labourers and workers, welfare of women, welfare for senior citizens, child rights, rights of persons with disability and other important aspects were given weightage
- Values such as equality, social justice, freedom, citizenship and ethical responsibility would be accepted by most people. As such values are translated into practise, they can be defined further as principles which then lead to policies.



11.8 FURTHER READING

- Jacob, K.K. 1989. *Social Policy in India*. New Delhi: Himanshu Publications
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- Blakemore, Ken and Edwin Griggs. 2007. *Social Policy- an Introduction*. UK- Mc Graw Hill Education

11.9 ANSWERS TO CHECK YOUR PROGRESS

1. Social policies are web of related policies, schemes and institutions that are concerned with the social conditions of the citizens and impact of the welfare activities on the state. It refers to the government policies and practices that continuously work for the well-being and empowerment of the members of the society.
2. To achieve the purpose of the Constitutional values, certain principles and guidelines are laid down in the Part IV of the Constitution. These provisions are known as- the Directive Principles of State Policy. They are not directly enforceable but they act as guidelines and instructions to the Central and State Governments while framing laws and policies for the country.

11.10 MODEL QUESTIONS

1. What are social policies?
2. What are the constitutional values that influence social policies?
3. Discuss the Directive Principles of State Policy.
4. How has social policies evolved in India?

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UNIT 12 CONCEPT OF SOCIAL PLANNING

UNIT STRUCTURE

12.1 Learning Objectives
12.2 Introduction
12.3 Concept of Social Planning
12.4 The Five Year Plans of India
12.5 Multi-Level Structure of Planning
12.6 Human Development Index
12.7 Social Audit
12.8 Community Score Card
12.9 Let us Sum Up
12.10 Further Reading
12.11 Answers to Check your Progress
12.12 Model Questions

12.1 LEARNING OBJECTIVES

After going through this unit, you will be able to:

- Define social planning
- Explain HDI
- Describe the significance of social audit and community score card

12.2 INTRODUCTION

In the previous unit, we had discussed what is social policy and its significance. In the present unit, let us discuss what is social planning and how it is done. There are various aspects that need to be considered to make social policies effective. Thus the planning process should be carefully designed so that the society is benefitted to the maximum level. Planning is the essence of the development process as we know it. Here, let us analyse the significance of social planning and the important factors that are considered essential.

12.3CONCEPT OF SOCIAL PLANNING

Planning refers to strategic and measurable goals that a community or state plans to meet within a certain time frame. Social planning is the purposeful intention of the state to achieve predetermined goals through a series of decisions to be taken over a period of time relating to the growth of the nation. These might target fundamental socio-economic variables like health, education, employment, income, welfare and others. The directive principles offer instruction of state policy. The directive principles is a phrase of the will of people for monetary growth and as a result the government adopted planning as a means for nurturing economic and social development. Four long-term objectives are:

- To ensure social justice and equality
- To increase manufacture to the utmost possible scope so as to attain higher level of state and per capita returns.
- To get full service.
- To decrease inequalities of earnings prosperity.
- To set up a communist society based on impartiality, honesty and lack of mistreatment.

The social organization envisaged was a socialistic pattern of society. The people were predictable to contribute in. the course of preparation on the widest possible level.

12.4 THE FIVE YEAR PLANS OF INDIA

The main vehicle of planning, was the Five Year Plan. Though the First Five Year Plan (1951-56) was basically a simple exercise of putting together programs, targets and outlays, it provided the first milestones in rural development through the launching of the community development programs, national extension services.

Second Five Year Plan was conceived in an ambiance of fiscal constancy. The fundamental viewpoint of second five year plan was therefore to provide a big push to the financial system so that it enters the impression stage. Besides, the administration announced its trade rule in 1956 accepting the founding of socialistic blueprint of civilization as the aim of monetary policy.

Among the priorities scheduled in the Third Plan, it was normally predictable that cultivation had the first place, The Third Plan differed from the second plan. It is usually documented that there was a universal de-emphasis of farming in the second plan. The third plan attempted to reverse this.

Indian planning suffered two major shacks caused by exogenous factors in the 1960s. The first came in the form of the conflict with China in 1962 and the second in the type of consecutive yield failure in 1965 and 1967. The new approach came to be implemented throughout the course of the Fourth Five Year Plan (1969-1974) and was more commonly known as the “Green Revolution” in agriculture. Thus indoors the accepted slogan of GaribiHata and with it came the importance on poverty mitigation as a different planning goal in its own right.

Thus, the basic approach of Fifth Five Year Plan was development with reorganization. However, on description of the serious harvest failure of 1972-73 and the oil disaster of 1973, inflationary pressures compulsory Indian planners to limit the motivated programs they had envisaged. The Sixth Plan (1980-85) again undertook abolition of deficiency as its major aim. The IRDP attached with rural service programs, the lowest Needs Programe and the district expansion programs meant that the Sixth Plan had strong importance on the rural sector.

Poverty improvement sustained to be a vital concern in the Seventh Plan. In the course of seventh plan, the accent had shifted towards the concept of transformation again this time in trade. With

this came the relative de-emphasis on the civic sector as an engine of development.

The Eighth Five Year Plan (1990-95) could not take of due to varying political position at the center. Eighth Five Year Plan (1992-97) was launched instantly after the opening of structural alteration policies and universal stabilization measures which were necessitated by aggravation stability of payment position and price raises position during 1990-91.

The Ninth Five Year Plan (1997-2000) launched in 50th year of India's sovereignty, The prime task of this plan was to escort in a new era of enlargement with social justice, in which not only the rule at the center and states, but the people at large, even the poor can become effected in participatory planning procedure.

12.5 MULTI-LEVEL STRUCTURE OF PLANNING

The significant characteristic of scheduling in India is that it operates in a self-governing structure, through a central scheme, involving simultaneous planning at the countrywide and state level. The centralized character of India's Constitution demands planning at least at two levels i.e. amalgamation and State. Planning in India has to be viewed in provisions of actions at diverse district and organization levels extending well beyond merger and shape structure.



The Planning Commission is the nominal body for facilitating the planning procedure in India.

National Level Planning

Planning Commission:

The Planning Commission is the nominal body for facilitating the planning procedure in India. It was set up by the Government in March 1950. It performs its role as a suggested body operations at the highest policy level without further being involved in the responsibilities of every day organization. The prime minister is the Chairman of Planning Commission.

National Development Council:

The matter of financial and public planning is in the simultaneous list as this is a topic in which the Center as well as the states are concerned and have to work in agreement. The system of discussion in the formulation of policies on the basis of overall national necessity is the essential point of planning in the country. The National Development Council is the maximum policy making body which provides the chance for plans to be formulated and implemented all over the state as a combined expansion effort.

State Level Planning :

In the states, a number of organizations and departments are involved in the planning process.

State Planning Department :

On account of diversity in managerial association in different States and. Union Territories of the country, it is not probable to have a single standardized pattern for the planning equipment at that level. Basically the Planning Department is accountable for coordinating the growth effort in the state.

In most state in addition to the States Planning Department, there exists a State Planning Board. It comprises the ministers concerned, experts, non-officials and officials. Normally, the role of such a Board is recommended, connecting to plan strategies. It also suggests traditions and means to progress the operational of various programs in the state.

Department of Economics and Statistics, Manpower and Evaluation:

The Department of Economics and Statistics provides mechanical workforce at the state and lower levels for planning and monitoring of programs. The Manpower department assesses the necessities and need for manpower in the coming years and enables

the planning process to include action plans for gathering the overall manpower requirements for plan execution.

The Evaluation Department is entrusted with assignment of conducting assessment studies of the different programs being undertaken on simultaneous or ex post facto basis.

District Level Planning:

District Level Planning prerequisite of district planning arises from the need to enhancement the national and state plans with a more detailed assessment of potentials at the mid-unit of management i.e. the district. District planning involve, remarkable a balance between specific requirements of the people of the constituency, growth potentials of the area and budgetary allotment available.

Its aim should be to bring all managerial operations at the district level under successful synchronization and manage of single agency and clearly lay down a programme of work for the participating agencies. At the district level most of the heads of departments are represented by officials termed as District level Officers.

For example, there are Executive Engineers for PWD, Public Health, and Engineering Department etc. These officials are part of the planning process at district level. In 1980, the District Rural Development Agencies were set up to plan, execute and monitor such programmers.

Block Level Planning:

The community development block is the assignment of planning is undertaken in the country. Block planning fundamentally means planning for the development of block within a particular time frame. Block planning basically goes through the planning work out at the local level.

The block planning has its source in the founding of community expansion blocks under the Community Development Programe

(CDP) in 1952. These blocks were measured as appropriate units for planning and development purposes. Block plans could not be formulated in the essential manner as there was lack of proficiency on the one hand and lack of synchronization between diverse functionaries working at that level.

Since block level planning has been assumed in the district planning work out, this has diluted the advancement of block level planning in the country. In our nation the planning method is fundamentally decentralized in nature in the sense that the powers, responsibilities and duties have been handed over to the people in general to ensure the successful accomplishment of plans and policies with maximum people's involvement.



CHECK YOUR PROGRESS 1

1. What are the objectives of planning?

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2. State the objective of the ninth five year plan.

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12.6 HUMAN DEVELOPMENT INDEX

In the first decade of this century, in the period of financial and economic crisis, social issues and poverty and significant climate changes, the International Community continuously appeals for measuring the progress of well-being and quality of life at global level. By introducing human development concept, the UN has also developed measuring indicators of human development. Human Development Index (HDI) is the fundamental indicator, combining indicators of health and education with GDP in a special way. This is a contribution to quantification of the entire socio-economic aspect of the progress, Human development indicators have provided the

possibility of innovative thinking about the progress in society, by introducing a simple, but powerful idea that development is much more than economic growth. Using human development indicators is a step towards measuring the overall socio-economic progress. Human development has significantly changed the way the world sees development nowadays, while conception of human development has become a developmental paradigm of the 21st century.

Human Development Index is a result of looking for a common measure for economic and social development, referring to achievements of a country in fundamental human development dimensions. Human Development Index (HDI) includes three fundamental human development dimensions, which refer to the capabilities that people expect to achieve. Those are the following: -

i. life expectancy is achieved by the capability to live a long and healthy life,
ii. the achieved education is realized by the capability to acquire knowledge.
iii. the achieved living standard is realized by the capability to provide decent incomes for life.

For calculation of HDI, as well as other human development indicators, it is necessary to calculate the index for each dimension. Each dimension is measured by one or more variables, combined into the index on the basis of the determined minimum and maximum value of the given variable. Use of the index of variables enables their combined application in a single indicator, which would be usually impossible, since the variables are expressed in different units of measurement (years, percentages, dollars). It is calculated by simple geometric mean of the index of fundamental dimensions. Changes introduced in HDR 2010 refer to the choice of dimension indicators, transformation in the calculation of dimension index, as well as aggregation method

12.7 SOCIAL AUDIT

Social Audit is the examination and assessment of a programme/scheme conducted with the active involvement of people and comparing official records with actual ground realities. Social Audit is a powerful tool for social transformation, community participation and government accountability.The process of Social Audit combines people's participation and monitoring with the requirements of the audit discipline. It is necessary to promote people's participation in the audit along with support provided by an independent social audit organization that facilitates the process.
The Social Audit process is a factfinding process. The work of the Auditor is to investigate by cross-verifying facts and details in the records from the workers and cross- verifying works at site. The "Auditors" must not view themselves as "Prosecutors".

Benefits of Social Audit

- It informs and educates people about their rights and entitlements.
- It provides a collective platform for people to ask queries, express their needs and grievances.
- It promotes people's participation in all stages of implementation of programmes.
- It brings about transparency and accountability in government schemes.
- It strengthens decentralised governance.

Key features of Social Audit

- Fact finding not fault finding.
- Opportunity for awareness building on entitlements and processes.>

- Creating the space and platform for dialogue among various levels of stakeholders.
- Timely grievance redressal.
- Strengthening the democratic process and institutions.
- Building people's pressure for better implementation of programmes.

12.8 COMMUNITY SCORE CARD (CSC)

The Community Score Card (CSC) process, sometimes also known as a community voice card, is a community based monitoring tool that enables citizens to voice their assessment of a priority public service. The CSC is an instrument used to elicit social and public accountability and increases the responsiveness of service providers. The Community Score Card (CSC) is a participatory, community based monitoring and evaluation tool that enables citizens to assess the quality of public services such as a health centre, school, public transport, water, waste disposal systems and so on. It is used to inform community members about available services and their entitlements and to solicit their opinions about the accessibility and quality of these services. By providing an opportunity for direct dialogue between service providers and the community, the CSC process empowers the public to voice their opinion and demand improved service delivery.

Key steps in implementing a CSC are:

1. Preparatory groundwork and research: ● Identify the subject and scope of the assessment (e.g. health provision for pregnant women in a specific district). ● Carry out preliminary research regarding current inputs, entitlements, degree of usage etc. ● Identify people or groups within the sample area who can help to facilitate the implementation of the CSC process, such as

traditional leaders, NGO staff, and officials of local governments. ● Conduct an awareness campaign to inform people about the purpose and benefits of the CSC. ● Train facilitators.

2. Help community members generate a scorecard ● Convene community members into one or more focus groups.Ask each group to identify performance/quality indicators for the public service in question. ● Ask the group to score each indicator and give reasons for the scores. ● Ask the group to develop their own suggestions on how to improve the service, based on the performance criteria they have identified.



CHECK YOUR PROGRESS 2

3. What does social audit include?

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4. what is community score card?

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12.9 LET US SUM UP

- Social planning is the purposeful intention of the state to achieve predetermined goals through a series of decisions to be taken over a period of time relating to the growth of the nation.

- These might target fundamental socio-economic variables like health, education, employment, income, welfare and others. The directive principles offer instruction of state policy.
- Human Development Index is a result of looking for a common measure for economic and social development, referring to

achievements of a country in fundamental human development dimensions. Human Development Index (HDI) includes three fundamental human development dimensions, which refer to the capabilities that people expect to achieve.



12.10 FURTHER READING

- Mehta, Ashok. 1970. *Economic Planning in India.* New Delhi: Young India Publication.
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12.11 ANSWERS TO CHECK YOUR PROGRESS

1. The main objectives of planning are-

- To ensure social justice and equality
- To increase manufacture to the utmost possible scope so as to attain higher level of state and per capita returns.
- To get full service.
- To decrease inequalities of earnings prosperity.

2. The Ninth Five Year Plan (1997-2000) launched in 50th year of India's sovereignty, The prime task of this plan was to escort in a new era of enlargement with social justice, in which not only the rule at the center and states, but the people at large, even the poor can become effected in participatory planning procedure.

3. The Social Audit process is a factfinding process. The work of the Auditor is to investigate by cross-verifying facts and details in the records from the workers and cross- verifying works at site.

4. The Community Score Card (CSC) is a participatory, community based monitoring and evaluation tool that enables

citizens to assess the quality of public services such as a health centre, school, public transport, water, waste disposal systems and so on. It is used to inform community members about available services and their entitlements and to solicit their opinions about the accessibility and quality of these services



12.12 MODEL QUESTIONS

1. State the significance of planning.
2. what are the hierarchy of social planning in India?
3. State the objectives of the five year plans.
4. What is social audit and community score card?
5. How is Human Development Index calculated?
6. Why is HDI report important for planning?

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UNIT 13 BASIC CONCEPTS OF SOCIAL JUSTICE

UNIT STRUCTURE

13.1 Learning Objectives
13.2 Introduction
13.3 Social Justice
13.4 MillenniumDevelopment Goals and Social Justice
13.5 Public Interest Litigation (PIL)
13.6 Types of Courts
13.7 Indian Penal Code and Code of Criminal Procedure
13.8 Let Us Sum Up
13.9 Further Reading
13.10 Answers to Check your Progress
13.11 Model Questions

13.1 LEARNING OBJECTIVES

After going through this unit, you will be able to:

- Define social justice
- Discuss MDG and its relation to justice
- Explain the processes of IPC and CrPC
- Describe the functions of the types of courts

13.2 INTRODUCTION

Justice is a broad concept. In the broad sense, justice means giving each man his/her due. At the same time, what is due to a man is a debatable issue. The concept of justice is as old as the very existence of human civilization. Its meaning and connotation keeps on changing from time to time as per the value system of the people. For e.g. in ancient times, slavery was a just institution. Let us discuss how the concept of social justice have evolved.

13.3 SOCIAL JUSTICE

The great philosophers like Aristotle had justified the institution of slavery in Ancient Greece and Roman Empire. But unlike justice which is as old as human civilization, social justice is relatively a recent concept. It is the result of the struggle surrounding the industrial revolution and the emergence of the socialist option for the purpose of the organization of the society. It is a concept rooted deeply in the Anglo-Saxon Political Culture. It could be stated that it does not appear in the UN Charter or in the Universal Declaration of the two international covenants of Human Rights. However, it may be stated that the idea of social justice was reflected in the preamble to the constitution of India. In that sense, social justice may be described as a concept that indicate equality of treatment and opportunity for all people in the society irrespective of caste, creed, community, place of birth, sex, etc. The reference of social justice in the preamble to the Constitution of India indicates such a position for the people of India.



The evolution of the philosophy of social justice in recent years has been derived from the ideas of the French Revolution of 1789.

The evolution of the philosophy of social justice in recent years has been derived from the ideas of the French Revolution of 1789. It is based on the principles of liberty, equality and fraternity that were highlighted during the French Revolution. In other words, these ideas of liberty, equality and fraternity are inseparable and constitute an integral whole that may be described as social justice. Here, liberty is the absence of restrained while equality indicates the absence of discrimination. On the other hand, fraternity is the cooperation among the fellow human beings. It is in this context, that the whole idea of social justice could be understood.

In the Indian context, we may also refer to the policy of reservation of the government of India. It shows the concern of the State of India to bring social justice to the socially backward classes.

13.4 MILLENIUM DEVELOPMENT GOALS AND SOCIAL JUSTICE

At a UN summit held at the dawn of the new millennium, 189 of the world's leaders came together to sign what has been described as "the world's biggest promise - a global agreement to reduce poverty and human deprivation at historically unprecedented rates through collaborative action". The fundamental values embodied in the Millennium Declaration (Declaration), including freedom, equality, tolerance and solidarity, together spelt out a firm commitment to social justice as the guiding spirit of the Declaration. Conflict, insecurity, weak institutions and limited access to justice remain a great threat to sustainable development.

The state has a critical role to play in carving out an agenda for tackling social exclusion. The private sector undoubtedly has an important contribution to make because of its central role as an engine of growth, but driven as it is by profit considerations, it is unlikely to take a lead in promoting social justice. Civil society organisations are also indispensable because of their ability to mobilise against injustice and hold state and corporations accountable, but they represent specific interests. They rarely speak for, or are accountable to, society as a whole. Consequently, however flawed the state might be, it is the only institution that has a mandate to respond to claims for social justice by all its citizens.

Socially diverse societies do not have to be socially divided societies but group-based differences harden into inequality, exclusion and conflict in the face of systematic discrimination – the consistent denial of resources, recognition and representation to some groups on the basis of who they are. The persistence of historically established patterns of exclusion over the course of a life time, and often over generations, can give rise to a deep sense of despair and hopelessness. But there are enough examples of progress, some of

which have been touched on in this paper, to suggest that change is possible. This concluding section highlights some basic principles that can guide the efforts of state and civil society in bringing about such change. First of all, these efforts may need to be framed by the language of rights. Given that social exclusion entails the denial of full personhood and citizenship to excluded groups, the rights discourse has proved to be a powerful mobilising force in bringing such social conditions.

Building inclusive forms of citizenship requires the transformation of the relationship between the state and citizens, it also requires a transformation of relations between citizens themselves. It is not the state alone that is responsible for discrimination and it cannot be the state alone that can tackle it. This means that along with changing laws and policies, efforts to tackle exclusion must also challenge taken-forgranted norms and practices that make up the “mind-set” of a society, using the various means of re-socialisation available to it: education, media, popular culture, statistics, research as well as pro-active campaigns and public information messages

The structural factors that give rise to deeply entrenched and intersecting inequalities and suggested some policy options that might help to carve out pathways to social justice. The multidimensional nature of poverty and social exclusion require such options to be pursued as part of a broader agenda of social transformation. A new social contract to build more responsive states and more active citizens is part of this broader transformative agenda.

13.5 PUBLIC INTEREST LITIGATION

In Indian law, means litigation for the protection of public interest. It is litigation introduced in a court of law, not by the aggrieved party but by the court itself or by any other private party. It is not necessary, for the exercise of the court’s jurisdiction, that the person

who is the victim of the violation of his or her right should personally approach the court. Public Interest Litigation is the power given to the public by courts through judicial activism.

Such cases may occur when the victim does not have the necessary resources to commence litigation or his freedom to move court has been suppressed or encroached upon. The court can itself take cognisance of the matter and proceed suomotu or cases can commence on the petition of any public-spirited individual.

Public interest Litigation,In simple words, means, litigation filed in a court of law, for the protection of Public Interest, such as pollution, Terrorism, Road safety, constructional hazards etc.

Public interest litigation is not defined in any statute or in any act. It has been interpreted by judges to consider the intent of public at large. Although, the main and only focus of such litigation is only Public Interest there are various areas where a Public interest litigation can be filed. For e.g.

- Violation of basic human rights of the poor
- Content or conduct of government policy
- Compel municipal authorities to perform a public duty.
- Violation of religious rights or other basic fundamental rights

Any individual or organisation can file a PIL either in his/her/ their own standing i.e. to protect or enforce a right owed to him/her/ them by the government or on behalf of a section of society who is disadvantaged or oppressed and is not able to enforce their own rights.

The concept of “Locus Standi” has been relaxed in the case of PILs so as to enable the Hon’ble Court to look into grievances that are filed on behalf of those who are poor, illiterate, deprived or disabled and are unable to approach the courts themselves.

However, only a person acting in good faith and who has sufficient interest in the proceeding will have the locus standi to file a PIL. A person who approaches the Hon’ble Court for personal gain,

private profit, political or any oblique consideration will not be entertained.

Suo moto cognizance may also be taken by the Court.

The following are some of the essential steps that should be followed when drafting a PIL:

Collection of information– The first step of drafting a PIL would be to collect all relevant information pertaining to the issue.

Collation of documents– All documents regarding the case including photographs if any, must be collated.

Court in which it is to be filed– The Petitioner must decide in which he/she/it wants to file the PIL, whether before the Hon'ble Supreme Court or the High Court of that State.

Form of the PIL– A PIL can be in the form of a Petition or even a letter or postcard. In the event that the PIL is to be filed before the Hon'ble Supreme Court of India, the letter/postcard must be addressed to the Chief Justice of India. In the event that the PIL is to be filed before a High Court, the letter/postcard must be addressed to the Chief Justice of that particular High Court.

Public Interest Litigation (PIL) guidelines are available on the website of the Hon'ble Supreme Court of India. It states inter alia that certain letter-petitions that fall under certain categories alone will ordinarily be treated as PILs including petitions pertaining to environmental pollution, disturbance of ecological balance, drugs, food adulteration, maintenance of heritage and culture, antiques, forest and wildlife and other matters of public importance.

A PIL is an important judicial tool especially for the protection of the rights of those who are unable to approach the courts themselves. They are one of the most commonly used forms of litigation, especially in environmental cases. The courts have tried to make rules regarding PILs simpler so as to not discourage the filing of PILs in public interest and on behalf of the poor, disable or deprived classes of persons. However, there are several instances in which

people have tried to further their own private interests under the guise of PILs. Thus, courts must continue to remain extremely cautious to ensure that PILs are not misused.

13.6 TYPES OF COURTS



There are two type of law courts in every district, one is the Civil Court and the other is the Criminal Court.

There are two type of law courts in every district, one is the Civil Court and the other is the Criminal Court. In every state, besides the High Court there are number of judicial Courts to administer justice which functions under the supervision and complete control of the High courts.

Civil Courts Powers, Functions & Hierarchy

Civil courts deal with civil cases. Civil law is referred to in almost all cases other than criminal cases.

Civil law is applied in disputes when one person sues another person or entity. Examples of civil cases include divorce, eviction, consumer problems, debt or bankruptcy, etc.

Judges in civil courts and criminal courts have different powers. While a judge in a criminal court can punish the convicted person by sending him/her to jail, a judge in a civil court can make the guilty pay fines, etc.

Civil Court Jurisdiction

Civil courts have four types of jurisdiction:

Subject Matter Jurisdiction: It can try cases of a particular type and relate to a particular subject.

Territorial Jurisdiction: It can try cases within its geographical limit, and not beyond the territory.

Pecuniary Jurisdiction: Cases related to money matters, suits of monetary value.

Appellate Jurisdiction: This is the authority of a court to hear appeals or review a case that has already been decided by a lower court. The

Supreme Court and the High Courts have appellate jurisdiction to hear cases that were decided by a lower court.

Civil Courts Hierarchy

The Civil Courts are of three grades. The Court of the District Judge is at the top and is located at the district headquarters.

It has the power of superintendence over the courts under its control and exercises both judicial and administrative powers. He has both original and appellate jurisdictions. Cases of amount beyond a specified value can come straight to his court. He can also hear appeals from lower courts.

The High Court can entertain appeals against the judgement of the Court of the District Judge.

Criminal Courts are established to impart justice to people and punish the offenders that go against the law. The hierarchy is established according to the rule book of the Code of Criminal Procedure, 1973. Supreme Court is the highest criminal court in India. The various classes of criminal courts in India are:

- Supreme Court
- High Courts
- The Courts of Session
- The Judicial Magistrates of the First Class, and, in any metropolitan area; the Metropolitan Magistrates.
- The Judicial Magistrates of the Second Class
- The Executive Magistrates

Juvenile court- special court handling problems of delinquent, neglected, or abused children. The juvenile court fulfills the government's role as substitute parent, and, where no juvenile court exists, other courts must assume the function.

A juvenile case normally gets started when a prosecutor or probation officer files a civil petition, charging the juvenile with violating a criminal statute and asking that the court determine that the juvenile

is delinquent. If the charges are proved and a delinquency determination is made, the juvenile offender comes under the courts broad powers. At that point, the juvenile court has the authority to do what it considers to be in the best interest of the juvenile.

Often, the juvenile court retains legal authority over the minor for a set period of time—until the juvenile becomes an adult, or sometimes even longer.

Two types of cases are processed by a juvenile court: civil matters, usually concerning care of an abandoned child or one whose parents cannot support him; and criminal matters arising from antisocial behaviour by the child.

13.7 INDIAN PENAL CODE AND CODE OF CRIMINAL PROCEDURE

The **Indian Penal Code** is the official code which covers the substantive aspects of criminal law. It came into force in the year 1860, during the British Raj. The Code, since then, has been amended several times and is supplemented by other criminal provisions. IPC is sub-divided into 23 chapters and comprises of 511 sections. The objective of the IPC is to provide a general penal code for India. It defines the crime - for eg. theft (Section 375) and also gives the punishments for these crimes - for eg. Section 379.

The **Code of Criminal Procedure** or the CrPC is the main legislation that provides for the administration of the substantive criminal law (as given under IPC and other criminal provisions). The CrPC was enacted in 1973 and came into force on April 1 1974. It provides the procedures or the machinery to be followed for arrest and apprehension, investigation of the crime, bail provisions, maintenance to be provided to children/wife/parents, judges at different levels of courts etc. It consists of 484 Sections divided into 37 chapters, 2 schedules and 56 forms.



CHECK YOUR PROGRESS

1. What are the fundamental values of the Millennium Declaration?

.....

.....

2. Define the Indian Penal Code.

.....

.....



13.8 LET US SUM UP

- Regarding social justice, In the Indian context, we may also refer to the policy of reservation of the government of India. It shows the concern of the State of India to bring social justice to the socially backward classes.
- Building inclusive forms of citizenship requires the transformation of the relationship between the state and citizens, it also requires a transformation of relations between citizens themselves. It is not the state alone that is responsible for discrimination and it cannot be the state alone that can tackle it.
- A PIL is an important judicial tool especially for the protection of the rights of those who are unable to approach the courts themselves. They are one of the most commonly used forms of litigation, especially in environmental cases.
- The courts have tried to make rules regarding PILs simpler so as to not discourage the filing of PILs in public interest and on behalf of the poor, disable or deprived classes of persons



13.9 FURTHER READING

- Pandhy, Prafullah. *Social Legislation and Crime.* New Delhi: Oscar Publications
- Raju, CB. 2006. *Social Justice and Crime.* New Delhi: Serials Publications



13.10 ANSWERS TO CHECK YOUR PROGRESS

Answer 1. The fundamental values embodied in the Millennium Declaration (Declaration), including freedom, equality, tolerance and solidarity, together spelt out a firm commitment to social justice as the guiding spirit of the Declaration.

Answer 2. The Indian Penal Code is the official code which covers the substantive aspects of criminal law. It came into force in the year 1860, during the British Raj. The Code, since then, has been amended several times and is supplemented by other criminal provisions.



13.11 MODEL QUESTIONS

1. what are the objectives of the MDGs?
2. How has the concept of justice evolved?
3. What is IPC?
4. Define Code of Criminal Procedure.
5. Explain the types of courts.

*** ****** ***

UNIT 14 LEGAL AID AND LOK ADALAT

UNIT STRUCTURE

14.1 Learning Objectives
14.2 Introduction
14.3 Human Rights
14.4 JotibaPhule
14.5 Dr B.R. Ambedkar
14.6 Mahatma Gandhi
14.7 LokAdalat
14.8 Let Us Sum Up
14.9 Further Reading
14.10 Answers to Check your Progress
14.11 Model Questions

14.1 LEARNING OBJECTIVES

After going through this unit, you will be able to

- define human rights
- understand the concept of human rights
- understand the core of the social and political philosophy of JotibaPhule
- know the main ideas of his socio political ideas of Dr. B.R. Ambedkar's philosophy.
- understand the core ideas of Gandhi's philosophy
- discuss the contribution of JyotibaPhule, Mahatma Gandhi and Dr. B.R. Ambedkar

14.2 INTRODUCTION

In this unit, we will discuss about the contributions of JyotibaPhule, Dr.B.R. Ambedkar and Mahatma Gandhi towards human rights and social justice.

Jotiba Phule was a social revolutionary of the 19th century who was instrumental in the unification of the dalits and was a great inspiration for them to fight against caste and untouchability. Jotiba Phule was of the view that the hindus were divided on the basis of the caste system and was against the exploitation against the backwards. On the other hand, Dr. B.R. Ambedkar was the first leader of the untouchables in India. He observed that the untouchables were exploited by the higher caste in the society for which he raised the issues of the untouchables to a major socio political issue in Indian society and laid the basis of a constitution with adequate provisions for the depressed classes. Mohandas Karam Chand Gandhi was a great Indian Revolutionary and regarded as the father of the nation who developed a philosophy of his own on the basis of his works. Here, we would like to dicuss the core ideas of philosophies of Jotiba Phule, Dr. B.R.Ambedkar and Mahatma Gandhi.

14.3 HUMAN RIGHTS

The foundational norm governing the concept of human rights is that of respect for human personality and its absolute worth, regardless of colour, race, sex, religion or other considerations. These rights are essential for the adequate development of the human personality and for human happiness. Therefore human rights may be said to be those fundamental rights to which every men of women inhabiting any part of the world should be deemed entitled merely by virtue of having been born a human being.

Foundation of Human Rights in Constitutional Law

The actual foundation of human rights in constitutional law dates back to several centuries. In England, what began with the rights for the barons under the Magna Carta of 1215 AD, led to the Petition of Rights 1672, the Habeas Corpus Act 1679 and the Bill of Rights 1989. The spirit of human rights came to be incorporated in

these documents from the 17th century. In the American continent the Charter of new Plymouth, 1620 expressed the principles of human right. The expression "Fundamental Rights of Man" finds expression in the declaration and other constitutional instruments of Virginia, Maryland, NewGersey, Northern and Southern Carolina of 1767 and in the American declaration of Independence and the Bail of Rights 1791 and the first ten amendments of the American Constitution. In France, the National Assembly Declaration of the rights of man and the citizen 1789, embodied the principles of human rights. Later, it became a part of the law of nearly all European countries like Sweden in 1809, Spain in 1812, Norway in 1814, Belgium in 1831, Denmark in 1849, Prussia in 1850 and Switzerland in 1874. The constitution of Liberia of 1874 opened with a Bill of Rights. The first article of it contained the statement that all men are born equally free and independent and have natural, inherent and inalienable rights. The Russian Congress of Soviets proclaimed in January 1918, the declaration of the rights of the Toiling and exploited people which was incorporated as part I of the Constitution of 1918.

The idea of International Organization and the Promotion of Human Rights-

The idea of international organization for peace and security of the world was not a new one. It was as old as the idea of the universal church and the Universal Umpire. The idea of submitting the disputes of the European Nations before a "Council of Nations" was proposed for the first time by Pierre Duboise in the 14th century through the book "Restoration of the Holy Land 1306". He was a disciple of Sir Thomas Aquinas (1225-74).

In the 17th century the Legal Aspect of the International relation was outlined in Hego Grotius' Treatise on the subject. Other works produced in this period included EmericCruce's "New Society" 1623 AD. Cruce advocated a worldwide organization. Sully (1560-1641), the minister of the France King Henry IV, Envisaged an international

organization in which the European State should be divide into 15 units of equal powers and these should constitute a commonwealth. It was perhaps the first scheme that outlined the need for international organization for the elimination of work as an instrument of settling disputes. Another Advocate of pacific settlement of disputes was William Penn 1644-1718. In 18th century Penn Proposed a Parliament of Europe and advocated that a Parliament should be able to enforce its will. It outlines a confederation of 24 States. In the 19th Century the industrial revolution and the advance made in the field of Scientific Discovery brought to the forefront the problem of international cooperation. The different States of the world became interdependent. The result was the growth of a number of organizations in the later half of the 19th century. The 19th century saw the formation of the League of Nations as an International Organization to deal with such issues. The 19th century also saw the growth of peace movements in fact these peace movements were the forerunners of the League of Nations established after the World War I. It may be noted that the League Covenant although, did not specifically mention the phrase Human Rights, objectively seemed to promote the concept.



The charter of the United Nations which was signed on 26th June, 1945 in San Francisco and came into force on 24 October 1945 contained certain provisions relating to human rights.

The International LabourOrganisation (ILO) was a positive step in the direction of promotion of human rights. Reference must also be made to the preamble to the UN Charter which states that “We the Peoples of the United Nations Stand Determined……” “To reaffirm faith in fundamental human rights, in the dignity and worth of the human persons, in the equal rights of men and women and of Nations large and small……. “.The charter of the United Nations which was signed on 26th June, 1945 in San Francisco and came into force on 24 October 1945 contained certain provisions relating to human rights.

The Universal Declaration of Human Rights(1948) has proved to be a rich vocabulary of human rights. There are 30 articles and each of them is a reflection of human rights.

The philosophy of Human Rights in the context of the constitution of India could be traced back to the historic Objective Resolution of Pt. Jawaharlal Nehru which was adopted by Constituent Assembly on 22 January 1947. In so far as the ideas embodied in the above Resolution are concerned, they could be found in the preamble to the Constitution of India. It summarises the aims and objectives of the Constitution.

In so far as the concrete provisions of Human Rights in the Constitution of India are concerned, reference could be made to that of the fundamental rights as contained in the Part III of the Constitution.These rights positively confirm to the provisions of Human Rights in the UN Charter and Universal Declaration of Human Rights in the form and content.



CHECK YOUR PROGRESS

Q1: What is the foundational norm of human rights?

.....

.....

Q2. What is the first article of the Bill of Rights?

.....

.....

14.4 JOTIBA PHULE

Jotiba Phule (1827-1890) was a social revolutionary of the 19th century. He was instrumental in the unification of the dalits and was a great inspiration for them to fight against caste and untouchability. This writeup would focus on the social and political ideas of Phule. It may be noted that the social and political ideas of Phule were revolutionary. He had a deep involvement for the social transformation of the shudras through education as well as social unity.

Jotiba Phule was of the view that the hindus were divided by the caste system. He observed that there was disunity and lack of real patriotism amongst the hindus. He was of the view that it is because of the disunity amongst the hindus that the british succeeded in establishing their rule in India. He believed that revolution is a vehicle of change and when revolution takes place, new values and new ideas come to the society. That is why he was opposed to the caste system and was in favour of a revolution for establishing new values in the society.

Jotiba Phule was a practical reformer of the society. Being so, he was not in favour of any religious dogmas that was against reason and opened the door to reforms. He was in favour of reconstructing the society on the basis of equality, liberty and reason. At the same time, he was keen to remove the superstitious beliefs from the society. At the same time, he was ready to raise a social voice against all such evil practices. He was particularly against the exploitation against the backwards.

Jotiba Phule had published a book of Ballads where he depicted as to how the Brahmins had exploited the poorer classes in the society by making them observe different religious rituals. His writings had described the social milieu in which the Brahmins have exploited the shudras.

Jotiba Phule was in favour of forming an institution so that the shudras could fight against priestcraft. Accordingly, he resolved to launch a movement in Maharashtra for the liberation of the shudras from the brahmin's influence. Accordingly, he formed an institution namely Satya Sadhak Samaj through which he wanted to fight against the Brahmin autocracy. Phule was elected the first president of Samaj. The fundamental objectives of the samaj are to redeem the shudras and the atishudras from the influence of the brahminical exploitations.

Accordingly, the core of the social and political philosophy of Mahatma Phule was to redeem the backward classes to fight against the brahminical exploitations.



CHECK YOUR PROGRESS

1. FILL IN THE BLANKS

a. ..... is a social revolutionary of the 19th century.

b. JotibaPhule was in favour of forming an institution so that the shudras could fight against .....

c. JotibaPhule was of the view that the hindus were divided by the .....

Q 2. How was JotibaPhule related to Satya Sadhak Samaj?

.....

.....

14.5 DR. B.R. AMBEDKAR

Dr. B.R. Ambedkar was the first untouchable leader of India. He found that the untouchables have been exploited by the higher caste in the society. He raised the issues of the untouchables to a major socio political issue in Indian society. Reading this write up, the learner will be able to know the main ideas of his socio political ideas of his philosophy.

Dr.Ambedkar found that about 60 million people belonging to 429 communities were treated as untouchables. A mere touch is believed to cause pollution to the Hindus in India. He was in favour of organising the so called untouchables to fight against this social menace. According to the system of untouchability, the so called higher caste looked down upon the so called lower caste. They are not given their place of right in the social milieu.

Ambedkar emphasized that there is a need for a campaign launched against untouchability. But at the same time, he pointed out that campaign against untouchability could not succeed because of the presumption that the shudras are preordained to do all such things. Even if a shudra is talented enough to secure a place of pride



According to the system of untouchability, the so called higher caste looked down upon the so called lower caste.

in the society, he cannot secure that because he had certain specified duties to perform. These trends helped to perpetuate the caste system amongst the hindus. But at the same time, Dr.Ambedkar clearly stated that the caste system must be annihilated to ensure justice and fairness to all sections of the hindus.

It may be noted that Dr.Ambedkar was in favour of regeneration of Hindu society. According to him, only those who have undergone an intellectual regeneration can go for moral regeneration.

Dr.Ambedkar was highly disappointed to note that even the colonial government had failed to initiate any concrete step for the untouchables. They have continued to suffer from the disabilities prescribed by the Manusmritieven in the colonial period. Fore.g.; the children of the so called untouchables cannot study in the same schools with the children of the higher caste, they cannot take water from a public well and were prohibited from travelling by public service. Dr.Ambedkar was of the view that it was the duty of the british government t to legislate to protect the civil rights of the so called untouchables. In a petition submitted to the Indian statutory commission on 29th May, 1928, Dr.Ambedkar demanded safeguards for the protection of the depressed classes in the Bombay Presidency. Ambedkar had launched his movement for the upliftment of the untouchables on 9th March, 1924 by convening a meeting of the untouchables at the Damodar Hall at Bombay. The purpose of the meeting was to consider the desirability of establishing a central institution to fight for the rights of the untouchables. Accordingly, on July 20, 1924, an organisation called “BahishkritaHitakarini Sabha”. The aims and objectives of the sabha were to promote the spread of education amongst the depressed classes, to promote the spread of culture among the depressed classes, to advance and improve the economic conditions of the depressed classes. At the same time, Dr.Ambedkar also intensified the campaign for the entry of the untouchables into temples. In other words, Dr.Ambedkar wanted to

dismantle the dogmas of the manusmriti. Dr.Ambedkar was the architect of the constitution of India. An eminent constitutional expert, Dr.Ambedkar laid the basis of a constitution with adequate provisions for the depressed classes. The constitutionalism that he promoted was wide and accommodative that provided a friendly ground to the depressed classes.



CHECK YOUR PROGRESS

FILL IN THE BLANKS

a. ..... was the first untouchable leader of India.

b. Dr.Ambedkar found that about ..... people belonging to ..... communities were treated as untouchables.

c. Dr.Ambedkar was ..... of regeneration of hindu society.

14.6 MOHANDAS KARAM CHAND GANDHI

Mohandas Karam Chand Gandhi, the great Indian Revolutionary and the father of the nation developed a philosophy of his own on the basis of his “Experiments With Truth”. Here, we would like to refer to the core ideas of his philosophy.

Satyagraha is a fundamental component in the political philosophy of Mahatma Gandhi. In this term, satyagraha, we find two words i.e. satya (truth) and agraha (holding). The implication of this is that one holds of the truth. According to Gandhiji, God is truth and truth is God.Gandhiji understood that truth i.esatya was reached through a complex dialogue. He knew that in all cases, in ultimate analysis what matters is truth. In Gandhiji’ssatyagraha, there are no enemies. In fact, it is a violation of satyagraha to wish ill to an opponent or to say a harsh word to him. At the same time, Gandhiji had contrasted satyagraha with other forms of non violence resistance. The other forms he believed were based on an appeal to narrow self interest.

The techniques of satyagraha or civil resistance developed by Gandhi became a central figure of Indian politics, more particularly during colonial times. In fact, it was the core of the techniques of anti colonial struggle developed by Gandhi. Another very important component of the philosophy of Gandhiji is non violence. It represented a creative adaptation of non violence. This component of his philosophy is rooted in the compassion towards fellow humans. It may be noted that Gandhiji'snon violence was influenced by the teachings of Jesus in Sermon on the Mount and traditions of Christian descent.

In Gandhiji's philosophy, we find an alternative modernity of civilization. His work, Hind Swaraj saw the rejection of the various aspects of western civilization. Here, Gandhiji has developed a different understanding of the term civilization. He believed that civilization is that mode of conduct which points out to mend the path of duty. In fact, the Gujrati equivalent for civilization needs good conduct. Thus, Gandhiji had put forward a new way of understanding the concept of civilization. Here, he wanted a civilization rooted in ethics.

While discussing about Gandhi and his ideas, a definite reference must be made to that of contructive programme. This constructive programme has incorporated the principles such as Swadeshi and Sarvodaya, as well as aparigraha.

Accordingly, Gandhi had followed a philosophy where individual conscience had a very important role to play. Each individual must make a moral choice to be made by each individual. Accordingly, the individual has always been a prime focus in Gandhi's philosophy.



ACTIVITY

Name two works of Gandhi.

.....

.....



CHECK YOUR PROGRESS

Q 7. Write about the techniques of satyagraha or civil resistance developed by Gandhi.

.....

.....

Q 8. Explain the term satyagraha.

.....

.....

14.7 LOK ADALAT

LokAdalat is a forum where the disputes/ cases pending in the court of laware settled amicably. The LokAdalat has been given statutory status under the Legal Services Authority Act, 1987. Under this Act, the award made by the LokAdalats is deemed to be the decree of a civil court and is final and binding on all parties and no appeal lies before any court against its decree. The persons deciding the cases in the LokAdalats are called the Members of the LokAdalats, they have the role of statutory conciliators only and do not have any judicial role; therefore they can only persuade the parties to come to a conclusion for settling the dispute outside the court in the LokAdalat and shall not pressurize or coerce any of the parties to compromise or settle cases or matters either directly or indirectly. The LokAdalat shall not decide the matter so referred at its own instance, instead the same would be decided on the basis of the compromise or settlement between the parties. The members shall assist the parties in an independent and impartial manner in their attempt to reach amicable settlement of their dispute.

Nature of Cases Referred to LokAdalat

- Any case pending before any court.
- Any dispute which has not been brought before any court and is likely to be filed before the court. Provided that any matter

relating to an offence not compoundable under the law shall not be settled in LokAdalat.



14.8 LET US SUM UP

- Human rights are essential for the adequate development of the human personality and for human happiness.
- The constitution of Liberia of 1874 opened with a Bill of Rights and the first article of it contained the statement that all men are born equally free and independent and have natural, inherent and inalienable rights.
- The 19th century saw the formation of the League of Nations as an International Organization and also saw the growth of peace movements which were the forerunners of the League of Nations established after the World War I.
- The concept of justice is as old as the very existence of human civilization. Its meaning and connotation keeps on changing from time to time as per the value system of the people.
- It is the result of the struggle surrounding the industrial revolution and the emergence of the socialist option for the purpose of the organization of the society.
- Phule had a deep involvement for the social transformation of the shudras through education as well as social unity.
- JotibaPhule had published a book of Ballads where he depicted as to how the Brahmins had exploited the poorer classes in the society by making them observe different religious rituals.
- The core of the social and political philosophy of JotibaPhule was to redeem the backward classes to fight against the brahminical exploitations.
- Dr. B.R. Ambedkar was the first untouchable leader of India and clearly stated that the caste system must be annihilated to ensure justice and fairness to all sections of the hindus.

- Dr.Ambedkar also intensified the campaign for the entry of the untouchables into temples. In other words, Dr.Ambedkar wanted to dismantle the dogmas of the manusmriti. Dr.Ambedkar was the architect of the constitution of India. An eminent constitutional expert, Dr.Ambedkar laid the basis of a constitution with adequate provisions for the depressed classes.
- Mohandas Karam Chand Gandhi, the great Indian Revolutionary and the father of the nation developed a philosophy of his own on the basis of his “Experiments With Truth”.
- Gandhiji’snon violence was influenced by the teachings of Jesus in Sermon on the Mount and traditions of Christian descent.
- Gandhiji had put forward a new way of understanding the concept of civilization where he wanted a civilization to be rooted in ethics.



14.8 FURTHER READING

1. Makwana, MH. 2011. *Backward classes and social justice.* 1st edition. Jaipur:Rawat Publications.
2. Naik, Varun and MukeshSahni. 2011. *Human rights and social justice*. 1st edition. New Delhi: Crescent Publishing Corporation
3. Singh, HarMohinder. 2008. *JotibaPhule: the great dalit leader: history and development of dalit leadership in India* (vol.4). 1st edition. New Delhi: Sarup& Sons
4. Jaffrelot, Christophe. 2008. *Dr Ambedkar and Untouchability.* 2nd Edition Ranikhet: Permanent Black
5. Singh, Janak. 2010. *Dr.B.R. Ambedkar: messiah of the downtrodden.* 1st Edition. Delhi:Kalpaz Publications

6. Hardiman, David. 2007. *Gandhi in his time and ours.* 1st Edition. Ranikhet: Permanent Black



14.9 ANSWERS TO 'CHECK YOUR PROGRESS'

1. a. Jotiba Phule b. Priestcraft c. Caste system
2. Jotiba Phule was in favour of forming an institution so that the shudras could fight against priestcraft. Accordingly, he resolved to launch a movement in Maharashtra for the liberation of the shudras from the brahmin's influence. Accordingly, he formed an institution namely Satya SadhakSamaj through which he wanted to fight against the Brahmin autocracy. Phule was elected the first president of Samaj. The fundamental objectives of the samaj are to redeem the shudras and the atishudras from the influence of the brahminical exploitations.
3. a. Dr. B.R. Ambedkar b. 60 million, 429 c. in favour
4. The techniques of satyagraha or civil resistance developed by Gandhi became a central figure of Indian politics, more particularly during colonial times. In fact, it was the core of the techniques of anti colonial struggle developed by Gandhi. Another very important component of the philosophy of Gandhiji is non violence. It represented a creative adaptation of non violence. This component of his philosophy is rooted in the compassion towards fellow humans. It may be noted that Gandhiji'snon violence was influenced by the teachings of Jesus in Sermon on the Mount and traditions of Christian descent.
5. Satyagraha is a fundamental component in the political philosophy of Mahatma Gandhi. In this term, satyagraha, we find two words i.e. satya (truth) and agraha (holding). The implication of this is that one holds of the truth. According to Gandhiji, God is truth and truth is God.



14.10 MODEL QUESTIONS

Q.1: What are human rights? Explain the foundation of human rights in constitutional law.

Q.2: Explain social justice in your own words.

Q.3: Write about the social and political philosophy of JotibaPhule to redeem the backward classes to fight against the brahminical exploitations.

Q.4: What are the aims and objectives of BahishkritaHitakarini Sabha?

Q.5: Write short notes on: Mahatma Gandhi and Dr. B.R. Ambedkar

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UNIT 15 SOCIAL LEGISLATION AND THE JUDICIAL SYSTEM

UNIT STRUCTURE

15.1 Learning Objectives
15.2 Introduction
15.3 Historical Background leading to the inclusion of Constitutional Provisions and Formulation of Legal Provisions of Human Rights in India
15.4 Constitutional Framework of Human Rights in India
15.4.1 Preamble of the Indian Constitution
15.4.2 Fundamental Rights in the Indian Constitution
15.4.3 Directive Principles of State Policy in the Indian Constitution
15.4.4 Fundamental Duties of the Indian Constitution
15.5 Legal Framework of Human Rights in India
15.5.1 Protection of Human Rights Act, 1993
15.5.2 National Human Rights Commission (NHRC)
15.5.3 State Human Rights Commission
15.5.4 National Commission for Scheduled Caste and Scheduled Tribes, 2004
15.6 Let Us Sum Up
15.7 Further Reading
15.8 Answers to Check Your Progress
15.9 Model Questions

15.1 LEARNING OBJECTIVES

After going through this unit, you will be able to-

- describe the historical background that leads to include Human Rights provisions in the Constitution of India

- explain the provisions which are included in the Indian Constitution leading to the upliftment of Human Rights and Fundamental Freedom of the people of India
- examine the various Acts relating to the protection and promotion of human rights in India
- examine the role of the National Human Rights Commission (NHRC), State Human Rights Commission, National Commission for Scheduled Castes, and National Commission for Scheduled Tribes, 2004 in protecting rights of the Indian people.

15.2 INTRODUCTION

Human Rights are the basic requirements of an individual for leading a dignified and civilised life. The founders of the Indian Constitution, realising this fact, laid great emphasis on insertion of provisions relating to human rights in the Constitution of the country. Inclusion of human rights provisions in the Indian Constitution is an expression of respect towards the human rights and fundamental freedom of every individual of the country. Along with this the Parliament of India has also formulated a number of legal provisions for promoting and protecting rights of the people.

15.3 HISTORICAL BACKGROUND LEADING TO THE INCLUSION OF CONSTITUTIONAL PROVISIONS AND FORMULATION OF LEGAL PROVISIONS OF HUMAN RIGHTS IN INDIA

In India awareness of people for their rights and freedoms assumed a revolutionary character throughout the freedom movement during the colonial rule. During this period the people of India demanded their rights along with their chief demand of freedom from foreign rule. Resistance to foreign rule was manifested in the form of demand for fundamental freedoms and civil and political rights for

the people of India (Yasin and Upadhyay, 2004; 59). The first organised demand for rights and freedoms was made through the Constitution of India Bill, 1895 (which is also known as Home Rule Document). This Bill emphasised on the freedom of expression and equality before law for the citizens of India. After that the Commonwealth of India Bill, 1925, the Nehru Report, 1928, the Karachi Session of Congress in 1931, the Government of India Act, 1935, the Tej Bahadur Sapru Committee, 1945- all these stressed on the inclusion of fundamental rights and freedoms in written form in the Constitution of India. Because of all these efforts during the freedom movement, the Constituent Assembly had decided to include provisions relating to rights and freedoms in the Constitution for the people of India. The Constitution of India through the Preamble, Fundamental Rights and the Directive Principles of State Policy provide the basic human rights and fundamental freedom for the people of India. Along with the Constitution, the Parliament of India has also expressed its commitment towards protecting and promoting human rights through various enactments and constitution of various statutory commissions. In a nutshell, we can say that in India human rights provisions have two dimensions – constitutional and legal provision.



The Constitution of India through the Preamble, Fundamental Rights and the Directive Principles of State Policy provide the basic human rights and fundamental freedom for the people of India.

15.4 CONSTITUTIONAL FRAMEWORK OF HUMAN RIGHTS IN INDIA

Constitutional provisions of human rights are those provisions which are included in the Constitution itself. The Constitution of India contains human rights provisions elaborately in a number of its articles. The Constitution of India in its Preamble, Part III (which deals with Fundamental Rights), Part IV (deals with Directive Principles of State Policy), Part IV A(deals with Fundamental Duties) and Articles 226, 300A, 325 and 326 include the provisions related to human rights

(Arjun Dev. Et.al(ed) (1996): Human Rights: A Source Book, New Delhi, NCERT).

15.4.1 Preamble of the Indian Constitution

The Preamble of the Indian Constitution is a declaration of rights and freedoms that India aims to secure for all its citizens. The Preamble of the Indian Constitution proclaims that the objectives of the Indian Constitution is to make India a country where justice (social, economic and political), freedom, equality, fraternity will be achieved for all. So the Preamble of the Indian Constitution has laid down the foundation of human rights and fundamental freedom for the people of India. In this context it may be said that in India human rights may be regarded as the offspring of the Preamble.

15.4.2 Fundamental Rights in the Indian Constitution

Part III of the Indian Constitution which deals with the Fundamental Rights contains significant constitutional provisions dealing with human rights in India. These fundamental rights are enforceable or justiciable rights. This means that the citizens can approach the courts in India for getting justice in case of violation of their fundamental rights. Article 13 of the Indian Constitution mentions that the state shall ensure that no 'law' including orders, rules, regulations, notifications, ordinances, customs or usages is in violation of any fundamental rights. This indicates the true concern of the Indian constitution towards protection of fundamental rights. Human rights provisions as included in Part III are as follows–

Articles 14 -18 deal with the right to equality. Article 14 guarantees right to equality before the law and equal protection

of the law to all persons. Article 15 provides that the state shall not make discrimination against an individual on the ground of religion, race, caste, sex or place of birth. Article 16 guarantees equality of opportunity in public employment for all citizens. Articles 17 and 18 provide for abolition of untouchability and titles respectively.

Articles 19-22 deal with the right to freedom. Article 19(1) guarantees six fundamental freedoms to the people of India. These freedoms are–

- Freedom of speech and expression
- Freedom to assemble peacefully without arms
- Freedom to form associations and unions
- Freedom of movement
- Freedom to reside and settle in any part of India
- Freedom to practice any profession or carry on any occupation, trade or business.

Right to Information forms an integral part of Article 19(1) (a) [i.e. right to freedom of speech and expression]. Article 20(2) states that an accused person cannot be prosecuted and punished for the same offence more than once. Article 21 guarantees all citizens and non-citizens protection of life and personal liberty. Article 21A provides right to education for all children from the age 6 to 14 years. Article 22 provides safeguards against arbitrary arrest and detention.

Articles 23-24 deal with the right against exploitation. Article 23 prohibits traffic in human beings, 'begar' and any other form of forced labour. Article 24 prohibits employment of children below 14 years of age in factories, mines and hazardous employment.

Articles 25-28 deal with the right to freedom of religion. Article 25 guarantees to every person in India the right to freedom of conscience and the right to profess, practice and

propagate religion freely. Article 26 provides that all religious communities have the right to establish and maintain institutions for religious and charitable purposes and have the freedom to manage their own religious affairs. Article 27 states that no individual or organisation shall pay tax for the promotion of any particular religion. Article 28 prohibits religious instruction in state-aided educational institutions.

Articles 29-31 deal with the educational and cultural rights. Article 29(1) states that citizens with a distinct language, culture or script shall have the right to preserve the same. Article 29(2) states that no citizen shall be denied admission to a state owned or state-aided educational institution on ground of religion, race, caste or language. Article 30(1) provides for the right of minorities to establish and administer educational institutions. Article 30(2) provides that the state shall not make discrimination against any educational institution on the ground that it is under the management of a minority community.

Articles 32-34 deal with the right to constitutional remedies. These three Articles provide a guaranteed remedy for the enforcement of fundamental rights. Citizens can approach the Supreme Court if their rights are violated. The Supreme Court can issue writs, such as Habeas Corpus, Mandamus, Prohibition, Certiorari and Quo- Warranto for this purpose. Article 35 empowers the Parliament to make laws for effective realisation of fundamental rights inserted in Part III of the Constitution.

LET US KNOW

Habeas Corpus is a writ through which the Supreme Court or the High Courts can direct a person, who is detaining another person

to bring that detained person in his/her custody at a specified time to a specified place in order to provide liberty or to secure his/her release if it feels that person is confined without legal justification. Through the writ of Mandamus, the court can issue an order to a person or a body to do his/her or its duty. Certiorari is a writ which orders the removal of a suit from a subordinate court and to transfer to a superior court. The writ of Prohibition prevents a subordinate court from exceeding its jurisdiction, or from acting contrary to the rules of natural justice. Through the writ of Quo-Warranto the Supreme Court or the High Courts restrains a person from acting in an office to which he or she is not entitled.



CHECK YOUR PROGRESS

Q.1 : The Indian Constitution contains Human Rights provisions in the ……., Fundamental Rights, Directive Principles of State Policies and Fundamental Duties. (Fill in the blank)

Q. 2 : The Fundamental Rights are justiciable rights. (True/False)

.....

Q. 3 : Mention the six freedoms guaranteed under article 19(1) ofthe Constitution of India.

.....

Q. 4 : What are the rights to religious freedom as guaranteed bythe Constitution of India?

.....

Q. 5 : Mention the writs available to the citizens of India forprotecting their basic human rights and freedoms.

.....

15.4.3 Directive Principles of State Policy in the Indian Constitution

Directive Principles of State Policy (DPSP) included in Part IV containing Articles 36-51 also constitute an important part of the constitutional framework of Human Rights in India. These principles aim at achieving welfare for the people of India. DPSP, though not justiciable, aims to entrust a positive duty on the state in order to ensure social and economic justice and dignity of the individual. Some of these principles which have important human rights implications are as follows–

- According to Article 38, the State shall try to secure and protect a social order which stands for the welfare of the people.
- Article 39 states the techniques through which the State can achieve welfare for all the people of India. Some of the important goals which the state is expected to realise are-

  i. Adequate means of livelihood for all citizens,

  ii. Proper distribution of wealth to serve the common good,

  iii. Equal pay for equal work for both men and women,

  iv. The prevention of concentration of wealth so that it does not put obstacles in securing the common good,

  v. Protection of childhood and youth against exploitation or moral and material abandonment

  vi. Protection of the health and strength of the workers and protection of workers against entry into vocations which do not suit their age or strength.
- According to Article 41, the State shall within its capacity make effective provision for securing the right to work, right to education, public assistance in case of unemployment, old age or sickness.
- Article 42 provides that the State shall make provision for securing just and humane conditions of work and for maternity relief.

- According to Article 43 the State shall endeavour to secure humane conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities.
- According to Article 45 the State shall endeavour to provide for free and compulsory provision to all children up to the age of 14 years. (This provision was initially for 10 years from the commencement of the Constitution, but has been retained by the Government continuously since then)
- According to Article 46, the State shall promote the educational and economic interest of the weaker sections of people especially of the Scheduled Caste and Scheduled Tribes with a view to protect them against social injustice and exploitation.
- According to Article 46, the State shall raise the level of nutrition and improve public health.
- According to Article 51, the State shall promote international peace and security, maintain just and honorable relations with other nations and encourage settlement of international disputes by arbitration.

15.4.4 Fundamental Duties of the Indian Constitution

It is a well recognised fact that human rights and duties are complementary to each other. To achieve the goal of fullest realisation of human rights we should have respect towards the rights of every individual in the society; and only then will be the rights of every person protected. With this view in mind the Parliament of India in 1976 included certain Fundamental Duties in Part IV(A) of the Constitution of India. Article 51A states that it shall be the duty of every citizen of India:

- to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
- to cherish and follow the noble ideals which inspired our national struggle for freedom;
- to uphold and protect the sovereignty, unity and integrity of India;
- to defend the country and render national service when called upon to do so;
- 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;
- to value and preserve the rich heritage of our composite culture;
- to protect and improve the natural environment including forest, lakes, rivers and wildlife, and to have compassion for living creatures;
- to develop the scientific temper, humanism and the spirit of inquiry and reform;
- to safeguard public property and to adjure violence;
- to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement;
- to provide opportunities for education by the parents or the guardian to their child between the age of 6-14 (this fundamental duty was added by the 86thConstitution Amendment Act in 2002)

Apart from the above mentioned provisions, the Constitution of India also has other articles which deal with human rights. Some of these articles are–

(i) Article 226 provides the right for the Indian people to approach the High Courts for the protection of their

fundamental rights. Under this provision the High Courts can issue certain writs like habeas corpus, mandamus, prohibition, quo-warranto and certiorari for protecting the rights of the people.

(ii) Article 300 (A) proclaims that no person can be unlawfully deprived of his/her property.

(iii) Article 325 states that no person shall be ineligible for inclusion in, or claim to be included in a special electoral roll on the grounds of religion, race, caste or sex. This provision guarantees the right to equality to hold public offices for the citizens of India.

(iv) Article 326 states that elections to the House of People and to the Legislative Assemblies of the States will be held on the basis of universal adult franchise. This provision guarantees to the citizens of India the right to vote without any kind of discrimination.



CHECK YOUR PROGRESS

Q. 6 : Directive Principles of State Policies are legally enforceable.(True/False)

.....

Q. 7 : In which year and through which amendment was thefundamental duty to provide education to the children between the age of 6-14 years included in the Constitution of India?

.....

Q. 8 : Directive Principles of State Policies aim to achieve.....of the people of India. (Fill in the blank)

Q. 9 : Mention the goals under Articles 39 which the state isexpected to achieve.

.....

.....

15.5 LEGAL FRAMEWORK OF HUMAN RIGHTS IN INDIA

The legal provisions of Human Rights are those which have come out through various enactments of the Central and state legislatures for protecting the human rights of the Indian people. Some of those provisions are - Protection of Human Rights Act, 1993; Right to Information Act, 2005; National Rural Employment Guarantee Act, 2005; National Commission for Scheduled Castes, 2004; National Commission for Scheduled Tribes, 2004; National Commission for Minorities Act, 1992; National Commission for Women Act, 1990; Protection of Civil Rights Act, 1955; Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995; Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989; Immoral Traffic (Prevention) Act, 1956; Indecent Representation of Women (Prohibition) Act, 1986; Juvenile Justice Act, 1986; Dowry Prohibition Act, 1961; Commission for Sati (Prevention) Act, 1987; Maternity Benefit Act, 1961; Children Act, 1960; Child Labour (Prohibition and Regulation) Act, 1986; Minimum Wages Act, 1986; Caste Disabilities Removal Act, 1950; Mental Health Act, 1987; Bonded Labour (System) Abolition Act, 1976 etc.

15.5.1 Protection of Human Rights Act, 1993

The Government of India with a view to establish a national institution relating to the protection and promotion of human rights, introduced the Human Rights Commission Bill in the Lok Sabha on May 14, 1992. The bill was referred to the Standing Committee of the Parliament on Home Affairs. However due to the urgent need of the time for having a human rights commission, the President of India on 27thSeptember 1993 promulgated an Ordinance for the creation of a National Commission on Human Rights and Commissions at the state level. After having made certain amendments, the Protection

of Human Rights Bill was passed by both the Houses of the Parliament to replace the ordinance. The Bill became an Act after it received the assent of the President on January 8, 1994, known as the Protection of Human Rights Act. With the enactment of the Protection of Human Rights Act, the establishment of a National Human Rights Commission, State Human Rights Commission in states and Human Rights Courts for the better protection of human rights in India became a reality.



NHRC- It came into being on 12th October 1993. Chapter II to IV of the Act deals with National Human Rights Commission.

15.5.2 National Human Rights Commission (NHRC)

The National Human Rights Commission is an expression of India's concern for the protection and promotion of human rights. It came into being on 12th October 1993. Chapter II to IV of the Act deals with National Human Rights Commission.

- **Composition of the Commission**

Chapter II of the Act deals with the constitution of National Human Rights Commission. Section 3 of the Act lays down that the Central government shall constitute a body to be known as the National Human Rights Commission. The Commission shall consist of–

1. A Chairperson who has been the former Chief Justice of the Supreme Court.
2. One member who is or has been a judge of the Supreme Court.
3. One member who is or has been the Chief Justice of a High Court.
4. Two members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.

5. The Chairpersons of the National Commission for Minorities, the National Commission for the Scheduled Castes and Scheduled Tribes and the National Commission for Women are also to be appointed as members of National Human Rights Commission.

   The Chairperson and the members of the Commission shall be appointed by the President on the recommendation of six-member committee headed by the Prime Minister as Chairperson. Other members of the committee are the Speaker of the House of People, Minister in charge of the Ministry of Home Affairs in the Govt. of India, Leader of the Opposition in the House of People, Leader of the Opposition in the Council of State, Deputy Chairman of the Council of State.

   The Central Government shall make available to the Commission an Officer who shall be the Secretary General of the Commission and such police and investigative staff as may be necessary for the efficient performance of the Commission. The Commission shall have its headquarters in New Delhi and with the permission of the Central Govt. may establish offices in other parts of India.

- **Term of Office**

  The Chairperson and the members of the Commission hold office for a term of 5 years. They are eligible for reappointment for another term. A person can serve at the commission until the age of 70 years. The chairperson and any other member may be removed from his office by an order of the President on the ground of proven misbehaviour or incapacity after the Supreme Court, on enquiry, reports that the chairperson or such other member ought to be removed.

- **Functions of the Commission**

  The functions of the Commission are laid down under Section 12 of the Act, which are as follows-

(i) The Commission inquires suomotu (on its own) or on petition presented to it by a victim or any person on his behalf, into any compliant of–

(a) Violation of human rights or abetment thereof,

(b) Negligence in the prevention of such violation by a public servant.

(ii) The Commission may intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court.

(iii) It can visit, under intimation to the State Govt., any jail or any other institution under the control of the state govt., where persons are detained or lodged for the purpose of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon.

(iv) The Commission can review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation.

(v) The Commission may review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures.

(vi) It studies treaties and other international instrument on human rights and makes recommendation for their effective implementation.

(vii) It undertakes and promotes research in the field of human rights.

(viii) The Commission helps in spreading of human rights literacy among various sections of society and promotes awareness regarding the safeguards available for the protection of these rights, through publications, media, seminars and other available means.

(ix) It encourages the efforts of NGOs and institutions working in the field of human rights.

(x) The Commission also performs such other functions as it may consider necessary for the protection of human rights.

(xi) The Commission submits an annual report to the Central Govt. and to the State Govt. concerned and may at any time submit special reports on any matters which, in its opinion, is of such urgency or importance that it shall not be deferred till submission of the annual report.

(xii) The Commission shall perform functions pursuant to the directions issued by the Supreme Court in the exercise of the jurisdiction under Article 32 of the Constitution.

- **Evaluation of Functioning of National Human Rights Commission in India:** The National Human Rights Commission in India has received more than 74,000 complaints from people with a hope of getting justice for violation of their rights. It has investigated a number of serious cases of human rights violation and has submitted reports to the Govt. suggesting measures to be taken to curb the human rights violation. But the commission has not been able to perform its task up to the most satisfactory level as it is simply an investigative and recommendatory body. It can recommend the appropriate authority to take action against violations or to provide interim relief to the victim of human rights violations. The Commission does not have the power of prosecution. Further, the inquiry made by the Commission is not always impartial in view of the fact that the Commission is not equipped with an independent investigative agency.

15.5.3 State Human Rights Commission

The Protection of Human Rights Act, 1993 under Section 21 (Chapter V) lays down that the State Governments

may constitute Human Rights Commission in their respective states.The State Human Rights Commission consists of one Chairperson who has been a Chief Justice of a High Court, one member who is or has been a Judge of a High Court, one member who is or has been a District Judge in that state, two members to be appointed from amongst persons having knowledge of or practical experiences in matters related to human rights. The Chairperson and other members of the State Commission are appointed by the Governor of that state as per the recommendation of a Committee consisting of the Chief Minister, Speaker of the Legislative Assembly, Minister in charge of the Department of Home of that state, Leader of the Opposition of the Legislative Assembly of that state. The term of all members of the Commission including the Chairperson is 5 years. However they may be removed from the office by the President of India on certain grounds. Some of the functions of the State Human Rights Commission are-

(a) The State Human Rights Commission inquires violation of human right cases in matters which are included in the State List and Concurrent List of the 7th Schedule of the Constitution. However if the NHRC is already investigating such cases, the State Commission shall not inquire those cases.

(b) The Commission submits an annual report to the respective State Govt. and special report at any time on any matters.



LET US KNOW

The Assam Human Rights Commission was constituted on 19th March, 1996. It is headed by one Chairperson and four other members and has its headquarters in Guwahati.



ACTIVITY 15.1

Try to find out the name of the present Chairperson of the National Human Rights Commission of India and Assam State Human Rights Commission.

15.5.4 National Commission for Scheduled Caste and Scheduled Tribes, 2004

The Parliament of India enacted the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act in 1989 and this Act provided for the constitution of the National Commission for Scheduled Caste and Scheduled Tribesin 2004. The members of the Commission are appointed by the President of India. The Commission consists of one Chairperson, one Vice- Chairperson and three other members. The term of office of all the members of the Commission is three years. Some of the functions of the Commission are-

(a) The Commission investigates into all matters relating to the safeguard provided to the Scheduled Caste and Scheduled Tribes under the Act.

(b) The Commission also investigatesinto any special caserelated to the violation of rights and safeguards of the Scheduled Caste and Scheduled Tribes.

(c) The Commission also advises and participates in the planning process related to socio economic development of the Scheduled Caste and Scheduled Tribes and can evaluate the progress of the same process.

(d) The Commission also performs any other functions for the welfare of the Scheduled Caste and Scheduled Tribes.

(e) The Commission submits an annual report and special report at any time on any matter related to the rights of the Scheduled Caste and Scheduled Tribes to the President of India.



CHECK YOUR PROGRESS

Q.10 : In India legal provisions of human rights were originally included in the Constitution of India. (True/False)

.....

Q.11 : In which year was the Protection of Human Rights Act enacted?

.....

Q.12: The Protection of Human Rights Act provided for theestablishment of ..... (Fill in the blank)

Q.13: The National Commission for Scheduled Caste and Scheduled Tribes was established in the year ..... (Fill in the blank)

Q.14: Mention any two functions of the National Human RightsCommission of India.

.....

.....

Q.15: State two functions of the State Human Rights Commission.

.....

.....



15.6 LET US SUM UP

- In India the entire jurisprudence of human rights is founded on the above mentioned constitutional and legal provisions. The strong will and determination for the promotion of human dignity and worth of India has been realised through these provisions.
- The Constitutional framework of human rights has found expression through the Preamble, Fundamental Rights, Directive Principles of State Policy and Fundamental Duties.

- In India the Parliament has also enacted a number of laws relating to the promotion and protection of human rights in India.
- One such important enactment is the Protection of Human Rights Act, 1993.In India the Protection of Human Rights Act, 1993 has led to the establishment of National Human Rights Commission, State Human Rights Commission in the states and Human Rights Courts at the district levels.
- The National Human Rights Commission has performed its tasks regarding protection of human rights with efficiency to a great extent. But some loopholes still remain in its performance procedure specially due to the lack of its implementation power and financial autonomy.
- The Protection of Human Rights Act, 1993 under Section 21 (Chapter V) lays down that the State Governments may constitute Human Rights Commission in their respective states.
- The Parliament of India enacted the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act in 1989 and this Act provided for the constitution of the National Commission for Scheduled Caste and Scheduled Tribes in 2004. This Commission performs a number of functions to protect the rights of the Scheduled Caste and Scheduled Tribes.



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15.8 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1 : Preamble

Ans to Q No 2 : True

Ans to Q No 3 : (i) Freedom of speech and expression
(ii) Freedom to assemble peacefully without arms
(iii) Freedom to form association and union
(iv) Freedom of movement
(v) Freedom to reside and settle in any part of India
vi) Freedom to practice any profession or carry on any occupation, trade or business.

Ans to Q No 4 : Articles 25-28 of the Constitution of India deal with the right to freedom of religion. Article 25 guarantees to every person in India the right to freedom of conscience and the right to profess, practice and propagate religion freely. Article 26 provides that all religious communities have the right to establish and maintain institution for religious and charitable purposes and have the freedom to manage their own religious affairs. Article 27 states that no individual or organization shall pay tax for the promotion of any particular

religion. Article 28 prohibits religious instruction in state-aided educational institutions.

Ans to Q No 5 : Habeas Corpus, Mandamus, Prohibition, Certiorari and Quo-Warranto

Ans to Q No 6 : False

Ans to Q No 7 : The 86th Constitution Amendment Act in 2002

Ans to Q No 8 : Welfare

Ans to Q No 9 : (i) Adequate means of livelihood for all citizens,
(ii) Proper distribution of wealth to serve the common good,
(iii) Equal pay for equal work for both men and women,
(iv) The prevention of concentration of wealth so that it does not put obstacles in common good,
(v) Protection of childhood and youth against exploitation or moral and material abandonment.
(vi) Protection of the health and strength of the workers and protection of workers against entry of vocations which do not suit their age or strength.

Ans to Q No 10 : False

Ans to Q No 11 : January 8, 1994

Ans to Q No 12 : National Human Rights Commission, State Human Rights Commission in states and Human Rights Courts in districts

Ans to Q No 13 : 2004

Ans to Q No 14 : The Commission inquires suomotu or on petition presented to it by a victim or any person on his behalf, into compliant of-
(a) Violation of human rights or abetment thereof,
(b) Negligence in the prevention of such violation by a public servant.

2. The Commission may intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court.

Ans to Q No 15 : (a)The State Human Rights Commission inquires violation of human right cases in matters which are included in the State List and Concurrent List of the 7th Schedule of the Constitution.

(b) The Commission submits an annual report to the respective State Govt. and special report at any time on any matters.



15.9 MODEL QUESTIONS

A) Very Short Questions

Q.1: Under Article 226 of the Indian Constitution the people of India have the right to move to the Supreme Court for the protection of their fundamental rights. (True/False)

Q.2: Who appoint the Chairperson and members of the National Human Rights Commission in India?

Q.3: Mention two Acts relating to the protection and promotion of human rights.

B) Short Questions

(Answer each question in about 150 words)

Q.1: Write about the historical background that led to the inclusion of human rights provisions in the Constitution of India.

Q.2: Write a short note on the functions of the National Human Rights Commission in India.

Q.3: Write about the Right to Equality and Educational and Cultural rights as human rights provisions of the Indian Constitution.

Q.4: Write briefly about the functions of the National Commission for Scheduled Caste and Scheduled Tribes.

Q.5: Write briefly about the composition and functions of the State Human Rights Commission.

C) Long Questions

(Answer each question in about 300-500 words)

Q.1: Discuss the constitutional provisions of human rights in India.

Q.2: Critically evaluate the performance of the National Human Rights Commission in India.

*** ***** ***



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