



HUMAN RIGHTS IN INDIA: CONSTITUTIONAL AND INSTITUTIONAL PERSPECTIVES

UTTARAKHAND OPEN UNIVERSITY

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UNIT-1

FOUNDATIONS OF HUMAN RIGHTS THOUGHT IN INDIA

STRUCTURE

1.1 INTRODUCTION

1.2 OBJECTIVES

1.3 CONCEPT OF HUMAN RIGHTS IN THE VEDIC PERIOD

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1.12 SELF ASSESSMENT QUESTION'S (SAQ)

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1.1 INTRODUCTION

The concepts of human rights are deeply rooted in the history of India, since ancient times, Indian traditions have shown interest in the concept of Justice. The ancient texts of India which includes the Vedas, the Upanishads, and other such texts told us of living a righteous life which they called it Dharma they also emphasized on maintaining social harmony. Religions like Buddhism and Jainism that originated in India introduced us to the notion of non-violence (Ahimsa) and respect for all living creatures which align with the principles of modern human rights.

In modern times, when India was struggling for its independence from British rule during this long national struggle, the notion of human rights gained importance. Prominent leaders like Gandhi, Ambedkar and others didn't just fight for political freedom but also for protecting people's dignity, liberty, freedom of speech and equality for everyone. All these ideas were considered during the framing of India's Constitution after gaining independence, and these ideas were transformed into a set of rights for all citizens.

The Indian Constitution in its part three guarantees six fundamental rights from article 12 to article 35 which includes right to equality, right to freedom, right against exploitation, right to freedom of religion, cultural and educational rights, right to constitutional remedies. These rights ensure that each and every individual lives without fear and is treated equally. The Constitution also lays some framework for the government of India to formulate policies that ensure social and economic justice for citizens of India especially for the weaker sections of the society.

In this chapter, we shall explore the development of human rights in India from ancient to modern times by looking at both ancient traditions and freedom struggle that helped shaping these ideas. By understanding this journey, we can see how India's approach to human rights has grown over time and continues to evolve.

1.2 OBJECTIVES

After reading this chapter you will be able to understand:

- The meaning and concept of human rights.
- The Historical and philosophical perspectives of Human Rights.
- The evolution of Human Rights from the ancient Indian perspectives.

1.3 CONCEPT OF HUMAN RIGHTS IN THE VEDIC PERIOD

The earliest philosophical and spiritual foundation of Indian thought lies in the Vedic period, this period marks the composition of the Vedas, although the Vedas did not reflect the concept of

human rights as we understand today but they introduced the ideas that matches with the modern ideas of human rights.

A key principle of the Vedic period is of “**Vasudhaiva Kutumbhakam**” which conveys that “the world is one family”. This idea reflects a sense of unity, brotherhood among all human beings. It reflects that no person should be seen as an outsider and shall be treated respectfully and with care. This idea recognizes the modern thought of universal brotherhood and can be seen as an early form of equality and dignity to all.

Another key feature of Vedic period is the ancient prayer “**Sarve Bhavantu Sukhinah, Sarve Santu Niramaya, Sarve Bhadrani Pashyantu, Ma Kaschit Dukhbhag Bhavet**”. This prayer from ancient Vedic period wishes for the well-being, happiness, good health for all. This prayer embodies the notion of compassion towards all human beings aligning very closely with the modern idea of right to good life, health and free from sufferings. This prayer was a universal call for peace and humanity which shows that welfare of all was an important notion which in modern times is equal to social and economic development, of all.

The Vedic period introduced us to the concept of **Dharma** which meant moral and ethical framework of living life that governed both the individual and society. Dharma focused on the righteous conduct, justice, and to carry out one’s duty towards society. Dharma had a broader scope but it laid down the basic idea of moral behavior and right conduct which included fair treatment with others, which in modern times resonates the idea of justice in the framework of human rights. Therefore, during the Vedic period even though the concepts of human rights were not properly defined but the ideas of equality, justice, unity and betterment of all were present during those times.

1.4 MANUSMRITI AND CODE LAWS

Manusmriti is one of the ancient texts of Hindu laws and is often refer to for its social prescriptions. Some of the section of Manusmriti is controversial in present time but there are sections in the Manusmriti that laid down the idea of justice, protection of weak, women and children. It should be noted that Manusmriti also focuses on social hierarchies on the basis of birth in a particular caste, which acted as a barrier to universal rights for centuries.

1.5 CONCEPT OF HUMAN RIGHTS IN THE TEACHING OF BUDDHISM AND JAINISM

In 6th century bce, India witnessed the emergence of two great thinkers, spiritual leaders and social reformer known as Gautama Buddha and Mahavira. Both of these reformers challenged the existing social structure of that period and condemn the evils that were present in that period especially the caste system and introduced the notions of non-violence and equality. These

teachings propagated by these two great scholars can be seen as an early concept of human rights, propagating the dignity and well-being of all human beings regardless of their social background.

Human Rights in Buddhism (Teachings of Gautama Buddha)

Buddhism, founded by Siddhartha Gautama popularly known as Buddha based on his experience of life and his teachings he shares his notes on compassion and reducing human suffering. Buddha gave insights on the concepts of human rights as he emphasizes on non-violence, though his teachings are based more on moral and ethical conduct of one in his life, he does focus on dignity, life worth living, compassion, and also alleviation of human suffering. These principles closely relate to the modern concept of human rights. The key ideas of Buddha that align with human rights are

- 1. Non-violence or Ahimsa:** This belief of not causing harm to any living being is very much similar to modern idea of right to life.
- 2. Equality:** Gautama Buddha opposed discriminating humans on any basis such as caste, gender, etc. He believed all people deserve equal respect and dignity thus reflecting the idea of right to equality.
- 3. Compassion (Karuna):** Buddha emphasized on being compassionate, kind to all, this reflects the idea of right to be treated with dignity and freedom from any oppression.

Therefore, both Buddhism and Jainism emphasize non-violence, compassion, and equality, which align closely with modern human rights values like the right to life, freedom from discrimination, and the right to dignity. They teach that all beings, regardless of who they are or where they come from, deserve respect, kindness, and the chance to live without suffering or harm.

In this way both of the religions share the ideas of treating each and every one with equal respect, kindness and promoted the spirit of brotherhood which is a core philosophy of human rights in modern times.

1.6 CONCEPT OF HUMAN RIGHTS IN DURING THE MAURYA PERIOD (ASHOKA'S RULES)

The Mauryan Empire, especially under the reign of **Emperor Ashoka**, marked a significant development in the formal promotion of values that align with modern human rights. Ashoka, who ruled from around 268 BCE to 232 BCE, is particularly remembered for his efforts to ensure the welfare of his subjects after converting to Buddhism following the Kalinga War.

The edicts of emperor Ashoka which were used to be carved on pillars and rocks and were spread across his empire are a clear example of his dedication towards human rights. These inscriptions or edicts provided insights about his ideas on moral and ethical conduct of humans towards other beings. It also reflects his religious tolerance and non-violence in his governance. Some key aspects of Ashoka's human rights vision include:

Non-Violence (Ahimsa): After the Kalinga war, Ashoka practiced non-violence throughout his empire. His edicts clearly tell us about the importance of refraining from violence and not to harm any living being this focuses on peace and non-violence and in modern time reflect the core of right to life and protection from violence.

Religious Tolerance: Ashoka emphasized on the peaceful coexistence of all religions and beliefs in his empire. In his inscriptions he clearly states that all religions should be respected equally and that his subjects should not quarrel among themselves on religious differences. This idea aligns with modern right of right to freedom of religion and belief.

Welfare of the people: Ashoka is recognised for his good governance in his empire by building hospitals, planting trees along roads, digging wells for the public. His public policies reflected the ideas of welfare state and the well-being of his subjects ensuring they had access to all resources required for a healthy and prosperous life. All these notions reflect the idea of state providing essential services to its people which results in social and economic justice in society.

Justice and fair treatment: The inscriptions of Ashoka also spoke of fair and good governance and the just treatment of all citizens regardless of their religion or their caste. Ashoka appointed officers known as Dharma-Matamatas to ensure that these principles were followed throughout his empire ensuring morally and ethically correct treatment of his people.

In conclusion, the ideas of human rights as we know today were not stated in the Mauryan Empire by the policies and actions of emperor Ashoka reflect many of the core philosophy of modern day human rights including justice, non-violence, equality, and welfare of all.

1.7 CONCEPT OF HUMAN RIGHTS DURING THE GUPTA EMPIRE

The Gupta Empire (around 4th to 6th century CE) also known as the 'Golden age of India' had certain practices and policies that can be seen as early examples of human rights. Although they were not that formal or in legal sense as of today but they can be considered as an early blueprint of human rights. The Gupta Empire is known as the golden age of India for its economic prosperity, scientific advancements, and flourishing culture all these indirectly supported some ideas of modern human rights.

1. Law and Justice: The emperors of Gupta Empire placed a strong emphasis on justice and the rule of law. The empire had a well-organized system of judiciary where courts of law used to

resolve disputes fairly. Panchayats used to play an important role in local administration and legal matters. The legal system was influenced by religious texts like the Manusmriti but it still attempted to offer justice to people.

- Fair trials and the right to justice were concepts observed in the legal framework.
- The king's duty to protect his subjects and ensure justice reflects an early form of the right to protection under the law.

2. Social Welfare: The Guptas undertook measures to ensure the welfare of their people they undertook public works like constructing roads, irrigation system and developed health care facilities and they ensured that the population had access to resources they need to live a healthy and prosperous life.

This indirectly supports the idea of economic and social rights, such as the right to basic infrastructure and the right to public services.

3. Religious Freedom and Tolerance: The primary religion in the Gupta Empire was Hinduism but the Guptas were known for their religious tolerance. Religions like Buddhism and Jainism were respected and Buddhist institutions continued to thrive under the rule of Guptas.

This reflects an early understanding of the right to religious freedom, allowing people to follow their beliefs without persecution.

4. Women's Rights: The social position of women during the Gupta period is a bit complex to understand, certain matrilineal tradition existed, and women had roles in religious and domestic life but there was also a decline in their condition and rights over time especially in terms of inheritance and social freedom.

While the rights of women were limited by modern standards, some women enjoyed freedom in education, which relates to the right to education.

5. Caste system and Inequality: The caste system was still a rigid feature even in the Gupta period and this meant that equality for all was not practiced. Lower caste has to face several restrictions in terms of mobility and access to resources. Therefore, the concepts of certain human rights were present but they were not universal and were mostly applied to the people of upper castes.

1.8 DURING THE 8TH TO 12TH CENTURY: EARLY MEDIEVAL INDIA (CONDITION OF HUMAN RIGHTS)

After the fall of Gupta Empire, the whole empire got divided and around in the beginning of 8th century three dynasties established in different parts of India. In the eastern part of India, Pala

dynasty came into existence, in the western part of India the Gurjara-Pratihara gained control and in the southern part of India the Rashtrakutas emerged as a great power. All these three dynasties were in constant struggle among themselves and due to this in the beginning of 11th century all these dynasties ended and India got divided into smaller principalities, this led to the Muslim invasion and almost from the beginning of the 13th century some areas of India were in control of Turk Muslims. Although the period from 8th century to 12th century India was witnessing political struggle but still social harmony was not that bad as it worsened in the 13th century and even after that. The caste discrimination and the position of women were also not good during this period but it worsened in the Sultanate and the Mughal period.

1.9 HUMAN RIGHTS DURING THE SULTANAT AND MUGAL PERIOD

The condition of human rights in India from the time of Delhi Sultanate (13th to early 16th century) and in the Mughal Period (16th to 18th century) was shaped by many factors such as political, social, religious. While the notion of human rights as we understand them today didn't exist in that period, certain practices reflected the protection and violation of these rights.

Even during this period caste system continued to dominate the society, with Brahmins and upper castes holding most of the power and privileges and lower castes like Dalits were marginalized and were facing discrimination in society in economic, social and religious spheres. This created a hierarchy in the society on the basis of caste where basic right like equality and freedom were denied to many. The rise of feudalism meant that landlords and local rulers had significant control and power over the lives of the peasants. Some rulers were known for good governance but often the system leads to corruption and exploitation, with peasants having limited rights or protection against the powerful landlords or chiefs. Women's status depended upon their caste and religion and in general their rights decreased over the period of time. The restrictions on women were increased upon their mobility, property, rights, and education. The practice of Sati became more widespread especially in the communities of upper caste. During this period in India, Bhakti movements also originated which criticized the caste system, rituals and religious discrimination. Although the saints of Bhakti movements criticized the unethical and unmoral practices which were existing in the society still to some extent all these religious and caste based discrimination remained in the society.

Delhi Sultanate (13th to Early 16th Century)

Religious Discrimination: Islamic rule in India started with the establishment of the Delhi Sultanate in northern India. The Sultans of the Delhi Sultanate introduced Islamic laws and Islamic administrative system that favored Muslims over Non-Muslims. Hindus were known as “Dhimmis/Jimmis” (protected non-Muslims) and they were allowed to practice their religion by paying a tax to the state known as “Jizya” (a tax imposed on non-Muslims). This way a system

of discriminating people on the basis of religion was created, where Hindus and other non-Muslims were having lesser rights than Muslims.

Cultural Exchange and Tolerance: Despite religious discrimination, there were times when the Sultans of Delhi Sultanate showed tolerance towards other culture and religion. Sultan such as Alauddin Khilji and Muhammad Bin Tughlaq promoted policies that integrated Hindu culture and administration into their Islamic governance. Religious conversions under force were not uncommon during the Sultanate.

Caste and Social Hierarchy: The caste system prevailed even during the Sultanate period and the Muslim ruling elites respected this existing Hindu social structure but did not integrated it with them. The people of lower caste continued to face discrimination by both upper Hindus and Muslim landlords.

Women's Rights: Women especially Hindu women during the Sultanate period faced several restrictions and the practice of "Purdah" that is the seclusion of women became widespread especially among the women of upper-class Hindu and Muslim, however some Muslim women in the royal courts held influential position and enjoyed relatively more freedom compared to Hindu women.

Human Rights in Mughal Period

Religious tolerance and Akbar's reforms: Mughal Empire under the reign of Akbar (1556-1605) was known for its liberal policies and religious tolerance. Akbar abolished the Jizya tax on non-Muslims also allowed Hindus and other religious groups to serve in high positions in the royal court. Akbar also introduced a new religion called Din-i-Ilahi which aimed at promoting harmony among different religions, Akbar's policies promoted religious freedom and aimed at reducing religious discrimination.

Continued Discrimination under Later Mughal rulers:

Mughal rulers after Akbar such as Aurangzeb (1658-1707) reintroduced discriminatory policies like the Jizya tax on non-Muslims and imposed highly strict Islamic laws which led to increased religious persecution and marginalization of non-Muslim communities particularly Hindus and Sikhs.

Social and Economic Inequality:

The Mughal Empire which was a highly centralised empire promoted art, culture, and trade but there was a stark divide between the rich and the poor. The Zamindari system of the Mughal Empire often led to exploitation of peasants who had to face economic hardships and had little say in governance.

Women's rights:

The rights of women were very complex in the Mughal Empire where some women of the royal family and elite class had access to education and political influence such as NurJahan, the wife of Jahangir but ordinary women faced several restrictions in both Hindu and Muslim societies. The practice of purdah became more prevalent and also the practices like Sati and child marriages continued in Hindu society also Muslim women could not inherit property under the Islamic law.

1.10 SUMMARY

The idea of human rights in ancient and medieval India was formed by religious, social and political developments of that period. Though the modern concept of human rights didn't exist but many early practices aligned with the principles of modern day justice, equality and individual dignity.

Ancient India: The earliest notion of human rights in India can be traced back to the period of Buddhism and Jainism in 6th century BC where both Gautama Buddha and Mahavira emphasized on non-violence, compassion and equality which reflect the idea of modern day human rights. Their teaching aimed towards the protection of all human beings regardless of their caste, gender, status or religion the idea was that every person deserves respect and dignity.

Gupta Period: The Gupta Empire from 4th to 6th century CE was known for its advancements in the field of science, art and governance it also introduced the concept of justice, welfare, religious tolerance which can be linked to modern day human rights. However, this period also witnessed the strict implementation of the caste system and growing restrictions on the rights of women creating a society where equality was very far.

8th to 12th century: Before the medieval period the caste system and feudalism shaped the society which led to inequality and discrimination towards the lower castes and women. Religious tolerance was practiced in some regions but the general social structure did not promote equal rights for all.

Delhi Sultanate: The Delhi Sultanate introduced the Islamic rule in India which further brought a new system of governance influenced by Islamic laws. While religious tolerance did exist during these periods but non-Muslims did face discrimination like the practice of paying the Jizya tax. The caste system continued to exist alongside the Islamic rule maintaining social hierarchies even in this period.

Mughal Empire (16th to 18th century CE): In the Mughal rule under the reign of Akbar there were efforts to promote religious harmony and tolerance and to reduce discrimination on the basis of religion in this effort Jizya was abolished by Akbar and Hindus were recruited in the

government and in high positions but the rights of women continued to be restricted though some royal women did held positions of influence.

1.11 GLOSSARY

1. **Ahimsa:** A principle of non-violence central to both Buddhism and Jainism, promoting the protection of all living beings.
2. **Caste System:** A hierarchical social structure in India that classified people into different groups based on their birth, significantly impacting social mobility and rights.
3. **Jizya:** A tax levied on non-Muslims in Islamic states, including under the Delhi Sultanate and Mughal Empire, which symbolized religious discrimination.
4. **Dhimmi:** Non-Muslims living in an Islamic state who were allowed to practice their religion but had to pay the jizya tax.
5. **Sati:** A controversial practice where a widow was burned alive on her husband's funeral pyre, prevalent during medieval times.
6. **Purdah:** The practice of secluding women from public observation by means of curtains, clothing, or confinement, common in both Hindu and Muslim communities.
7. **Feudalism:** A social system where peasants were bound to a landowner, who offered them protection in return for their labor, limiting their rights.
8. **Bhakti Movement:** A religious movement during medieval India that focused on personal devotion to deities, often bypassing caste-based rituals and promoting equality.
9. **Din-i Ilahi:** A syncretic religion introduced by Akbar the Great, aimed at blending elements of different religions to promote harmony.
10. **Religious Tolerance:** The acceptance and allowance of different religious practices and beliefs, which varied significantly during different periods of Indian history.

1.12 SELF ASSESSMENT QUESTIONS (SAQ)

MCQ'S

1. According to Manusmriti, what was the status of women in terms of independence?
A) Women had full legal independence
B) Women could become priests and rulers
C) Women were to be dependent on their father, husband, or son
D) Women had equal inheritance rights as men

Answer: C) Women were to be dependent on their father, husband, or son

2. During the Gupta period, which of the following was most characteristic in terms of human rights?

- A) A rigid enforcement of Manusmriti
- B) Religious tolerance and support for education
- C) Suppression of all religions except Hinduism
- D) Women's voting rights

Answer: B) Religious tolerance and support for education

3. The caste system, as elaborated in Manusmriti, was based primarily on:

- A) Economic status
- B) Physical appearance
- C) Birth and occupation
- D) Military service

Answer: C) Birth and occupation

4. Which Mughal ruler actively enforced Islamic laws that were considered restrictive to certain human rights, especially for non-Muslims?

- A) Akbar
- B) Humayun
- C) Aurangzeb
- D) Jahangir

Answer: C) Aurangzeb

5. What was one key human rights-related feature of the early Vedic period (before Manusmriti's codification)?

- A) Gender equality and access to education for women
- B) Ban on animal sacrifice
- C) Universal religious freedom
- D) Elimination of social hierarchies

Answer: A) Gender equality and access to education for women

SAQ'S

1. What rights did women have in the early Vedic period?
2. How did the Manusmriti view the role of women in society?
3. Explain how the caste system impacted human rights during the Gupta period.
4. What were the contributions of Buddhism and Jainism to the concept of human rights in ancient India?
5. What was the religious tolerance and Akbar reforms in mugalperiod?

TRUE AND FALSE

1. The Manusmriti allowed women to inherit property equally with men.
False
2. Akbar was known for promoting religious tolerance and interfaith dialogue.
True
3. In the Gupta period, education and intellectual freedom were encouraged.
True
4. In the later Vedic period, women's rights improved significantly.
False
5. Aurangzeb abolished all religious taxes and promoted equal rights for all religions.
False

TERMINAL QUESTIONS AND MODEL QUESTIONS

1. How did the Bhakti movement challenge the traditional caste system and promote early concepts of equality and human rights in medieval India?
2. Evaluate the role of feudalism in medieval India in shaping the rights of peasants and the lower classes. How did it limit their access to justice and equality?
3. Compare and contrast the human rights situation during the Gupta period with that of the Mughal period. How did religious policies shape the rights of different communities?
4. Explain the role of caste and gender discrimination in shaping the social hierarchy in medieval India. How did these forms of discrimination affect individual freedoms?
5. What were the key human rights challenges faced by lower castes and women during the Sultanate and Mughal periods? How did rulers' policies exacerbate or alleviate these challenges?

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UNIT 2

HUMAN RIGHTS AND SOCIAL MOVEMENTS OF THE 19TH AND THE EARLY 20TH CENTURY

STRUCTURE

2.1 INTRODUCTION TO HUMAN RIGHTS IN MODERN TIMES

2.2 OBJECTIVES

2.3 RELEVANCE

2.4 THE ROLE OF RENAISSANCE IN EUROPE AND ITS CONNECTION TO HUMAN RIGHTS

2.5 THE AMERICAN REVOLUTION AND ITS IMPORTANCE FOR HUMAN RIGHTS

2.6 THE FRENCH REVOLUTION AND ITS IMPORTANCE FOR HUMAN RIGHTS

2.7 THE FRENCH REVOLUTION AND WOMEN'S RIGHTS

2.8 THE INDIAN RENAISSANCE AND ITS RELATION TO BRITISH IMPERIALISM

2.9 THE INDIAN RENAISSANCE AND HUMAN RIGHTS

2.10 THE ROLE OF BRAHMO SAMAJ AND ARYA-SAMAJ IN HUMAN RIGHTS

2.11 THE ROLE OF THE ALIGARH MOVEMENT AND OTHER OTHER MUSLIM MOVEMENTS IN INDIA FOR HUMAN RIGHTS

2.12 SOCIAL REFORM MOVEMENTS IN THE SIKH COMMUNITY (19TH AND THE 20TH CENTURY)

2.13 SOCIAL REFORM MOVEMENTS IN THE PARSI COMMUNITY (19TH AND EARLY 20TH CENTURY)

2.14 CONTRIBUTION OF MAHATMA GANDHI FOR THE UPLIFTMENT OF THE DEPRESSED CLASSES

2.15 CONTRIBUTION OF JYOTIBAPHULE FOR THE UPLIFTMENT OF THE DEPRESSED CLASSES

2.16 CONTRIBUTIONS OF DR. B.R. AMBEDKAR FOR THE UPLIFTMENT OF THE DEPRESSED CLASSES

2.17 SUMMARY

2.18 GLOSSARY

2.19 SELF ASSESSMENT QUESTIONS (SAQ)

2.20 REFERENCES

2.1 INTRODUCTION

Human rights are some basic rights and freedoms that are entitled to every person simply on the grounds of being a human being. These rights are universal in nature meaning that they apply on everyone regardless of their nationality, race, caste, gender, religion or color. These rights are inalienable in nature which means they cannot be taken away except in specific situation and that too according with the process of law. With the arrival of Globalization in modern times and world becoming more interconnected the concept of human rights has gained significant importance. The need to protect dignity and freedom of individual has become very crucial. These human rights ensure that people live a life with dignity, equality and freedom from fear. They protect people from discrimination, violence and injustice, they create conditions where people can express themselves freely without any constraints and have access to education, healthcare and other basic needs.

2.2 OBJECTIVES

After reading this unit you will be able to understand

- Understand the role of 19th- and early 20th-century social movements in shaping human rights in India.
- Analyze contributions of key reformers like Raja Ram Mohan Roy and Jyotiba Phule to caste and gender equality.
- Examine the influence of global events like the Renaissance and French Revolution on Indian human rights movements.
- Explore how social movements addressed caste, gender, and religious inequalities.
- Assess the contributions of Gandhi and Ambedkar in promoting human rights for marginalized groups.
- Without any constraints and have access to education, healthcare and other basic needs.

2.3 RELEVANCE

Human rights are important in many aspects of our lives today. They are important as they provide foundation for a fair and just society and in modern day democracies human rights guide the governments.

Human rights play a significant role in addressing global problems such as poverty, inequality, discrimination and environmental degradation. For an example the right to education can help us strike out poverty by making people skilled by which they can improve their lives in a similar way the right to clean and safe environment is becoming more important seeing the adversity of climate change.

Human rights also help us in promotion of international peace and cooperation when different countries respect human rights then they are less likely to engage in conflict and will work together to solve global problems. In times of war and crisis human rights serves as guidelines for protecting vulnerable population and ensuring humanitarian aid is being provided where and when it is needed.

Hence human rights are crucial for creating a world where everyone has the opportunity to live freely and equally contributing to both personal and societal growth.

2.4 THE ROLE OF RENAISSANCE IN EUROPE AND ITS CONNECTION TO HUMAN RIGHTS

The Public Information Officer should check whether the The period of 14th century in Europe marked the beginning of the Renaissance it was a period of cultural, artistic and intellectual revival and marked a shift from the Middle Ages to modern times and this period also emphasized upon the importance of human reasoning, individualism and critical thinking. The thinkers of this period started to question the traditional authority and concentrated on human potential and achievements.

The Renaissance played a vital role in modelling modern day ideas about human rights. This period of Renaissance focused on individual dignity and the value of each person laid the foundation for later ideas of equality and freedom. For an example, thinkers like Erasmus and other upheld the idea that all human beings had worth and should be treated with respect, regardless of their status or background.

The period of Renaissance also ignited movements towards freedom of thought and expression which are key features of modern day human rights. Martin Luther and John Calvin were prominent figures of the Protestant Reformation, which occurred during the time of Renaissance; Martin Luther challenged the authority of the Catholic Church with his 95 Theses which advocated for religious freedom and personal interpretation of the Bible. John Calvin further expanded these ideas by promoting a more direct relationship between the individuals and the God. Both Luther's and Calvin's efforts reduced the Church's control over individual faith, which contributed to broader the ideas of freedom, equality and individual rights. By challenging the supremacy of the Church and traditional authorities, it opened the door for more open discussions, debate and the development of democratic values that later influenced the fight for human rights.

In summary, the period of Renaissance helped to inspire the modern concept of human rights by promoting individual dignity, freedom of thought and expression and the value of human life. These ideas in later times influenced major world events like the American Revolution and the French Revolution which shaped the framework of modern day human rights.

2.5 THE AMERICAN REVOLUTION AND ITS IMPORTANCE FOR HUMAN RIGHTS

The American Revolution which happened from 1775 to 1783 was a crucial moment in the world history which contributed meaningfully for the development of human rights. The colonists in America revolted against the British rule, demanding independence and the right to govern themselves. The important principles behind this revolution were liberty, equality and justice for all.

The most important result of this American Revolution was the drafting of the **Declaration of Independence** in 1776, this document emphasized that “all men are created equal” and have certain “inalienable rights”, including the life, liberty and the pursuit of happiness, these ideas were revolutionary as they argued that people had inherited certain rights that the government should not violate.

The American Revolution also resulted in the creation of the **United States Constitution** and the **Bill of Rights** these documents further laid the foundation of a government based on the protection of individual rights such as freedom of speech and expression, religion and the right to a fair trial.

In a wider context the American Revolution inspired other nations and movements around the globe, for demanding their rights and freedom making it a key event in the development of global human rights.

2.6 THE FRENCH REVOLUTION AND ITS IMPORTANCE FOR HUMAN RIGHTS

The French revolution which began in the year 1789 was a significant event that not only reformed France but also the understanding of human rights. The revolutionaries of the movement wanted to overthrow the absolute monarchy and establish a society based on the idea of liberty, equality and fraternity.

An important achievement of this revolution was the **Declaration of the Rights of Man and of the Citizen** (1789). This document declared that all men are born free and equal in rights and emphasized upon the importance of individual freedoms such as freedom of speech, religion and

the freedom to participate in government. This document also declared that sovereignty belongs to the people and not to the rulers or monarch.

The French Revolution challenged the traditional hierarchy and recognised the idea that rights are not granted by kings or church but are inherited to all humans. This revolution was an important step in development of modern day human rights as it promoted the concepts of democracy, equality before law and the protection of personal freedoms.

The French Revolution also inspired other movements worldwide for equality, liberty, fraternity and freedom making it a significant event in the history of human rights. It highlighted the importance of confronting oppressive systems to ensure that the basic rights of a person are upheld.

2.7 THE FRENCH REVOLUTION AND WOMEN RIGHTS

Although the French Revolution supported the ideas of liberty, equality and fraternity, these principles only applied to men, women were majorly excluded from the political and social changes brought by this revolution. The Declaration of the Rights of Man and of the Citizen did not extend its rights and freedoms to women for an example; women were not given the right to vote or to hold political office and their social and legal status remained inferior to men. Some women, like Olympe de Gouges protested against this exclusion and practice and she wrote the Declaration of the Rights of Woman and the Female Citizen (1791) which demanded equal rights for women. However, her efforts were ignored and later she was persecuted for her beliefs.

This segregation of women highlighted a major limitation of the revolution's impact on human rights. While the revolution promoted the idea of individual freedom and equality it failed to address the rights of half of the population (women). It took many more years of struggle for women to get their rights that were earlier denied to them.

In this context, the French Revolution was a significant moment for the development of human rights, but it also exposed the limitations and challenges in achieving true equality for all.

2.8 THE INDIAN RENAISSANCE AND HUMAN RIGHTS

The 19th century witnessed the Indian Renaissance which was a period of cultural, social and intellectual awakening in India; it was deeply influenced by British imperialism which had deep impact on the society of India. The British rule brought with it the western education, ideas of democracy and exposed the Indians to European thoughts which help shaping the Indian Renaissance in many ways.

However, on one hand the British imperialism created the conditions of poverty, exploitation and social oppression in India which inspired Indian thinkers and reformers to address these

injustices. On the other hand, the arrival of western ideas such as liberty, equality and human rights with the help of British Education helped Indian leaders to recognize the need for a social reform. Reformers like **Raja Ram Mohan Roy**, often regarded as the father of Indian Renaissance used these ideas to fight against the social evils like sati, caste discrimination, child marriage and tried to promote education especially for women.

Hence the Indian Renaissance was a response to British imperialism and a movement that was inspired from western ideas to push for social and cultural reforms and also it had the goal of reviving and preserving India's very own rich cultural and spiritual heritage.

2.9 THE INDIAN RENAISSANCE AND HUMAN RIGHTS

In the early development of human rights in India the Indian Renaissance played a crucial role. Many reformers like **Raja Ram Mohan Roy**, **Ishwar Chandra Vidyasagar** and **Swami Vivekananda** worked hard to promote human dignity and social equality. They fought against the oppressive traditions, such as discrimination on the basis of caste and gender. They focussed on the importance of education and freedom of thought.

Raja Ram Mohan Roy's efforts on abolishing the evil practice of Sati improved the lives of women he also tried to improve the rights of women which were early signs towards gender equality. Ishwar Chandra Vidyasagar worked towards widow remarriage and female education which was essential in promoting the rights of women. All these efforts can be seen as an early expression of human rights which aimed to create a more just and equal society.

Also the leaders of the Indian Renaissance called for political rights and self-determination which later laid the groundwork for India's struggle for independence. These leaders believed in the inherent dignity and right of every individual, a concept that resonated with the global rights movement.

Altogether, the Indian Renaissance marked the beginning of India's journey towards recognizing and protecting human rights it combined the ideas introduced by British imperialism with a commitment to reform the Indian society.

2.10 ROLE OF BRAHMO-SAMAJ AND ARYA-SAMAJ IN HUMAN RIGHTS

Brahmo Samaj

The BrahmoSamaj was founded by Raja Ram Mohan Roy in 1828. It played an important role in advocating social reforms and promotion of human rights in India. It was a movement that aimed at reforming religious and social practices within the Hindu society. Key contributions to human rights from the BrahmoSamaj include:

1. Abolition of Sati: Raja Ram Mohan Roy was a prominent leader who strongly revolted against the inhumane and evil practice of sati that was the burning of widows, and due to his efforts it led to its abolition in the year 1829 this was a major step towards the protection of rights of women.

2. Promotion of Women's Rights: The BrahmoSamaj highlighted the need for education of women and gender equality. The BrahmoSamaj also fought for widow remarriage, the right of woman to choose its own partner and to end the practice of child marriage, all of this contributed to broader human rights of women in India

3. Religious Freedom and Equality: BrahmoSamaj worked towards the promotion of the idea of religious tolerance and freedom of conscience which aligned with the idea of respecting individual rights. It also prohibited caste-based discrimination and also promoted the notion that all human beings are equal in all capacity.

AryaSamaj

The **AryaSamaj** which was founded by **Swami DayanandaSaraswati** in 1875 had a meaningful impact on promotion of human rights through their social reforms in India. They laid emphasis on individual dignity and equality. The key contributions of AryaSamaj in the field of human rights are:

1. Caste Reform: The AryaSamaj rejected the authority of caste system and prohibited this any discrimination on the basis of caste. It promoted the idea of equality of all human beings regardless of their caste, gender, religion. This reform advocated for the rights of the marginalized section of the society.

2. Promotion of Education: The AryaSamaj emphasized on the right to education for all especially the women and lower caste. It established schools and colleges that provided modern education which resulted in the betterment of women and marginalized communities.

3. Religious and Social Reform: AryaSamaj worked towards eliminating superstitions and religious practices that oppressed individuals such as idol worship and rituals that exploited the lower castes; this was in line with the principle of freedom of belief and protection from exploitation.

4. Women's Rights: Just like the BrahmoSamaj, the Aryan Samaj also participated in promotion rights of women, they supported widow remarriage, fought against the practice of child marriage and they encouraged women to participate in public sphere and promoted the

Conclusion

Both the BrahmoSamaj and the AryaSamaj played an important role in promotion of human rights in India. They struggled against the deep-rooted social injustices such as caste discrimination and gender equality and both promoted the ideas of equality, individual freedom and human dignity all together aligning with the basic principles of human rights. Both these movements laid the groundwork for the modern human rights in India by challenging oppressive traditions and advocating for a more just and equal society.Challenging oppressive traditions and advocating for a more just and equal society.

2.11 ROLE OF THE ALIGARH MOVEMENT AND OTHER MUSLIM MOVEMENTS IN INDIA FOR HUMAN RIGHTS

Aligarh Movement

The **Aligarh Movement** which was initiated by **Sir Syed Ahmed Khan** in the late 19th century was one of the most significant Muslim reform movements in India, the Aligarh movement aimed for the social, educational and economic betterment of the Muslim community after their decline following the post British colonial takeover after the 1857 revolt. The contributions of the Aligarh movement for the human rights particularly within Muslim community include:

1. Promotion of Education: Sir Syed Ahmed Khan believed that education was the key to progress and empowerment of any community. Under this movement the **Mohammedan Anglo-Oriental College** was established in 1875 which later became the **Aligarh Muslim University**. The movement promoted modern education and the idea of equal educational opportunity an important human right which was previously neglected in the Muslim community.

2. Advocacy for Social Reform: The Aligarh Movement inspired the Muslim community to embrace modern education, knowledge and rational thinking alongside retaining the ethical values of Islam. Sir Syed Ahmed Khan focused on the need for Muslim community to reform their outdated customs and focus on progress and individual rights, including the freedom of thought and expression.

3. Religious Tolerance: The Aligarh Movement primarily emphasized on the betterment of Muslims but Sir Syed Ahmed Khan also advocated for religious tolerance and harmonious coexistence between different religious communities. Sir Syed also believed in the protection of rights of individual regardless of religious affiliation which is a fundamental aspect of human rights.

4. Women's Education: The Aligarh Movement primarily focused on men's education but it also planted seeds for future reforms for women's education which became a significant issue for Muslim reformers in the early 20th century. Educating women was seen as a pathway to improving the overall state of the community.

Deoband Movement

The **Deoband movement** that began in 1866 was another significant reform movement within the Muslim community that originated in Deoband of Uttar Pradesh. It focused primarily on religious matter but it also indirectly contributed in the field of human rights by:

1. Religious Education: The Deoband Movement encouraged religious education through the establishment of the **Darul Uloom Deoband** which was an Islamic seminary that focused on individual responsibility and the importance of Islamic values in daily life. By imparting education through this movement it contributed for the empowerment and promotion of right to education and religious freedom of the Muslim community.

2. Political Awareness: The Deoband Movement was more conservative in nature as compared to the Aligarh Movement. The Deoband movement played a crucial role in raising political awareness among Muslims, some Deobandi scholars actively participated in the Indian independence movement supporting the right of self-determination and political freedoms for Indians under British rule.

Khilafat Movement

The **Khilafat Movement** that existed from 1919 to 1924 was a significant Muslim political movement that aimed at protecting the rights of the Ottoman Caliphate after the World War I. Its main focus was on protecting the Caliphate but the movement also had broader implications for human rights:

1. Political Rights and Independence: The Khilafat Movement brought Indian Muslims into the struggle for political rights and demanding independence from British colonial rule, it marked a period where Hindus and Muslims collaborated in India's struggle for freedom which emphasized on the universal rights such as right to self-determination and political freedom.

2. Religious Rights: The Khilafat Movement encouraged the protection of religious symbols and institutions, highlighting the importance of religious freedom as an important human right. It brought attention on the rights of Muslims not just in India, but worldwide emphasizing on the right to practice their religion freely and without foreign or outside interference.

Conclusion

Muslim Movements such as the Aligarh Movement, Deoband Movement and Khilafat Movement all together played a crucial role in promoting human rights within the Indian society. These movements emphasized on education, social reform and political empowerment all these are important components of human rights. Although all these movements had different goals

and ideologies but they contributed significantly for the upliftment of the Muslim community and laid the groundwork for their future struggles for equality, education and political rights.

2.12 SOCIAL REFORMS MOVEMENT IN THE SIKH COMMUNITY (19TH AND EARLY 20TH CENTURY)

Sikh community in the 19th century saw significant changes mainly driven by the Singh Sabha Movement which was founded in 1873. This particular movement aimed at reviving Sikhism, which was perceived to be losing its identity due to the British influence and the rise of Christian missionaries.

The key objectives of the Singh Sabha Movement were:

Restoration of Sikh practices by re-establishing traditional Sikh beliefs and customs.

The movement also focused on imparting modern education and founding institutions to educate Sikh youth in both religious and secular subjects.

The Singh Sabha Movement aimed to prevent Sikhs from converting into Christianity or other faiths trying to preserve the religious identity of Sikhs.

The Singh Sabha Movement advocated against caste discrimination and superstitious practices focusing primarily on justice and equality as focused in the teachings of Sikhism. Practices focusing primarily on justice and equality as focused in the teachings of Sikhism.

2.13 SOCIAL REFORM MOVEMENTS IN THE PARSI COMMUNITY (19TH AND EARLY 20TH CENTURY)

The Parsi community even though being very small in number played a vital role in Indian social reforms during the 19th century. Some prominent figures like Dadabhai Naoroji, Pheroze Shah Mehta and Behramji Malabari gave their efforts in social and political reforms.

Some of the important reforms in the Parsi community include:

- **Emphasis on Education:** The Parsi community was among the first to embrace Western education, they also established many schools and institutions to provide modern education to their youth population as a result they had a significant presence in commerce and public life.
- **Women's Rights:** The Parsi community gave efforts to improve the status of women, emphasizing on issues like widow remarriage and female education. Social reformers like Behramji and Malabari advocated for the rights of women and pushed for legal changes in child marriages and widowhood practices.

- **Religious and Social reforms:** The Parsi community thought of how to preserve their religious practices while embracing modernity. Some reformers even called for revising traditional customs and practices that no longer aligned with modern ideas and values.

Both the Sikh and the Parsi community tried to balance tradition with modernization while improving the socio-economic status of their community member emphasizing on education, equality and justice.

In a way, these social reform movements in both of the communities contributed to advancing the human rights of their community members by advocating for equality, education, gender justice, and religious freedom, laying the groundwork for the broader human rights struggles that followed.

2.14 CONTRIBUTION OF MAHATMA GANDHI FOR THE UPLIFTMENT OF THE DEPRESSED CLASSES

Mahatma Gandhi gave efforts for the upliftment of the oppressed and marginalised section of the society particularly the “Depressed Classes”, to whom he referred as “Harijans” or “Children of God”. His key contributions for the betterment of depressed classes were:

- **Advocacy for Social Equality:** Mahatma Gandhi believed in the equality of all individuals regardless of their caste. He also believed in the inherent dignity of all. Mahatma Gandhi gave efforts for elimination of untouchability which he viewed as a deep social evil.
- **Harijan Movement:** Mahatma Gandhi in the year 1932 started the HarijanSevakSangh which focused on the welfare of the depressed classes. Gandhi travelled across India to spread awareness about the need to abolish untouchability.
- **Temple Entry Movement:** Mahatma Gandhi saw discrimination on the basis of caste and religion as a violation of one’s basic human dignity and spiritual freedom, in this case Mahatma Gandhi supported the right of harijans to enter in the temples which was denied to them.
- **Economic and Educational supports:** Mahatma Gandhi emphasized heavily on education and economic empowerment of the depressed classes. He encouraged for the development of cottage industries, self-reliance and vocational education for the upliftment of them. Mahatma Gandhi’s efforts are very closely aligned with the right to equality, freedom from discrimination and the right to dignity (Articles 1 and 2 of the Universal Declaration of Human Rights - UDHR), Mahatma Gandhi struggled to make sure that the depressed classes can enjoy the same respect and rights as others in society.

2.15 CONTRIBUTION OF JYOTIBAPHULE FOR THE UPLIFTMENT OF THE DEPRESSED CLASSES

Jyotiba Phule was one of the prominent figures, who raised their voice for the rights of the lower castes and women in India. JyotibaPhule's contribution includes:

- **Education for all:** JyotibaPhule had believed that education was the key to improve the conditions of the oppressed and marginalised classes. JyotibaPhule along with his wife SavitribaiPhule established the first school for girls and for the children of lower caste in 1848.
- **Abolition of Caste System:** JyotibaPhule was against the evil of caste system and strongly opposed the authority of caste system; he saw it as an instrument of oppression. JyotibaPhule wrote a book named Gulamgiri (Slavery) where he examined the social hierarchy that oppressed the lower castes.
- **Satyashodak Samaj:** JyotibaPhule founded an organization named Satyashodak Samaj in 1873 which promoted the social rights and the equal treatments of lower castes. The SatyashodakSamaj worked against the caste based discrimination and promoted the idea of self-respect and dignity for the marginalised.
- **Women's Rights:** JyotibaPhule strongly supported the rights of women and advocated for widow remarriage and opposed the practice child marriage.
- JyotibaPhule's efforts were aligned with the modern day ideas of right to education, equality and freedom from exploitation. JyotibaPhule's efforts aimed towards breaking barriers of discrimination on the basis of caste and ensuring that all individuals, regardless of their caste or gender can exercise basic human rights.

2.16 CONTRIBUTION OF DR B.R. AMBEDKAR FOR THE UPLIFTMENT OF THE DEPRESSED CLASSES

Dr.B. R. Ambedkar was a prominent figure who struggled for the rights of the depressed classes particularly dalits, he fought against the caste system to dismantle it by political and legal means. His key contributions were:

- **Constitutional Safeguards:** Being the chief architect of the Constitution of India, Dr. Ambedkar enshrined the principles of equality, non-discrimination and social justice into law which ensured that the rights of marginalised sections were guarded.
- **Political Representation:** Dr.Ambedkar believed that political power was essential for the upliftment and empowerment of the depressed classes so he fought for separate electorates for Dalits ensuring their representation in the political sphere.
- **Education and Legal Reforms:** Dr.Ambedkar himself rose to a rank of such high esteem due to his education and then he further championed the rights of lower castes to access education. He advocated for the policy of reservation to ensure their participation in education and employment, this policy of reservation aligned with the ideas of affirmative actions.

- **Campaign against Untouchability:** Dr.Ambedkar in 1927 led a movement called Mahad Satyagraha for allowing untouchables to access public resources like water tanks, wells, which were earlier denied to them because of being of lower caste.

Dr.Ambedkar's work reflects the concepts of right to equality before the law, political participation and freedom from discrimination all of these are ideas of Universal Declaration of Human Rights in the Articles 7, 21 and 2. Dr.Ambedkar's efforts led to formation of a legal framework that protects the rights of dalits that directly aligned with the concept of human rights, ensuring that the marginalised sections of the society are treated with dignity.

Each of these scholars - Mahatma Gandhi, JyotibaPhule and Dr. B.R. Ambedkar all played a crucial role in promotion of rights of depressed classes. Their work can be seen as a struggle for human dignity, equality and freedom from oppression all of these are central ideas of modern human rights.

2.17 SUMMARY

In the 19th and early 20th century, Indian society witnessed several significant social reform movements that aimed at improving conditions of the marginalised sections; these movements also included challenging discriminatory practices. These movements which were carried forward by leaders from different communities addressed issues such as caste discrimination, gender inequality and lack of access to education. These reform movements such as the BrahmoSamaj, AryaSamaj and SatyashodakSamaj and the efforts of Sikh and Parsi community played an important role in reshaping Indian society.

The contributions of scholars like Mahatma Gandhi, JyotibaPhule and Dr.Ambedkar were very important in the betterment of depressed classes promoting social equality, dignity and their human rights. All these scholars fought against the evil practice of untouchability and promoted education for all and by legal means they provided political representation for the marginalised groups.

The core of all these movements was the promotion of human rights principles such as the right to equality, freedom from discrimination and dignity for all individuals which later became part of Universal Declaration of Human Rights.

2.18 GLOSSARY

1. **Depressed Classes:** A term used in British India for communities subjected to social discrimination, particularly Dalits or untouchables.
2. **Brahmo Samaj:** A reform movement founded by Raja Ram Mohan Roy in 1828, advocating for the abolition of practices like Sati and promoting social justice.

3. **Arya Samaj:** A Hindu reform movement founded by Swami Dayanand Saraswati in 1875 that emphasized Vedic teachings, equality, and social reforms.
4. **Satyashodhak Samaj:** Founded by Jyotiba Phule in 1873, this movement sought to improve the condition of lower castes and women, advocating for education and social equality.
5. **Harijan:** A term used by Mahatma Gandhi to refer to the "children of God," referring to the untouchables or Dalits, aimed at removing caste-based discrimination.
6. **Untouchability:** The practice of ostracizing a group by segregating them from the rest of society based on caste, particularly applied to Dalits.
7. **Singh Sabha Movement:** A Sikh revivalist movement started in 1873 to reform Sikh society and protect its religious identity.
8. **Human Rights:** Basic rights and freedoms to which all humans are entitled, including equality, freedom from discrimination, and the right to dignity.

2.19 SELS ASSESSMENT QUESTION'S (SAQ)

MCQ's

1. Who founded the Brahmo Samaj to reform Hindu society?

- A) Swami Vivekananda
- B) Raja Ram Mohan Roy
- C) Ishwar Chandra Vidyasagar
- D) Bal Gangadhar Tilak

Answer: B) Raja Ram Mohan Roy

2. What was the main aim of the Arya Samaj movement?

- A) Promote Western education
- B) Support British rule
- C) Revive Vedic values and oppose caste discrimination
- D) Encourage industrialization

Answer: C) Revive Vedic values and oppose caste discrimination

3. Who played a major role in the abolition of Sati?

- A) Annie Besant
- B) Mahatma Gandhi
- C) Raja Ram Mohan Roy
- D) Rabindranath Tagore

Answer: C) Raja Ram Mohan Roy

4. The Aligarh Movement was mainly focused on:

- A) Promoting female education
- B) Reforms in Muslim education and society
- C) Organizing peasant uprisings
- D) Ending the zamindari system

Answer: B) Reforms in Muslim education and society

5. Which reformer campaigned for widow remarriage and women's education?

- A) Dayananda Saraswati
- B) Jyotirao Phule
- C) Ishwar Chandra Vidyasagar
- D) Lala Lajpat Rai

Answer: C) Ishwar Chandra Vidyasagar

TRUE OR FALSE

1. The Brahmo Samaj supported the practice of idol worship.

False

2. Jyotirao Phule fought for the rights of lower castes and women.

True

3. The Indian National Congress was founded in the 19th century.

True

4. Sati was officially abolished during British rule in 1857.

False (*It was abolished in 1829*)

5. The early women's rights movements in India had no connection to social reform movements.

False

SAQ'S

1. What was the main goal of the Brahmo Samaj?

2. Name one key contribution of Ishwar Chandra Vidyasagar to social reform.

3. Who started the Satyashodhak Samaj, and why?

4. What was the purpose of the Aligarh Movement led by Sir Syed Ahmed Khan?

5. How did the social reform movements help in the growth of human rights in India?

TERMINAL QUESTIONS

1. Describe the role of the Brahmo Samaj and Arya Samaj in the social reform movements of the 19th century. How did they relate to human rights principles?
2. How did Mahatma Gandhi's approach to the upliftment of the depressed classes contribute to the promotion of equality and dignity?
3. What were the main objectives of the Singh Sabha movement in the Sikh community, and how did they relate to the right to religious freedom?
4. Analyze the contributions of Jyotiba Phule in challenging caste discrimination and promoting social justice. How can his efforts be seen as advancing human rights?

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UNIT 3

ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN INDIA

3.1 INTRODUCTION

3.2 LEARNING OUTCOMES

3.3 ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN THE CONSTITUTION OF INDIA

3.4 ORIGINAL APPROACH TO ENFORCING ECONOMIC, SOCIAL AND CULTURAL RIGHTS

3.5 PUBLIC INTEREST LITIGATION AND EXPANSION OF ARTICLE 21

3.6 SUMMARY

3.7 SELF ASSESSMENT QUESTIONS (SAQ'S)

3.1 INTRODUCTION TO HUMAN RIGHTS IN MODERN TIME

The enforcement of economic, social and cultural rights (ESCRs) in India has changed significantly over the years. The Constituent Assembly, which drafted the Constitution of India (1950), separated these rights, for the most part, from civil and political rights. ESCRs were not placed in Part III (“Fundamental Rights”) but in Part IV (“Directive Principles of State Policy”). As a result, ESCRs were not originally enforceable in courts. However, beginning in the 1980s, the Indian Supreme Court issued a series of judgments in which it interpreted Article 21 (the right to life and personal liberty) not only to protect against the arbitrary taking of life but also to encompass a broader right to “live with dignity.” This brought various Directive Principles of State Policy within the ambit of Article 21 and made them enforceable in court.

This module will introduce students to the Constituent Assembly debates and Constitutional provisions that address ESCRs. It will also survey Indian Supreme Court case law ESCRs, noting how the rise of public interest litigation (PIL) in the 1980s and 90s changed how these rights are interpreted and enforced under the Constitution.

3.2 LEARNING OUTCOMES

- After completing this module, students should know and understand:
- The Constituent Assembly debates and constitutional provisions on the economic, social and cultural rights.
- The original judicial approach to ESCRs.
- The advent of public interest litigation and the shift in ESCR interpretation and enforcement.

3.3 ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN THE CONSTITUTION OF INDIA

India gained independence from the British in 1947 and adopted its republican Constitution in 1950 after more than two years of debate within its Constituent Assembly.¹ Given the poverty and high degree of inequality in India, social and economic justice was a priority in the drafting of the Constitution. As Granville Austin has noted, the Indian Constitution is “first and foremost a social document,” as many of its provisions are “directly aimed at furthering the goals of the social revolution.”² Yet, the question of whether to include socio-economic rights in the Constitution was a matter of debate within the Constituent Assembly. Some members favored including socio economic provisions as justiciable rights – that is, rights that can be enforced in court. K.M. Munshi drafted the “Rights of Workers” and “Social Rights,” which included the right to a living wage and protections for women and children. Dr. B.R. Ambedkar, the Chairman of the Drafting Committee, favored a social scheme to nationalize all major industries that would take effect ten years after the Constitution was adopted.

In the end, the members of the Constituent Assembly took a middle path. Following the Irish model, they did not include justiciable socio economic rights in the Constitution but instead set forth a detailed list of Directive Principles of State Policy (DPSPs). These are non-binding guidelines intended to guide elected representatives towards improving socioeconomic conditions. DPSPs are explicitly non-justiciable. Article 37 of the Constitution states that they “shall not be enforceable by any court.” One of the reasons directive principles are non-justiciable is that they represent aspirational long-term goals of the state that are not suited for judicial review. For example, Article 38 (2) declares, “The State shall, in particular, strive to minimize the inequalities in income,” while Article 39 (1) requires the state “to direct its policy towards securing...that the citizens, men, and women equally, have the right to an adequate means of livelihood.”

Part III of the Constitution, entitled “Fundamental Rights,” includes, inter alia, the rights to life, liberty, and equality that courts may enforce under Articles 32 and 226. DPSPs were placed in

Part IV and, as discussed above, were made explicitly non-justiciable. DPSPs are non-justiciable because they represent aspirational long term goals of the state to be progressively utilized. The Constitution sought to give elected representatives the flexibility to pursue these goals gradually and in light of resource constraints, without having the courts interfering in their enforcement.

Some ESCRs, however, are found in both Parts III and Part IV of the Indian Constitution. Take, for example, the right to education. Article 45, which is a DPSP, provides, “The State shall endeavor to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.” Two fundamental rights in Part III also pertain to introduction. Article 29 states that no citizen may be denied admission into a state-run or state, race, caste or language. Article 30 grants all minorities the right to establish and administer their own educational institutions whether based on religion or language. Article 30 can also be viewed as a cultural right, as it grants minority groups the right to establish and administer their own educational institutions so that they may preserve their cultural heritage. Cultural rights provisions can also be found in Part IV of the Constitution. For instance, Article 43 requires the state to ensure that all workers are able to fully enjoy social and cultural opportunities and Article 51 A (f) obligates all citizens of India to value and preserve the composite culture and heritage of the nation. Thus, it would be an over simplification to claim that all ESCRs were originally non-justiciable some aspects of these rights are protected in Part III of the Constitution and can therefore be protected in Court.

LEARNING OUTCOMES

After completing this module, students should know and understand:

- The Constituent Assembly debates and constitutional provisions on the economic, social and cultural rights.
- The original judicial approach to ESCRs.
- The advent of public interest litigation and the shift in ESCR interpretation and enforcement.

3.4 ORIGINAL APPROACH TO ENFORCING ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Indian citizens may file writ petitions before the Supreme Court to obtain redress for violations of their fundamental rights in Part III of the Constitution. Article 32 empowers the Indian Supreme Court to grant a range of remedies. It provides that the Court may issue “directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari” as it deems appropriate in a given case. Article 32 also states that citizens may move the Supreme Court for the enforcement of a right through “appropriate proceedings.” This grants the Court some discretion to determine the procedure through which citizens may bring petitions alleging fundamental rights violations.³

In the Court's early jurisprudence, the phrase "appropriate proceedings" was construed narrowly to permit only those individuals whose rights had been directly infringed to bring suit. For instance, in *Charanjit Lal v. Union of India* (1951), the Court held that a shareholder of a company did not have standing under Article 32 to petition the Court to enforce a corporation's right to hold and dispose of property under Article 19(1)(f) of the Constitution.⁴ The Court noted that a corporation and its shareholders are separate entities and that therefore only the corporation could properly bring this claim.

Similarly, in *G.C. College Silchar v. Gauhati University* (1973), petitioners challenged a resolution by a Gauhati University's Academic Council to retain English and introduce the native language (Assamese) as the languages of instruction.⁵ The petitioners claimed that this resolution violated their rights under Articles 29 and 30 (allowing minorities to enroll in any educational institution of their choice and preventing the state from discriminating against minorities in academic admissions, respectively) of the Constitution. Prior to this Resolution, the university had used Bengali alongside English to help students understand the content of English-language lectures. However, even though one petitioner was a Bengali-speaking student, the Court found that "the impugned resolution does not presently affect the petitioners." Thus, it held that the petitioners lacked standing to file this petition.⁶ The result of these early cases was limit standing (or *locus standi*) under Article 32 to petitioners directly harmed by a disputed law. Only these individuals were permitted to petition the Court to redress violations of the fundamental rights enshrined in Part III of the Constitution.

3.5 PUBLIC INTEREST LITIGATION AND EXPANSION OF ARTICLE 21

In the early 1980s, the judiciary became much more accessible to the public, as the courts began to accept cases that concerned the rights of large swathes of the Indian population. In this period, the Supreme Court introduced important procedural and substantive innovations that greatly expanded its own jurisdiction and allowed ESCRs found in Part IV of the Constitution to be enforced in court.

The procedural innovations in this period created a new form of litigation commonly referred to as "public interest litigation" (PIL).⁹ The Court's most significant innovation was to relax standing requirements under Article 32. Moving away from the traditional view of standing – where petitioners had to show direct harm by an impugned law – the Court began to recognize standing for any member of the public who moved the court for relief on behalf of any "person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the Court for relief."¹⁰

The chief architect of this procedural revolution was Justice P.N. Bhagwati – one of the justices who joined the Court's timorous majority opinion in the *Habeas Corpus* case. In a 1984 speech delivered at Columbia Law School, Justice Bhagwati set out his views on standing, making the

case that procedural allowan NGO to file a writ petition on behalf of bonded laborers but also expanded the scope of its authority to conduct its own fact-finding and to keep the litigation formalism inherited from Anglo-American jurisprudence did not suit the Indian context.¹¹ He said, “[T]he main obstacle which deprived the poor and disadvantaged of effective access to justice wasthe traditional rule of standing...it effectively barred the doors of the Court...to large masses of people.”¹² In response to criticism of the Court’s “judicial activism,” Justice Bhagwati argued that it was very much the province of the judiciary to develop new remedies to tackle difficult social problems. In his words, “unorthodox and unconventional remedies” were needed to “initiative affirmative action on the part of the state” to “ensure distributive justice to the deprived sections of the community.”¹³

The case of *Bandhua Mukti Morcha v. Union of India* nicely illustrates the Court’s willingness to experiment with new remedies.¹⁴ A three-judge Supreme Court bench, led by Justice Bhagwati, initiated at PIL in response to a letter they received from an NGO urging the Court to end the practice of bonded labor. Instead of simply issuing a judgment declaring bonded labor unconstitutional, the Court adopted a doctrine known as “continuing mandamus,” which permitted it to postpone its final judgment so that it may periodically issue guidelines and interim orders to ensure that the government complies with the relevant constitutional provisions.¹⁵ The Court also appointed two advocates and a doctor as “special commissioners” to investigate the living and working conditions of bonded laborers and report their findings to the Court.¹⁶ In sum, the Court in this case not only relaxed its standing requirements toopen so as to monitor compliance with its orders.

In addition to these procedural innovations, the Supreme Court instituted an important substantive change in the law. It began to enforce the Directive Principles of State Policy (DPSPs) by reading them into the fundamental right to life enshrined in Article 21 of the Indian Constitution. Recall that Article 37explicitly states that DPSPs “shall not been forceable by any court.”However, the Court led by Justice Bhagwati once again, sidestepped Article 37 in the larger cause of promoting greater human dignity and distributive justice. In *Francis Coralie Mullin v. Union Territory of Delhi* (1981), the Supreme Court was asked to rule on a narrow question: whether a detainee held in preventative detention had the right to meet with his lawyer and family.¹⁷ However, Justice Bhagwati took this as an opportunity to substantially enlarge the ambit of Article 21, which provides that “No person shall be deprived of his life or personal liberty except according to procedure established by law.”

Writing for the Court, Justice Bhagwati declared that this right to life and personal liberty protects a broader right to “live with human dignity.”¹⁸ He went on to state, “Article 21 cannot be restricted to mere animal existence.”¹⁹ Rather, “it must...include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the humanself.”²⁰ The Court has since built on this judgment to enforce a number of new socio-economic rights within the “right to live with human dignity.” These

include the rights to education, food, healthcare, shelter, and a decent livelihood.²¹

Overall, the Court enjoys greater scope for judicial review following these developments for at least three reasons. First, by easing its standing requirements, the Court has become more accessible to the Indian public. NGOs and other concerned citizens now regularly petition the Court for redress of fundamental rights violations on behalf of large affected communities. Second, through a broad reading of the right to life under Article 21, the Court now recognizes and enforces a range of socioeconomic rights that were originally thought to be non-justiciable. Third, by keeping cases open and inventing novel remedies in cases dealing with socioeconomic justice, the Court now actively monitors government compliance with its orders. All told, the Indian Supreme Court is a significant policy making institution today.

3.6 SUMMARY

India has come a long way with respect to the enforcement of economic, social and cultural rights (ESCRs). In 1950, when the Constitution was adopted after more than two years of debate, ESCRs placed in Part IV of the Constitution as Directive Principles of State Policy (DPSPs). They were separated from the fundamental rights contained in Part III of the Constitution, which included mostly civil and political rights with a few notable exceptions (e.g., Articles 29 and 30).

While fundamental rights were made to be justiciable under Article 32, Article 37 of the Constitution explicitly prohibited judicial enforcement of DPSPs. Moreover, Article 32, which allows the Supreme Court to grant various writs to enforce fundamental rights through “appropriate proceedings,” was read narrowly in the early years of the Indian republic. The Court interpreted this phrase to permit only those petitioners who had been directly affected by an impugned law to have standing (*locus standi*) to file writ petitions. The Court also took on a greater role in fact-finding, by appointing special commissioners in some cases, and in monitoring government compliance with its orders. It adopted a procedural innovation known as “continuing mandamus,” which permitted it to postpone its final judgment so that it could periodically issue guidelines and interim orders. The Court also broadened the scope of Article 21 to protect the “right to live with dignity.” This brought various DPSPs within the ambit of Article 21, including the rights to food, education, shelter, and a decent livelihood. The result of all these changes is that the Indian judiciary, particularly the Supreme Court, has vastly increased its power and jurisdiction. Today, it is not just a significant legal institution, but an important policy making institution as well.

3.7 SELF ASSESSMENT QUESTION’S (SAQ)

MCQ’S

1. Which of the following Articles of the Indian Constitution primarily relate to Economic, Social, and Cultural Rights?
A) Articles 12 to 35
B) Articles 36 to 51
C) Articles 14 to 18
D) Articles 124 to 147
Answer: B) Articles 36 to 51
2. Which directive principle promotes the right to education?
A) Article 39
B) Article 43
C) Article 45
D) Article 44
Answer: C) Article 45
3. The Supreme Court of India made the Right to Education a fundamental right under which landmark case?
A) Kesavananda Bharati v. State of Kerala
B) Mohini Jain v. State of Karnataka
C) Unni Krishnan v. State of Andhra Pradesh
D) Olga Tellis v. Bombay Municipal Corporation
Answer: C) Unni Krishnan v. State of Andhra Pradesh
4. Which fundamental right has often been used by the Indian judiciary to make ESCR justiciable?
A) Right to Equality
B) Right to Freedom of Speech
C) Right to Life and Personal Liberty (Article 21)
D) Right against Exploitation
Answer: C) Right to Life and Personal Liberty (Article 21)
5. Which of the following rights is NOT explicitly mentioned in the Indian Constitution but has been read into Article 21 by the courts?
A) Right to Food
B) Right to Shelter
C) Right to Privacy
D) Right to Vote
Answer: D) Right to Vote

TRUE OR FALSE

1. Economic, Social, and Cultural Rights are included in Part III of the Indian Constitution.
False

2. Directive Principles of State Policy are non-justiciable in nature.
True
3. The Indian judiciary has consistently expanded the scope of fundamental rights to include socio-economic rights.
True
4. The Right to Work is an enforceable right under Article 21.
False (It is part of DPSP, not directly enforceable unless interpreted judicially)
5. India is a signatory to the International Covenant on Economic, Social and Cultural Rights (ICESCR).
True

SAQs

- (1) What is the purpose of Article 32 of the Indian Constitution?
- (2) How do the Supreme Court originally interpret the phrase “appropriate proceedings”?
- (3) How was Article 21 originally understood?
- (4) What are some of the procedural innovations that accompanied the rise of public interest litigation (PIL)?
- (5) What is the major substantive innovation in the law since the 1980s?

TERMINAL QUESTION

1. Discuss the justiciability of Economic, Social, and Cultural Rights in India with reference to judicial interpretations.
2. Critically evaluate the role of the Supreme Court of India in transforming Directive Principles into enforceable rights.
3. Examine the interplay between Fundamental Rights and Directive Principles in the context of ESCR.
4. Explain how Article 21 of the Constitution has been used to give effect to socio-economic rights.
5. Assess the impact of international covenants like the ICESCR on the recognition and enforcement of ESCR in India.

UNIT 4

FUNDAMENTAL RIGHTS AND DUTIES OF CITIZENS UNDER THE CONSTITUTION

4.1 INTRODUCTION

4.2 OBJECTIVE

4.3 WHAT ARE FUNDAMENTAL RIGHTS

4.4 SOURCE OF FUNDAMENTAL RIGHTS

4.5 CLASSIFICATION OF FUNDAMENTAL RIGHTS

4.6 EXPLANATION OF FUNDAMENTAL RIGHTS

4.7 SCHOLARS' VIEWS ON FUNDAMENTAL RIGHTS

4.8 ELABORATING OF FUNDAMENTAL DUTIES

4.9 FUNDAMENTAL DUTIES

4.10 CONCLUSION

4.11 SAQs

4.12 REFERENCES

4.1 INTRODUCTION

Fundamental rights are essential privileges and freedoms that are guaranteed to every individual, forming the bedrock of a democratic society. These rights empower individuals, ensuring that they can lead a life of dignity and freedom. They serve as a safeguard against the arbitrary actions of the state and promote social justice and equality. The recognition and enforcement of fundamental rights are critical to the functioning of a just legal system and the protection of human rights.

4.2 OBJECTIVE

The objective of this chapter is to provide a comprehensive understanding of fundamental rights, their classification, sources, and their importance in protecting individual freedoms. It also aims to explore the relationship between fundamental rights and fundamental duties, highlighting their significance in maintaining a balance between individual rights and societal responsibilities.

4.3 WHAT ARE FUNDAMENTAL RIGHTS

In the context of India's Constitution, fundamental rights are defined as a set of basic human rights guaranteed to all citizens (and in some cases, non-citizens) under Part III (Articles 12 to 35), aimed at promoting individual dignity, equality, and liberty while safeguarding against arbitrary state actions. These rights are legally enforceable and form an integral part of the Constitution, adopted on November 26, 1949, and effective from January 26, 1950. They encompass six key categories: the right to equality, right to freedom, right against exploitation, right to freedom of religion, cultural and educational rights, and the right to constitutional remedies, which empowers individuals to seek judicial intervention if these rights are violated. The Constitution defines the State (under Article 12) as responsible for upholding these rights, and while they can be subject to reasonable restrictions for reasons like national security or public order, they represent the foundational principles of justice and democracy in India, inspired by both indigenous values and global human rights standards.

4.4 SOURCE OF FUNDAMENTAL RIGHTS

The primary source of fundamental rights in India is the Constitution of India, specifically Part III, which enumerates these rights. The Constitution was adopted on January 26, 1950, and has since been the cornerstone of legal and political rights in the country. Other international conventions and treaties, such as the Universal Declaration of Human Rights (UDHR), also influence the recognition and implementation of fundamental rights.

4.5 CLASSIFICATION OF FUNDAMENTAL RIGHTS

Fundamental rights can be classified into six categories as follows:

1. **Right to Equality (Articles 14-18):** This includes the right to equality before the law, prohibition of discrimination, and the abolition of untouchability and titles.
2. **Right to Freedom (Articles 19-22):** This encompasses various freedoms, including the freedom of speech and expression, assembly, association, movement, residence, and profession.
3. **Right against Exploitation (Articles 23-24):** This protects individuals from human trafficking, forced labor, and child labor.

4. **Right to Freedom of Religion (Articles 25-28):** This guarantees the freedom of conscience and the right to freely profess, practice, and propagate religion.
5. **Cultural and Educational Rights (Articles 29-30):** These rights allow minorities to preserve their culture and establish educational institutions of their choice.
6. **Right to Constitutional Remedies (Article 32):** This provides the right to approach the Supreme Court for the enforcement of fundamental rights.

4.6 EXPLANATION OF FUNDAMENTAL RIGHTS

1. Right to Equality:

- a. **Article 14:** Ensures equality before the law and equal protection of the laws.
- b. **Article 15:** Prohibits discrimination on grounds of religion, race, caste, sex, or place of birth.
- c. **Article 16:** Guarantees equal opportunity in matters of public employment.
- d. **Article 17:** Abolishes untouchability.
- e. **Article 18:** Prohibits titles and distinguishes between titles and honorifics.

The Right to Equality, enshrined in Articles 14-18, forms the bedrock of India's constitutional commitment to justice. Article 14 guarantees equality before the law and equal protection of the laws, a principle inspired by the British concept of rule of law and American equal protection doctrine. Scholars like Upendra Baxi note that the Supreme Court has interpreted Article 14 dynamically, using the "reasonable classification" test to balance equality with affirmative action, as seen in cases like *State of West Bengal v. Anwar Ali Sarkar* (1952). Articles 15 and 16 prohibit discrimination on grounds of religion, race, caste, sex, or place of birth, and ensure equal opportunity in public employment, respectively. Article 17 abolishes untouchability, a radical move credited to B.R. Ambedkar's vision, with its enforcement upheld in cases like *People's Union for Democratic Rights v. Union of India* (1982). Article 18 abolishes titles, rejecting feudal hierarchies, though exceptions like military or academic honors persist. Granville Austin describes this cluster as a fusion of liberal equality with social reform, unique to India's post-colonial context.

2. Right to Freedom:

- **Article 19:** Provides six freedoms, including speech, assembly, and movement.
- **Article 20:** Protects individuals from double jeopardy and self-incrimination.

- **Article 21:** Guarantees the right to life and personal liberty.
- **Article 22:** Provides protection against arrest and detention in certain cases.

Articles 19-22 enshrine the Right to Freedom, granting citizens six specific liberties under Article 19: speech and expression, assembly, association, movement, residence, and profession. These freedoms, however, are not absolute and are subject to "reasonable restrictions" for reasons like public order or national security, a balance Sudipta Kaviraj likens to Rousseau's social contract. Landmark cases like *Romesh Thappar v. State of Madras* (1950) expanded free speech, while *A.K. Gopalan v. State of Madras* (1950) initially limited Article 21's scope (life and liberty) until *Maneka Gandhi v. Union of India* (1978) broadened it to include due process. Article 20 protects against retrospective criminal laws and double jeopardy, while Article 22 safeguards against arbitrary detention, mandating safeguards like informing detainees of grounds for arrest. Pratap Bhanu Mehta argues that these provisions reflect a tension between individual autonomy and state authority, shaped by India's colonial legacy and democratic aspirations.

3. Right Against Exploitation:

- a. **Article 23:** Prohibits human trafficking and forced labor.
- b. **Article 24:** Prohibits child labor in hazardous industries.

The Right Against Exploitation, under Articles 23-24, addresses historical injustices like forced labor and child exploitation. Article 23 prohibits human trafficking and begar (forced labor without payment), rooted in India's struggle against bonded labor systems. The Supreme Court's ruling in *Bandhua Mukti Morcha v. Union of India* (1984) extended this to bonded laborers, interpreting it as a dignity-enhancing right under Article 21. Article 24 bans employment of children under 14 in hazardous industries, such as mines or factories, a provision reinforced by the Child Labour (Prohibition and Regulation) Act, 1986. Amartya Sen praises this as a capability-focused right, though he critiques its patchy enforcement, with millions of children still in informal sectors. Scholars like Baxi view this category as a moral commitment to erase exploitative traditions, aligning with India's constitutional goal of social justice.

4. Right to Freedom of Religion:

Article 25: Guarantees the freedom of conscience and the right to freely practice religion.

Article 26: Provides the freedom to manage religious affairs.

Article 27: Prohibits compulsion for taxes to promote a particular religion.

Article 28: Prohibits religious instruction in educational institutions wholly maintained out of state funds.

Articles 25-28 guarantee the Right to Freedom of Religion, reflecting India's secular yet pluralistic ethos. Article 25 ensures freedom of conscience and the right to profess, practice, and propagate religion, subject to public order, morality, and health—a caveat Austin sees as pragmatic given India's religious diversity. Article 26 allows religious denominations to manage their affairs, while Article 27 prohibits compelled taxation for religious promotion, reinforcing state neutrality. Article 28 bans religious instruction in fully state-funded schools, balancing secularism with personal faith. The Supreme Court's *S.R. Bommai v. Union of India* (1994) ruling entrenched secularism as a basic structure, yet scholars like Mehta critique the state's uneven application, citing controversies over personal laws or temple management as challenges to true religious equality.

5. Cultural and Educational Rights:

- a. **Article 29:** Protects the cultural and educational rights of minorities.
- b. **Article 30:** Grants the right to establish and administer educational institutions.

Cultural and Educational Rights under Articles 29-30 protect India's linguistic and religious minorities, a response to its multicultural fabric. Article 29 grants citizens the right to conserve their language, script, or culture and prohibits discrimination in educational access. Article 30 empowers minorities to establish and administer educational institutions, a provision upheld in cases like *T.M.A. Pai Foundation v. State of Karnataka* (2002), which clarified the extent of autonomy versus regulation. Kaviraj links this to Arendt's idea of rights requiring community recognition, arguing it ensures minorities' "right to have rights" within India's polity. Scholars like Austin hail this as a masterstroke of inclusion, though implementation debates—such as funding for minority institutions—persist, reflecting tensions between cultural preservation and national integration.

6. Right to Constitutional Remedies:

- a. **Article 32:** Allows individuals to approach the Supreme Court for the enforcement of their fundamental rights.

Article 32, dubbed the "heart and soul" of the Constitution by Ambedkar, provides the Right to Constitutional Remedies, empowering citizens to approach the Supreme Court directly for fundamental rights enforcement. It allows the Court to issue writs—habeas corpus, mandamus, prohibition, quo warrant, and certiorari—making it a guardian of liberties, as seen in *Kesavananda Bharati v. State of Kerala* (1973), which established the basic structure doctrine. Baxi emphasizes its role in public interest litigation (PIL), enabling marginalized groups to seek justice, as in *Vishaka v. State of Rajasthan* (1997) on workplace harassment. Sen views Article 32 as a procedural capability, ensuring rights are actionable, though critics like Mehta note

overburdened courts and delays as practical hurdles. This right underscores the Constitution's self-enforcing mechanism, a feature scholars globally admire.

These six categories collectively embody India's vision of a rights-based democracy, blending universal principles with contextual imperatives, as analyzed by scholars like Austin, Baxi, Sen, Kaviraj, and Mehta. Their authentic data drawn from constitutional text, judicial precedents, and historical intent highlights both the framework's strengths and its ongoing challenges.

4.7 SCHOLARS VIEWS ON FUNDAMENTAL RIGHTS

Legal scholars emphasize the importance of fundamental rights as a safeguard against tyranny and oppression. They view these rights as essential for the functioning of a democratic society, allowing for individual freedoms while ensuring the rule of law. Scholars like Justice H.R. Khanna and Dr. B.R. Ambedkar articulated the necessity of protecting these rights for fostering an equitable society.

Scholars have extensively analyzed the fundamental rights enshrined in the Indian Constitution, offering diverse perspectives on their philosophical underpinnings, practical implications, and unique adaptations. John Locke's ideas on natural rights have been frequently invoked by scholars like Upendra Baxi, a prominent Indian legal theorist, to interpret the Constitution's emphasis on individual liberty. Baxi highlights how Article 21, guaranteeing the right to life and personal liberty, reflects Locke's notion of inalienable rights, but he argues that its judicial expansion—encompassing rights to education, health, and a clean environment—marks a departure from Locke's narrower focus on property. Baxi sees this as a distinctly Indian reinterpretation, tailoring universal principles to address socio-economic realities like poverty and caste discrimination.

Jean-Jacques Rousseau's social contract theory has been explored by scholars like Granville Austin, an American historian who authored seminal works on the Indian Constitution, including *The Indian Constitution: Cornerstone of a Nation*. Austin views the fundamental rights in Part III as a negotiated balance between individual freedoms and the collective will, akin to Rousseau's framework. He points to the reasonable restrictions on rights like freedom of speech (Article 19) and the integration of Directive Principles as evidence of a Rousseauian trade-off, where individual liberties are tempered to serve the common good. Austin argues that this reflects India's commitment to a democratic socialism that prioritizes equality alongside liberty, distinguishing it from purely liberal constitutions.

Edmund Burke's emphasis on tradition and context has been cited by scholars like Pratap Bhanu Mehta, an Indian political theorist, to explain the Constitution's accommodation of cultural pluralism. Mehta contends that rights such as freedom of religion (Articles 25-28) and minority protections (Articles 29-30) embody Burke's idea of rights evolving from historical experience rather than abstract universalism. He praises the Constitution for grounding these

rights in India's diverse social fabric, but also critiques its occasional tension with progressive reforms, such as uniform civil laws, suggesting that Burkean conservatism sometimes clashes with the document's transformative aspirations, as envisioned by B.R. Ambedkar.

Hannah Arendt's perspective on the contingency of rights has been applied by scholars like Sudipta Kaviraj, an Indian political scientist, to analyze the Indian Constitution's approach to inclusion and exclusion. Kaviraj draws on Arendt's concept of the "right to have rights" to argue that the Constitution's framers sought to secure political membership for all citizens, especially marginalized groups, through provisions like the abolition of untouchability (Article 17) and anti-discrimination clauses (Article 15). He notes, however, that Arendt's warning about the fragility of rights rings true in India's context, where implementation gaps—such as persistent caste violence or minority insecurity reveal the limits of constitutional guarantees without robust enforcement.

Amartya Sen, an Indian scholar himself, has directly engaged with the Indian Constitution's fundamental rights, advocating for their expansion through his capability approach. In works like *The Idea of Justice*, Sen praises the judiciary's role in interpreting Article 21 to include positive rights, such as the right to food and education, aligning with his view that rights must enable human flourishing, not just prevent interference. He argues that the Constitution's blend of civil-political and socio-economic aspirations bridging Parts III and IV offers a model for global human rights discourse, though he critiques India's uneven progress in translating these rights into tangible capabilities for the poorest citizens.

These scholars collectively underscore the Indian Constitution's fundamental rights as a dynamic interplay of global thought and local innovation. Baxi sees a Lockean core expanded for justice, Austin a Rousseauian compromise, Mehta a Burkean contextualism, Kaviraj an Arendtian realism, and Sen a capability-driven evolution. Their analyses reveal a document that is both a philosophical triumph and a practical challenge, reflecting India's ambition to reconcile individual dignity with collective equity in a pluralistic, post-colonial society.

4.8 ELABORATING ON FUNDAMENTAL DUTIES

Fundamental rights in India have evolved significantly through various landmark judicial decisions. The following cases have shaped the interpretation and scope of fundamental rights over time:

1. **Shankari Prasad v. Union of India (1951)**

Issue: This case dealt with the validity of the First Amendment, which curtailed certain fundamental rights to allow for land reform laws.

Judgment: The Supreme Court upheld Parliament's power to amend any part of the Constitution, including fundamental rights, under Article 368. This case marked the beginning of judicial discourse on the scope of Parliament's power to amend fundamental rights, setting the stage for future debates.

2. Sajjan Singh v. State of Rajasthan (1965)

Issue: Similar to Shankari Prasad, this case questioned Parliament's power to amend fundamental rights.

Judgment: The Supreme Court reaffirmed that Parliament could amend the Constitution, including fundamental rights. However, two judges voiced concerns, hinting that fundamental rights may be beyond the reach of Parliament's amending power. This dissent foreshadowed a shift in judicial thinking that would become prominent in later cases.

3. I.C. Golaknath v. State of Punjab (1967)

Issue: The primary issue was whether Parliament had the authority to amend fundamental rights under Article 368.

Judgment: The Supreme Court, in a landmark decision, reversed its previous rulings in Shankari Prasad and Sajjan Singh, holding that Parliament could not amend fundamental rights. This judgment emphasized that fundamental rights were "sacrosanct" and could only be changed by a Constituent Assembly, establishing a limitation on Parliament's power and underscoring the inviolability of these rights.

4. Kesavananda Bharati v. State of Kerala (1973)

Issue: The case challenged the validity of the 24th, 25th, and 29th Amendments, seeking to clarify the extent of Parliament's amending power.

Judgment: In a historic decision, the Supreme Court established the "basic structure doctrine," ruling that while Parliament has the power to amend the Constitution, it cannot alter its basic structure. This doctrine included fundamental rights as an essential part of the Constitution's core, thereby protecting them from unrestricted amendments. This case marked a pivotal moment in the evolution of fundamental rights by ensuring their protection as part of the Constitution's unchangeable essence.

5. Indira Nehru Gandhi v. Raj Narain (1975)

Issue: The case examined the Constitution (39th Amendment) Act, which sought to place certain electoral disputes beyond judicial review, impacting the right to equality and other fundamental rights.

Judgment: Applying the basic structure doctrine from *Kesavananda Bharati*, the Supreme Court ruled that the amendment violated the basic structure by undermining judicial review, an essential part of protecting fundamental rights. This judgment reinforced the role of judicial review as an integral part of the fundamental rights framework and safeguarded it from arbitrary amendments.

6. *Minerva Mills Ltd. v. Union of India* (1980)

Issue: This case questioned the validity of the 42nd Amendment, which expanded Parliament's power and sought to limit judicial review.

Judgment: The Supreme Court struck down the amendment, reaffirming that judicial review is part of the basic structure of the Constitution and essential to the protection of fundamental rights. This ruling reinforced the balance between fundamental rights and directive principles, ensuring that the amendment process could not weaken fundamental rights.

7. *Waman Rao v. Union of India* (1981)

Issue: The case revisited the application of the Ninth Schedule, which had been used to shield certain laws from judicial review, affecting fundamental rights. **Judgment:** The Supreme Court held that all amendments to the Constitution made after the *Kesavananda Bharati* judgment (i.e., after April 24, 1973) would be subject to the basic structure doctrine, including laws placed in the Ninth Schedule. This judgment restricted the scope of the Ninth Schedule, protecting fundamental rights from arbitrary additions and reinforcing their inviolability.

8. *I.R. Coelho v. State of Tamil Nadu* (2007)

Issue: This case addressed whether laws placed under the Ninth Schedule could be shielded from judicial review, especially if they violated fundamental rights.

Judgment: The Supreme Court ruled that even if a law was placed under the Ninth Schedule, it could still be reviewed if it violated the basic structure of the Constitution. This judgment further solidified the protection of fundamental rights from arbitrary legislative encroachment and reinforced that even the Ninth Schedule could not be used to bypass constitutional limits.

9. *Justice K.S. Puttaswamy v. Union of India* (2017)

Issue: This case examined whether the right to privacy is a fundamental right under the Indian Constitution.

Judgment: The Supreme Court unanimously declared the right to privacy a fundamental right under Article 21, linking it to the right to life and personal liberty. This landmark judgment expanded the scope of fundamental rights, adding privacy as a core component and highlighting the Constitution's adaptability to evolving societal values.

4.9 FUNDAMENTAL DUTIES

Fundamental duties are enshrined in Article 51A of the Constitution and were added by the 42nd Amendment in 1976. They are essential for promoting patriotism and encouraging individuals to uphold the spirit of the nation. The introduction of fundamental duties aimed to balance individual rights with social responsibilities. It was influenced by the Constitution of the Soviet Union and reflects the ethos of promoting civic consciousness. Fundamental duties are derived from the Constitution of India, specifically Article 51A, which outlines the responsibilities of citizens. These duties serve as moral obligations, encouraging responsible citizenship and supporting national integrity. Here are the 11 Fundamental Duties:

1. **To abide by the Constitution and respect its ideals and institutions, the National Flag, and the National Anthem:** This duty fosters respect for national symbols and upholds the dignity of the Constitution.
2. **To cherish and follow the noble ideals that inspired our national struggle for freedom:** Citizens are expected to honor the values and sacrifices made during India's independence movement.
3. **To uphold and protect the sovereignty, unity, and integrity of India:** This duty reinforces the importance of national unity and security.
4. **To defend the country and render national service when called upon to do so:** Every citizen should be prepared to defend the country if required.
5. **To promote harmony and the spirit of common brotherhood among all the people of India, transcending religious, linguistic, and regional or sectional diversities:** This duty encourages inclusivity and discourages divisive behavior.
6. **To value and preserve the rich heritage of our composite culture:** Citizens should appreciate and safeguard India's diverse cultural heritage.
7. **To protect and improve the natural environment, including forests, lakes, rivers, and wildlife, and to have compassion for living creatures:** This duty promotes environmental conservation and respect for all forms of life.

8. **To develop scientific temper, humanism, and the spirit of inquiry and reform:** Citizens are encouraged to embrace scientific reasoning and adopt progressive, humanistic values.
 9. **To safeguard public property and to abjure violence:** This duty calls for the protection of public resources and discourages destructive or violent behavior.
 10. **To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavor and achievement:** This duty motivates citizens to contribute positively to society and national progress.
 11. **To provide opportunities for education to one's child or ward between the ages of six and fourteen years:** Added by the 86th Amendment, this duty emphasizes the importance of primary education for childrens.
- **Nature:** Fundamental rights are enforceable by law, while fundamental duties are not.
 - **Focus:** Rights focus on individual freedoms, whereas duties emphasize responsibilities towards society.
 - **Enforcement:** Violations of fundamental rights can be challenged in court, while violations of duties do not have a legal remedy.

Aspect	Fundamental Rights	Fundamental Duties
Nature	Justiciable and legally enforceable	Non-justiciable, moral obligations
Focus	Emphasizes individual liberties	Focuses on responsibilities towards society
Remedies	Legal recourse in case of violation	No legal remedy for non-compliance

4.10 CONCLUSION

Fundamental rights and duties are two sides of the same coin, essential for the promotion of a just and equitable society. While fundamental rights guarantee individual freedoms, fundamental duties remind citizens of their responsibilities towards the nation. Understanding and respecting both is crucial for the overall development of a democratic society.

4.11 SELF ASSESSMENT QUESTION'S (SAQ'S)

MCQ'S

1. What article of the Indian Constitution guarantees the right to equality?

A) Article 14

B) Article 19

C) Article 21

D) Article 30

Answer: A) Article 14

2. Fundamental rights can be enforced in which court?

A) District Court

B) High Court

C) Supreme Court

D) All of the above

Answer: D) All of the above

3. Which article prohibits child labor in hazardous industries?

A) Article 23

B) Article 24

C) Article 25

D) Article 26

Answer: B) Article 24

SAQs

1. What are Fundamental Rights, and where are they mentioned in the Indian Constitution?
2. List any three Fundamental Duties as provided in Article 51A of the Constitution.
3. What is the significance of Article 32 in the context of Fundamental Rights?
4. How many Fundamental Rights are currently guaranteed by the Indian Constitution?
5. Explain the relationship between Fundamental Rights and Fundamental Duties.

TRUE OR FALSE

1. The Fundamental Duties are enforceable by law.
False
2. The Right to Equality includes the abolition of untouchability.
True
3. The 42nd Amendment Act, 1976 introduced the Fundamental Duties into the Constitution.
True
4. Article 21 guarantees the Right to Freedom of Religion.
False(Article 21 is Right to Life and Personal Liberty; freedom of religion is under Articles 25–28)
5. The Constitution originally included Fundamental Duties when it was adopted in 1950.
False

TERMINAL QUESTION

1. Discuss the importance of the right to freedom of speech and expression in a democratic society.
2. Explain the relationship between fundamental rights and fundamental duties, and why both are essential for citizens.
3. Analyze the role of the Supreme Court in protecting fundamental rights, citing relevant case laws.
4. Describe the historical context of the introduction of fundamental duties in the Indian Constitution.
5. Compare and contrast the rights of minorities with those of the majority in the context of cultural and educational rights.

4.12 REFERENCES

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UNIT 5

DIRECTIVE PRINCIPLES UNDER INDIAN CONSTITUTION

STRUCTURE

5.1 INTRODUCTION

5.2 OBJECTIVES

5.3 GENESIS OF DIRECTIVE PRINCIPLES OF STATE POLICY

5.3.1 BACKGROUND

5.3.2 SOURCES

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5.7 CRITICISM

5.8 IMPLIMENTATION OF THE DIRECTIVE PRINCIPELS IN STATE POLICY

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5.10 SUMMARY

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5.12 MCQs

5.13 TRUE/ FALSE

5.14 SAQS

5.15 TERMINAL QUESTIONS

5.16 REFERENCES

5.1 INTRODUCTION

The Directive Principles of State Policy enshrined in the Part IV of the Constitution of India from Article 36 to 51 are the fundamental principles guiding the state in the governance of the country. The Fundamental rights in the Part III of the Constitution are the justiciable rights made available by the Constitution; similarly, the Directive Principles are the non-justiciable rights that find their place in the Constitution. Non-justiciable means that they cannot be enforced by court and no claim can be made in a court for their enforcement. They are the guiding principles for the government in its policy and governance in order to achieve the goal of establishment of a welfare state in India. They have been enacted to serve as ideals for the government of the day to follow in order to establish economic and social democracy in India.

Fundamental rights are mostly considered in the form of negative injunctions as they place certain limitations on the State and prohibit the State from encroaching upon the liberty of the people. Directive Principles on the other hand are positive rights which place positive obligations on the state in the welfare of the people. In the same refrain Austin connects Directive Principles to the Isaiah Berlin's conception of positive freedom. Austin identifies the Fundamental Rights and the Directive Principles of State Policy together as the Conscience of the Constitution. According to him though they appear in the Constitution as separate entities both are products of the national and social revolution for national renaissance.

The inclusion of Directive Principles in the Constitution reaffirms the belief that the state is responsible for the welfare of its citizens and political freedom cannot exist without social and economic security as, 'Necessitous men are not free men'.

5.2 OBJECTIVES

This unit provides

- An introduction to the Directive Principles of State Policy in the Constitution
- A brief account of the history and development of the Directive Principle
- The sources and inspiration of the Directive Principles.
- An article wise explanation of the Directive Principles.
- Criticism of the Directive Principles
- Significance of the Directive Principles

- Relation between the Directive Principles and Fundamental Rights.

5.3 GENESIS DIRECTIVE PRINCIPLE OF STATE POLICY

5.3.1 SOURCES

Indian National Movement

The Indian struggle for civil rights formed a part of the wider demand for self-rule. Many of the rights demanded by Indians from British rulers were the same as those which have been included in the Directive Principles. Thus **Annie Besant's Commonwealth of India Bill (1925)** mentions seven fundamental rights one of which was the provision of free elementary education for all.

In the Fundamental Rights of the **Motilal Nehru Report (1928)** three of the nineteen rights mentioned appear again in the Directive Principles.

Karachi Resolution (1931)

The Resolution on Fundamental Rights and Economic and Social Change was adopted in the Karachi Session of Congress in March 1931. Along with demand for political rights the Karachi Resolution stated that 'political freedom must include real economic freedom of the starving million'. It further talked about labor welfare, public assistance and social security, state ownership of key industries, reform of system of land tenure as well as some Gandhian ideals like promotion of khadi. Thus the Karachi resolution presaged the Fundamental Rights and the Directive Principles and can be seen as their forerunner.

Sapru Committee Report (1945)

The Constitutional Proposal of the Tej Bahadur Sapru Committee of 1945 also known as the Sapru Report. This committee was appointed by the Non party conference of November 1944. The Sapru committee among other things also recommended for rights to be divided into justiciable and non-justiciable categories.

Irish Constitution

The Directive Principles serve as guidelines for the government but are non-justiciable in nature. These features of the Directive Principles of State Policy have been adopted from the Constitution of the Republic of Ireland (1937). The Directive principles of Social Policy in the Article 45 of the Irish Constitution mention principles which are for the 'guidance' of the parliament and 'shall not be cognizable by any court'.

Instruments of Instruction

Dr. Ambedkar described the Directives as ‘novel features’ of the Constitution whose goal was the establishment of ‘economic and social democracy’ in India. The Directive Principles of State Policy were according to him similar in nature to the Instrument of Instructions issued to the Governor-General and the Governors under the Government of India Act 1935. Further clarifying on the rationale of inclusion of the Directive Principles in the constitution Ambedkar opined “What is called 'Directive Principles' is merely another name for Instrument of Instructions. The only difference is that they are instructions to the legislature and the Executive. Such a thing to my mind should be a welcomed. Wherever there is a grant of power in general terms for peace, order and good government, it is necessary that it should be accompanied by instructions regulating its exercise.”¹

5.3.2 THE CONSTITUENT ASSEMBLY DEBATES

Sri Benegal Narsing Rau, the constitutional adviser to the Constituent Assembly also suggested the division of rights into enforceable and unenforceable rights.

5.3.2.1 SUB-COMMITTEE ON FUNDAMENTAL RIGHTS

There was no separate committee for drafting of the Directive Principles they were drafted by the Fundamental Rights sub-committee headed by J.B. Kriplani. Other illustrious members of this sub-committee were Rajkumari Amrit Kaur, Hansa Mehta, Minoo Masani, K. T. Shah, A.K. Ayyar, K. M. Munshi, Sardar Harnam Singh, Maulana Azad, B. R. Ambedkar, J. Daulatram and K.M. Panikkar. It must be noted that all sections of Indian society were represented by these luminaries.

5.3.2.2 DISCUSSION IN THE CONSTITUENT ASSEMBLY

B. R. Ambedkar said that the Directive Principles aspired to introduce economic and social democracy in addition to political democracy and were also meant to establish the foundations of welfare state in India. According to him though the principles were non-justiciable in nature the sanction behind them was electoral. In other words, any government which ignores the implementation of the principles in their policy decisions would risk being voted out by the electorate in the next elections. He also clarified that the principles had not been made justiciable like the Fundamental Rights as the government of the incipient nation did not have the resources and the wherewithal to implement them at that juncture in history and if they were made enforceable it would lead to a tremendous burden on the economic resources of the newly independent country.

While discussing the inclusion of Directive Principles of State Policy in the constitution there was significant debate on the non-enforceability of the principles. Many of the members were critical of the non-justiciable nature of the directives. Most notably Prof. K. T. Shah moved an amendment in order to make them enforceable. According to him the excuse of practicality and

lack of government resources in making the said principles unenforceable was not an acceptable one. Shibban Lal Saxena also raised the issue of unenforceable nature of the Directive Principles and put forward the idea of making at least some of the Directives enforceable or setting up a timeline in which they will be implemented.

5.4 THE DIRECTIVE PRINCIPLE OF STATE POLICY

Article 36

This article defines the term 'state' for Part IV of the constitution. It states that the term state shall have the same meaning as it does for Part III of the constitution. That is to say it shall have the same meaning as given in the Article 12. The term 'state' here shall be understood as

- a) the Government and Parliament of India
- b) the Government and legislature of each of the States
- c) all local authorities, like municipalities, panchayats, district boards
- d) all other authorities whether statutory or non-statutory like ONGC, LIC, Sail etc.

Over time the definition of the state has been widened by the Supreme court in context of the Article 12. The same definition applies for the Part IV as well.

Article 37

Article 37 deals with the application of the Directive Principles, it states that the principles contained in Part IV shall not be enforceable by any court but are fundamental to the governance of the country and it shall be the duty of the State to apply these principles in the making of laws. Therefore, we see that the Directive Principles are non-justiciable or unenforceable in any law court of the land. The non-justiciable nature of the Principles was a point of contention in the Constituent Assembly. It was argued that if the Directive Principles are made enforceable they will impose an extraordinary burden on the meager resources of the government of the newly independent country. Prof K.T. Shah proposed that without any provision of enforceability the Directives will remain 'pious superfluities'. Shibban Lal Saxena too argued for making the Principles enforceable or at least setting some form of time limit for their enforcement.

Article 38

State to secure a social order for the promotion of welfare of the people

38(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

38(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

This article basically deals with the establishment of a welfare state in India. It aims for the establishment of social and economic justice in the country. It also talks about minimization of inequalities in status, facilities and opportunities among people.

The second part was added by the Constitution (Forty-Fourth Amendment) Act 1978.

D. D. Basu says that, Article 38 directs the state to establish a social order permeated by justice-social, economic and political. This ideal of justice shall inform all national institutions which shall strive to minimize inequalities among individuals and groups within the country.

Granville Austin contends that Article 38 contains the essence of the Constitution and echoes the Preamble.

Article 39- The State shall, in particular, direct its policy towards securing—

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

These are Socialistic principles which deal with provision of adequate means of livelihood for all, for protection of worker's rights and prevention of exploitation of those who are economically weak. 39(b) and 39(c) deal with the use of the resources of the country for common good and prevention of concentration of resources in the hand of few individuals. The implementation of 39(b) and 39(c) led to a conflict between the Part III and Part IV and their

implementation was privileged above Fundamental Rights by the government through the Constitution (Twenty-fifth Amendment) Act, 1971 all of this will be taken up later in the unit.

Article 39A makes provision for equal justice and free legal aid. It states that the State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

The Article 39A is concerned with the provision of equal justice. The provision of free legal aid for the poor aims at establishing equal access to justice for all. This provision was introduced in the 42nd Constitutional Amendment Act (1976). In order to implement this principle, The Legal Services Authorities Act was passed in 1987 which mandated the establishment of institutional mechanisms to provide free legal aid for the poor and exigent.

Article 40 provides for the organisation of Village Panchayats. It states that the state shall take such steps to organize village panchayats and endow them with such powers and authority as maybe necessary to enable them to function as units of self government. This is a principle inspired by the Gandhian ideal of village republic or Gram Swaraj. It was introduced in the constituent assembly through an amendment proposed by noted Gandhian Politician K. Santhanam. Though the idea of panchayat and local self government is an old idea in the context of the Indian Civilization, Gandhiji placed special importance on the development of self-reliant villages which were self-governing units in themselves. He called this idea the Gram Swaraj. In order to achieve this dream of the father of the nation the Article 40 was introduced as a Directive Principle. Subsequent governments took several steps to implement this Directive. Finally, in 1992 with the passage of 73rd Constitutional Amendment Act the three-tier panchayati raj system was given constitutional recognition thus translating Gandhiji's dream into reality.

Article 41 provides for the right to work, to education and to public assistance in certain cases. It states that the state shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

This Article is concerned with the provision of social security to those in need. It recognizes an important obligation of the state to provide robust social security cover and public assistance for those who are suffering from various exigencies.

Article 42 makes provision for just and humane conditions of work and maternity relief. It states that the State shall make provision for securing just and humane conditions of work and for maternity relief. The Government has passed several acts to provide for maternity relief for working women namely the provision of paid leave for women employees upon maternity. The

latest act concerning maternity relief i.e. The Maternity (Amendment) Bill 2017 which increases the period of full paid leave upon maternity for women employees to 26 weeks.

Article 43 provides for living wage, etc., for workers. It states that the State shall, endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

The state is obligated to ensure that the citizens have an adequate means of livelihood which affords them a decent standard of living allowing them to enjoy some leisure as well as social and cultural opportunities.

Article 43A provides for the participation of workers in management of industries. It states that the State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry. This Directive was inserted by the 42nd constitutional Amendment Act 1976.

Article 43B makes provision for the promotion of cooperative societies. It states that the State shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies. It was added by the 92nd Constitutional Amendment Act, 2011.

Article 44 Uniform civil code for the citizens. It states that The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.

Uniform Civil Code means that all people are governed by uniform laws and not by their personal laws according to their religion. During British rule in personal matters like succession, marriage, adoption etc. people were governed by their own personal laws according to their respective religions. After independence their codification of Hindu personal laws but there were no attempts to bring a uniform civil code for all. Goa was the only state which followed a uniform civil code – Goa Civil Code which is based on the Portuguese Civil Code (Codigo Civil Portugues) of 1867 which was introduced in Goa by the Portuguese in 1870. After liberation of Goa from Portuguese rule in 1961 the Goa Civil Code has continued to govern the people of Goa in civil matters irrespective of their religion.

In the Ahmad Khan v Shah Bano Begum case (1985) the Supreme Court ruled that Shah Bano, a divorced Muslim woman was entitled to maintenance under Section 125 of the Code of Criminal Procedure (1973) as it was applicable to all citizens irrespective of religion. The court also showed concern about the fact that despite the establishment of a uniform civil code was a

constitutionally mandated directive under the Part IV of the Constitution government has not taken any action to implement the same.

In response to the Shah Bano case verdict there were protests organized by some in the Muslim. They were of the view that through this verdict their personal laws were being encroached upon. As the result buckling under pressure, the Sanjay Gandhi government passed the Muslim Women (Protection of Rights on Divorce) Act 1986 thus diluting the court's verdict.

Again in *Sarla Mudgal v Union of India* (1995), the Supreme Court observed that the government should take steps to introduce uniform civil code in the country.

In *John Vallamattom v Union of India* (2003); the Supreme Court observed that implementation of a Common Civil Code will help enhance national integration.

The state of Uttarakhand became the first state to enact a law on the Uniform Civil Code. The Uniform Civil Code of Uttarakhand Act, 2024 makes provision for a common law in matter of marriage, inheritance, succession, adoption and maintenance irrespective of religion. The said law was drafted on the recommendations of the Ranjana Prakash Desai Committee.

Article 45 Provision for early childhood care and education to children below the age of six years. It states that The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.

The directive under the Article 45 originally provided for free and compulsory education for children. In 1990 the Ramamurthy Committee recommended for the need for passage of a Right to Education. In 1992 the Supreme Court in the *Mohini Jain v. State of Karnataka* case said that though not mention in the Part II of the Constitution a Right to Education could be inferred from the Preamble and the Directive Principles. In 1993 in the *Unnikrishnan v. State of Andhra Pradesh* the Supreme Court declared the Right to Education to be as a fundamental right under the right to life in Article 21 of the constitution. The Government formed the Tapas Majumdar Committee to look into the possibility and challenges of making right to primary education for children from ages 6 to 14 a Fundamental Right. Subsequently with the 86th Constitutional Amendment Act, 2002 the provision of free and compulsory education to all children of the age 6 to 14 was made a Fundamental Right under Article 21A. The same amendment substituted the earlier directive on provision of free and compulsory education with the new directive on provision of early childhood care and education.

Article 46 Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections. It states that the State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

Article 47 Duty of the State to raise the level of nutrition and the standard of living and to improve public health. It states that The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

Article 48 Organisation of agriculture and animal husbandry. It states that The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle. This directive was of great importance due to the primarily agricultural nature of the Indian economy at the time of independence. It also includes the Gandhian principle of cattle protection and prohibition of cattle slaughter which is based on the general Hindu ideal of cow protection.

Article 48A Protection and improvement of environment and safeguarding of forests and wild life. It states that The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country. This Directive was inserted through the 42nd Constitutional Amendment Act of 1976.

Article 49. Protection of monuments and places and objects of national importance. It states that It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, 2 [declared by or under law made by Parliament] to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be.

Article 50. Separation of judiciary from executive. It states that The State shall take steps to separate the judiciary from the executive in the public services of the State.

Article 51. Promotion of international peace and security. It states that The State shall endeavour to –

- (a) promote international peace and security;
- (b) maintain just and honourable relations between nations;
- (c) foster respect for international law and treaty obligations in the dealings of organized peoples with one another; and
- (d) encourage settlement of international disputes by arbitration.

5.5 CLASSIFICATION

Durga Das Basu classified Directive principles into

Another classification is based on the contents of the Directives and their philosophy, namely

- Socialist Principles: Article 38, Article 39, Article 39A, Article 41, Article 42, Article 43, Article 43A and Article 47.
- Gandhian Principles: Article 40, Article 43, Article 43B, Article 46, Article 47 and Article 48.
- Liberal-Intellectual Principles: Article 44, Article 45, Article 48, Article 48A, Article 49, Article 50 and Article 51.

Another scheme of classification on the basis of the objective or goal of the Directive Principles is as follows

- Socio-economic justice
- Social Security
- Community Welfare

5.6 SIGNIFICANCE

Article 38 states that ‘the state shall strive to promote the welfare of the people’, emphasizing the inclusion of the word ‘strive’ B. R. Ambedkar said that it signified a commitment on the part of the Government that no matter how adverse circumstances may be it shall strive for the fulfillment of the directive principles.

Thus the Directive Principles represent a pledge by the State to its people. It is not only a programme of action for the Government but also a promise of delivery.

5.7 CRITICISM

5.7.1 Non Justiciable Nature

An oft repeated criticism of the Directive Principles is that they are non-justiciable. The lack of legal force behind the directives led K. T. Shah to describe them as ‘pious superfluities’. T.T Krishnamachari described them as a ‘veritable dustbin of sentiments’. Constitutional scholar K.C. Wheare described the directives as a ‘little more than a manifesto of aims and aspirations’. Ivor Jennings questioned the rationale of insertion of such principles without any real legal sanction.

5.7.2 Inconsistent and Incompatible Ideologies

As we have seen the Directive Principles are inspired by varied philosophies. It has been pointed out that they are a collection of principles with divergent and sometimes incompatible Philosophies. Ivor Jennings pointed out that a prominent influence on the Directives was that of the Fabian Socialism of Sydney and Beatrice Webb which may have been relevant in 19th century England but their relevance in 20th century India was difficult to see. In addition to this there are principles which are inspired by modern Socialism, Liberalism along with principles which owe their origin to Indian traditions. N Srinivasan opined that they mix ‘relatively unimportant issues with the most vital economic and social questions.’ and combine ‘rather incongruously the modern with the old and provisions suggested by the reason and science with provisions based purely on sentiment and prejudice’

5.8 IMPLIMENTATION OF THE DIRECTIVE PRINCIPLES IN STATE POLICY

The Directive Principles of State Policy are guidelines for the government of the day which is bound to consider them while legislating.

Planned Development

The high ideal of establishment of a welfare state would not have been possible if the economy of the newly independent country which had been ruined by two hundred years of colonial rule was not revitalized. In order to effectively mobilize the resources of the country Planned Development was adopted. The Planning Commission was established in 1950. The subsequent five year plans always prioritized socio economic justice and reducing inequalities of status wealth and opportunities while trying to raise the standard of living of the ordinary people of the country. In fact the Draft First Five Year Plan observed “The economic and social pattern to be attained through planning is indicated in the Directive Principles of State Policy enunciated in Arts.36 to 51 of the Constitution.”

Land Reform

Land Reform was one of the earliest measures taken by the Indian Government to curtail the concentration of wealth and means of production to the common detriment and to bring greater equality in the distribution of wealth. Recommended as a major part of the scheme of agricultural reforms recommended by the J C Kumarappa Committee land reforms were an important policy priority for the Government. The first step of land reforms was the abolition of Intermediaries or Zamindars. Any laws which would have been passed for this purpose were vulnerable to challenge in courts on the basis of their constitutionality. In pursuance of this the Parliament enacted the 1st Constitutional Amendment Act, 1951, which inserted the Article 31B and created the 9th Schedule. This was done to save any acts which would be passed to acquire the estates of Zamindars from being invalidated upon being challenged in courts of law.

Labour Welfare

The Government of India has always prioritized labour rights. Several legislations have been passed by the Parliament over the years to prevent exploitation of labour, provide for humane conditions of work, to provide them with a decent living wage and a good standard of living. the Industrial Disputes Act (1947), the Factories Act (1948), The Minimum Wages Act (1948), the Mines Act (1952), the Payment of Bonus Act (1965), the Contract Labour Regulation and Abolition Act (1970), the Child Labour Prohibition and Regulation Act (1986), the Bonded Labour System Abolition Act (1976) are some of the acts which have been passed by the Parliament to ensure labour welfare.

Social Security

The National Social Assistance Programme launched in 1995 was an attempt to fulfill the obligation placed on the government by the Article 41 for provision of necessary social assistance to the needy and the destitute. The Atal Pension Yojana was launched by the government to provide a social security net for the workers of the unorganized sector. Similarly, the Pradhan Mantri Suraksha Beema Yojana and the Pradhan Mantri Suraksha Beema Yojana have been introduced to widen the net of social security in India and to provide for relief and social assistance to those who might become victims of exigency or undeserved want. In addition to this the government has launched Ayushman Bharat which is the world largest health insurance scheme.

Maternity Relief

The Maternity Benefit Act passed in 1961 provided for paid leave for women employees in the event of maternity. The 2017 amendment to the Act increased the paid leave benefit to a period of 26 weeks. This Act was later subsumed within the Code of Social Security, 2020 which consolidated the legislations related to social security.

Prevention Of Concentration Of Wealth

The nationalization of banks in 1969 and then in 1980, abolition of privy purses in 1971 were some of the measures taken by the government to prevent concentration of wealth to the common detriment.

Panchayati Raj and Local Self Government

The Constitution (Seventy-Third Amendment) Act provided for constitutional recognition of Panchayati System.

Standard of Living

Various government schemes like Mahatma Gandhi National Rural Guarantee Scheme MGNREGS, Pradhan Mantri Awaas Yojana PMAY, Deen Dayal Upadhyay Antyodaya Yojana DDUAY, UJWALA Yojana, Pradhan Mantri Gareeb Kalyan Yojana PMGKY etc. which focus on provision of a better standard of living for the beneficiaries.

Environmental Protection

The Wild life (Protection) Act, 1972; Water (Prevention and Control of Pollution) Act, 1974; Environment Protection Act, 1986; Air (Prevention and Control of Pollution) Act, 1981 have been passed by the Parliament in order to protect and preserve the environment. In addition, the Government has established National Parks, Wildlife Sanctuaries, and Biosphere Reserves for conservation purposes.

Promotion of Cottage Industries and Khadi

Handicrafts Board, Khadi and Village Industries Board have been setup to help cottage industry.

Separation of Executive and Judiciary

With the enactment of Criminal Procedure Code of 1973 the judiciary and executive were separated. Executive Magistrates like District magistrates, Sub-divisional Magistrates were divested of their judicial powers which are now exercised only by judicial magistrates.

Development of Scientific Agriculture

Indian Council of Agricultural Research and several Agriculture Universities have been at the forefront of providing modern solutions to the problems of Indian agriculture sector. Irrigation extension and the introduction of High Yielding Variety seeds led to Green Revolution in India which helped India become self sufficient and achieve food security.

Protection of Monuments and Ancient Heritage

The Ancient Monuments and Archaeological Sites and Remains Act (AMASR Act), 1958 was enacted to protect and preserve the ancient heritage of the country.

Protection and Promotion of Milch Cattle

Many states have passed cattle protection bills. The Government through scientific research has endeavoured to improve the breeds of various livestock to improve the performance of the dairy industry.

Promotion of International Peace

Indian Foreign Policy has always prioritized the settlement of international disputes through diplomacy and mediation. India was the founding member of United Nations. It championed the Non Alignment Movement at the height of Cold War to help foster peace when the world was divided in two hostile blocks.

5.9 DIRECTIVE PRINCIPLES AND THE FUNDAMENTAL RIGHTS

The Directive Principles are non-justiciable and cannot be enforced by the courts while the Fundamental Rights are justiciable. Further the Directives are in the form of guidelines to the State to follow while legislating. The Fundamental Rights however do not require the passage of any separate law for their enforcement; an aggrieved person can directly move the Supreme Court or the High Court under the Article 32 and Article 226 if their Fundamental Rights are infringed. The Court under Article 13 is mandated to review the constitutionality of laws passed by the legislature and can strike down any law if it is inconsistent with the Fundamental Rights. These differences in the nature, ambit and function of the Directive Principles and Fundamental Rights have been a subject of controversy for a long time.

In the **State of Madras v Champakam Dorairajan (1951)** the Supreme Court ruled that in case of a conflict between the Directive Principles and Fundamental Rights the latter will prevail. The court further added that the Directives were subsidiary to the Fundamental Rights and must conform to them however the Parliament had the power to amend the Fundamental Rights.

Therefore, in order to implement certain Directives, the Parliament passed the 1st Constitutional Amendment Act (1951) which added Article 31A and Article 31B which were meant to save land reform laws passed by the Parliament and State legislatures for acquisition of estates of Zamindars and other intermediaries from being invalidated on the grounds of being in violation of Fundamental Rights.

The Supreme Court in **Kameshwar Singh v State of Bihar (1952)** upheld the validity of the Bihar Land Reforms Act 1950 but found that it did violate the requirement of fair compensation.

In response to this the Parliament passed the **Constitution (Fourth Amendment) Act, 1955** and **Constitution (Seventh Amendment) Act, 1964** which expanded the scope of Article 31A.

In **Mohd. Hanif Quereshi v the State of Bihar (1959)** the Supreme Court held that “the directive principles of State policy have to conform to and run as subsidiary to the Chapter on Fundamental Rights”.

Again in the **Re Kerala Education Bill (1959)** the Supreme Court observed that even though the State was obligated to implement the Directive Principles they “nevertheless, sub-serve and not over-ride the fundamental rights conferred by the provisions of the Articles contained in Part

III”. The court opined that rule of harmonious construction should be adopted and an attempt should be made to give effect to both Fundamental rights and the Directive Principles.

The Court in **I. C. Golaknath v State of Punjab (1967)** held that Fundamental Rights were sacrosanct and the Parliament did not have the power to abridge or take away the Fundamental Rights.

The Parliament in response passed the **Constitution (Twenty-Fifth Amendment) Act, (1971)** and the **Constitution (Twenty-Fifth Amendment) Act, (1971)**. The 25th Amendment Act added Article 31C which provided that laws implementing the socialistic Directives of Article 39 (b) and (c) could not be declared void on grounds of contravention of the rights under Articles 14, 15, 19 and 31. Thus they placed the directives under Article 39 (b) and (c) above the Fundamental Rights conferred by Articles 14, 15, 19 and 31. The second part of the Article 31C provided that a law declaring that it gives effect to implementation of the directives under 39 (b) and (c) will not be questioned in any court on the ground that it does not give effect to any such policy.

The Supreme Court in the **Kesavanand Bharati v Union of India (1980)** struck down the second part of the Article 31C as it held that judicial review was part of the basic structure of the Constitution and could not be taken away. It further observed that Fundamental Rights and Directive Principles were supplementary to each other. Quoting Granville Austin, the court described the Directive principles as the conscience of the Constitution.

The Parliament through the **Constitution (Forty-Second Amendment) Act, (1976)** extended the scope of protection of 31C beyond the directives in 39 (b) and (c) and extended it to all the Directive Principles of State Policy. Therefore, there was an attempt by the Government to give legal primacy to the Directives above the Fundamental Rights given under Articles 14, 19 and 31.

In the **Minerva Mills v Union of India (1980)** case Supreme Court struck down the amendments made to 31C by the 42nd Amendment as violative of the constitution. The court ruled that the balance between the Fundamental Rights and Directive Principles is the bedrock of the Constitution and any attempt to upend the same goes against the basic structure of the Constitution.

In state of **Tamil Nadu v Abu Kavur Bai (1984)** the Supreme Court reiterated “that although the directive principles are not enforceable yet the court should make a real attempt at harmonising and reconciling the directive principles and the fundamental rights and any collision between the two should be avoided as far as possible.”

In **Unni Krishnan v State of Andhra Pradesh (1993)** the court emphasized the supplementary and complementary nature of the Fundamental Rights and the Directive Principles of State Policy.

In the **State of Gujarat V Mirzapur Moti Qureshi Jamat (2006)** the Supreme Court held that while testing the validity of legislative enactments or executive acts as violative of the any Fundamental Rights due regard should be given to whether such enactment or act give effect to the Directive Principles and Fundamental Duties.

The position of the Fundamental Rights and Directive Principles is not one of conflict but they are together the soul and conscience of the constitution. According to Granville Austin the Constitution is first and foremost a social document committed to the goal of a social revolution for national renaissance and Part III and Part IV of the Constitution form the core of this commitment to social revolution.

5.10 SUMMARY

The Directive Principles of State Policy are a distinct feature of the Indian Constitution. They provide guidance for the governance of the country. They serve as ideals which all elected governments should strive to achieve. By providing a uniform guide for successive governments the directive principles also provide stable policy for advancement of social and economic democracy for the citizens of the country.

5.11 GLOSSARY

- **Directive principles of state policy**

Guidelines for the governance of India outlined in Part IV of the Constitution, which aim to establish social and economic justice. These principles are non-justiciable, meaning they cannot be enforced by the courts, but are considered fundamental for governance.

- **Fundamental Rights**

Basic human rights guaranteed to all citizens in Part III of the Indian Constitution. These rights are enforceable by courts and protect individual freedoms like freedom of speech, equality before the law, and protection from discrimination these were instructions to the legislature and executive, given to the Governor-General under the Government of India Act 1935.

- **Instruments of instruction**

These were instructions to the legislature and executive, given to the Governor-General under the Government of India Act 1935.

- **Constituent Assembly**

The body formed to draft the Constitution of India. It debated and finalized various provisions of the Constitution, including the Directive Principles and Fundamental Rights.

- **State**

Article 36 defines the term "State" in the context of Part IV of the Indian Constitution, including the government of India, state governments, local authorities, and statutory or non-statutory bodies.

- **Gram swaraj (Village Republic)**

A concept introduced by Mahatma Gandhi, advocating for self-reliant villages governed by local panchayats.

5.12 MCQs

1. Which Directive Principle promotes equal pay for equal work for both men and women?

- A) Article 44
- B) Article 41
- C) Article 39(d)
- D) Article 47

Answer: C

2. The Directive Principles of State policy are given in which Part of the Constitution?

- A) Part V
- B) Part IV
- C) Part III
- D) Part II

Answer: B)

3. Directive Principles are inspired from

- A) The constitution of the United States of America
- B) The French Constitution
- C) The Irish Constitution
- D) The constitution of the U.S.S.R.

Answer: C

4. The Directive Principles are inspired by the Constitution of which country?

- A) USA
- B) UK
- C) Ireland
- D) Australia

Answer: C)

5. Which Article provides for the organization of village panchayats?

- A) Article 45
- B) Article 39A
- C) Article 40

D) Article 46

Answer: C)

5.13 TRUE OR FALSE

1. Directive Principles are enforceable in a court of law.
False
2. Article 44 of the Constitution deals with the Uniform Civil Code.
True
3. The Directive Principles aim to establish a welfare state in India.
True
4. There is no connection between Fundamental Rights and Directive Principles.
False
5. Directive Principles were added by the 42nd Amendment Act.
False (They were part of the original Constitution; some were added later)

5.14 SAQ'S

1. What is the primary objective of the Directive Principles of State Policy in the Indian Constitution?
2. Under which part and articles of the Constitution are the Directive Principles included?
3. How are Directive Principles different from Fundamental Rights?
4. Name two Directive Principles related to the promotion of economic equality.
5. What is the significance of Article 39(b) and 39(c)?

5.15 TERMINAL QUESTION

1. Which Constitution are the Directive Principles of State policy inspired from?
2. What is the relation between the Directive Principles of State Policy and the Fundamental Rights?
3. To what extent have been the Directive Principles of State Policy been implemented?
4. What are some of the criticisms of the Directive Principles of State Policy?
5. Discuss the nature, classification, and importance of the Directive Principles of State Policy in India.

5.16 REFERENCES

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UNIT 6

INDIAN JUDICIARY AND HUMAN RIGHTS ENFORCEMENT

STRUCTURE

6.1 INTRODUCTION

6.2 OBJECTIVES

6.3 STRUCTURE AND COMPOSITION

6.4 INDEPENDENCE

6.5 SUPREME COURT

6.6 GROWTH AND EVOLUTION OF JUDICIAL POWERS: AN OVERVIEW

6.7 PUBLIC INTEREST LITIGATION AND JUDICIAL ACTIVISM

6.8 JUDICIAL ACCOUNTABILITY

6.9 JUDICIAL REFORMS

6.10 MCQs

6.11 SAQs

6.12 TRUE/ FALSE

6.13 TERMINAL QUESTIONS

6.1 INTRODUCTION

From being a reliable guardian and protector of constitution, an able propagator of rights of poor and faceless citizens to an institution of last recourse for millions of citizens to activism on issues

that often get little or no attention from the executive, the judiciary in India has come full circle since its inception in 1950. The judiciary which has so far played extremely stellar role in having emerged as institution of last resort as executive and legislative branches have failed to perform their constitutional roles, has in many occasions intruded into the constitutional spaces of other organs. Such activism of judiciary has brought tensions in established constitutional 'separation of powers' and therefore criticism. In addition to this, there are equally critical issues/concerns with regard to reforms in terms of appointments of judges, accountability, corruption, and pendency, issues of access and affordability of justice for ordinary citizens and so on. In short, the judiciary is on spotlight both for right and wrong reasons.

6.2 OBJECTIVES

- To understand and evaluate the working of Indian Judicial System.
- To explain the evolution and rise of the Supreme Court in India.
- Role of judicial activism towards public interest litigation and in what way it contributed to shape the nature and contours of judicial activism in India.
- To explain various problems and challenges faced by the judiciary and reform initiatives to address them.

6.3 STRUCTURE AND COMPOSTION

Soon after his appointment as the Chief Justice of India in June 2013 Justice Altamas Kabir described Indian judiciary among the most powerful in the world in a speech in Sri Nagar.¹ Unlike the US and other federal countries, the judiciary in India is a single integrated system. The framers of the Constitution consciously opted for an integrated judicial system to 'eliminate all diversities in a remedial procedure. Under the arrangement, the Supreme Court is the highest court of the land, followed by the High Courts at the state levels which cater to one or more number of states. Down the High Court there are subordinate courts comprising of the District Courts at the district level. This apart, there exist various quasi-judicial bodies such as Tribunals and Regulators to resolve disputes. The Indian Judicial System it follows 'common law system'. In a common law system, law is developed by the judges through their decisions, orders, or judgments. Unlike the British legal system which is entirely based on the common law system, where it had originated from, the Indian system incorporates the common law system along with the statutory law and the regulatory law.

6.4 INDEPENDENCE

The makers of the constitution were aware that many of democratic ideals would remain

meaningless if they would not be backed by an independent and impartial judicial system (Austin1966;1999). No subordinate or agent of the Government could be trusted to be just and fair in judging the merits of a conflict in which the Government itself was a party. Thus, in a bid to establish complete independence of the judiciary, the Constitution has first erected a barrier that separates the executive from the judiciary. The judicial independence is further ensured by laying down rigid qualifications.

He said: ‘Today the Indian judiciary is one of the most powerful judiciary in the world, because there is a power of judicial review. We are empowered under Article 32 of the Constitution to enforce or implement any fundamental rights.

Dr. B. R. Ambedkar explained in the Constituent Assembly that ‘The Indian federation, though a dual polity, has no dual judiciary at all. The High Courts and the supreme Court constitute one single integrated- judiciary having jurisdiction and providing remedies in all cases under the constitutional law, the civil law or the criminal law. This is done to eliminate all diversities in a remedial procedure.

To cite a few familiar names, they include Central Administrative Tribunal (CAT), Armed Forces Tribunal (AFT), Competition Appellate Tribunal (COMPAT), Debt Recovery Tribunal (DRT) and Telecom Disputes Settlement Appellate Tribunal (TDSAT). See Basu2012).

6.5 SUPREME COURT

The Supreme Court of India (SC) is elaborated in Part V, Chapter IV of the Constitution as the highest court of the land, the highest court of appeal and the guardian of the Constitution. Therefore, any law passed by this apex body is binding on all the law courts in the country. By virtue of being the highest court of law, the SC controls and supervises the entire judicial edifice of the country to ensure the realization of the high judicial standards (Pylee 1980). Articles 124 to147 of the constitution lay down the composition and jurisdiction of the SC. Essentially it is an appellate court which takes up appeals against judgements of the provincial High Courts (HC). It also takes writ petitions in cases of serious human rights violations of if a case involves serious issue that requires urgent resolution (Mohanty 2009).

6.5.1 COMPOSITION

While the original constitution (1950) had provisioned for a Chief Justice and 7 other judges for the SC, over the years with word loads increasing the numbers have steadily gone up. Now there are 30 judges apart from the Chief Justice. The Chief Justice is appointed by the President of India, largely on seniority basis. Other judges (including High Courts) are chosen by a collegium comprised of the ChiefJustice and 4 senior judges of the Supreme Court. The collegiums system was established by the Supreme Court in a series of judgements popularly known as three Judges

case. In terms of composition, the SC has somewhat maintained regional and ethnic representation as it has good share of judges belonging to religious and ethnic minorities. For instance, Justice K.G. Balakrishnan was the first dalit to be appointed as Chief Justice of India in 2000.

A judge of the Supreme Court cannot be removed from office except by an order of the President passed after an address in each House of Parliament backed by a majority of total membership of that House and by a majority of not less than two-thirds of members present and voting, and presented to the President in the same. See Basu 2012.

Earlier, judges of Supreme Court were appointed by the president in consultation with the Chief Justice. However, based on three judgments viz. S.P. Gupta vs. Union of India (1981), Supreme Court Advocates-on Record Association vs Union of India (1993) and in Special Reference of 1998, the court framed the principle of judicial independence by which no other branch of the state including the legislature and the executive would have any say in the appointment of judges. For more see, <http://www.indiankanoon.org/doc/543658/6.5.2> POWERS AND JURISDICTIONS

As the highest court, the SC has been granted a wide range of powers and functions. The SC has original, appellate and advisory jurisdictions to perform the role of the defender of the Constitution.

Original Jurisdiction

Under Article 131, the original jurisdiction of the SC extends to any dispute arising between Union and one or more States and between two or more states. Original jurisdiction, though, restricts to question of law or fact brought before the court by any party mentioned above. In this regard, cases or disputes primarily involving the enforcement of fundamental rights (Article 32) come under the ambit of original jurisdiction. Under Article 32 of the Constitution, the court is empowered to issue orders, directions or writs in the nature of habeas corpus (बंदीप्रत्यक्षीकरण) mandamus (परमादेश), prohibition (निषेधाज्ञा), quo warrant (अनधिकारपृच्छा) and certiorari (उत्प्रेषणलेख)¹¹ to enforce Fundamental Rights (Mohanty 2009). However, the SC does not have any original jurisdiction or power over disputes arising out of any treaty, agreement, covenant or similar instruments which had been agreed upon or executed before the commencement of the constitution.

Appellate Jurisdiction

The SC is the highest appellate court in the country and by virtue of this it can hear appeals against the judgement of the High Courts in both civil and criminal cases involving substantial question of law which involves the interpretation of constitution (Article 132). This jurisdiction of the SC is a writ of habeas corpus is a summons with the force of a court order. On a complaint from an individual, it is addressed to the custodian (a prison official for example) demanding that a

prisoner be taken before the court, and the custodian is acting beyond his or her authority. A writ or order that is issued from a court of superior jurisdiction that commands an inferior tribunal, corporation, Municipal Corporation, or individual to perform, or refrain from performing, a particular act, the performance or omission of which is required by law as an obligation.

A writ or order of mandamus is an extraordinary court order because it is made without the benefit of full judicial process, or before a case has concluded. It may be issued by a court at any time that it is appropriate, but it is usually being issued in a case that has already begun.

Writ of Prohibition is an order from a superior court to a lower court or tribunal directing the judge and the parties to cease the litigation because the lower court does not have proper jurisdiction to hear or determine the matters before it.

A writ of prohibition is an extraordinary remedy that is rarely used. In common language it is known as stay order.

Quo Warranto is a Latin word meaning by what warrant. It is a prerogative writ requiring the person to whom it is directed to show what authority they have for exercising some right or power they claim to hold.

Certiorari is a Latin word meaning 'to be informed of, or to be made certain in regard to'. As an appellate proceeding, it is about re-examination of actions of a trial court, by an appeals court. It is a decision by the Supreme Court to hear an appeal from a lower court. Intact both in the cases where a High Court certifies or otherwise. If the court is satisfied that case involves (criminal and civil) an interpretation of constitution, the SC can issue special leave to appeal (Pylee 1980). This apart, the Supreme Court has wide ranging appellate jurisdiction over all courts and Tribunals in the country. Under Article 136, the court can use its discretion to grant special leave to appeal from any judgement, decree, sentence or order in any cause or matter passed by any court, tribunal in India (Mohanty 2009).

Advisory Jurisdiction

The advisory jurisdiction ranges from specific advises sought by the President of India function of the SC is also very important. If there arises any ambiguity regarding the interpretation of a clause of the constitution or certain constitutional problem arises, the President can refer the same to the SC for its expert opinion. To spell the exact wordings of Article 143 'If at any time it appears to the President that a question of law or fact has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the SC upon it, he may refer the question to that Court for consideration and the Court may, after such hearing as it thinks fit, report to the President its opinion thereon.' However, the opinion of the Court is not binding on the President.

Miscellaneous Powers

Apart from three key jurisdictions as mentioned above, the SC has many miscellaneous powers. Notably, it is a court of records, meaning that the records of its decisions and proceedings are preserved and published. Further, the decisions of the SC are binding on all the courts of the country. Importantly, the highest court has powers to review its own judgment or order. More importantly, the SC is provided with the power of judicial review. This apart, the SC is authorized to make rules for regulating the practice and procedure of the Court with the approval of the President. Further, the court has power to appoint amicus curie (friend of the court) to argue the case of the accused who is unrepresented. Finally, the court has power to extend free legal aid to person belonging to poorer sections (Austin 1999; Mohanty 2009).

6.6 GROWTH AND EVOLUTION OF JUDICIAL POWERS: AN OVERVIEW

The power of judicial review stems from a combined reading of Articles 13, 32 and 142 of the constitution. For instance, Article 13(2) states that “The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.” For more clarity see Pylee 1980; Basu 2012.

While formulating structures and various provisions for the supreme court, Alladi Krisnaswami Ayyar, a key member of the Drafting Committee had remarked that “The future evolution of the Indian constitution will thus to a large extent rest upon the work of the Supreme Court and the direction given to it by that Court.” To a great extent, the Indian judiciary ably led by the Supreme Court has lived up to the expectations of the framers of the Constitution. Below is a brief overview of evolution and growth of judiciary as an independent organ of the government.

6.6.1 FIRST PHASE: A POSITIVIST COURT

The judiciary (meaning the higher courts) has evolved in different phases in its response to legislative and executive branches of the government. The judiciary in its early years was understated yet potent, using restricted confines of the judicial space to act as an effective check on legislative pronouncements. This check exercised through the power of judicial review, was used judiciously by the judiciary in the early years. At least three key aspects of early years of judiciary stand out. First, it strictly adhered to the constitutional text. Second, it refused to support lofty ideologies of the government of the day. Third, at the same time, it conceded parliament to have plenary power to amend constitution (Rajamani and Sengupta 2010). Thus, although the judiciary declared zamindari abolition as illegal and violation of right to property in Kameshwar

Prasad vs. State of Bihar, it refrained from using the provision of judicial review when parliament quickly brought out first amendment to constitution which placed the provision (inserted Article 31B) out of the purview of judicial review. Similarly, in State of Madras vs. Champakam Dorairajan, it the court struck down government's decision to have reservations in educational institutions based on caste as violation of right to equality (Article 14), it did not oppose parliament's right to bring a constitutional amendment to justify such affirmative action on the basis of caste.

The court did follow near similar approach in Seventeenth Amendment in 1964 that arose as a result of its verdict in Sajjan Singh case.¹⁴ In all these, the Court seems to have followed a positivist interpretation of constitution in the first fifteen years of its functioning. To quote Rajamani and Sengupta (2010), "The Court kept its head above the hurly-burly of custodian politics, in the first fifteen years of India's Independence it was a controversial institution, its decisions generating fierce and bitterly contested public debates. This was no surprise given the matters it was called upon to adjudicate. Civil liberties, free speech, caste discrimination, and most notably land reforms were matters central to the ideals, aspirations, and lived realities of people in the new republic." It perceived itself as an institution discharging a function that the drafter's of the Constitution envisaged for it.

¹⁴AIR 1965 SC 845

6.6.2 SECOND PHASE: BENDING BACKWARD

The second phase that began with famous Golak Nath¹⁵ verdict was rather tumultuous and politically charged. The judiciary which was perceived as a political institution in character and essence notwithstanding its dealing with many politically sensitive issues such as abolition of zamindari, reservation policy which often caused direct confrontation with parliament, entered the political water with its expansive interpretation of Fundamental Rights in Golak Nath. The SC in this case reconsidered the constitutionality of the Seventeenth Amendment and by a majority verdict declared the said amendment illegal. Thus, it overruled Sankari Prasad and Sajjan Singh cases that it had avoided to confront with the parliament. The Court held that the amending power of the parliament to be subject to fundamental rights tests. In short, with one stroke the SC denied parliament its legislative sovereignty and restored its power of judicial review even on matters related to right to property. The court went farther in R.C. Cooper vs. Union of India¹⁶ when it struck down much touted bank nationalization scheme as illegal. This prepared a stage for direct confrontation between judiciary and parliament. To restore its supremacy, the Parliament passed Twenty-fourth Amendment which overturned Golak Nath.

The Twenty-fourth Amendment (along with Twenty-fifth and Twenty-ninth Amendments) led the Court to delivering historic Kesavananda Bharti vs. State of Kerala¹⁷ judgment that saw the judiciary limiting parliament's sovereign power to amend the constitution. All thirteen judges bench of the Supreme Court in a majority verdict (7 judges supported) held that while parliament

was supreme to amend constitution, under Article 368 it cannot alter the ‘basic structure’ of the constitution (Basu; 2012; Austin 1999). This act of judiciary, however, opened up further resistance and opposition from the parliament particularly the ruling congress government at the centre. The government reacted very strongly by superseding three senior most judges to appoint Justice AN Ray as Chief Justice of India. The ensuing confrontation reached its peak in Raj Narain case¹⁸ involving the validity of Mrs. Indira Gandhi’s election. The Allahabad High Court which set aside Mrs. Gandhi’s election and subsequent declaration of Emergency in June 1975, set the stage for rapid marginalization of judiciary. National Emergency and the supersession of judges which led to rapid politicization of judiciary, actively contributed to judicial surrender to the executive in the controversial ADM Jabalpur vs. Shivkant Shukla¹⁹ that backed government’s act of suspending right to life under Article 21 of the Fundamental Rights. The SC overturned the decisions of several High Courts that had declared suspension of habeas corpus illegal and took a stand that supported government’s claims.

The judiciary which fought all these decades to defend and protect Fundamental Rights maintained that “the right to life and personal liberty were bounties given to citizens by the state and hence could be withdrawn in times of Emergency.”²⁰ Thus, with one judgment the judiciary which had assiduously nurtured a positivist, apolitical and independent course, lost it to the diverse tactics of executive branch which exercised further supremacy with Forty-second Amendment that took away most critical judicial powers including the power of judicial review. The judiciary which had earned accolades and respects in the previous decades became prey to politicization, turned unpopular and lost much acquired legitimacy (Rajamani and Sengupta 2010).

6.6.3 THIRD PHASE: ERA OF JUDICIAL SUPREMACY

With the defeat of ruling government in 1977 and new Janata government claiming powers at the Centre, situation turned favourable for the judiciary to undo its mistakes and restore lost ground that it had gradually ceded to the executive over the years. The judiciary which was viewed to have made abject surrendering to the government tried to do the ‘repentance’ acts by taking on an activist course through many of its subsequent judgments. Post-Emergency, the most immediate response from the judiciary was to quickly undo the damage it had done in Habeas Corpus case (known as ADM Jabalpur). In the famous Maneka Gandhi vs. Union of India²¹, the judiciary went on to widen the ambit of Article 21 by linking it to grounds of procedural and substantive fairness. In this case, the court opened up a new dimension of right to life and personal liberty when it laid down that Article 21 was not only a guarantee against the executive action unsupported by law, it is also a restriction on law making. It also struck down the key provisions of Forty-second Amendment that had kept judicial review out of the ambit of constitutional amendments in *Minerva Mills*.²² However, these verdicts were just the beginning of a new era by judiciary was recovering from the shock of its Emergency bungling. In a gradual manner, the judiciary fashioned an era of judicial activism in the later decade through expansive

interpretation of fundamental rights by creative use of a new instrument called public interest litigation (PIL). By actively embracing PIL route, “the Supreme Court of India for the first time became Supreme Court for Indians.”²³

6.7 PUBLIC INTEREST LITIGATION AND JUDICIAL ACTIVISM

Public interest litigation (PIL)²⁴ which had gained considerable popularity in America and other western democracies as an emancipatory tool to defend the rights of third parties mostly disadvantaged minorities, poor and marginalized, was embraced by Indian judiciary in early 1980s to expand ‘access’ to justice. PIL fostered judicial innovation and doctrinal creativity that a post- Emergency judiciary was looking out desperately to salvage its image (Sahoo 2002; Rajamani and Sengupta 2010). The starting point of PIL revolution was with landmark *S.P. Gupta vs. President of India and others*.²⁵ Delivering the judgment, Justice P.N. Bhagwati, the key architect of PIL relaxed the locus standi, and opened up the doors of the judiciary to public spirited citizens – both those wishing to espouse the cause of the poor and oppressed and those wishing to enforce performance of public duties (Sathe 2001; Rajamani and Sengupta 2010). While delivering the judgement, Justice Bhagwati made it clear that “any member of the public acting bona fide and having sufficient interest in instituting an action for redressal of public wrong or public injury could move the court. The court will not insist on strict procedures when such a person moves a petition on behalf of another or a class of persons who have suffered legal wrong and they themselves cannot approach the court by reason of poverty, helplessness or social backwardness.”²⁶ In other words, with *S.P. Gupta*, the court changed the old concept of locus standi by allowing people who had a stake, direct or indirect, in the outcome of a suit, to be represented in the judicial proceedings.

Beyond relaxing the locus standi, the judiciary went ahead and allowed public participation in the judicial process even as it recognized the group rights to participation legal proceedings. In doing so, the judiciary granted workers, residents and general public the right to appeal the courts against violation of the collective rights. For instance, court in the *National Textile Workers Unions*.

²³See Baxi 1985; 2000.

²⁴PIL grew in America in response to the failure of regulatory agencies to fulfill the constitutional obligations. The people did not have access to represent their grievances. Groups like minorities, women, children and destitute having grievances were taken up by various public interest’s groups. The groups furnished formal legal representation to such groups in the court. The US Supreme Court granted recognition to these groups to represent the interests of indeterminate class of persons, apart from relaxing the rules of standing. See Khosla 2008.

²⁵(1981) Supp (1) SCC 87

²⁶AIR, 1982SC1473

P.R. Ramakrishnan²⁷ held that although the Companies Act did not provide for participation of workers in the winding up of proceedings of a company, they had stakes in the outcome of the action proposed to be taken. In another important case *Sunil Batra vs. Delhi Administration*²⁸, the court relaxed the adversarial procedures to the extent that it recognized the right to a prisoner to move the court complaining of alleged torture of another prisoner. In the same breadth, the judiciary treated the letters written to it as writ petitions as it would expand ‘access to justice’ (Sahoo 2002). The court made further innovation in public interest cases by granting interim relief to the victims, specifying the amount of compensation and supervising the process of their implementation.²⁹ The Court’s active promotion of PIL encouraged thousands of public spirited individuals, lawyers, citizen forums and NGOs to file litigations on behalf of underprivileged and helpless individuals and groups. Hundreds of litigations were filed on all kind of issues ranging from human rights violation, women rights, child rights, bonded labour, environmental pollution and even constitutional and governance issues.³⁰

In every sense, PIL heralded the era of judicial activism³¹ in India. This is not to deny the roles of other instruments in aiding the activism of the court. Through PIL, the court creatively expanded substantive rights (i.e., Fundamental Rights Especially Article 21) to cover unarticulated but implicit rights such as right to live with human dignity, the right to livelihood, the right to education, the right to health and medical care of workers, (Baxi 2000; Rajamani and Sengupta 2010). In the process of performing such roles, which many name as ‘judicial activism’ (Sahoo 2002; Khosla 2009), the judiciary seems to have taken up or assumed the functions of other organs of the government. Scholars and practitioners cite such judicial tendencies of taking up the roles of other organs to inaction or failures of these branches to perform their constitutional roles which brought judiciary into the scene (Baxi 2000; Sathe 2001). However, there are equal numbers of scholars who point this to the ambition of a handful of ambitious judges to usurp the powers of executive and legislature at a time when the governance regimes are fragile.

²⁷AIR1983SC75

²⁸AIR1980, SC1579

²⁹For more see *Bandhua Mukti Morcha Case*, Supra Note 11.

³⁰Using PIL as an instrument, thousands of people petitioned court to compel the executive branch to do what its duties or to prevent it from doing something forbidden by the law. In response, the court liberalised the traditional mandamus and directed the government agencies to perform their constitutional duties. For instance, the court directed CBI to investigate cases of

human rights violations, government hospitals to provide medical aid, municipalities to provide compensations to victims of negligence, etc. formoresee Sahoo2003.

³¹The term judicial activism was originated in the US especially in the judgements of Warren Court. The Warren Court took an activist stance to redefine individual rights, civil liberties is-avis-the Congress.

³² Regardless of its origin, court's activism through PIL route has got into take various avatars: mainly law making and executive.

6.7.1 COURT IN EXECUTIVE SHOES

In hundreds of PIL based judgements, the courthas entered editssel fun to the shoes of executive branch. Beyond delivering verdicts, the court virtually has gone into executive spheres when it granted compensation to the victims,³³ passed orders to rehabilitate bonded labourers,³⁴ issued directions to rickshawsto rickshaw pullers and to prevent them fromunemployment,³⁵ issuing guidelines to check environmental pollution.³⁶ In a significant judgement in Vineet Narain vs. Union of India³⁷, court used 'continuing mandamus' to give government a series of policy directions including conferment of statutory status to Central Vigilance Commission, manner of the selection, tenure and other nitty- gritty of executive job (Rajamani and Sengupta 2010). All these acts suggest that the judiciary has intruded into the areas, which were usually known as domains of executive. The fact is, in all these cases, judiciary is apparently telling the executive branch to implement their own laws on bonded labour, minimum wages, equal remuneration, contract labour and so on (Baxi 1985).

Judicial law making role

Through PIL backed judicial activism, the court often assumed law making role meant exclusivelyfor the legislative branch. For instance, in *Hussainara*³⁸, the court went to the extent of redrafting the prison jurisprudence. Similarly, in *Azad Rickshaw*, the court directed reforms need to be infused in the existing laws. In a significant judgement in *Vishaka vs. State of Rajasthan*,³⁹ in the absence oflaw the Court took the reasonability of laying down guidelines on sexual harassment in theworkplace apart from providing procedures and mechanisms for investigation and redress. The court justified such act under Article 32 of the Constitution (constitutional remedies). The Court emphasized that this would be treated as the law declared by this court under the article141 of the Constitution.⁴⁰ In short, in a number of PIL related judgments, the court has assumed law making role, often raising uncomfortable constitutional questions.To sum up, the implantation of PIL into justice delivery process and its further improvisation by the court in numerous cases ranging from human rights violations, rights of disadvantaged, environment, redress for executive inaction to constitutional questions restored public faith on judicial institution and eventually made it one of the most powerful judiciaries in

the world. Yet, PIL and host of other instrumentalities that the court has been employing in increasing number of instances have led to growing tensions among key branches of the government, thereby raising serious constitutional questions of separation of powers. Scholars and critiques monitoring the judicial story feel that in growing number of issues, the court is usurping powers of other constitutional branches, something rarely visualized by the constitution makers (Shunmugasundaram 2007; Mehta 2007). That Court is adjudicating matters beyond its jurisdictions and often dabbling in policy making (Mehta 2007, Rajamani and Sengupta 2010). From cases ranging to decide technical issues such as nature of environmental pollution to political questions such as dissolution of state Assembly (Article 356) to anti-defection laws, judicial overreach has been spread in all spheres of state policies. Judicial overreach has been spread in all spheres of state policies.

6.8 JUDICIAL ACCOUNTABILITY

PIL aided judicial activism which has led to an unprecedented growth of judicial powers, is ironically an institution with very little formal accountability. By creating a 'basic structure' conditionality (to effectively restrict legislature's power to amend constitution), by including judicial review into the new clause, by expansive interpretation of traditional rights and by investing itself with the power to select the judges, the judiciary has made itself as a supra institution. In every sense, the court has moved closer to becoming an 'imperium in imperio' (Rajamani and Sengupta 2010). For all practical purposes, there exists no oversight over judicial exercise of constitutional roles. The only way in which the executive used to retain some control i.e. Appointment of judges, have been taken away by the judiciary after its controversial judgement in three *Judges* case. In fact, India is only country in liberal democracies where the judges alone appoint judges to the higher judiciary (Menon 2008). Similarly, with impeachment provision remaining extremely arduous process (has been exercised successfully only once in the last 68 years), judiciary increasingly look above the democratic processes (Mehta 2007). The most striking fall out of such unaccounted power is reflected in many individual judges often going out of rule book and decide cases and make remarks that can clearly bring down the reputation and legitimacy of judiciary. Most worrisome trend is growing trends of corruption⁴¹ among the judicial fraternity which have been openly acknowledged by the Chief Justices and senior members of the Bar.⁴² In fact, alarmed by the lack of accountability and other vices gripping judiciary, the government has put up a Judicial Accountability Bill to address many of the maladies currently afflicting judiciary. In short, there exist little or no institutional mechanisms to enforce accountability and responsiveness among the judges of higher judiciary.

6.9 JUDICIAL REFORMS

Notwithstanding its activist streak and far reaching contributions in terms of expanding new frontier of rights and justices via PIL, this critical constitutional instrument of last resort is in deep crisis today. Not only are the courts in India sitting over mountain of litigations, judicial

decisions becoming inconsistent often contradicting each other⁴³, expensive and time consuming and far beyond the reach of average citizen, let alone the poorest and marginalised as the court have been trying to do through PIL.

By government's own admission, there are 32 million cases pending in all tiers of the judiciary.⁴⁴ While about 66,569 cases are currently pending with the Supreme Court, 42 lakhs with High Courts and 2.8 crore with subordinate courts. According to estimation by PRS Legislative, a parliamentary watchdog, pendency has increased by 148% in the SC, 53% in High Courts and 36% in subordinate courts in the last 10 years.⁴⁵ Added to this is very low conviction rate (6%). Disposal rate is just over 17%. According to a recent McKinsey study, if Indian courts continue operating at their current rates, they would take more than 300 years to clear their judicial backlog. The reasons for pendency according to the Union Law Minister are multifarious (i) increase in institution of fresh cases; (ii) inadequate number of judges and vacancies; (iii) inadequate physical infrastructure and staff; and (iv) frequent adjournments.

Linked to pendency is ever increasing number of vacancies at various courts. According to a recent estimate, there are 3,422 unfilled vacancies in the district and subordinate courts and 276 in the High Court (out of sanctioned strengths of 895).⁴⁶ More startling is that as many as seven high courts in the country are without full-time chief justices, largely because the existing collegiums have not time to make recommendations.⁴⁷ In short, even the collegiums system of appointment by the judiciary has not kept pace with the demands of the time.

Growing instances of corruption is something which bothers the judiciary as much as it has to other branches of the government. Once viewed above corruption, the judicial branch is newsworthy for corruption and favouritism. According to Transparency International judicial corruption survey, some 77% of Indians believe judiciary to be corrupt.⁴⁸ Nearly 3600 crores go in terms of bribing lawyers and judges to get justice and avoid long dragging of cases and frequent adjournments. Several sensational cases of corruption and misuse of official position by some judges have grabbed the attention of press and public, thereby sullyng the image of judiciary in the recent years.

The most important issue, however, is the issue of access to justice. For countless citizens, especially poor and marginalised, access to justice remains a distant dream. Many special schemes such as Lok Adalat and free legal aid have remained of symbolic nature (Menon 2008). According to many reports and studies, justice delivery system in India remains cumbersome, time and money consuming for most citizens, let alone the poor.⁴⁹

Last but not the least, the judicial process is yet to embrace modern information technology in a big way. It is evident from global experiences that application of communication technologies and automation of judicial process is revolutionizing justice delivery process and the aspects of speed and efficiency. However, except for the higher courts to some extent, much of the judicial system at lower level functions with old and inefficient process. The judiciary in India is lacking both physical as well as knowledge infrastructure to meet the gargantuan expansion of workload and public expectations.

In response, both judiciary and the government have undertaken a slew of measures to overhaul

an ailing justice delivery system. The government has set up a number of commissions and committees to study and suggest remedial measures. The most recent have been the elaborate

⁴⁸See the press report here: <http://www.infochangeindia.org/governance/news/77-of-indians-believe-judiciary-is-corrupt-ti-survey.html>

⁴⁹170th Report of the Law Commission of India; Second ARC report 2008.

Suggestions made by the Report of Second Administrative Commission and 170th Report of the Law Commission of India. Against a growing outcry about a dysfunctional justice system, the SC and several High Courts have initiated number of initiatives to reduce pendency, expand infrastructure facilities, improve governance process and be more accessible to citizens. For instance, the SC set up a National Court Management Systems Scheme in May 2012 to address the issues of efficiency and governance. Under the scheme, a National Framework of Court Excellence has been instituted which will set "measurable standards" of performance for courts addressing the issues of quality, responsiveness and timeliness. Similarly, the Court has set up an E-Committee to devise and implement a National Policy on computerization of judicial administration in order to expedite delivery of justice in civil and criminal cases.⁵⁰ On pendency issue, the idea of Fast Track Courts which have reduced pendency of nearly 20 lakh criminal cases. In Tamil Nadu, Andhra Pradesh and Gujarat, such courts have been proved to be quite effective in disposal of cases involving minor offences which are clogging our criminal justice system.

Delhi High Court has recently started evening courts initially for cases under Section 138 of Negotiable Instruments Act, involving small amounts.⁵¹ Most important developments, however, is allocation of substantial financial resources for judiciary by the 13th and 14th Finance Commissions.

These apart, there have been slew of other proposals of huge promise doing the round of judicial reforms. While the judiciary has proposed for Alternative Methods of Delivery of Justice to dispose cases more rapidly through out of court settlements, the Union government has come out with several key bills on appointments, accountability, judicial conduct and so on. Also, there is a pending proposal for the constitution of All India Judicial Services. In short, a number of ideas and proposals are being mooted and actively debated to reform judiciary in India.

⁵⁰See *The Indian Express* story, December 27, 2012, link:

<http://www.indianexpress.com/news/yearender-2012-judicial-reforms-flavour-of-2012/1050916/3>

⁵¹For details, see Chief Justice K.G. Balakrishnan's lecture, see link: <http://indiacurrentaffairs.org/judicial-reforms-in-india-addressed-by-k-g-balakrishnan-honble-mr-chief-justice-of-india/>

6.10 MCQs

1. Which is the highest judicial authority in India?

- a) High Court
- b) District Court
- c) Supreme Court
- d) Civil Court

Answer: c) Supreme Court

2. Who appoints the judges of the Supreme Court in India?

- a) Prime Minister
- b) Parliament
- c) President
- d) Chief Minister

Answer: c) President

3. What is the retirement age of a Supreme Court judge?

- a) 60 years
- b) 62 years
- c) 65 years
- d) 70 years

Answer: c) 65 years

4. The system of Judiciary in India is:

- a) Federal
- b) Integrated
- c) Dual
- d) Mixed

Answer: b) Integrated

5. Which Article of the Indian Constitution deals with the establishment of the Supreme Court?

- a) Article 124
- b) Article 226
- c) Article 32
- d) Article 214

Answer: a) Article 124

6.11 SAQ'S

1. What do you understand by the term "judicial review"?
2. What is the role of the High Court in a state?
3. Who is the head of the Indian judiciary?
4. Mention any two features of the Indian judiciary.
5. What is meant by Public Interest Litigation (PIL)?

6.12 TRUE OR FALSE

1. The Indian judiciary is independent of the executive.
Answer: **True**
2. Only the Supreme Court can issue writs.
Answer: **False (High Courts can also issue writs)**
3. The President can remove a judge of the Supreme Court without Parliament's approval.
Answer: **False**
4. District courts are the lowest courts in the Indian judiciary system.
Answer: **False (They are above subordinate courts)**
5. Judges of the Supreme Court can be reappointed after retirement.
Answer: **False (They cannot be reappointed to the Supreme Court)**

6.13 TERMINAL QUESTIONS

1. Explain the structure of the judiciary in India.
2. Discuss the role of the Supreme Court as the guardian of the Constitution.
3. Describe the process of appointment and removal of judges in the Supreme Court.
4. What is meant by the independence of the judiciary? Why is it important in a democracy?
5. What are writs? Explain the types of writs issued by the Indian courts.

UNIT 7

NHRC AND HUMAN RIGHTS PROTECTION MECHANISMS

7.1 INTRODUCTION

7.2 OBJECTIVE

7.3 WHAT IS NATIONAL HUMAN RIGHTS COMMISSION (NHRC)

7.4 ESTABLISHMENT AND LEGAL FRAMEWORK OF NHRC

7.5 STRUCTURAL COMPOSITION AND MEMBERSHIP CRITERIA

7.6 APPOINTMENT PROCESS

7.7 TENURE

7.8 FUNCTIONAL POWERS OF NHRC

7.9 PROCEDURE FOR FILING AND DEALING WITH COMPLAINTS IN NHRC

7.10 TYPES OF COMPLAINTS ADDRESSED BY NHRC

7.11 CHALLENGES IN THE FUNCTIONING OF NHRC

7.12 STRATEGIC RECOMMENDATIONS FOR STRENGTHENING NHRC'S EFFECTIVENESS

7.13 CONCLUSION

7.14 MCQs

7.15 TRUE/ FALSE

7.16 SAQs

7.17 TERMINAL QUESTIONS

7.18 REFERENCES

7.1 INTRODUCTION

The National Human Rights Commission (NHRC) of India plays a crucial role in ensuring the protection and promotion of human rights as enshrined in the Indian Constitution and international treaties. It functions as an autonomous institution tasked with safeguarding individuals' rights related to life, liberty, equality, and dignity, thereby strengthening democratic governance and the rule of law. NHRC also collaborates with international human rights organizations to uphold universal human rights standards.

7.2 OBJECTIVES

The objective of this unit is to understand the National Human Rights Commission (NHRC), its functioning, and how it addresses human rights violations. The NHRC primarily investigates and takes action on human rights violations, ensuring justice for victims while recommending policy measures for effective human rights protection. Additionally, it fosters awareness, accountability, and responsiveness among government institutions, law enforcement agencies, and civil society. The commission also plays a crucial role in advising the government on legislative and policy reforms to align with global human rights conventions.

7.3 WHAT IS THE NATIONAL HUMAN RIGHTS COMMISSION (NHRC)

The National Human Rights Commission (NHRC) of India is a statutory body established under the Protection of Human Rights Act, 1993, to promote and protect human rights, including the rights to life, liberty, equality, and dignity, as enshrined in the Indian Constitution and international covenants. It investigates and addresses human rights violations, ensures justice for victims, and recommends policy measures for better protection. The NHRC also advises the government on legislative and policy reforms, reviews existing human rights laws, and monitors compliance with international obligations. Additionally, it fosters awareness, supports NGOs and civil society in human rights advocacy, and conducts research and education initiatives to strengthen human rights protection in India.

7.4 ESTABLISHMENT AND LEGISLATIVE FRAMEWORK OF NHRC

The National Human Rights Commission (NHRC) of India is a statutory body established under the Protection of Human Rights Act, 1993, to promote and protect human rights, including the rights to life, liberty, equality, and dignity, as enshrined in the Indian Constitution and international covenants. It investigates and addresses human rights violations, ensures justice for victims, and recommends policy measures for better protection. The NHRC also advises the government on legislative and policy reforms, reviews existing human rights laws, and monitors compliance with international obligations. Additionally, it fosters awareness, supports NGOs and

civil society in human rights advocacy, and conducts research and education initiatives to strengthen human rights protection in India.

7.5 STRUCTURAL COMPOSITION OF NHRC

The National Human Rights Commission (NHRC) consists of a chairperson, five full-time members, and seven deemed members, ensuring a broad representation of human rights concerns.

1. **Chairperson:** The chairperson must be a former Chief Justice of India or a Supreme Court judge.
2. **Full-time Members:** The NHRC includes five full-time members:
 - One serving or retired judge of the Supreme Court
 - One serving or retired Chief Justice of a High Court
 - Three individuals with significant knowledge or practical experience in human rights, with at least one being a woman.
3. **Deemed Members:** The NHRC also includes seven deemed members, who are the chairpersons of key statutory bodies that address various human rights issues:
 - National Commission for Minorities
 - National Commission for Scheduled Castes
 - National Commission for Scheduled Tribes
 - National Commission for Backward Classes
 - National Commission for Protection of Child Rights
 - National Commission for Women
 - Chief Commissioner for Persons with Disabilities

This composition ensures that the NHRC includes expertise from the judiciary, human rights professionals, and representatives from statutory bodies, thereby strengthening its ability to address a wide range of human rights concerns effectively.

Category	Eligibility / Composition
Chairperson	Former Chief Justice of India or Supreme Court Judge
Full-time Members	- One serving/retired Supreme Court Judge - One serving/retired Chief Justice of a High Court - Three individuals with expertise in human rights (at least one must be a woman)
Deemed Members	Chairpersons of: - National Commission for Minorities - National Commission for Scheduled Castes - National Commission for Scheduled Tribes - National Commission for Backward Classes - National Commission for Protection of Child Rights - National Commission for Women - Chief Commissioner for Persons with Disabilities

Table 1: Structural composition of NHRC

7.6 APPOINTMENT PROCESS OF NHRC MEMBERS

The **Chairperson** and **Members** of the National Human Rights Commission (NHRC) are appointed by the **President of India**. The appointment is based on the recommendations of a **six-member committee**, which includes:

- Prime Minister (Chairperson of the committee)
- Speaker of the Lok Sabha
- Deputy Chairman of the Rajya Sabha
- Leaders of the Opposition in both the Lok Sabha and Rajya Sabha
- Union Home Minister

This selection process is designed to uphold transparency, independence, and institutional integrity.

7.7 TENURE OF NHRC CHAIRPERSON AND MEMBERS

The Chairperson and Members of the NHRC hold office for a term of three years or until they reach the age of 70, whichever comes first. They are eligible for reappointment; however, after

completing their tenure, they cannot take up any further employment with the central or state government.

7.8 FUNCTION AND JURISDICTION OF NHRC

NHRC serves as an investigative and advisory body with powers similar to a civil court when addressing human rights violations. It has the authority to summon individuals, examine witnesses, collect evidence, and conduct judicial proceedings. Additionally, the NHRC can seek assistance from central or state government agencies for investigations. However, its role remains primarily recommendatory, as it lacks direct enforcement powers.

Key functions of NHRC include:

- **Judicial Powers:** Acts with the authority of a civil court while conducting inquiries.
- **Investigative Authority:** Can use central and state agencies to investigate human rights violations.
- **Time-bound Inquiry:** Can only investigate cases that occurred within one year.
- **Prison and Custodial Monitoring:** Visits prisons and custodial institutions to assess detainees' living conditions and recommend reforms.

While the NHRC cannot enforce its recommendations, it plays a crucial role in advocating for policy changes and holding authorities accountable for human rights protection.

7.9 PROCEDURE FOR FILING AND DEALING WITH COMPLAINTS IN NHRC

NHRC is responsible for addressing complaints related to human rights violations. The Commission follows a structured procedure to ensure transparency, accountability, and fair investigation of complaints.

7.9.1 Procedure for Dealing with Complaints

Eligibility for Filing Complaints:

- Complaints can be filed by individuals, groups, or organizations regarding alleged human rights violations.
- There is no restriction on the identity of the complainant, meaning anyone can report violations on behalf of the victim.

Registration and Preliminary Review:

- Upon receiving a complaint, the NHRC registers and assigns a unique reference number to track the case.
- Complaints are reviewed by the Commission members, who may request additional information or affidavits to substantiate the allegations.
- If the complaint lacks merit or does not fall under NHRC's jurisdiction, it may be dismissed at this stage.

Inquiry and Investigation Process:

- If the complaint is deemed admissible, the NHRC initiates an inquiry or directs an investigation.
- The Commission may seek reports or comments from the concerned state or central government authorities.
- A detailed assessment of the case is prepared, based on the available evidence and government responses.
- If no further investigation is required, or if the authorities have taken appropriate action, the complaint may be closed.

Investigation and Legal Proceedings:

If the NHRC finds substantial evidence of human rights violations, it can:

- Conduct an independent investigation through its members or the investigation division.
- Recommend prosecution against the responsible officials in cases of negligence or violation.
- Direct immediate relief or compensation to the victim or their family.
- Approach the Supreme Court or High Court for enforcement of its recommendations.

Complaints Involving Armed Forces:

- In cases where the complaint concerns human rights violations by armed forces, the NHRC seeks a report from the central government.
- If the NHRC is satisfied with the government's response, it does not pursue the case further.

- If not satisfied, the NHRC provides recommendations to the government, which must respond with details of action taken within three months.

Investigation Authorities:

- NHRC has an investigation team led by a Director General of Police, responsible for examining human rights violations.
- The Commission may also collaborate with central or state investigative agencies.
- In some cases, non-governmental organizations (NGOs) may be involved in fact-finding missions.

7.9.2 Filing of Complaints

Languages Accepted: Complaints can be filed in Hindi, English, or any language recognized under the Eighth Schedule of the Indian Constitution.

No Fee Requirement: The NHRC does not charge any fee for filing complaints.

Modes of Filing Complaints: Complaints can be submitted through multiple channels:

- In-person or via post to the NHRC headquarters.
- Email submission at covdnhrc@hub.nic.in (General) / jrlaw@hub.nic.in.
- Telephonic complaints on NHRC's designated mobile number 9810298900.
- Fax submissions for urgent cases.
- Online complaint portal available on the NHRC's official website.

Additional Documentation and Follow-up:

- NHRC may request further details or affidavits to support the allegations.
- In some cases, telegraphic complaints or complaints via fax/email may be accepted at the Commission's discretion.

7.10 TYPES OF COMPLAINTS ADDRESSED BY NHRC

NHRC receives and investigates various complaints related to human rights violations. These complaints often highlight issues of abuse, negligence, and systemic failures by law enforcement agencies and public authorities. Some of the key types of complaints admitted by NHRC include:

- **Custodial Deaths and Violence:** Cases involving deaths in police or judicial custody due to negligence, abuse, or excessive force.
- **Fake Encounters:** Allegations of extrajudicial killings by police, army, or paramilitary forces.
- **Illegal Detention and Intimidation:** Instances of wrongful confinement, extortion, or threats by law enforcement officials.
- **Negligence in Law Enforcement:** Failure to register cases, protect citizens' lives and property, or conduct effective investigations.
- **Custodial Abuse and Torture:** Complaints of physical abuse, torture, or sexual violence within police stations or prisons.
- **Denial of Basic Rights in Custody:** Lack of access to legal aid, proper food, hygiene, and medical care in police stations and correctional facilities.
- **Violation of Fundamental Needs:** Denial of clean drinking water, sanitation, and other essential services.
- **Discrimination and Atrocities Against Marginalized Communities:** Cases of caste-based discrimination, including denial of access to public resources like village wells and water bodies.
- **Exploitation and Forced Labour:** Incidents of bonded labour, child labour, and human trafficking.

7.11 CHALLENGES THE FUNCTIONING OF NHRC

Despite its mandate, the NHRC faces several limitations that hinder its effectiveness:

- **Non-Binding Nature of Recommendations** – NHRC's recommendations are not legally enforceable, making their implementation dependent on governmental cooperation.
- **Lack of Punitive Authority** – The NHRC does not have the power to punish human rights violators, reducing its ability to ensure accountability.

- **Restricted Jurisdiction Over Armed Forces** – Cases involving the armed forces are largely beyond NHRC’s purview, limiting its ability to address human rights violations committed by military personnel.
- **Time Constraints on Complaints** – The NHRC cannot take cognizance of human rights violations reported after one year, restricting justice in cases of delayed reporting.
- **Resource Constraints and Staffing Issues** – A shortage of resources and personnel impacts the NHRC’s ability to conduct investigations and awareness programs effectively.
- **Lack of Institutional Independence** – Government appointments to NHRC positions raise concerns about its autonomy and susceptibility to political influence.

Reactive Approach to Human Rights Violations – The NHRC primarily responds to complaints rather than proactively addressing systemic human rights issues.

7.12 STRATEGIC RECOMMENDATION FOR STRENGTHENING EFFECTIVENESS

To enhance the efficacy of NHRC, the following measures are suggested:

- **Expanding Mandate to Address Emerging Human Rights Issues** – NHRC should broaden its scope to address challenges related to Artificial Intelligence, deepfake technology, climate change, and other contemporary concerns.
- **Empowering NHRC with Enforcement Authority** – Granting NHRC punitive powers would ensure stricter compliance with its recommendations.
- **Reforming the Appointment Process for Greater Diversity** – Including members from civil society, academia, and human rights activism would bring diverse perspectives.
- **Establishing an Independent Cadre for Human Rights Enforcement** – A specialized workforce trained in human rights law and investigative procedures would improve NHRC’s operational efficiency.
- **Strengthening State Human Rights Commissions (SHRCs)** – Adequate resources, coordination mechanisms, and structural improvements should be provided to SHRCs for better grassroots-level human rights enforcement.
- **Enhancing Public Awareness and Advocacy Initiatives** – Proactive engagement in human rights education and campaigns would empower citizens and strengthen institutional accountability.

- **Fostering International Collaboration** – NHRC should engage with global human rights organizations to adopt best practices and enhance its functioning.

7.13 CONCLUSION

The NHRC serves as a critical institution for upholding human rights in India. However, its effectiveness is constrained by limited enforcement powers, bureaucratic inefficiencies, and political influence. Strengthening its autonomy, expanding its jurisdiction, and ensuring resource sufficiency are essential for enhancing its impact. A proactive and empowered NHRC can contribute significantly to the realization of human rights and justice in India. Strengthening partnerships with civil society, leveraging technology for human rights monitoring, and engaging in international best practices can further bolster NHRC's role in safeguarding human rights in a dynamic socio-political landscape.

7.14 MCQs

1. The NHRC was established under which legal framework?
 - a) Protection of Human Rights Act, 1993
 - b) Indian Penal Code, 1860
 - c) Right to Information Act, 2005
 - d) Citizenship Act, 1955

Answer- a) Protection of Human Rights Act, 1993

2. The NHRC is classified as:
 - a) A statutory body
 - b) A constitutional body
 - c) A non-governmental organization
 - d) A judicial authority

Answer- a) statutory body

3. The NHRC's recommendations are:
 - a) Legally binding
 - b) Advisory in nature
 - c) Enforced by the Supreme Court
 - d) Subject to parliamentary approval

Answer- b) Advisory in nature

4. What is the tenure of the NHRC Chairperson and Members?
 - a) 3 years or until 70 years of age
 - b) 5 years or until 75 years of age

- c) 6 years or until 65 years of age
- d) No fixed tenure

Answer- a) 3 years or until 70 years of age

5. Which of the following bodies is automatically a deemed member of NHRC?
- a) Election Commission of India
 - b) National Commission for Minorities
 - c) Central Vigilance Commission
 - d) NITI Aayog

Answer- b) National Commission for Minorities

7.15 TRUE OR FALSE

1. The National Human Rights Commission of India was established in 1993.
True
2. NHRC has the power to prosecute offenders directly in a court of law.
False
3. The chairperson of the NHRC must be a retired Chief Justice of India.
True
4. NHRC can investigate complaints of human rights violations only if the victim files a petition.
False
5. NHRC's recommendations are legally binding on the government.
False

7.16 SAQs

1. What is the primary function of the National Human Rights Commission of India?
2. Under which Act was the NHRC established?
3. Who appoints the Chairperson and members of the NHRC?
4. Can NHRC take suo motu cognizance of human rights violations? Explain briefly.
5. Mention two types of cases or issues that the NHRC commonly deals with.

7.17 TERMINAL QUESTIONS

1. . Examine the role of NHRC in safeguarding human rights in India?
2. Discuss the structural composition and appointment process of NHRC members. How does this impact its autonomy and efficiency?
3. Discuss the functioning of NHRC.
4. Critically analyze the limitations of NHRC and suggest measures for its improvement.
5. Explain the core functions of NHRC in addressing human rights violations. Provide examples where NHRC has played a significant role.

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UNIT 8

NATIONAL COMMISSION FOR THE SCHEDULE CASTES

STRUCTURE

8.1 LEARNING OUTCOMES

8.2 INTRODUCTION

8.3 INSTITUTIONAL SETUP OF NATIONAL COMMISSION FOR SCHEDULED CASTES

8.4 RULES OF PROCEDURE

8.5 APPRAISAL OF NCSC'S ACTIVITIES

8.6 SUMMARY

8.7 SUGGESTED READING

8.8 SELF ASSESSMENT QUESTION'S (SAQ'S)

8.1 INTRODUCTION

Justice is one of the most important values cherished and promoted by the Constitution of India. To ensure protection of all sections of the society, several institutional and legislative steps have been taken. For instance, the Article 46 of the Constitution provides that the State shall promote with special care the educational and economic interests of the weaker sections of the society and in particular, of the Scheduled Castes and shall protect them from social injustice and all forms of exploitation. Thus, it can be clearly seen that the Constitution of India is committed towards the protection of all weaker sections in general and SCs in particular. To this effect, the National Commission for Scheduled Castes was conceived with a view to ensure that there is an institutionalized mechanism to carry out the mandate of the Constitution.

The Commission has been regularly presenting its Annual Reports and Special Reports to the President of India, evaluating the functioning of various welfare and development programmes for the Scheduled Castes, analyzing the atrocities being committed against them as well as monitoring the actions taken by the authorities for effective implementation of the various Acts

and Rules. The Commission has been making specific recommendations on all spheres including the handling of atrocity related cases, socio economic development programmes and service related safeguards.”

In order to execute its functions, the Commission conducts itself with a defined mechanism laid down as the Rules of Procedure. The manner of investigation, approach and methodology to be adopted- all such decisions are carried out in accordance with the Rules of Procedure. In the following section, the Module will discuss the Rules of Procedure in detail.

OBJECTIVES

- In this module, the students will get to learn about the institutional set up and the functioning of the Commission.
- This module entails a comprehensive discussion of the rules of procedure of the Commission regarding its inquiry, approach and methodology adopted by the Commission.
- The students will also get to learn about the new amendments that have been introduced with regard to the law prohibiting atrocities against SCs.

8.3 INSTITUTIONAL SETUP OF THE NATIONAL COMMISSION FOR SCHEDULED CASTES

The National Commission is headed by a Chairman who has been assigned particular responsibilities with regard to the functioning of the Commission. The following chart gives a semblance of the organizational setup of the National Commission of Scheduled Castes.

10.4 RESPONSIBILITIES OF THE CHAIRMAN

As per the Handbook of the National Commission for Scheduled Castes, following are the responsibilities of the Chairman:

The Chairperson shall be the head of the Commission and shall have powers to decide on all questions and matters pertaining to the Commission.

- a) The Chairperson shall allocate subjects and responsibilities among the Members of the Commission. The Orders allocating the subjects and responsibilities shall be notified to all concerned by the Secretariat of the Commission.
- b) The Chairperson shall be the authority to sanction leave and approve tours of the Members, Secretary, Joint Secretary and Directors.
- c) The Chairperson shall preside over the meetings of the Commission.

- d) All important decisions in the Commission about its functioning shall be taken with the approval of the Chairperson.
- e) All important administrative matters like appointments, promotions, transfers, posting, deputation and sanction of leave etc. shall be placed before the Chairperson where in he/she may pass general or specific order on such matter.
- f) The Chairperson may call for any records on any matter which he/she considers important and may take a decision on it himself/herself or, if necessary, place it at the meeting of the Commission.
- g) The Chairperson shall be authority to approve Annual Report, Special Report, and communication to the Ministries/ Departments of the Govt. of India/ State Governments/ Media.
- h) The Chairperson shall take decision to conduct specific studies in the areas of the safeguards provided to SCs and shall sanction the budget required for such studies.

i. Responsibilities of the Vice-Chairman

- a) The responsibilities of the Vice-Chairman are the following:
- b) “The Vice-Chairperson shall preside over the meetings of the Commission in the absence of the Chairperson.
- c) The Vice-Chairperson shall perform such functions as are entrusted to him/ her by the Chairperson.
- d) All important administrative matters like appointments, promotions, transfers, posting, deputation and sanction of leave etc. to other than Secretary, Joint Secretary and Directors shall be placed before the Vice-Chairperson wherein he/she may pass general or specific order on such matters.”

8.3.2 Responsibilities of the Members

As mentioned earlier, the Chairman allocates the responsibilities among the members. Following are the responsibilities of the members as per the Handbook:

- a) “The Members of the Commission shall have collective responsibility and shall function by participating in the ‘meetings’ and ‘sittings’ of the Commission and looking after the subjects allocated to them. Important actions and decisions of a Member may be brought at a meeting of the Commission which may review the same.
- b) Any Member may suggest items for inclusion in the agenda of a meeting of the Commission and the same shall be so included after obtaining the consent of the Chairperson.
- c) Each Member shall have overall responsibility of subjects and/or regions or State(s) as may

be allocated to him.

- d) The Members shall play the role of advising the State Governments under their jurisdiction on matters of planning and development relating to the welfare of Scheduled Castes in accordance with the decision taken in the meetings of the Commission/ with approval of the Chairman. The Commission's Secretariat at Headquarters and the State Offices shall assist the Members in keeping them fully informed of the problems and activities of the States and subjects under the irrespective charge."

In addition to the above mentioned officials, the position of the Secretary and Joint Secretary are also pivotal to the National Commission for Scheduled Castes. They assist the Commission with administrative matters.

After this quaint introduction to the institutional setup of the National Commission for Scheduled Caste, the next section would focus on the Rules of Procedure which govern the functioning of the Commission.

8.4 RULES OF PROCEDURE

Rules regarding Inquiry into Specific Complaints

The Official Handbook has laid down the manner in which the Commission could delve into complaints by individuals. The directive given in the Handbook lays down the following rule with regard to laying down the rules for inquiry:

"In order to enable the Commission to perform this function effectively and efficiently, the Commission would like the members of Scheduled Castes to know that it will be helpful to inquire into their grievances if they substantiate their complaints with supporting documents and quote the relevant provisions of the Act or Rules directions which have been violated."

i. STAGES THROUGH WHICH ACTION HAS TO BE TAKEN REGARDING THE COMPLAINTS:



“a) The complaint should be directly addressed to the Chairman/Vice-Chairman/Secretary, National Commission for Scheduled Castes, New Delhi or the heads of its State Offices.

b) The complaints should disclose his full identity and give his full address and should sign the representation.

c) Complaints should be legibly written or typed and, where necessary, supported by authenticated documents.

d) No action will be taken on matters, which are sub-judice. Hence, sub-judice matter need not be referred to the Commission as complaint(s).

e) Cases pending in courts or cases in which a court has already given its final verdict may not be taken up a fresh with the Commission.

f) If Commission, prima facie, feels that there is instance of Allegation-Thorough enquiry may be conducted by the Commission through its Investigation Officers and report of the said inquiry may be placed before the Commission before final decision is taken by the Commission.

g) The cases of transfer/posting in the Govt. service of the members of Scheduled Castes should not be considered in the Commission unless the specific instance of violation of Rules / instructions leading to discrimination against the complainant come to the notice of NCSC.”

ii. Rules of Procedure for inquiry into cases of atrocities

The Commission has the responsibility to immediately get involved in case of atrocities. The Commission has the mandate to act with the law enforcement machinery as well as the administrative branches of the state government. As per the Handbook, the Commission has to follow the following procedure in case there is any substance with regard to the case of atrocities- “If after detailed inquiry/investigation; the Commission finds substance in the allegation/complaint regarding atrocity, the Commission may recommend to file an FIR against the accused with the concerned law-enforcing agency of the State/District.”

Check list for the Commission while investigating cases of atrocities

The Commission undertakes the inquiry into a case of atrocities in an extremely calibrated and comprehensive manner. As mandated by the Handbook, the Commission ensures the following:

a) “Whether the scene of occurrence of the crime has been visited immediately by Collector and Superintendent of Police of the district on receipt of information.

b) Whether proper FIR is registered in local Police Station.

c) Whether names of all the persons involved/cited by the complainant has been included in the

FIR.

- d) Whether investigation has been taken up by a Senior Police Officer as per provisions of the POA (Act)1989 and the amended POA Act 2015.
- e) Whether culprits have been apprehended and booked without loss of time.
- f) Whether proper charge sheet is filed mentioning the relevant sections of IPC together with the Protection of Civil Rights Act, 1955 and the Prevention of (Atrocities) Act, 1989 and the amended Act 2015 in the Court.
- g) Whether the cases are tried by the Special Courts.
- h) Whether special Public Prosecutors are appointed to handle these cases.
- i) Whether Police assists the courts in bringing forward witnesses and see that the culprits are suitably punished by the courts.”

In light of the above discussion, it can be clearly seen that the Commission ensures that there is a comprehensive mechanism in place with regard to handling cases of atrocities against members of Scheduled Castes.

In addition to conducting inquiry into the cases of atrocities, the Commission also monitors that the state machinery ensures adequate protection with regard to compensation and relief to the victims.

The victims are provided with suitable medical assistance and on time; adequate protection is arranged for the victims of such incidents by providing police protection by stationing a police party, by patrolling, to see that proper compensation is paid to the victims as per provisions of law.”

Till now, this module has discussed about the organizational setup of the Commission, Role of each functionary of the Commission. Also, the module contains a detailed description of the rules of procedure that guide the functioning of the Commission.

In the next section, a brief analysis of the functioning of the organization is being done along with the proposed amendments to the law regarding protection of atrocities against Scheduled Castes.

8.5 APPRAISAL OF NCSC’S ACTIVITIES

As mentioned in the previous section, it is important to analyze the functioning of the National Commission of Scheduled Castes since it has been in operation for a considerable period of time and now, therefore its review is essential.

In this regard, the statement of the National Human Rights Commission at Durban is extremely

relevant. At the World Conference against Racism, Racial Discrimination, Xenophobia & Related Intolerance held in Durban, the National Human Rights Commission reaffirmed its commitment to protect rights of persons belonging to Scheduled Castes. In particular, the NHRC statement laid special emphasis on the role of National Commission for Scheduled Castes for ensuring protection of the vulnerable sections of the Indian society.

The NHRC recognized the role played by the Commission in the following manner:

“The Commission has also taken up the issue of the rights of persons displaced by mega projects, specifically those affected by the construction of large dams, many of whom are tribals. The efforts of the Commission in this respect are greatly facilitated by the presence of the Chairperson of the National Commission for Scheduled Castes and Scheduled Tribes, who is also an ex-officio Member of the National Human Rights Commission.”

K.B.Saxena-Report on Prevention of Atrocities against Scheduled Castes, 2004

This report conducted an analysis of the entire institutional and legislative framework regarding the protection of the atrocities against Scheduled Castes. The National Commission for Scheduled Castes gave following recommendations to Mr.K.B.Saxena:

a) Prosecution and Trial of Cases

With regard to the prosecution and trial of cases, the Commission gave the following comments:

“It has been observed that appointment of prosecutors is often influenced by political considerations. The remuneration paid to the prosecutors is generally too low to attract competent and capable lawyers. It is, therefore, necessary that remuneration to the public prosecutors be reasonably enhanced and they should be provided basic minimum facilities necessary for effective functioning. Despite setting up of Special Courts, the disposal of cases is generally very poor and the pendency is rising. For criminal justice system in atrocity cases to be effective, punishment must be prompt and sufficient to deter the potential offender. The various Committees at District and State levels should review the pendency regularly, examine the cause of overwhelmingly large proportion of acquittals and take urgent corrective measures to improve the rate of convictions.”

a) Relief and Rehabilitation

The Commission has also expressed its dissatisfaction with the relief and rehabilitation provisions are being implemented in the current system:

“The SCs & STs (Prevention of Atrocities) Rules, 1995 prescribe standardized norms for relief and rehabilitation to the victims of the atrocities or their families. The Central Government operates a centrally sponsored scheme under which matching share is provided to the State

Governments for meeting the cost of such relief and rehabilitation. While most of the States have started implementing this provision, there are a few States who are yet to start payment of rehabilitation package. The provision also seeks to meet the cost of traveling and maintenance of the victims and witnesses to enable them to attend the courts, etc. To facilitate effective implementation of the provisions of the Act, this provision needs to be enforced strictly.”

The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015

This amendment act came into effect in 2016 and includes several stringent measures for the protection of the members of both Scheduled Castes and Scheduled Tribes.

Following are the key features of the Amended Act:

- i. **Inclusion of an elaborate definition of atrocities:** “New offences of atrocities like tonsuring of head, moustache, or similar acts which are derogatory to the dignity of members of Scheduled Castes and Scheduled Tribes, garlanding with chappals, denying access to irrigation facilities or forest rights, dispose or carry human or animal carcasses, or to dig graves, using or permitting manual scavenging, dedicating a Scheduled Caste or a Scheduled Tribe woman as devadasi, abusing in caste name, perpetrating witchcraft atrocities, imposing social or economic boycott, preventing Scheduled Castes and Scheduled Tribes candidates from filing of nomination to contest elections, hurting a Scheduled Caste/ Scheduled Tribes woman by removing her garments, forcing a member of Scheduled Caste/Scheduled Tribe to leave house, village or residence, defiling objects sacred to members of Scheduled Castes and Scheduled Tribe, touching or using words, acts or gestures of a sexual nature against members of Scheduled Castes and Scheduled Tribe.
- ii. **Several offences related to IPC have also been included in the Act:** Addition of certain IPC offences like hurt, grievous hurt, intimidation, kidnapping etc., attracting less than ten years of imprisonment, committed against members of Scheduled Caste/Scheduled Tribe, as offences punishable under the PoA Act. Presently, only those offences listed in IPC as attracting punishment of 10 years or more and committed on members of Scheduled Caste/Scheduled Tribe are accepted as offences falling under the PoA Act.
- iii. **Establishment of specialized Institutional Structure:** Establishment of Exclusive Special Courts and specification of Exclusive Special Public Prosecutors also, to exclusively try the offences under the PoA Act to enable speedy and expeditious disposal of cases.
- iv. **Enhancement in the Powers of the Special Court:** Power of Special Courts and Exclusive Special Courts, to take direct cognizance of offence and as far as possible,

completion of trial of the case within two months, from the date of filing of the chargesheet.

- v. **Recognition of the Rights of the Victims:** Addition of chapter on the 'Rights of Victims and Witnesses'.
- vi. **Definition of the willful negligence:** Defining clearly the term 'willful negligence' of public servants at all levels, starting from the registration of complaint, and covering aspects of dereliction of duty under this Act.
- vii. **Addition of presumption to the offences** –If the accused was acquainted with the victim or his family, the court will presume that the accused was aware of the caste or tribal identity of the victim unless proved otherwise.”¹

8.6 SUMMARY

In this module, the institutional framework of the National Commission for Scheduled Castes has been explained in detail. There is also a detailed discussion of the powers and functions of each of the functionaries of the Commission. Moreover, this module discussed the rules of procedure adopted by the Commission. Lastly, this module entails a brief overview of the amendments that have been brought about by the government with regard to the protection of the Scheduled Castes.

8.7 SUGGESTED READING

1. The Protection of Civil Rights Act, 1955.
2. The Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989.
3. National Crime Records Bureau, Annual Report for year 2010, p.441
4. Police & You: Know Your Rights, By' Common wealth Human Rights Initiative
5. CHRI for Ministry of Home Affairs.
6. SCST Commission Report, year 1993-94, Para 7.7
7. K.B.Saxena, Report on Prevention of Atrocities Against Scheduled Castes, NHRC, 2004 p .47,55
8. SCST Commission Report, 1994-95, p.204
9. NCRB Report, 2010

10. SCST commission Report, 1994-95, p.210
11. <http://mahapolice.gov.in>
12. www.ncrb.nic.in
13. Annual Report of Supreme Court of India for year 2008-09.
14. <http://indiacode.nic.in/>
15. Supreme Court of India, Annual Report for year 2008-09.

8.8 MCQs

1. The National Commission for Scheduled Castes (NCSC) is a:

- A. Statutory body
- B. Constitutional body
- C. Non-Governmental Organization
- D. Judicial body

Answer: B.

2. Under which Article of the Indian Constitution was the NCSC established?

- A. Article 342
- B. Article 340
- C. Article 338
- D. Article 370

Answer: C.

3. The main function of the NCSC is to:

- A. Conduct elections for Scheduled Castes
- B. Enforce law and order
- C. Monitor safeguards for Scheduled Castes
- D. Allocate funds to SC communities

Answer: C.

4. The Chairperson of the NCSC is appointed by:

- A. Prime Minister
- B. Chief Justice of India
- C. President of India

D. Lok Sabha Speaker

Answer: C

5. The NCSC submits its annual report to:

A. Ministry of Social Justice

B. Supreme Court

C. Election Commission

D. The President of India

Answer: D.

8.9 SAQ'S

1. What is the main objective of the National Commission for Scheduled Castes?

2. How many members are there in the NCSC, and who are they?

3. Mention one important power of the NCSC.

4. Who appoints the Chairperson and members of the NCSC?

5. What are two major functions of the NCSC?

8.10 TRUE OR FALSE

1. The NCSC has no power to summon witnesses.

False – It has powers equivalent to a civil court.

2. NCSC can only make recommendations; it cannot enforce laws.

True

3. The NCSC also looks after the welfare of Scheduled Tribes.

False– A separate commission, the NCST, handles that.

4. The NCSC can submit special reports in addition to annual reports.

True

5. The President of India appoints the Chairperson of the NCSC.

True

8.11 TERMINAL QUESTIONS

1. Explain the composition, powers, and functions of the National Commission for Scheduled Castes.

2. Discuss how the NCSC ensures constitutional safeguards for Scheduled Castes.

3. What role does the NCSC play in addressing complaints and grievances of Scheduled Castes? Provide examples.

4. How is the NCSC different from the National Commission for Scheduled Tribes (NCST)?

5. Evaluate the effectiveness of the NCSC in uplifting the socio-economic status of Scheduled Castes in India.

UNIT 9

NATIONAL COMMISSION FOR THE SCHEDULE TRIBES

STRUCTURE

9.1 LEARNING OUTCOMES

9.2 INTRODUCTION

9.3 FORMATION OF STATUTORY NATIONAL COMMISSION FOR SCHEDULED TRIBES

9.4 APPRAISAL OF NCST'S ACTIVITIES

9.5 SUMMARY

9.6 MCQs

9.7 SAQs

9.8 TRUE/ FALSE

9.9 TERMINAL QUESTIONS

9.1 INTRODUCTION: BASIS FOR A NATIONAL BODY FOR THE PROTECTION AND PROMOTION OF HUMAN RIGHTS OF SCHEDULED TRIBES IN INDIA

Scheduled tribes (STs) are the communities within the country who have for long inhabited mainly forest land where they are an integral part of the land and the eco-system. However, due to their geographical disconnect with the other population, they have been suffering from extreme economic and social backwardness, thus requiring special consideration for safeguarding their interests. These communities have been notified as 'Scheduled Tribes' under Articles 341(1) and 342(1) of the Indian Constitution.

Their well-being depends heavily on the occupation of their traditional lands, which have been

inhabited through generations by the members of their communities. Their very existence in addition to the existence of their culture depends on these lands. Therefore, their concerns are also surrounding these issues. STs face discrimination from the larger society due to their low literacy levels and non-participation in the formal economy. At the same time, they face threat of displacement from the mining operations in their lands since they usually inhabit forest land which are rich in mineral resources. These necessitate a human-rights based protection mechanism for STs which is sought to be provided in the form of the National Commission for Scheduled Tribes (NCST).

The website of NCST acknowledges the above on its website where it is stated that – “The framers of the Constitution took note of the fact that certain communities in the country were suffering from extreme social, educational and economic backwardness arising out of age-old practice of untouchability and certain others on account of this primitive agricultural practices, lack of infrastructure facilities and geographical isolation, and who need special consideration for safeguarding their interests and for their accelerated socio-economic development.”

9.1 LEARNING OUTCOMES

- By the end of the unit, students will know the background to the creation of the National Commission for Scheduled Tribes (NCST) in India in addition to its mandate, functions, powers and a brief regarding its activities.
- The students must be able to assess the organizational set-up of the Commission and its individual complaints mechanism.
- Students must also be in a position to appreciate the relevance of an autonomous statutory body mandated to protect and promote the rights of Scheduled Tribes in India.

9.3 FORMATION OF A STATUTORY NATIONAL COMMISSION FOR A SCHEDULED TRIBES

The course of the National Commission for Scheduled Tribes mirrors the course of the formation of an independent National Commission for Scheduled Castes.

Initially, under the original provisions of Art. 338 of the Constitution, a Special Officer (Commissioner) for SC&ST appointed was designated the duty to investigate all matters relating to the Safeguards for SCs and STs in various Statutes and to report to the President upon the working of these Safeguards. In 1987, the Govt. (through another Resolution) modified functions

of the Commission (making it as a National Level Advisory Body) to advise the Govt. on Broad Policy Issues and levels of Development of SCs and STs. Thereafter, a National Commission for SCs & STs came into being on 12-3-92 (after the Constitutional (65th) Amendment); Act of 1990. Finally, as per the provision of the Constitution (89th) Amendment Act, 2003, through a notification dated 19-2-2004, the erstwhile National Commission for SC & ST was replaced by two Commissions viz; National Commission for Scheduled Castes (NCSC) and National Commission for Scheduled Tribes (NCST).

9.3.1 MANDATE AND VISION OF THE NATIONAL COMMISSION FOR SCHEDULED TRIBES

The National Commission for Scheduled Tribes was set to monitor all matters relating to the implementation of the safeguards provided for the Scheduled Tribes under the Constitution or under any other law or under any order of the Government and to participate and advise on the planning process of socio-economic development of the Scheduled Tribes.

The Vision of the NCST¹ is stated as - “The National Commission for Scheduled Tribes with utmost Zeal and dedication shall uphold its mandate as entrusted by Constitution of India. In doing so, the Commission shall endeavor to bring about equality in the society by protecting the Constitutional, Socio-economic, Legal and Civil Rights of the Scheduled Tribe population of the Nation and shall facilitate easy access and effective delivery of justice to the Scheduled Tribes of the country.”

The Mission Statement of NCST presents the outlook and strategy of the Commission in the following words:

- “To evaluate the process of all round development of Scheduled Tribes.
- To monitor the implementation of the Constitutional and Legal safeguards given to the members of the Scheduled Tribes.
- To look into complaints and conduct enquiries in cases of violation and deprivation of rights and socio-economic safeguards of the Scheduled Tribes.
- To give recommendations to the Central and State Governments regarding the protection of rights and furtherance of the safeguards of the Scheduled Tribes.
- To proactively make recommendations for further empowering the Scheduled Tribes.
- To work as an agent of justice and rights without fear or favour, in the supreme interest of the Scheduled Tribes in consonance of the constitutional provisions.”²

9.3.2 FUNCTIONS, DUTIES AND POWERS OF THE COMMISSION

Under Article 338A, clause (5), NCST is entrusted with the following functions and duties:-

1. To investigate & Monitor matters relating to Safeguards provided for STs under the Constitution or under other laws or under Government Order, to evaluate the working of such Safeguards;
2. To inquire into specific complaints relating to Rights & Safeguards of STs;
3. To participate and Advise in the Planning Process relating to Socio-economic development of STs, and to Evaluate the progress of their development under the Union and any State;
4. To submit report to the President annually and at such other times as the Commission may deem fit, upon/working of Safeguards, Measures required for effective implementation of Programmes/Schemes relating to Welfare and Socio-economic development of STs;
5. To discharge such other functions in relation to STs as the President may, subject to the provisions of any law made by Parliament, by rule specify.

Further, under the notification of the Ministry of Tribal Affairs, dated 23rd August, 2005, the Commission was specifically entrusted to “discharge the following other functions in relation to the protection, welfare and development and advancement of the Scheduled Tribes, namely:

- (i) Measures that need to be taken over conferring ownership rights in respect of minor forest produce to STs living in forest areas.
- (ii) Measures to be taken to safeguard rights of the tribal communities over mineral resources, water resources etc. as laid down by law.
- (iii) Measures to be taken for the development of tribal to plug loop holes and to work more viable livelihood strategies.
- (iv) Measures to be taken to improve the efficacy of relief and rehabilitation measures for tribal groups displaced by development projects.
- (v) Measures to be taken to prevent alienation of tribal people from land and to effectively rehabilitate such people in whose case alienation has already been taken place.
- (vi) Measures to be taken to elicit maximum cooperation and involvement of tribal communities for protecting forests and undertaking social afforestation.
- (vii) Measures to be taken to ensure full implementation of the provision of Panchayat (Extension to Scheduled Areas) Act, 1996.

- (viii) Measures to be taken to reduce and ultimately eliminate the practice of shifting cultivation by tribal that lead to their continuous disempowerment and degradation of land and the environment.”

Further, under clause (9) of Article 338A, the Union and every State Government is obligated to consult the Commission on all major policy matters affecting Scheduled Tribes.

The powers provided to the Commission for the purposes of effectively carrying out its functions and duties are laid down in clause (8) of Article 338A which states that: - “The Commission shall, while investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of clause (5), have all the powers of a civil court trying a suit and in particular in respect of the following matters, namely: -

- (a) Summoning and enforcing the attendance of any person from any part of India and examining him on oath;
- (b) Requiring the discovery and production of any documents;
- (c) Receiving evidence on affidavits;
- (d) Requisitioning any public record or copy thereof from any court or office;
- (e) Issuing commissions for the examination of witnesses and documents; or
- (f) Any other matter which the President may by rule, determine.”

9.3.3 THE INDIVIDUAL COMPLAINTS MECHANISM OF NCST

As per its functions, the Commission is required to inquire into specific complaints with respect to the deprivation of rights and safeguards of Scheduled Tribes. In order to enable the Commission to perform this function effectively and efficiently, the Commission requests the complainants to substantiate their complaints with supporting documents and quote the relevant provisions of the Act or Rules directions which have been violated. Further, the complaint should be directly addressed to the Chairperson/Vice-Chairperson/Secretary, National Commission for Scheduled Tribes, New Delhi or the heads of its State Offices. The complainant must disclose his/her full identity with full address, duly signed. As far as possible, complaints should be legibly written or typed.

The Commission does not entertain matters which are sub judice, nor does it take up cases which are pending in courts or cases in which a court has already given its final verdict need not be taken up afresh with the Commission.

Procedure for Enquiry

As soon as information is received by the Commission regarding any violation of the rights of member of belonging to a ST community, it seeks relevant details of the incident and the action taken from the law enforcing and administrative machinery of the concerned State and the district to ascertain the details of incident and the action taken by the district administration.

The overarching considerations while asking for details from relevant authorities is: -

- “Whether the scene of occurrence of the crime has been visited immediately by Collector and Superintendent of Police of the district on receipt of information?
- Whether proper FIR is registered in local Police Station?
- Whether names of all the persons involved/cited by the complainant has been included in the FIR?
- Whether investigation has been taken up by A senior Police Officer as per provisions of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989?
- Whether the culprits have been apprehended and booked without loss of time?
- Whether proper chargesheet has been filed mentioning the relevant sections of IPC together with the SCs & STs (POA) Act, 1989 in the Court?
- Whether the cases are tried by the Special Courts?
- Whether special Public Prosecutors are appointed to handle these cases?
- Whether Police assists the courts in bringing forward witnesses and see that the culprits are suitably punished by the courts?”³

Further, the Commission also monitors to ensure that the victims are provided with suitable medical assistance and on time in addition to adequate protection and proper compensation as per provisions of law. Wherever feasible and necessary, and depending on the circumstances of an incident, the Commission may visit the place of incident to oversee the arrangements and to console and infuse confidence among the victims.⁴

9.3.4 ORGANISATIONAL SET-UP OF NCST

The National Commission for Scheduled Tribes has its headquarters in New Delhi and also functions from its six Regional Offices located at Bhopal, Bhubaneswar, Jaipur, Raipur, Ranchi and Shillong. The Regional Offices of the Commission work as a bridge between the Commission and the State authorities in addition being the ‘eyes and ears’ of the Commission in the respective States.

There are four Wings at the Headquarters of NCST, namely: -

(i) Administration/ Establishment Wing

The Administration/ Establishment Wing provides all kinds of administrative support to the Commission. It also looks after establishment matters, general administration including accounts and budgetary matters, and human resource management of officers and staff of the Secretariat of the Commission and its six Regional Offices.

(ii) Economic & Social Development Wing

The Economic and Social Development Wing of the Commission deals with matters relating to socio-economic development and advancement of Scheduled Tribes. The Commission discharges this duty, at various levels, i.e., state/ district/ taluk, through a mechanism of monitoring the implementation of the various plans schemes being formulated by the Central/ State Governments. This is conducted by way of extensive reviews with the senior officials of the Central Ministries/ Departments and the State Govts. The Commission seeks detailed information from various Ministries and departments of the Central and State governments by populating targeted questionnaires. If the information requires review, only then, a view is conducted.

An important aspect of these reviews is to monitor the flow of funds released by the Ministry of Tribal Affairs as Special Central Assistance to Tribal Sub-Plan (TSP) which are grants provided by the Ministry of Tribal Affairs under Article 275(1) of the Constitution for the benefit of the STs.

Some of the other activities of this Wing also include addressing complaints by members of a Scheduled Tribe community regarding their grievances on matters other than atrocities and service matters. Further, this Wing monitors the implementation of Land Reforms Acts and various schemes for the educational development of STs.⁵

(iii) Service Safeguards & Coordination Wing

A major safeguard for the STs is the reservation in various government institutions. All matters related to this are monitored by the Service Safeguards & Coordination Wing of the Commission which basically deals with the implementation of reservation policy and any connected complaints of the Scheduled Tribes in the services of the Central Govt./State Government/ Central PSEs/ State PSEs/ Universities/ Autonomous Bodies/ Public Sector Banks and Financial Institutions. Additionally, this Wing also deals with the matters relating to major policy issues affecting Scheduled Tribes which are referred to it by the Central Ministries/ State Govts. For the purpose of offering its comments/ observations concerning service matters. Cases relating to false community certificates and inclusion in or exclusion from the lists of Scheduled Tribes are

also dealt within this Wing.

(iv) Atrocities Wing

This Wing's responsibilities pertain to matters pertaining to atrocities on Scheduled Tribes defined under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and its corresponding Rules, and cases relating to the Bonded Labour System (Abolition) Act, the Minimum Wages Act, etc. the Commission, through his Wing, entertains complaints from individuals or takes suo moto cognizance on the basis of reports published in newspapers. This Wing also conducts evaluation studies/surveys on matters affecting the rights of STs. Complaints relating to atrocities are referred to the concerned police authorities for detailed investigation by this Wing.

9.4 APPRAISAL OF NCST'S ACTIVITIES

Tribal people, special provisions and safeguards have been provided in the Annual Report 2004-05 & 2005-06

Over the years, NCST has taken several measures in pursuance to its mandate, functions and duties:

- It has given comments and recommendations on various Bills such as the SCs and STs (Reservation in Posts and Services) Bill 2008, proposed amendments to the SC/ST (Prevention of Atrocities) Act, 1989, the Mines and Minerals (Development & Regulation) Bill, 2011, Forest Rights Act, etc.
- It has also made interventions and representations before courts in several matters, notably, before the Chhattisgarh High Court in a matter relating to the denial of promotion to SC and ST officers of Chhattisgarh State Electricity Board, and (ii) before the Bombay High Court, in a matter challenging the list of Assembly Constituencies reserved for STs in Maharashtra Legislative Assembly. Taken up individual and suo moto complaints into violations against members of the ST communities.
- Advised Central and State governments over necessary actions to be taken for the promotion of rights of STs such as in relation to the disbursement of funds under the Tribal Sub-Plan (TSP) Strategy. According to the Commission, "[f]or the Socio-economic and overall development of the Constitution of India and some initiative have also been taken by the Government of India, including Tribal Sub Plan (TSP) strategy. The Tribal Sub Plan (TSP) strategy was aimed for the rapid socio-economic development of tribal people. The funds provided under the Tribal Sub Plan of the State have to be at least equal in proportion to the ST population of each State or UTs. Similarly, Central Ministries/ Departments are also required to earmark funds out of their budget for the Tribal Sub-Plan. As per guidelines

issued by the Planning Commission, the Tribal Sub Plan funds are to be non-divertible and non-lapsable. The National Commission for Scheduled Tribes is vested with the duty to participate and advise in the planning process of socio-economic development of STs, and to evaluate the progress of their development under the Union and any State".⁶

- Reviewed existing legislative, service and socio-economic conditions of STs in various parts of the country.

9.5 SUMMARY

In this module, we have briefly analysed the background, mandate, functions and powers of the National Commission for Scheduled Tribes in India. In doing so, the importance of the institution as a Tribes in India cannot be overstated. However, continuous engagement of the Commission is essential with government and non-government stakeholders to maintain its critical role.

9.6 MCQs

1. When was the National Commission for the Scheduled Tribes (NCST) established?
 - a) 1947
 - b) 1999
 - c) 2004
 - d) 2010**Answer:** c) 2004

2. Under which Article of the Indian Constitution was the NCST formed?
 - a) Article 338
 - b) Article 338A
 - c) Article 342
 - d) Article 339**Answer:** b) Article 338A

3. Who appoints the Chairperson of the NCST?
 - a) Prime Minister
 - b) President of India
 - c) Chief Justice of India
 - d) Ministry of Tribal Affairs**Answer:** b) President of India

4. Which of the following is NOT a function of the NCST?
 - a) Safeguarding the rights of STs
 - b) Monitoring the implementation of constitutional safeguards

- c) Conducting elections in tribal areas
- d) Inquiring into complaints regarding rights violations

Answer: c) Conducting elections in tribal areas

5. Which amendment led to the bifurcation of the National Commission for SCs and STs?

- a) 42nd Amendment
- b) 65th Amendment
- c) 89th Amendment
- d) 73rd Amendment

Answer: c) 89th Amendment

9.7 SAQ'S

1. What is the primary objective of the NCST?
2. List two constitutional safeguards that the NCST monitors.
3. Mention the composition of the NCST.
4. What does the NCST do in case of a violation of tribal rights?
5. Name any two welfare schemes evaluated by the NCST.

9.8 TRUE OR FALSE

1. The NCST was set up in 2005. — **False**
2. The NCST has the power of a civil court during investigations. — **True**
3. The NCST only deals with Scheduled Tribes from the North-East region. — **False**
4. Article 338A of the Constitution provides for the NCST. — **True**
5. The Commission submits its report annually to the Prime Minister. — **False** (It submits to the **President**)

9.9 TERMINAL QUESTION

1. Explain the background and need for the formation of the National Commission for Scheduled Tribes.
2. Discuss the major functions and powers of the NCST.

3. Describe the structure and composition of the NCST. How is it appointed?
4. What role does the NCST play in protecting the rights of Scheduled Tribes? Provide examples.
5. Evaluate the impact and effectiveness of the NCST in addressing tribal issues in India. Suggest improvements.

UNIT 10

NATIONAL COMMISSION FOR MINORITIES

STRUCTURE

10.1 INTRODUCTION

10.2 OBJECTIVES 10.3 NATIONAL COMMISSION FOR MINORITIES: AN INTRODUCTION

10.4 COMPOSITION AND STRUCTURE

10.5 FUNCTIONS

10.6 CONSTITUTIONAL PROVISIONS FOR THE PROTECTION OF MINORITIES

10.7 LIMITATIONS AND CHALLENGES

10.8 SUMMARY

10.9 GLOSSARY

10.10 MCQs

10.11 SAQs

10.12 TRUE/FALSE

10.13 TERMINAL QUESTIONS

10.14 REFERENCES

10.1 INTRODUCTION

India is a country of great diversity. It is home to a vast array of languages, religions and cultures. This diversity has an underlying strand of unity within it which is best expressed by the phrase Anekta Mein Ekta or Unity in Diversity. This large diversity is a great asset of India as a

nation but it also raises the need for protection of these diverse groups and cultures. In the context of the Indian Independence Movement and the partition of the country which happened on the basis of religion; the members of the Constituent Assembly realized that in order to achieve the ideals they set forth for themselves in the Preamble they will have to create special safeguards for the rights of minorities in the country. In India apart from the fundamental right to freedom of religion for all guaranteed by the constitution; there also exist special safeguards for the minorities within the scheme of Fundamental Rights and elsewhere in the Constitution.

The Preamble of the Constitution declares India to be a secular nation. The Supreme Court while expressing its opinion in the S. R. Bommai case declared that secularism was part of fundamental law and basic structure of the Indian Political System. In the Bijoe Emmanuel case the Supreme Court had opined that religious freedom under Article 25 of the Constitution incorporated within itself the real test of democracy which was the **“ability of even an insignificant minority to find its identity under the country’s Constitution”**. In order to realize such high ideals of the Constitution it is incumbent on the political system to provide for special protection of the rights and interests of the minorities.

Therefore, overtime a need was felt for the establishment of a dedicated agency which could oversee the effective implementation of the constitutional scheme of protection of the rights of the minorities in India as well as look into egregious cases of denial of rights and protections of the minorities. This is why the National Commission for Minorities was created as a statutory body under the National Commission for Minorities Act.

10.2 OBJECTIVES

In this unit the learner is introduced to the National Commission on Minorities. After successful completion of this unit the learner will be able to-

- Know about the National Commission on Minorities, its origin and need
- Know about the organizational structure of the NCM
- Know about its functioning

10.3 NATIONAL COMMISSION FOR MINORITIES: AN INTRODUCTION

National Commission for Minorities came into existence with the enactment of the National Commission for Minorities Act, 1992 (Act XIX of 1992). The Act came into force on 17 May, 1993. The functions of the constitution are to protect the interests of the minorities and ensure the safeguards provided for them in the Constitution and laws passed by the Parliament and State

Legislatures are properly enforced. It also provides the facility for redressing grievances of aggrieved persons who can make representations to the commission.

Definition of minorities - Section 2(c) of the NCM Act, 1992 defines 'minority' as a community which has been notified as such by the Central government.

The Commission is charged with the protection of interests of the six notified religious minorities Muslims, Christians, Jains, Sikhs, Buddhists and Zoroastrians (Parsis). Originally in 1993 five communities were notified as minorities namely Sikhs, Buddhists, Parsis, Christians and Muslims vide notification S.O. No. 816(E). Jains were added in 1994 vide notification S.O. No. 267(E).

Genesis and Development of the National Commission for Minorities

A Ministry of Home Affairs Resolution dated 12.01.1978 envisaged the establishment of a commission to provide for 'effective institutional arrangements', for 'the enforcement and implementation of all the safeguards provided for the Minorities in the Constitution, in the Central and State Laws and in the government policies and administrative schemes enunciated from time to time'. This Minorities Commission was to be placed under the Ministry of Home Affairs.

The ministry noted the importance of creation of a separate commission for this purpose as it was felt that despite the safeguards provided for minorities in the constitution there existed among them feelings of inequality and discrimination. A commission for minorities would help preserve the secular tradition of the country and would be helpful in the goal of national integration.

Shri M. R. Masani was the Chairman of the newly created Minorities Commission.

In 1984 The Minorities Commission was detached from the Ministry of Home Affairs and attached to the newly created Ministry of Welfare.

In 1988 linguistic minorities were removed from the purview of the Minorities Commission by the Ministry of Welfare Resolution No IV 11011/2/88-CLM dated 30.03.1988.

With the passage of the National Commission for Minorities Act, 1992 (Act XIX of 1992), the National Commission for Minorities was constituted as a statutory commission. The Chairperson of the first statutory commission was Justice Mohd. Sardar Ali Khan and the first Vice Chairperson was Shri B. S. Ramoowalia.

The establishment of the National Commission for Minorities, its functions and the purview of its work is in accordance with the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities adopted by the UN General Assembly on 18 December 1992 by resolution No. 47/135.

10.4 COMPOSITION AND STRUCTURE OF THE COMMISSION

The composition of the Commission has been elucidated in the Section 3(2) of the NCM Act 1992.

The Commission shall consist of a total of seven persons:

1. A Chairperson
2. A Vice-Chairperson
3. An additional five members

All of whom are nominated by the Central Government from amongst persons of eminence, ability and integrity. Further it has been provided that at least five members including the Chairperson shall be members of a minority community.

Term - The members hold office for a term of three years from entering office.

Removal - The members can be removed from office by the Central Government with an order to that effect if the Chairperson or member is:

- i. Adjudged insolvent
- ii. Engages during the term of his office in paid employment
- iii. Refuses to act or becomes incapable of acting
- iv. Is of unsound mind and stands so declared by a competent court
- v. Has abused his office to render his continuance in office detrimental to public interest
- vi. Is convicted and imprisoned for an offence which in the opinion of the Central Government involves moral turpitude.

Incumbent - As of November 2024; the incumbent Chairperson is Shri Iqbal Singh Lalpura and the incumbent Vice Chairperson is Shri Kersi Kaikhushroo Deboo.

Secretariat - The Commission is provided with a Secretary and such officers and employees as may be necessary for its functioning [Section 5 (2), NCM Act 1992]. The administrative set-up of the commission secretariat is as follows:

1. A Secretary
2. A Joint Secretary
3. A Director
4. An Under-Secretary of Administration with Section Officer and Administrative Officer under him
5. An Under-Secretary of Grievance Redressal with Legal Officer and Research Officer under him.
6. Other Administrative Staff.

10.5 FUNCTION

Functions of the Commission as per the Section 9 of the NCM Act, 1992 are as follows:

- (a) evaluate the progress of the development of minorities under the Union and States;
- (b) monitor the working of the safeguards provided in the Constitution and in laws enacted by Parliament and the State Legislatures;
- (c) make recommendations for the effective implementation of safeguards for the protection of the interests of minorities by the Central Government or the State Governments
- (d) look into specific complaints regarding deprivation of rights and safeguards of the minorities and take up such matters with the appropriate authorities;
- (e) cause studies to be undertaken into problems arising out of any discrimination against minorities and recommend measures for their removal;
- (f) conduct studies, research and analysis on the issues relating to socio-economic and educational development of minorities;
- (g) suggest appropriate measures in respect of any minority to be undertaken by the Central Government or the State Governments;
- (h) make periodical or special reports to the Central Government on any matter pertaining to minorities and in particular difficulties confronted by them; and
- (i) any other matter which may be referred to it by the Central Government.

The Commission while performing functions (a), (b) and (d) shall have all the powers of a civil court while trying a suit namely:

- i. summoning and enforcing the attendance of any person from any part of India and examining him on oath;
- ii. requiring the discovery and production of any documents
- iii. receiving evidence on affidavits
- iv. requisitioning any public record or copy thereof from any court or office;
- v. issuing commissions for the examination of witnesses and documents; and
- vi. any other matter which may be prescribed.

Responsibilities of Central and State Governments towards the reports and recommendations of the Commission:

- a) The Central Government shall lay before each House of Parliament; the reports and recommendations of the Commission along with memorandum explaining action taken or proposed to be taken on the recommendations and the reasons for non-acceptance of any such recommendations.
- b) The State Governments shall also lay before their respective legislatures; the reports and recommendations of the Commission along with memorandum explaining action taken or proposed to be taken on the recommendations and the reasons for non-acceptance of any such recommendations.
- c) The State Governments shall also lay before their respective legislatures; the reports and recommendations of the Commission along with memorandum explaining action taken or proposed to be taken on the recommendations and the reasons for non-acceptance of any such recommendations.

10.6 CONSTITUTIONAL PROVISIONS FOR THE PROTECTION OF MINORITIES

The constitution does not define the word minority, however it does make mention of religious and linguistic minorities. The rights of minorities can be divided into two sets of rights common domain rights and separate domain rights. Common domain rights are those rights which are available to all but these rights are of special importance for the protection of rights of the minorities. Separate domain rights are those rights which are specifically available to the minorities. The National Commission of Minorities is responsible for the effective implementation and safeguarding of these rights available to the minority community

Common Domain Rights

The Preamble declares that the State shall be secular; this declaration is of special importance for the minorities. In addition to this the Preamble declares that there shall be ‘liberty of thought, expression, belief, faith and worship’ and ‘equality of status and of opportunity.’

Fundamental Rights

The following fundamental rights can be seen as common domain rights.

Article 14 - Equality before law and equal protection of law.

Article 15 - Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

Article 16 - Equality of opportunity in matters of public employment.

Article 25 - Freedom of conscience and free profession, practice and propagation of religion

Article 27 - Freedom as to payment of taxes for promotion of any particular religion.

Article 28 - Freedom as to attendance at religious instruction or religious worship in certain educational institutions.

These rights though available to all are of special significance for the minorities.

Directive Principles of State Policy

Directive Principles of State Policy given in Part IV of the Constitution are non justiciable but are essential to the governance of the country and it shall be duty of the government to apply these principles in legislation. Directive principles which can be classified as common domain rights i.e. available to all but also of special importance for minorities are

Article 38 (2) - The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

Article 46 - Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections

Fundamental Duties

The following fundamental duties given in the Part IV-A of the Constitution under Article 51-A though common to all are of special importance for the protection of interests of the minorities and can be considered as common domain right for minorities.

Article 51A. (e) duty 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;

Article 51A. (f) duty to value and preserve the rich heritage of our composite culture;

Separate Domain Rights

Fundamental Rights

Following Fundamental Rights have been made available to the minorities to specifically protect their interests and can be considered separate domain rights

Article 29(1) - Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

Article 29(2) - No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

Article 30(1) - All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

Article 30 (2) - The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

Explanation 1 below Article 25 - Sikh community's right of 'wearing and carrying of kirpans;

Other Constitutional Rights

Rights for protection of interests of minorities which though not in the Part III are given elsewhere in the constitution

Article 347 - Special provision relating to language spoken by a section of the population of a State.

Article 350 A - Facilities for instruction in mother-tongue at primary stage.

Article 350 B - Special Officer for linguistic minorities.

10.7 LIMITATIONS AND CHALLENGES

There are several limitations and challenges faced by the Commission

- a) Inadequate human resource - There have been long periods of vacancies in the commission and the understaffing of the secretariat provide to the commission
- b) Low expenditure on research activities – The fact finding mission of the Commission is an important part of its duties as it is required to give recommendations to the Central and State governments on the condition of the minorities in the country. Low expenditure on research activities leads to lacuna in one of the most important part of the mandate of the commission.
- c) Failing to keep pace with technological development- There can be end to end digitalization of the grievance redressal and complaint management with real time monitoring of the progress on complaints and action taken. This has been adopted by several government departments which deal with complaints resolution the same can be adopted by the Commission.
- d) Annual Reports not tabled – The NCM Act mandates that the reports by the Commission be tabled by the Central government in both Houses of the Parliament along with the recommendations the actions taken on the basis of the recommendations and the reasons for

non acceptance of recommendations if any. However, this has not been the case and the governments have often failed in their duties to table the reports.

- e) **Overlapping Jurisdiction** – Other commissions like the National Human Rights Commission, National Commission for Women and National Commission for Protection of Child Rights often have overlapping mandates this leads to work differences.
- f) **Opacity in appointments** – The nomination process by the Central Government is not a transparent process as there is no prescribed method of selection nor is there any enumeration of specific qualifications mentioned for the selection of the members of the commission.
- g) **Lack of Power** – The Commission lacks power to take action suo moto.
- h) **Insufficient Investigative Powers** – **Shrimati Sumitra Mahajan led** standing committee on social justice and empowerment in 2004 recommended the enhancement of the investigative powers of the commission to give it greater efficiency however this recommendation was not taken up by any government.

10.8 SUMMARY

In conclusion, the National Commission for Minorities (NCM) plays a critical role in safeguarding the rights and interests of minority communities in India, ensuring that the promises enshrined in the Constitution are effectively upheld. The creation of the NCM, under the National Commission for Minorities Act of 1992, reflects India's commitment to its secular ethos and the protection of its diverse population. With its focus on monitoring the welfare and development of minorities, investigating complaints, and making policy recommendations, the Commission is essential for promoting national integration and ensuring social harmony. However, despite its important mandate, the NCM faces several challenges, including resource limitations, insufficient technological advancement, and overlapping jurisdiction with other bodies. Additionally, the Commission's lack of investigative powers and the opacity in the appointment process hinder its ability to perform optimally. Addressing these challenges would enhance the Commission's effectiveness in protecting minority rights and furthering India's vision of unity in diversity.

10.9 GLOSSARY

Minority – Defined under Section 2(c) of the National Commission for Minorities Act, 1992, as a community notified as such by the Central Government. Currently, six religious communities—Muslims, Christians, Sikhs, Buddhists, Jains, and Zoroastrians (Parsis)—are recognized as minorities in India.

Fundamental Duties – Responsibilities enshrined in Article 51A of the Indian Constitution that apply to all citizens.

Unity in Diversity (Anekta Mein Ekta) – A phrase that highlights the underlying unity among India's diverse languages, religions, and cultures.

Secularism – As declared in the Preamble of the Indian Constitution, secularism ensures that the state maintains an impartial stance toward all religions, guaranteeing religious freedom for all citizens.

Fundamental Rights – A set of rights enshrined in the Indian Constitution, such as the right to equality (Article 14), freedom of religion (Article 25), and protection of minority interests (Article 29 & 30). These rights ensure the protection of all citizens, including minorities.

10.10 MCQs

1. What does the phrase Anekta Mein Ekta mean?

- a) Strength in Numbers
- b) Unity in Diversity
- c) Religious Tolerance
- d) National Integrity

Answer: b) Unity in Diversity

2. Under which Act was the National Commission for Minorities (NCM) established?

- a) The Religious Freedom Act, 1950
- b) The National Commission for Minorities Act, 1992
- c) The Fundamental Rights Protection Act, 1978
- d) The Secularism and Equality Act, 1984

Answer: b) The National Commission for Minorities Act, 1992

3. Which of the following is NOT a recognized religious minority in India?

- a) Muslims
- b) Jains
- c) Hindus
- d) Parsis

Answer: c) Hindus

4. Which Article of the Indian Constitution grants minorities the right to establish and administer educational institutions?

- a) Article 14
- b) Article 25
- c) Article 30

d) Article 51A

Answer: c) Article 30

5. What is one major challenge faced by the National Commission for Minorities (NCM)?

- a) Excessive funding for research
- b) Overlapping jurisdiction with other commissions
- c) Complete autonomy in governance
- d) Lack of constitutional recognition

Answer: b) Overlapping jurisdiction with other commissions

10.11 SAQ'S

1. What is the primary purpose of the National Committee on Minorities?
2. Which government body typically oversees the functions of the National Committee on Minorities in India?
3. Name at least three minority communities recognized by the National Committee on Minorities.
4. When was the National Commission for Minorities (NCM) established in India?
5. How does the National Committee on Minorities protect the rights of minority communities?

10.12 TRUE OR FALSE

1. The National Committee on Minorities was established under the Constitution of India.
False (It was set up through an executive order, not constitutional provision.)
2. The National Committee on Minorities has the power to pass binding laws.
False (It is an advisory body, not a legislative one.)
3. Sikhs, Muslims, Christians, Buddhists, Parsis, and Jains are recognized as minority communities in India.
True
4. The National Committee on Minorities can investigate complaints regarding the violation of minority rights.
True

5. The chairperson of the National Commission for Minorities must be from a minority community.

True

10.13 TERMINAL QUESTIONS

1. What was the main reason for the establishment of the National Commission for Minorities in India?
2. List the six religious communities currently recognized as minorities in India.
3. What are the key functions of the National Commission for Minorities as per the NCM Act, 1992?
4. Explain the difference between 'common domain rights' and 'separate domain rights' as mentioned in the passage.
5. What are some of the major challenges faced by the National Commission for Minorities in fulfilling its mandate?

10.11 REFERENCES

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UNIT 11

CHILD RIGHTS AND PROTECTION MECHANISMS

STRUCTURE

11.1 INTRODUCTION

11.2 OBJECTIVES

11.3 OBJECTIVES OF UN CONVENTION ON THE RIGHTS OF CHILD ACT, 1989

11.4 PROVISIONS FOR RIGHTS OF CHILD IN UNCRC, 1989

11.5 CONSTITUTIONAL PROVISIONS RELATED TO THE RIGHTS OF CHILDREN

11.6 SUMMARY

11.7 MCQs

11.8 SAQs

11.9 TRUE/ FALSE

11.10 TERMINAL QUESTIONS

11.11 REFERENCES

11.1 INTRODUCTION

“The child, by reason of his physical and mental immaturity needs special safeguards and care including appropriate legal protection before as well as after birth”. –Declaration on the rights of the child, 1959.

The child cannot express as an adult of its pain and hardship. “Health is a state of complete physical, social and mental well-being and not merely an absence of disease or infirmity” says WHO. Due to poverty, parental illiteracy, social and economic backwardness nations many

children today are unable to be born healthy and develop in full sense. Projections on child statistics are very alarming.

- Almost 70 million children may die before reaching their fifth birthdays – 3.6 million in 2030
- Children in sub-Saharan Africa will be 10 times more likely to die before their fifth birthdays than children in high-income countries
- Data from a range of low- and middle-income countries show that around 120 million girls under 20 years of age (about one in 10) have been subjected to **forced sexual intercourse or other forced sexual acts**. Globally, an estimated 230 million children currently live in countries and areas affected by **armed conflict** and tens of thousands of children each year are recruited and used by armed forces and armed groups.
- 168 million children (representing 11 percent of all children) are engaged in child labour with 50 percent working in hazardous conditions.
- About one-third of women aged 20–24 years in the developing world were married as children and approximately 30 million girls are at risk of female genital mutilation/cutting (FGM/C). Approximately 2 million children continue to live in residential care instead of with families¹

International states thought of child's protection from these and many hazards since a long time. The United Nations Convention on the rights of the child, 1989 came into force by taking an initiative from earlier conventions. The child labour convention adopted in 1919, Geneva declaration of the rights of the child 1924, Universal Declaration of Human rights 1948, Declaration of the rights of the child adopted by the General Assembly on 20th Nov 1959, Minimum age convention 1973 No 138, International Convention on Economic social and cultural rights, 3 March 1966, International Convention on Civil and Political rights 23 March 1968, Declaration of Alma Ata in 1978, Convention on the elimination of All Forms of Discrimination Against Women (CEDAW) 1979, Declaration on the right to development, 1986, Convention on the rights of the child adopted and opened for signature, ratification and accession by general assembly resolution 44/11 of 20 November 1989 (entered into force 2 September 1990 in accordance with **Article 49**). Also World Summit 1990 and The worst forms of child labour convention 1999 came into force to protect the right of the child affected due to various socio-economic and cultural conditions of many countries.

11.2 LEARNING OUTCOMES

- This sub module helps the students to know about the major international convention on the rights of child – UNCRC 1989

- By studying this sub modules students will come to know that this is a significant Convention binding the state parties to provide legal measures to see the comprehensive development of the children of all nations.

11.3 OBJECTIVES OF UN COVENTION ON THE RIGHTS OF CHILD ACT 1989

UN Convention on the rights of Child (UNCRC), 1989 aims at such rights of the child which will be “the foundation of freedom, justice and peace” “treating all the human beings as members of the human family” (Preamble CRC, 1989). These objectives are in fact goals of many early international initiatives. These are:

- Recognition of inherent dignity and of equal and inalienable rights for the child
- Entitlement of rights to all without discrimination of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status
- “Special care and assistance” for the child owing to its’ physical and mental immaturity” and “appropriate legal protection” before and after its birth
- Aiming at promotion of social progress and better guards of life
- To see that the child is brought up in family environment, in an atmosphere of happiness, love and understanding
- To see that family as a fundamental group be afforded the necessary protection and assistance such that it stands for well-being of all, particularly children.
- To see that the child lives as an individual with the spirit of peace and ideals
- Giving due importance to the traditional and cultural values to help harmonious development of child
- Sensing the need that “there are children living in exceptionally different conditions all over the world who need special attention” and
- Recognition for the need for international co-operation everywhere with particular reference to the children in developing countries

11.4 PROVISION FOR RIGHTS OF CHILD IN UNCRC, 1989

The convention on the rights of the child, taking an initiative from earlier conventions and certain legal principles related to the welfare and foster placement and adoption and referring itself to the minimum rules for the administration of justice, and also declaration on the participation of women and children, develop edits sacred goals and objectives. It aims at such rights of the child which will be “the foundation of freedom, justice and peace” “treating all the human beings as members of the human family” (Preamble CRC, 1989).

Keeping in the view these aims, the text of the convention is divided into three parts. The **Part I** deals with the nature of rights described in 41 **Articles**; **Part II** deals with the progress report of child by parties to the convention. Articles 42 to 45 deal with the establishment of select committee with members of high moral standing and its functions. The countries should submit report within two years of the entry into force of the convention and thereafter for every five years to the select committee. The **Part III** that constitutes **Articles** 46-54 deals with the proposed amendments, by state parties, that may be enforced basing on the majority of states adopted them. Hence according to the convention once a state (a nation) becomes a party to the convention it is obligated to see that following provisions for the rights of the child are ensured in its national states. Before entering into the details of the rights assured in the Convention one has to look at one significant aspect of convention. Through **Article 3 of Part I** of the convention importance given to child is explicit:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

There are 41 **Articles** in the part 1 of the convention stating and detailing the rights of the child. For the sake of convenience, the present study is done looking at the rights under four categories as ‘**Right to survival**’, ‘**Right to development**’, ‘**Right to participation**’ and ‘**Right to protection**’. We shall now go into the details of the provisions under these four categories of rights for the child. We will see further, the obligation of the state parties to convention to provide for the rights in the four categories the children of their nations.

Essential Articles (for all categories of rights):

Definition of the child:

As per the convention on the rights of the child, “a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier” – Article

Right to equal treatment

The convention provides for child’s right to equal treatment through its **Article 2 (1)** that states that the state parties to the convention shall respect the child without discrimination, irrespective of child’s or his or her parent’s / legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth, or other status. The convention also takes appropriate measures to protect the child against discrimination or punishment on the basis of the status, activities, expressed opinions or beliefs of the child’s parents, legal guardians or family members-**Article 2 (2)**

Right to survival and health:

The convention provides for child's right to survival, life, and standard of health, nutrition, adequate standard of living and identity, name and nationality and equal treatment.

Right to life:

The convention makes the state parties to recognize every child's inherent right to life (**Article 6 (1)**) and to ensure the maximum extent possible the survival and development of the child (**Article 6 (2)**). Right for parental care:

- Makes parties to the convention to ensure the child with care from parents, legal guardians-

Article 3(2)

- Ensures that such care shall conform with the standards established by competent Authorities- **Article 3 (1)**
- Makes parents or others legally responsible for the child to provide appropriate guidance in a manner consistent with the evolving capacities of the child- **Article 5**

Right to preserve identity, family relations name, nationality:

- Respects the child's right to preserve his or her identity, nationality, family relations- **Article 8 (1)**
- Provides for appropriate assistance and protection when a child is illegally deprived of his/her identity- **Article 8 (2)**
- Sees that the child shall not be separated from parents against their will unless the judicial review determines so in such cases that involve neglect or abuse of the child by parents- **Article 9 (1)**
- Obligates state parties (under **Article 9** paragraph (mentioned above) to treat the applications by a child or his/ her parents to leave a state for the purpose of reunification in a human and positive sense- **Article 10(1)**
- To take measures to combat the illicit transfer and non-return of children abroad- **Article 11(1)**
- To promote bilateral or multilateral agreements in the above referred-**Article 11(2)**
- Provides for appropriate protection for a child who is considered as a refugee in accordance with international law or domestic law- **Article 22(2)**

- Provides for the child to trace the parents or other members of the family of any refugee

Child through intergovernmental or non-governmental organization- **Article 22(2)**

Right to standard health, standard living and nutrition:

- Makes state parties to recognize the right of the child to the enjoyment of highest attainable standard of health and to provide for facilities for the treatment of illness and rehabilitation of health- **Article 24 (1)**
- Provides for the full implementation of this right- **Article 24(2)** in particular:
 - To diminish infant mortality **(2(a))**
 - For primary health care **(2(b))**
 - Nutritious food, clean and drinking water, to combat disease and malnutrition, environmental pollution **(2(c))**
 - For appropriate pre-natal and post-natal healthcare for another **(2(d))**
 - To provide information and education of basic knowledge of child health and nutrition, of the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents **(2(e))**
 - To develop preventive health care, guidance for parents and family planning education and services **(2(f))** and
- Provides for care to abolish traditional practices prejudicial to the health of children-

Article 24(3)

Provides for a periodic review of the treatment for the purpose of care, protection of his

- /her physical or mental health –**Article 24(3)**
- Recognizes the right of every child to a standard of living for the child's physical, mental, spiritual, moral and social development- **Article 27 (1)**
- To secure conditions of living-**Article 27 (2)**
- Provides for measures to assist parents and others for child's nutrition, clothing and housing-

Article 27(3)

- Takes measures for recovery of maintenance for the child from the parents or other persons

who are within the state and from abroad; also holds that state parties shall promote accession to international agreements- **Article 27 (4)**

Rights for the disabled child

- Recognizes that a mentally or physically disabled child should enjoy a full and decent life, in conditions, which ensure dignity, promote self-reliance and facilitates the child's active participation in the community- **Article 23 (1)**
- Recognizes that special care and assistance be provided free of charge subject to available resources to the eligible child- **Article 23 (1)**
- Provides for effective access to education, training, health care services, rehabilitation services, preparation for employment opportunities and recreation opportunities conducive to cultural and spiritual development- **Article 23 (4)**
- Obligates state parties to promote the spirit of international cooperation, to exchange appropriate information on preventive health care, methods of rehabilitation, education and vocational services keeping in view of the needs of developing countries- **Article 23 (4)**

Right to development

This category of rights includes child's rights to:

- Parental Support for early childhood development
- Adoption/alternative care
- Provisions for refugee child
- Social security
- Education
- Respect for child's personality
- Leisure
- Recreation
- Cultural Activities

Right to parental support for early childhood development

- Obligates states parties shall to ensure the maximum extent possible the survival and

development of the child- **Article 6 (2)**

- Provides for parental responsibility for upbringing and development of the child- Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern - **Article 18 (1)**
- Insists State parties to render appropriate assistance to parents and legal guardians in performance of their child-rearing responsibilities and to ensure the development of institutions and facilities and services for Children-Article 18(2) and
- Obligates state parties to take appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities - **Article 18 (3)**

On adoption/alternative care:

- Provides for special protection by the state to the children who are temporarily or permanently deprived of his or her family- **Article 20 (1)**
- Provides for alternative care for the child in accordance with the national laws-**Article 20 (2)**
- Provides for foster placement and also to pay due regard when considering solutions, to the child's ethnic, religious, cultural and linguistic backgrounds- **Article 20 (3)**
- Recognizes and permit the system of adoption (**Article 21**). And in this regard further.
 - Ensures adoption of child is authorized in accordance with applicable law(**21(a)**)
 - Recognizes the inter-country adoption when the child cannot be placed in a foster or adoptive family in the child's country of origin (**21 (b)**)
 - Ensures that the child in the country adopted enjoys safeguards and standards equivalent to those of national adoption (**21 (e)**)
 - Takes measures that inter-country adoption does not result in improper financial gain (**21(d)**)
 - Promotes bilateral or multilateral arguments to ensure the placement of child in another country is carried out by competent authorities- **Article 21(e)**

Rights of the refugee child

- Takes the measures for a child who is seeking refugee status, whether accompanied or

unaccompanied by her parents to receive appropriate protection and humanitarian assistance-
Article 22 (1)

- To provide cooperation in any effort by the united nation's and other intergovernmental organizations to trace the parents or other members of family, of a refugee child- **Article 22 (2)**

Right for social security

- Makes state parties to recognize for every child's right to benefit from social security, including social insurance in accordance with their national law- **Article 26**

Right to education

- **Article 28** makes the parties to the convention to recognize the child's right to education. Further, basing on equal opportunity to be given for the child the convention:
 - Makes primary education compulsory
 - Encourages the development of secondary education
 - Makes higher education accessible to all
 - Makes educational and national information and guidance available and accessible to all children
 - Takes measures to encourage regular attendance of schools and to reduce the drop-out rule

Right to respect for child's personality

- **Article 29(1)** deals with the **guidelines** to be followed by state parties for the development of the child through child's right to education that has
 - Respect for child's personality, talents, and mental and physical abilities
 - Respect for human rights and fundamental freedoms
 - Respect for child's parents, cultural identity, language and values of country
 - Understanding of 'peace', 'tolerance', 'equality of sexes', friendship among all
 - Respect for natural environment

Right to leisure and recreation

- Recognizes the child's right to leisure, to engage in play and recreational Activities, to participate in cultural life and arts- **Article 31(1)**

- To participate fully in cultural life-**Article 31(2)**

Right to participation

This category of right to participation includes:

- Respect for the views of the child
- Right to freedom of expression
- Right to access for appropriate information, and freedom of thought
- Right to conscience and religion etc.,

Right to expression

- Provides for expression of his or her own views giving due weight in accordance with the age and maturity of the child- **Article 12 (1)**
- Provides for an opportunity to be heard in any judicial and administrative proceedings affecting the child- **Article 12 (2)**
- Provides for the right to freedom of expression that includes right to seek, require and impart information and ideas of all kinds through any media of child's Choice-**Article 13 (1)**
- Holds that the above right to expression is subject to such restriction that it respects the rights of Others-**Article (13(2a))** and protects the national security or of public Order-**Article (13 (2b))**

Right to Conscience and religion

- Respects the right of child to freedom of thought, conscience and religion-**Article 14 (1)**
- Respects the rights and duties of parents and legal guardians to provide direction to exercise this right- **Article 14 (2)**
- Provides for child's freedom to religion subject to limitations to protect the safety order, health or morals or the fundamental rights and freedom of others- **Article 14 (3)**

Right to freedom of association

- Recognizes the child's right to freedom of association and peaceful assembly-**Article 15 (1)**
- Holds that no restrictions be placed on the exercise of these rights other than those imposed

by law- **Article 15 (2)**

- Prohibits unlawful attacks/interferences and states that no child be subjected to arbitrary or unlawful interference with his/her privacy, family, home or correspondence- **Article 16 (1)**
- Provides for child with his/her right to protection against the interferences or Attacks-**Article 16 (2)**

Right to access to information from media

- Provides to recognize the important function of media from diversity of national and international Resources-**Article 17(1)**. To this end it also provides cultural benefit of the child in accordance with the spirit of **Article 29** that deals with right to education as preparation for development of personality -**Article 17 (a)**
- Encourages international co-operation-**Article 17(b)**
- Encourages production of children's books-**Article 17(e)**
- Encourages mass media to have regard to the linguistic needs of child from minority groups-

Article 17(d)

- Encourages the guidelines appropriate for protection against information and material injurious to his/her well-being- **Article 17 (e)**

Right to respect for child's background

- Provides for due regard for child's ethnic, religious, cultural and linguistic background-

Article 20(4)

- Provides for right to enjoy his/her own culture, to prefer and practice his/her own religion, use his/her own language- **Article (30)**
- Provides for, right to participate in cultural, artistic life and also for equal opportunities in this regard- **Article 31, (2)**

Right to protection

In fact, the term "child abuse" is inclusive of all sorts of exploitation of the child; it denotes, mistreatment, cruelty, ill-treatment, violence, maltreatment, neglect and misuse of the child. However, the convention specifies each right to freedom from all sorts of 'human wrongs' towards child and above all certain measures by state parties against exploitative use of

children, through the provisions for child-care as:

Right to freedom from economic exploitation:

- Recognizes child's right to protection from economic exploitation and from performing any work that is likely to be hazardous or to interfere with child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development- **Article 32(1)**
- Provides for legislative and administrative measures to provide for minimum age through, **Article 32 (a)**; for appropriate regulation, **32 (b)** and for appropriate penalties with reference to employment of children, **32(c)**

Right to protection from illicit use of drugs:

- Provides for appropriate measures including legislative, administrative, social and educational measures to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties and to prevent the use of children in the illicit production and trafficking of such substances-
- **Article 33 Right to freedom from sexual abuse:**
- Provides to protect the child from all sorts of sexual exploitation, sexual abuse-
- **Article 34.** Also provides for appropriate national, bilateral and multilateral measures against, a) coercion of child, b) exploitative use of child in prostitution and c) use of children in pornographic performance or materials

Right to protection from sale of or trafficking children:

- Provides for national, bilateral, multilateral measures to prevent the abduction of the sale of or traffic in children-
- **Article 35** Duty of state to protect the child from other forms of exploitation:
- **Article 36** of the convention holds that state parties should protect the child from other forms of exploitation

Right to protection from inhuman or degrading treatment and neglect **Article 37**

(a) Ensures protection, from torture or crueler inhuman degrading through

(b) Provides liberty in conformity with law,

(c) Provides for respect for the inherent dignity and

(d) Makes access to legal and other appropriate assistance as well as the right to challenge the legality of deprivation of liberty

Right to protection from armed conflicts:

- Provides for protection of children in case of armed conflicts to ensure respect for rules of international humanitarian law applicable to them through **Article 38 (1); (2)** ensures that children who have not attained the age of fifteen do not take part in hostilities, **(3)** takes measures to protect the children who have not attained the age of fifteen years from being recruited into their armed forces and **(4)** ensures protection of children who are affected by armed conflicts

Provisions for state measures for reintegration of victims of any neglect:

- Insists states parties to take all measures to promote physical and psychological recovery and social reintegration of a child who is a victim of any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment, or armed conflicts- **Article 39**

Rights of alleged/accused child for dignity

- Obligates state parties to recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of child's sense of dignity and worth- **Article 40 (1)**
- **Article 40(2) (a)** states that no child shall be alleged as or accused of as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law. And **Article 40 (b)** provides with certain guarantees for every child alleged or accused of penal law as:
 - To be presumed the child as innocent until proven guilty according to law
 - To be informed of charges against his/her and to have appropriate assistance for the preparation and presentation or his/her defence
 - To have the matter determined without delay
 - Not to be compelled to give testimony or to confess guilt
 - To provide for a review of higher competent judicial body, is considered to have infringed of penal law
 - To have free assistance
 - To have privacy at all stages or proceeding

Provision for minimum age against infringement of law

- **Article 40(3)** provides for **(a)** establishment of minimum age for the children regarding

infringement of law **(b)** appropriate measures to deal with such children and to provide legal safeguards.

Other provisions

Provision for other dispositions as guidance, foster care etc

- **Article 40 (4)** obligates state parties to provide for children a variety of dispositions such as care, guidance and supervision orders; counselling probation; foster care; education vocational training; alternative institutional care proportionate both to their circumstance and the offence.

Scope for more conducive provisions within or without convention

- **Article 41** states that nothing in the present Convention shall affect any provision which are more conducive to the rights of the child and which may be contained in **(a)** the law a state party; or **(b)** International law in force for the state

Obligation of international states for transmission of reports

When Part I, of the convention deals with the right of the child, Part II of the conventions makes the parties oblige to the select committee constituted as per the rules prescribed in the **Article 43** of the conventions, and to submit a report within two years after the entry into force of the Convention as per **Article 44 (1) (a)** and thereafter every five years as per **Article 44 (1) (b)**. And **Article 44 (5)** insists that these reports, which are comprehensive, shall be submitted to the General Assembly through economic and social council every two years. **Article 45(b)** of Part II provides for transmission of the reports to the specialized agencies of the United Nations Children Fund in order to transfer the effective implementation of the convention. The committee can also make suggestions and recommendations based on information received as per **Article 45 (d)**.

Further, Part III of the convention in its **Article 46)** states that the present convention is open for signature by all states; also it is subject to ratification as stated in **Article 47**. The convention also provides for proposals for amendment and to file it with the Secretary-General of the United Nations through its **Article 50(1)**. Further **Article 50(2)** states that the amendment adopted shall enter into to force when a two-thirds majority as approves it; from then onwards the amendment will be binding on those parties who have accepted it-states **Article 50 (3)**.

11.5 CONSTITUTIONAL PROVISION RELATED TO RIGHTS OF CHILDRENS

A child is a citizen of India due to his birth in the Indian Territory as per **Article 5** of the

Constitution. We can deduce that child is also a citizen of India and all the provisions of the Constitution apply to child also. While reading the constitutional provisions, one should look into all the aspects that Constitution covered for the comprehensive development of the child. We only look for such provisions where the child is given a special mention. We can say for example **Article 24** that protects the child and Prohibits **employment of children below the age of 14** years in any factory, mine or in any other hazardous place. But, we should read the thoroughly Indian constitution that provides for many provisions for the child under the citizenship. As for example **Article 38** obligates states to provide for a “secure a social order for the promotion of the welfare of the people”. Hence a child is one among the “people” under the Constitution, and a child can claim for his/her a right to welfare through a “secure social order” in that particular state. In this backdrop let us look into the constitutional provisions for the child.

1. The Constitution of India which came into effect from 26.1.1950 in its **preamble** itself held:
2. We, the people of India having solemnly resolved to constitute India into a Sovereign Socialist Secular Democratic Republic and to secure to all citizens: Justice, social, economic and political; Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity; and to promote among them all Fraternity assuring the dignity of the individual and the unity and integrity of the Nation True to its nature Indian constitution aimed at these goals through various legislations apart from its constitutional provisions for the rights and duties of citizens. And a child is not an exception for any legislative measures in this way. Indian constitution is divided into 22 parts. **Part II** of Constitution provides for citizenship, and **Part III** of the Constitution deals with **Fundamental Rights** and **Part IV** with **the Directive Principles of State Policy** and **Part IVA** with **Fundamental duties**. Now let us look into the legal provisions in these major parts of the Constitution along with other provisions of the Constitution.

RIGHT TO CITIZENSHIP

Part II of Constitution through **Article 5** provides for citizenship for (a) who was born in the territory of India; (b) either of whose parents was born in the territory of India or (c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement.

Further **Article 10** provides for the continuance of the rights of Citizenship. Accordingly, every person who is deemed to be a citizen of India under any of the foregoing provisions of this part shall, subject to the provisions of any law that may be made by Parliament, continue to be a citizen.

FUNDAMENTAL RIGHTS OF THE CHILD:

As said above Part–III of the Constitution provides for the Fundamental Rights of the citizens. The Fundamental rights are inclusive Articles from 14 to Articles 35. Fundamental Rights include:

1. Right to Equality

2. Right to Freedom

3. Rights Against Exploitation

4. Rights to Freedom of Religion and

5. Right to Cultural and Educational Rights

6. Right to Constitutional Remedies

Article 12 defines the “State”. It includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

Right to Equality

Article 14 states that the State shall not deny any person before the law or equal protection of the laws within the territory of India. Further two case laws are provided here:

- 1) A blind employee can offer to retire and request employment to his dependent. *Bhagawan Dass & Co., v. Punjab State Electricity Board*, AIR 2008 SC 990=2008 (1) SCC579
- 2) Employment of young tribals as police officers to fight Naxals is not permitted. In case of *Nandini Sundar and others v. State of Chattisgarh*, AIR 2011 SC 2839=201 (7) SCC547

Article 15 deals with Prohibition of discrimination against any citizen on the grounds, only of, religion, race, caste, sex, and place of birth or any of them- Provision for equal opportunity on the matter of public employment. Accordingly,

- (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, and place of birth or any of them.
- (2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to
 - (a) Access to shops, public restaurants, hotels and places of public entertainment; or

- (b) The use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.
- (3) Nothing in this article shall prevent the State from making any special provision for women and children.
- (4) Nothing in this Article prevents the state from making special provisions for the advancement of socially or educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes

Case laws under this study on Article 15(4): Forward class woman marrying the Scheduled case husband is not entitled to Scheduled Caste status. *Sobha Hymavathi Devi v. Setti Gangadhara*, 2005 AIR SCW715+AIR 2005 SC800=2005(2) SCC 244

Another case: Scheduled Tribe Woman marrying forward caste man. The children born to them shall be treated as forward class persons' subject however to the condition under which they are brought up. If they are brought up as Scheduled Caste Tribes, they take their mother's caste. *Ramesh Bhai Dabhai Naikav. State of Gujarat* 2012 (3) SCC 400= 2012(1) SCC (L&S) 624= 2012 (2) SCC (cri.). 190.

Article 16 provides for equal opportunities in matters of public employment. Though this article is not directly related to children, children are benefitted due to the parental status of employment in this regard.

Article 17 deals with the Abolition of untouchability. According to this Article 17, untouchability is abolished, and it's in practice in any form is forbidden. The enforcement of any disability arising out of "untouchability" shall be an offence punishable in accordance with law.

Right to Freedom

Article 19 of the Constitution provides for protection where

- (1) All citizens shall have the right
 - (a) To freedom of speech and expression;
 - (b) To assemble peacefully and without arms;
 - (c) To form associations or unions;
 - (d) To move freely throughout the territory of India;
 - (e) To reside and settle in any part of the territory of India;
 - (f) to practice any profession, or to carry on any occupation, trade or business.

Case law: Education is an occupation. It is not the same as business or trade. P.A. Inamdar and others v. State of Maharashtra and others, AIR 2005 SC3226=2005 AIR SCW3923= 2005(6) SCC537.

Right to life and personal liberty

Article 21 Provides for this. This is another right under the category of **Right to freedom** under Part III of Fundamental Rights. Accordingly, no person shall be deprived of his life or personal liberty except according to procedure established by law.

Case laws: Sexual harassment violates human rights. Visakha v. State of Rajasthan, AIR 1997 SC 3011 = 19C Another Case: Child offenders are entitled to special facilities.

Sheela Barsev. Union of India, AIR 1986 SC 1773=1986(3) SCC 596. Children of a woman prisoner shall be allowed to remain with her, and they shall be given all facilities for their maintenance.

Right to education

Article 21 –A states that the State shall provide free and compulsory Education to all children of the age of six to fourteen years in such manner as the State may, by law, determine. This came after 86th amendment Act, 2002, dt, 12-12-2002 w.e.f. 1-4-2010.

Some caselaws:

Differential fee structure between Kendriya Vidyalaya and project schools is justified. P. Ravindran V. Union of India & Ors. AIR, 2011 SC 3361 =2011(5) SCC1= 2011(2) SCC(cri.)504

Another case: In case of shifting a school from one village to another, the Government shall establish another school at the village of which the school is shifted. Ng. Komon v. State of Manipur and others, AIR 2010 Gau.102/.

Right against Exploitation

As per Article 23 (1), Traffic in human beings and begar and other similar forms of forced labour are prohibited, and any contravention of this provision shall be an offence punishable in accordance with law.

Article 24 deals with Prohibition of employment of children below the age of 14 years in any factory, mine or in any other hazardous place-Article 24.

Right to freedom of Religion

Article 11 deals with Freedom of Conscience and free profession, practice and propagation of

religion subject to public order and morality and health to other provisions all are equally treated for this provision.

Article 28 deals with freedom as to attendance at religious instruction or religious worship in certain educational institutions. Article 28(1) states that no religious instruction shall be provided in any educational institution which wholly maintained out of state funds. But (2) of the Article state clause

(1) of this Article is not applicable when the educational institution was administered by State but has been established under any endowment or trust. Clause (3) makes provision for such attendance when the person is minor; his guardian has given consent there to.

CULTURAL AND EDUCATIONAL RIGHTS

Article 29 (1) provides for protection of interests of minorities. Article 29(i) of the part III that deals fundamental rights thus states that any section of the citizens residing in the territory of India or any part there of having a distinct language, script or culture of its own shall have the right to conserve the same (For example rights of the tribal people in the development/industrial projects; see below rights in question against Vedanta project).



Article 29(2) states that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of state funds on grounds only of religion, race, caste, language or any of them.

Article 30 provides for Rights of minorities to establish and administer educational institutions. Tribes and other Weaker Sections. As per Article 30(1) all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

Right to Constitutional Remedies:

The Part III of the constitution of fundamental rights also provides certain articles that stand for the certain law (from Article 31-A to 31D) and right to constitutional remedies through Articles 32-35.

Article 32 of the Indian Constitution provides for remedies for the enforcement of rights conferred by this Part on Fundamental Rights. **Article 32 (1)** (1) provides for the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this part.

Case law: Police attack on sleeping people condemned by the Supreme Court. Ramlila Maidan incident, In re, 2012(5) SCC 1 = 2012 CrLJ 3516 = 2002(2) SCC (Cri.) 241.

Obligation of State for provisions for Child

Part-IV of the Constitution that provides for the Directive Principles of State Policy is inclusive of certain special provisions for children and certain other provisions along with other.

Right to welfare where the state is obligated to secure social order for the promotion of welfare of the people is provided through **Article 38(1)**. This reads that state shall strive to promote the welfare of the people to strive to promote by securing and protecting effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life. **Article 38 (2)** insist states shall strive to minimize the inequalities in income and endeavour facilities and opportunities, not only among individuals but also amongst groups of people residing in different areas engaged in different vocations.

Article 39 deals with certain principles of policy to be followed by the State in particular: The State shall, in particular, direct its policy towards securing

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

conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. (after 42nd amendment act, 1976, sec. 7 with effect from 3-1-1977 Case law:1. The object of this Article is the creation of welfare State. Kesavananda Bharathi v.State of Kerala, AIR 1973 SC 1461=1973(4) SCC

Case law 2. Foreign adoptions are recommended by the Supreme Court. Prime Consideration is the welfare of the child. Lakshmikant Pandey v. Union of India, AIR 1984 SC 469.

Case law 3. Compensation for the death of a child died in a motor accident outside the school while she was proceeding to quench a thirst due to non-availability of water in the school is maintainable. All India Lawyers Union (Delhi-Unit) v.Union of India and others. AIR 1999 Del.120.

Article 39A provides for equal justice and legal aid and to ensure opportunities for securing justice that are not denied to any citizen.

Article 41 provides for the right to work, education and public assistance. This Article obligates the state to provide for within the limits of economic capacity and development to make effective provisions for securing the right to work, to education, and to public assistance in cases of unemployment and old age, sickness and disablement and in other cases of undeserved want.

Obligation the state to provide for just and humane conditions of work and maternity relief is found in the **Article 42**.

There is a case law which provides for maternity benefit for casual employees also: Municipal corporation of Delhi v. Female Workers (Muster Roll) AIR 2000 SC 1274=2000 (3) SC C224

Article 43 holds that State shall endeavour to secure a living wage; conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities by suitable legislation or economic organization to all workers. These workers are agricultural; industrial workers or otherwise according to this Article 43. Further, this Article in this reference obligates a State to promote cottage industries on an individual co-operative basis in rural areas.

Article 44 insists on Uniform Civil Code for the citizens throughout the territory of India.

Article 45 provides for early childhood care and education to children below the age of six years. This provision is inserted due to 86th Amendment Act 2002 dated 12-12-2002 with effect from 1-4-2010.

Article 46 deals with Promotion of educational and economic interests of Scheduled Castes, Tribes and other weaker Section. Article 46 states that Right to nutrition and standard of living is another right where the state is obligated to improve public health. **Article 47** deals with the obligation of the state to regard the raising of the level of nutrition and the standard of living of

its people, raise of the nutritional level. For the **Article 47** reads, “the state shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public Health as among its primary duties and, in particular the state shall endeavor to bring about prohibition of consumption, except for medical purposes of intoxicating drinks and of drugs which are injurious to health”

Fundamental Duties:

Part IV A prescribes fundamental duties of citizens. In this, there is a provision for parental responsibility to provide opportunities for education

Article 51-A It shall be the duty of every citizen of India.

- a. To abide by the Constitution and respect its ideals and its institutions, the National Flag and the National Anthem;
- b. To cherish and follow the noble ideals which inspired our national struggle for freedom;
- c. To uphold and protect the sovereignty; unity and integrity of India;
- d. To defend the country and render national service when called upon to do so;
- e. 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;
- f. To value and preserve the rich heritage of our composite culture;
- g. To protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures;
- h. To develop the scientific temper, humanism and the spirit of inquiry and reform;
- i. To safeguard public property and to abjure violence;
- j. 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;
- k. Who is parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years¹

11.6 Summary

One has to appreciate the highly democratic nature of Indian constitution and its flexibility and scope for expansions of rights in general and child in particular. It is through many rights vested as this(k) is added by the Constitution (Eighty-sixth Amendment) Act 2002, dated 12-12-2002

Fundamental rights. And, we also may appreciate the various ways it obligates its states to provide for child welfare, family welfare which in turn helps for child development; and protection of the child in dangerous situations anywhere in factory or school etc., the child is provided with many rights. Further, it is through its democratic and socialistic and flexible nature

it has a scope for Public Interest Litigation where the public can speak and file a suit on behalf of a child and suggest for even an introduction of new laws and amendment provisions for the child. That is how Right to education became a fundamental right; for free and compulsory education to all children of the age of six to fourteen years through a lot of conscious efforts and consensus of the public. Yet by looking at the still existing worst forms of child labour and many issues due to child's living in poor socio and economic conditions, there is still need to look for the welfare and protection of children through law and public action.

This module dealt with elaborate provisions of the child in the constitution. In fact, rights of citizens need to be considered as rights of a child too. Hence it is to be understood of the various provisions best owed on the child as a citizen of India under Fundamental rights. For example, **Article 38** that provides for secure social order and promotion of welfare; **Article 41** that provides for the right to work, education and public assistance and **Article 42** that insists on the states for the provision of humane conditions of work and maternity benefit are indirectly meant for the welfare and protection of children. In a family, if the members of the family are employed, and mother is healthy the child will obviously have a healthy life. Hence one must understand the provisions for citizen in general and child in particular in relation to other provisions but not in isolation. Thus this study becomes fruitful and makes the persons to introspect on their role for improvement of a child who needs support not alone from parents but everybody in the civil society and state.

11.7 MCQs

1. Which document specifically outlines the rights of children?
 - a) Universal Declaration of Human Rights
 - b) United Nations Charter
 - c) Convention on the Rights of the Child (CRC)
 - d) Geneva Convention

Answer: c) Convention on the Rights of the Child (CRC)

2. Which of the following is NOT a basic right of children?
 - a) Right to education
 - b) Right to protection from abuse
 - c) Right to vote
 - d) Right to health care

Answer: c) Right to vote

3. The minimum age for employment under international child labor laws is generally:
 - a) 10 years
 - b) 12 years

- c) 14 years
- d) 18 years
- Answer:** c) 14 years

4. Which organization works globally for the protection of children's rights?
- a) UNESCO
 - b) WHO
 - c) UNICEF
 - d) WTO

Answer: c) UNICEF

5. The right to express opinions and be heard is guaranteed to children under which article of the CRC?
- a) Article 3
 - b) Article 12
 - c) Article 20
 - d) Article 1

Answer: b) Article 12

11.8 SAQ's

1. What is the main purpose of the Convention on the Rights of the Child?
2. Name two basic rights every child should have.
3. Why education is considered a fundamental human right for children?
4. How does child labor violate children's rights?
5. What role does UNICEF play in protecting children's rights?

11.9 TRUE OR FALSE

1. All children have the right to be protected from violence and abuse.
True
2. Children under the age of 18 can legally be forced into military service under international law.
False
3. The right to education is only guaranteed to children in developed countries.
False

4. Every child has the right to express their opinion and be heard.

True

5. The Convention on the Rights of the Child is legally binding for all countries

False (*It is binding only for countries that have ratified it.*)

11.10 TERMINAL QUESTIONS

1. Discuss the key principles of the Convention on the Rights of the Child and how they protect children globally.
2. Explain the challenges faced in the implementation of children's rights in developing countries.
3. Describe the role of international organizations in promoting and protecting the human rights of children.
4. Analyze the impact of child labor on children's rights and suggest solutions to eliminate it.

11.11 REFERENCES

¹This (k) is added by the Constitution (Eighty-sixth Amendment) Act 2002, dated 12-12-2002

² Madabhushi Sridhar, Discussion Paper on Legal Provisions Regarding Age of Child To protect the Rights of Children; NALSAR University of Law, Hyderabad

³ N.K. Acharya (2014). The Constitution of India (with important Box Items, Comments, case laws and amendments up-to-date). Hyderabad: Asia Law House.

⁴Chinmayee Satpathy, Child Welfare Policies and Programmes in India, in Yojana November, 2012 pp.23-27

⁵Savitha Bhakry (2006), Children in India and their rights, New Delhi: National Human Rights Commission

UNIT 12

WOMEN'S HUMAN RIGHTS: THEORETICAL PERSPECTIVES

STRUCTURE

12.1 INTRODUCTION

12.2 OBJECTIVES

12.3 WOMEN IN LAW

12.4 THE POSITION OF WOMEN IN SOCIETY

12.5 THE SOCIAL POSITION OF WOMEN IN INDIA

12.6 THE SOCIAL POSITION OF WOMEN GLOBALLY

12.7 CONCLUSION

12.8 MCQs

12.9 SAQs

12.10 TRUE/ FALSE

12.11 TERMINAL QUESTIONS

12.12 REFERENCES

12.1 INTRODUCTION

Women's disadvantaged social position throughout her life is often referred to as the **cycle of violence**. In India, there is a strong **patriarchal** culture. This is reflected and manifested in various forms including: son preference, and subsequent **sex determination based abortions** and **female infanticide**; more money being spent on male children's health and education; young men having more choice and control over their access to higher education, choice of subject and location of employment; men's age of marriage being later; grooms receiving and not having to pay dowry; male control over domestic decision making, eg the use of contraception, the number, and the spacing of children, and choices over how the household income is spent; male control over the ownership of property and land; men having higher

social status in their old age and as widowers over widows. Historically practises such as sati, and when widows were forced to live a life of isolation and poverty in temples but widowers could continue living in the family home were also forms of violence that only affected women.

12.2 OBJECTIVES

By the end of this module, you will be aware of the position of women in society within India, and globally that demonstrates their inferior social position; why women need specific human rights; and the gender bias present in the understanding and implementation of most human rights law that contemporary society relies on.

12.3 WOMEN IN LAW

The natural global average “of sex ratio at birth is around 105 male births per 100 female births.”²This equates to a naturally occurring 952 female births to 1,000 male births. This difference in the sex ratio at birth is naturally occurring as more male children are likely to die before their second birthday than female children. Therefore, the imbalance should naturally balance out by the time children are past infancy.

In India, the 1991 Census showed there were 948 female births compared to 1,000 male births.³As there was social concern that the female birth rate was being artificially interfered with (such as female foeticide and female infanticide) due to a socio-cultural preference for male children the Government of India passed a law in 1994 to ban the determining of the sex of the foetus.⁴Despite the Pre-Conception & Pre-Natal Diagnostic Techniques Act (1994) by 2012-2014, the census figures showed that the sex-ratio was 906:1,000. The continual decline of the sex ratio, even after the introduction of legislation to ban sex-determination, demonstrates that law in itself cannot change social values and pervasive cultural preferences. Feminists have consistently critiqued and challenged human rights law arguing that law does not represent and consider the oppressive forms of discrimination most women experience on a daily basis – a violation of their human rights and therefore cannot be the sole source of a solution to inequality.⁵ Historically women were not included as subjects in the definitions of rights. The life experience and needs of men have been treated as the standard to which rights apply to all people.⁶ When torture, disappearance, or bodily injuries are inflicted upon women, the difference in their experiences to what men might experience are not recognized. Their identities and experiences are co-opted in to the male definition of that experience and their definition of appropriate redress. Often women’s experiences, for example, that of the rape survivors in the Yugoslavian and Rwandan⁷ conflicts or of ‘half-widows’ in the conflict in Kashmir,⁸ are unrecognized by human rights legal systems and therefore no specific protections are afforded to them. Specific crimes against women have therefore either gone unnoticed and not prosecuted, or they have had to be made to fit into the definition of a crime that was not intended to cover such an act. The experience of prosecuting

sexual violence as a weapon of war in the former Yugoslavia and in Rwanda is an example of this. Gender myopia, i.e. blindness towards the inequalities between men and women, has been constantly playing a role in how the rules of society develop. If women's voices expressing how their experiences differ to those of men are not included and listened to, women are excluded from being able to benefit from human rights laws in their own capacity, i.e. as women.⁹

12.4 THE POSITION OF WOMEN IN SOCIETY

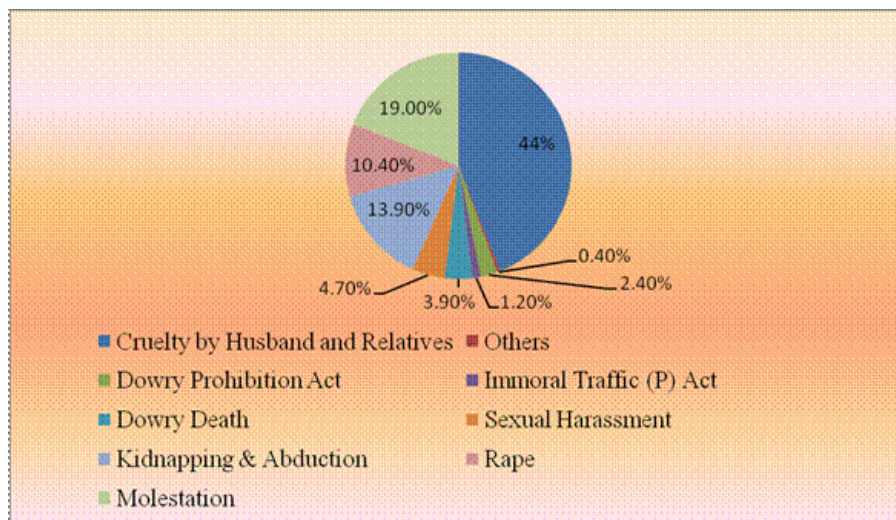
Crimes against Women in India

According to the National Crime Records Bureau figures from 2013 show there were a total of 3,09,546 incidents of crimes against women in 2013. Of these, the total number of cognizable offences against women were 52.24 crimes against women per 1,00,000 women. Of these offences the most common crimes, in descending order, were:

- Cruelty by husbands or his relatives: 1,18,866
- Assault on a woman too outrage her modesty: 70,739
- Kidnapping and abduction: 51,881
- Rape: 33,707
- Insult to modesty: 12,589
- Dowry: 8,083¹¹

All of the above listed crimes are crimes that are committed against women and which are overwhelmingly perpetrated by men. Cruelty, rape, assault and dowry particularly demonstrate male dominance and violence over women in society. These crimes are typically perpetrated to exert control, to create fear, and to reinforce a social hierarchy of power both within the family and within society that reinforces men's privileged and more powerful social position.

The United Nations' Special Rapporteur on violence against women, its causes and consequences said in 2014 that: "According to numerous interlocutors, the physical, sexual and psychological abuse of women in the private sphere is widely tolerated by the State and the community. The perpetrators include husbands, in-laws and other family members. Many victims live in family settings that are rooted in deeply entrenched patriarchal and customary practices that are sometimes harmful to women. The wide spread socioeconomic dependency of women subordinates them to their husbands and other family members. The fear of social exclusion and marginalization and the lack of effective responses to violence keeps them in a context of continuous violence and intimidation."¹²



12.5 THE SOCIAL POSITION OF WOMEN IN INDIA

A close examination of the kidnapping and abduction figures for women in Delhi by various studies¹⁴ have established that many cases of kidnapping and abduction are filed by young women's parents after the young woman has eloped with a lover. In many of these cases the woman is under the age of majority, 18 years of age. This has lead Rukmini Sen to ask whether these are cases of bhagna, as in to elope, which is the result of one's exercise of agency – a choice, or bhaagnaa, as in to be forcefully taken away, e.g. kidnapped or abducted, without any agency or choice.¹⁵ The parents' filing of the FIRs to register the alleged kidnapping demonstrates the parents' lack of approval of the relationship. The filing of a kidnapping, as opposed to a lost person report, reinforces the notion of daughters as property who are not allowed to make their own decisions and that any decisions taken without the expressed consent of the family must be controlled and curtailed.

Control over women's lives and their choices is easier when women are dependent on men for their economic and social survival. "According to the Food and Agricultural Organization of the UN (FAO), women [in India] account for only 9.5 per cent of land-holders."¹⁶ Women's low ownership of land and property results in them being dependent upon male members of their kin for their shelter. They may, therefore, be forced to accept certain living conditions such as domestic violence and generally have less influence in decision making within the home and family as they have no, or significantly less, control over resources, access to which may be needed to have a role in decision making. Not owning land or property also weakens women's access to capital and financial loans that may then increase their ability to make choices based on a wider range of options that includes their agency.

Low participation in formal, well paid, employment reinforces women's weaker social position. In 2015 an International Monetary Fund working paper stated: "At around 33 percent at the national level in 2012, India's FLFP [Full Labour Force Participation] [of

women] rate is well below the global average of around 50 percent and East Asia average of around 63 percent.”¹⁷In addition, men earn more than women in both the formal and informal sectors.¹⁸

The weak social and economic position of women in society reinforce their inferiority and vulnerability. Combined with a strong patriarchal attitude the safety of women even in the public sphere is less secure than men’s. The Delhi gang rape and resulting death of a young, 23-year-old, woman in December 2012 highlighted the disproportionate fear of, and threat of, actual violence women experience when accessing public spaces including leisure activities, public transport and roads. The UN Special Rapporteur on violence against women, its causes and consequences stated:

“Sexual violence, including rape and sexual harassment, is widespread across the country and perpetrated in public and private spaces. According to the National Crime Records Bureau, in 2012, 2.84 cases of rape were reported every hour.”¹⁹ Many interlocutors stated that there was a general sense of insecurity for women in public spaces, especially in urban settings. Women are easy targets of attacks, including sexual violence, whether while using public transportation or sanitation facilities or on the way to collect wood and water. Many victims of sexual violence carry a deep sense of shame, which is further exacerbated by the stigma and exclusion they experience, especially from family members and the community, and which may result in suicide.”²⁰

The event triggered mass protests not just in Delhi but in many cities across India including Bangalore and Kolkata where young people demanded more action and accountability from the police in securing the public safety of women.

12.6 THE SOCIAL POSITION OF WOMEN GLOBALLY:

VIOLENCE AGAINST WOMEN AND SERVICE PROVISION:

Internationally women’s social and economic security is less secure than men’s. In the UK two women, a week are murdered by their current or former partner²¹ and three women a week who are in a relationship with an intimate partner violence committed suicide largely because of the stress and mental health consequences of living with, or in fear of, abuse. To put this in context, on average 100 women a year are killed by their current or former male partner, a further 156 women are victims of suicide because they are in abusive relationships. These deaths would be easier to prevent if more support services and perpetrator reform programmes were funded. This compares to around ten men who are killed by their female partner every year.²²In the USA “[t]he number of American troops killed in Afghanistan and Iraq between 2001 and 2012 was 6,488. The number of American women who were murdered by current or ex male partners during that time was 11,766. That’s nearly **double** the amount of casualties lost during **war**”²³emphasis author’s own. These statistics highlight the gap in institutional protections for women.

When governments are aware that intimate partner violence disproportionately affects one

sex over another, we must ask why governments are not responding more comprehensively to fulfil women's human right to life. A potential reason is the lack of prioritisation of the decision making and budget allocation level. And respond to violent crimes against women."²⁴ These grants are recognised as "play[ing] a critical role in helping to create a coordinated community response to this problem [violence against women] and meeting the needs of the almost 1.3 million women victimised by rape and sexual assault annually, and the nearly seven million victims of intimate partner violence each year."²⁵ This \$413 million for a 'coordinated community response' to meet the needs of 8.3 million women every year equates to less than \$50 per person.

When we compare \$413 million to other national budgets we see how extremely small the budget is: in 2014 the USA budgeted to spend: "\$176.2 billion for the operations, training and supporting activities troops need to defeat current and future [security] threats,"²⁶ the "\$166.8 billion to continue the F-35 Lightning II (Joint Strike Fighter) aircraft programme," the \$5.4 billion for submarines, and the \$12 billion for strategic offensive forces, per year.²⁷

In the USA "it is estimated that VOCA [Victim of Crimes Act] provides \$310 million each year for domestic violence and sexual assault services."²⁸ This is compared \$640,221 billion in 2013 on the defence budget.²⁹ This defence budget is higher than the defence budget for then eight highest spending countries combined.³⁰ It prompts one question: What could be spared and re-allocated towards providing domestic violence shelters and social support, rehabilitation and therapy services for perpetrators and survivors, early intervention programmes, fast track courts and training for the police, health and judicial services on how to recognize and appropriately respond to abusive relationships in an informed and sensitive manner.

THE GENDER PAY GAP:

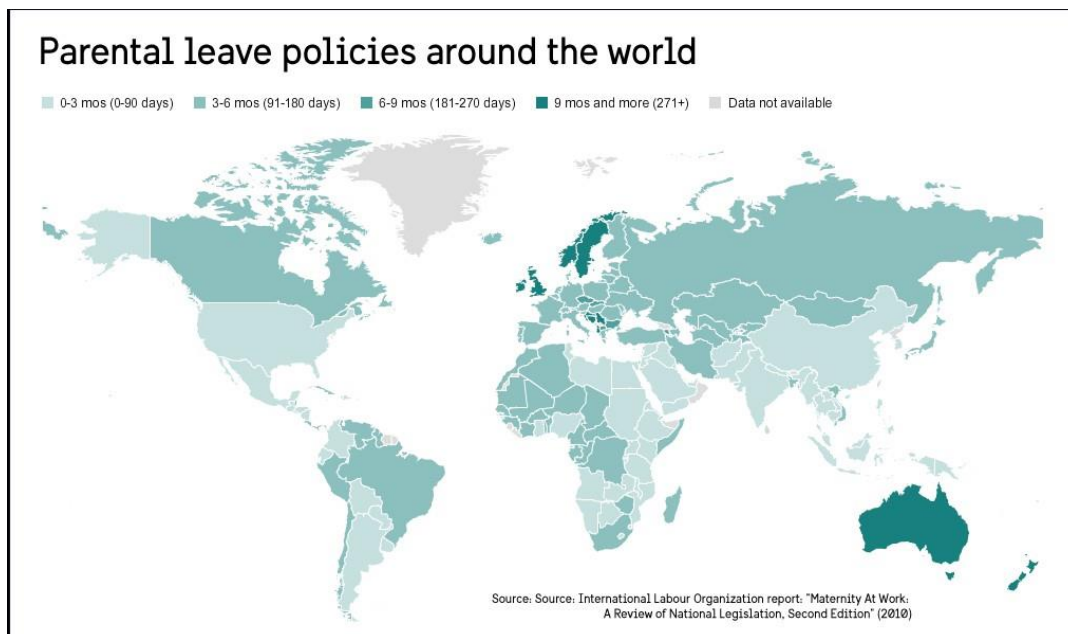
Gender discrimination negatively affects women in the West with women consistently earning less than men. "More than half a century after the United States passed the Equal Pay Act, and 45 years after similar legislation in the UK, women across the world earn 77% of the amount paid to men."³² An international consultancy firm predicted that the UK's gender pay gap, if it continues to decrease at the average rate, will not close until 2069, that's 99 years after the UK introduced its Equal Pay Act³³ and the World Economic Forum estimates that the global pay gap will not close until 2186.³⁴ Motherhood is also financially punished. Over a woman's life time women who have two children will earn 25% less than childless women.³⁵ Further, as women are more likely to be employed in part time jobs which allow them to better balance family care commitments with employment their pension contributions also cumulatively become less than men's over their lifetime. This is partly due to the fewer hours worked and partly because positions within the workforce which are more likely to be part-time are also more likely to have fewer responsibilities and thus less status within the organisation. In some countries, women's final pensions at the point of retiring are on average 40% less than men's.³⁶ As women on average live longer than men, this means they are also more likely to live in poverty in old age. Statistics such as these demonstrate an ingrained discrimination against women and lack of gender sensitivity within the workplace.

Why is it that the financial consequences of reproduction, necessary for the survival of the human race as a whole, should be disproportionately born by women? It is often a couple who are choosing to have a child and not one person in isolation.

PARENTAL LEAVE POLICIES

Gender stereotypes that define men as hard working and with fewer emotions and women as naturally more caring and happier within the domestic sphere are socially constructed. The broad legal recognition in most countries in the world for maternity leave, but very few legal provisions for paternity leave demonstrate how stereotypes can shape legal provisions. Scandinavian countries are a notable exception.³⁷ Sweden is well known for its gender neutral A lack of parental leave for parents removes child caring decisions from parents and forces women to take time off work as men often do not have legal rights to parental leave either at all, for as long as women do, or it is unpaid. The lack of legal rights and protections for men as equal parents places parental leave and caring decisions in the hands of the state – if men want to be the primary carer and they are not given employment protections they are forced to resign or take only earned or casual leave. Such restrictive policies often force women to take leave even if the couple would have preferred for the man to be the primary care giver. These policies demonstrate not only **gender stereotyping** regarding the roles men and women play within the family unit but also gender pigeon holing where the law restricts movement beyond these stereotypes. Parental leave policies, it first introduced parental leave for men forty years ago and has continued to introduce new policies to encourage men's participation in child rearing. When the policy that enabled men to take leave was first introduced only 0.5% of all paid parental leave was paid to men.³⁸ The low uptake of the new policy was likely due to a lack of awareness about the policy and how to access it. It also demonstrates entrenched social stereotypes that care work for children was seen as feminine and the existence of social pressure to not break such barriers. The Swedish government have continued to introduce policies to try to break such stereotypes and to provide incentives for men to utilise provisions available to them. In 1995 the Swedish government announced that for every family where both parents took a month of leave an extra one month of paid leave would be given to the family to look after their child. While this was a gender neutral policy as it applied to both parents, it was aimed at men who were not taking leave for child care. The policy quickly came to be known as the 'daddy month', and it has been credited with helping to "The Nordic countries, i.e. Denmark, Finland, Iceland, Norway and Sweden, have been considered the forerunners in designing family-friendly policies. Redress the imbalance between men and women in the distribution of child care, in 2002 it went further and gave families where both parents took at least two months of leave to look after their child an additional two months of leave for the family.³⁹ In 2014 men were taking 25% of all paid parental leave⁴⁰ and the gap between men and women's leave is said to be continually shrinking. Recognising that families often have significant financial commitments Sweden also provides men and women with 80% of their salary when they take parental leave.⁴¹ If policies do not pay compensation when a parent takes to leave this often forces the highest income earner to stay in employment. When the highest income earner is the male parent this further forces man into the role of financial provider for the family and women as unpaid

carers thus entrenching gender stereotypes and not trying to provide equal opportunities



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³⁹ Ibid.

⁴⁰ QuickFact8: Childcare, Equality. Government of Sweden. Available at: <https://sweden.se/quickfact/parental-leave/> Accessed on 6 May 2015

⁴¹ '10 Things that make Sweden Family-Friendly', Government of Sweden. Available: <https://sweden.se/society/10-things-that-make-sweden-family-friendly/> Accessed on 6 May 2015

⁴² Image by the International Labour Organisation Report: 'Maternity at Work: A Review of National Legislation, Second edition' (2010) available at: '10 Things that make Sweden family-friendly' Government of Sweden, available at: <https://sweden.se/society/10-things-that-make-sweden-family-friendly/>

⁴³ Gender stereotypes. Chrystensantos. Image available at <https://adv91chrystensantos.wordpress.com/2014/09/25/gender-stereotypes/> Accessed on 6 May 2015.

12.6 CONCLUSION

This module has introduced how the life cycle of violence against women and girls includes forms of violence that are typically only experienced by women. These forms of violence may

be extreme where they result in the ending of life females from sex-determined abortions to murder by intimate partners. They may also be more subtle and yet still be pervasive within society from greater control over women's choices to violence against their person. This is reflected in access to education and employment, ownership of property and choices that women may not have over their life direction and bodies that are freely available to men. This module has also given an introduction to how the historical lack of participation of women in significant numbers in decision making positions has resulted in women's needs often being under funded and their labour has been under-valued and pigeon-holed into often unpaid forms of care work. Without laws and policies that aim to promote a more equal and accommodative society that breaks down constructed gender stereotypes and builds solutions to encourage greater gender based equality women are likely to continue experiencing oppression. This module on human rights of women will introduce theories of what equality can be understood to mean, laws, and case studies to promote why human rights of women need greater attention and how laws can be shaped and structured to increase women's lived equality. The above examples ranging from the socio-economic position of women in society which reinforces women's more vulnerable and inferior position socially, lack of prioritisation of women's issues in the allocation of state funds to laws that do and do not exist, and their gender in sensitive implementation demonstrates why special measures are needed to promote the substantive upliftment of women.

12.8 MCQs

1. Which document was the first to affirm equal rights for men and women globally?
 - a) Universal Declaration of Human Rights (UDHR)
 - b) Magna Carta
 - c) Geneva Convention
 - d) UN Charter

Answer: a) Universal Declaration of Human Rights (UDHR)

2. Which of the following is a major international treaty focused on women's rights?
 - a) CRC
 - b) CEDAW
 - c) ILO
 - d) UNESCO

Answer: b) CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women)

3. The feminist theory in human rights argues that:
 - a) Women need fewer rights than men
 - b) Gender inequality is natural
 - c) The legal system must address structural gender inequality
 - d) Women should stay at home

Answer: c) The legal system must address structural gender inequality

4. **What is one reason women's rights need special attention in human rights discussions?**

- a) Women are less educated
- b) Women often face systemic discrimination and violence
- c) Women are fewer in number
- d) Men already have fewer rights

Answer: b) Women often face systemic discrimination and violence

5. **Which of the following rights is most commonly violated for women globally?**

- a) Right to vote
- b) Right to food
- c) Right to own property
- d) Right to marry freely

Answer: c) Right to own property

12.9 SAQ'S

1. What is the significance of the Universal Declaration of Human Rights in relation to women's rights?
2. Why was CEDAW introduced by the United Nations?
3. Define gender discrimination in the context of human rights.
4. How do cultural practices sometimes conflict with women's human rights?
5. Mention two social or legal barriers that prevent women from accessing their full human rights.

12.10 TRUE OR FALSE

1. The Universal Declaration of Human Rights guarantees equal rights to both men and women.
True
2. Women's rights are separate from human rights.
False
3. CEDAW is a legally binding international treaty promoting women's rights.
True
4. Women worldwide have always had equal access to education.
False
5. Violence against women is considered a violation of their human rights.
True

12.11 TERMINAL QUESTIONS

1. Why does the legal framework not take into account the oppressive processes that women experience?
2. Why are so many crimes, particularly cruelty, rape, domestic abuse and dowry committed against women?
3. How is control over women and their inferior social position maintained?
4. Give an example of the policies that are influenced by gender stereotyping at the global level?
5. How could states encourage its population to adopt new cultural practices?

UNIT 13

ROLE OF NGO'S IN HUMAN RIGHTS PROTECTION

STRUCTURE

13.1 INTRODUCTION

13.2 OBJECTIVES

13.3 WHAT DO NGOs DO?

13.4 DIFFERENT KINDS OF NGOs

13.5 WORLD'S LARGEST NGOs

13.6 CLASSIFICATION OF HUMAN RIGHTS

13.7 ROLE AND FUNCTIONS OF INDIAN HUMANA RIGHTS NGOs

13.8 SOME INSTANCES OF SUCCESSFULL ACTIVISM

13.9 SOME EXAMPLES OF HUMAN RIGHTS ISSUES AROUND

13.10 SUMMARY

13.11 GLOSSARY

13.12 MCQs

13.13 TRUE/ FALSE

13.14 SAQs

13.15 TERMINAL QUESTIONS

13.16 REFERENCES

13.17 SUGGESTED READINGS

13.1 INTRODUCTION

The transformation of the position of the individuals after the Second World War has been one of the most remarkable developments in contemporary International scenario. Presently, the vast majority of legal scholars and philosophers agree that every human being is entitled to some basic rights. Thus, there is universal acceptance of human rights in principle in domestic and international plane. The Declaration of the United Nations signed on January 1, 1942 at Washington was the first document which used the term human rights. The concept of human rights in India is derived from the Universal Declaration of Human Rights (UDHR), 1948. The UDHR and the two Covenants share a mutually reinforcing relationship with the Constitution of India.

Non-governmental organizations (NGOs) were always active in cultural promotion, health, education and humanitarian relief in times of natural disaster, in different times in history. NGOs in India increased during the colonial rule of the British, with a focus on providing literacy, education and various aspects of social welfare. For example, Friend-in-Need Society (1858), Arya Samaj (1875) and the National Council for Women in India (1875) served as NGO. It is apparent from the gathered knowledge and information from various sources that contemporary history of human rights NGOs in India has almost always been contextualized in the post-emergency era. The roots of many human rights NGOs in India were found and established due to atrocities committed by the Indian government on its people during the time of national emergency was declared between 1975 and 1977. During emergency period human rights were curtailed, and fundamental rights that were guaranteed by the Indian Constitution were infringed through constitutional amendments and promulgation of ordinances. Under the garb of 'preventive detention', thousands of people were illegally detained, arrested and jailed, and often tortured by curtailing their rights.

Non-governmental organizations (NGOs) work to address social issues and human rights, and other issues including environmental issues. Some of the works of NGOs include

- Education
- Human rights
- Animal rights
- Disaster relief
- Sanitation and hygiene
- Poverty eradication
- Environmental conservation
- Disease control

Human rights NGOs in India may be categorized based on different criteria. These include:

- Based on Size of the Organization
- Based on the Geographic Scope of their Work
- Based on Thematic Scope of Work
- Based on Structure of NGOs
- Women empowerment

13.2 OBJECTIVES

The aim and objectives of the present chapter is to provide information and deal with various aspects relating to the role of the NGOs working in the field of Human Rights including their role and functions. The present study is an attempt to trace out the different works done by the NGOs which would impact by playing a vital role in the field of Human Rights. The chapter also covers the National as well as the International plane wherein the NGOs have rendered their services with dedication to serve human beings for the protection of their Human rights. The aim of the present chapter is to deal with:

- Kinds of NGOs
- Study of role and functions of NGOs
- National Level
- International Level

13.3 WHAT DO NGOs DO?

Depending on their structure and mission, NGOs can work towards a wide variety of goals. The nature of the work performed by any NGO ascertains its basic feature. The World Bank separates NGOs into two types: operational and advocacy. Operational NGOs focus on development projects, while advocacy NGOs focus on promoting certain causes. Many NGOs, especially large ones, encompass both types at once, though there's often one area they are more focused on. Areas of work can include emergency relief, international health education, economic development, women's rights, , environmental advocacy, children's rights, disaster preparation, and more.

13.4 DIFFERENT KINDS OF NGOS

Non-governmental organizations (NGOs) can be further categorized on the basis of their orientation, such as their goals and how they operate. Some examples of NGOs are:

- **International NGOs**

These operate across international borders, and can be found in business, medical, and professional fields including Human Rights and Animal Rights as well.

- **Citywide organizations**

These help the poor and serve their welfare, and can include ethnic organizations, community organizations, and the Lion's Club

- **Human rights NGOs**

Advocate for human rights and civil liberties, and can monitor violations, provide legal aid, and lobby for legislation changes

- **Environmental NGOs**

Work to secure the environment, and can include organizations that have protested mining or worked to maintain ecological balance

- **National NGOs**

Operate across a country, and can include organizations like the Red Cross, YMCAs, and YWCAs

- **Participatory NGOs**

These kinds of NGOs involve local people in self-help projects, where they can contribute cash, tools, land, materials, and labour

- **Community-based NGOs**

Target specific communities and work to elevate their standards in society

- **Charitable NGOs**

These are formed to provide direct aid and support to people or communities in need, and are sometimes called service NGOs

13.5 WORLD'S LARGEST NGOs-

Some of the world's largest NGOs are-

1. **Oxfam International**- It is a group of independent non-governmental organizations formed in 1995 to share knowledge and resources and combine their efforts in the fight against poverty and injustice. The Secretariat is headquartered in Nairobi. The NGO is working in the regions of Asia, MENA (Middle East and Africa), Africa, and LAC (Latin America and the Caribbean).

2. **International Rescue Committee**- The International Rescue Committee works in more than 40 countries to help people affected by humanitarian crises to survive, recover and rebuild their lives.

3. **Doctors without Borders (Médecins Sans Frontières)**- An international, independent medical humanitarian organisation to provide medical assistance to people affected by conflict, epidemics, disasters, or exclusion from healthcare. The NGO works in more than 70 countries. Doctors without Borders/Médecins Sans Frontières (MSF) runs programs in India aimed at improving care for tuberculosis (TB), HIV, and other infectious diseases as well as increasing access to essential health care for remote communities.

4. **Amnesty International**-The NGO having its headquarter at London in United Kingdom, works in the field of human rights alleging its core values as follows-

- International solidarity

- Effective action for the individual victim
- Global coverage
- Universality and indivisibility of human rights
- Impartiality and independence
- Democracy and human rights

5.Save the Children- The NGO work in the United States and around the world to give children a healthy start in life, the opportunity to learn and protection from harm. It is having their five Core Values:

- Accountability
- Integrity
- Ambition
- Collaboration
- Creativity

6.Danish Refugee Council- This NGO is working in more than 40 countries across the world. DRC Danish Refugee Council is a private humanitarian organisation, founded in 1956. Today a cooperation agreement gives Danish Refugee Council preferred partner status with the UN, and the organization is present in the world's most critical hotspots.

13.6 CLASSIFICATION OF HUMAN RIGHTS

The United Nations has defined internationally accepted rights, including civil, cultural, economic, political and social rights. It has also established mechanisms to promote and protect these rights and to assist states in carrying out their responsibilities. Right to life, freedom of expression, protection against enslavement, and right to education are the basic human rights having universal recognition. These rights are considered inherent and inalienable, meaning they belong to every individual simply by virtue of being human, regardless of characteristics like ethnicity, religion, nationality, or socio-economic status.

HUMAN RIGHTS TREATIES-In 1966, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) were adopted by the United Nations. The ICESCR commits 155 state parties to work toward the granting of economic, social, and cultural rights (ESCR) to individuals.

Several other treaties have been offered at the international level. They are generally known as human rights instruments. Some of the most significant are:

- Convention on the Prevention and Punishment of the Crime of Genocide
- Convention on the Elimination of All Forms of Racial Discrimination (CERD).
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- United Nations Convention against Torture (CAT).
- Convention on the Rights of the Child (CRC).
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW)
- Rome Statute of the International Criminal Court (ICC)

13.7 ROLE AND FUNCTIONS OF INDIAN HUMAN RIGHTS NGOs

The Major functions performed by Indian human rights NGOs include:

1. Developing human rights norms and contributing to setting of human rights standards
2. Providing humanitarian aid and relief
3. Campaign and advocacy initiatives
4. Awareness raising
5. Research, documentation and publication
6. Mobilizing public opinion
7. Providing legal aid and counselling to individual victims and groups of victims

1. Developing human rights norms and contributing to setting of human rights standards-

The NGOs in India have been responsible in their contribution for expanding the human rights disclosure along with other certain rights like right to housing, forests and environment. Human Rights NGOs contributes in ascertaining and developing the essential norms of Human Rights. These working Group on Human Rights in India and the UN mutually prepares a report of the status of human rights in India, for consideration during the Universal Periodic Review by the Human Rights Council which takes place every four years.

2. Providing humanitarian aid and relief- Some NGOs specifically respond to disaster management, and to provide relief, rehabilitation in contexts of natural and human made disasters. While other human rights NGOs may not have a specific mandate to make humanitarian interventions, however, their mandate may be broad enough to allow them to help victims in distress in such contexts. Example The Latur earthquake of 1993, Gujarat earthquake of 2001, Kosi floods of 2008, Uttarakhand floods of 2013, and farmer suicides of Maharashtra in 2015-16 are all instances in which many human rights NGOs intervened to help victims in distress.

3. **Campaign and advocacy initiatives-** Many human rights NGOs are involved in campaigns on human rights which includes include law reform campaigns, campaigns for justice and accountability for heinous human rights violations, as well as campaigns against laws, policies and practices of the government having adverse consequences for human rights.

4. **Awareness raising:** Many of the human rights NGOs are involved in providing information dissemination and public education at a mass level, by conducting training, sensitization and skill building programmes.

5. **Research, documentation and publication** - Some of the human rights NGOs undertake quantitative and qualitative research. Such research forms the backbone of campaigns and advocacy initiatives. For the purpose of awareness, the documents and publications are made by the NGOs to advertise various information and knowledge for human beings.

6. **Mobilizing public opinion-** Mobilizing and influencing the public at large for their rights is also a task undertaken by many of the NGOs. Representatives of NGOs work closely with the print and electronic media for this purpose, issue press releases and reports, write articles for newspapers and participate in talk shows in the television.

7. **Providing legal aid and counselling to individual victims and groups of victims-** It is also important part in the functioning of the NGOs to provide social, legal, financial, psychological, medical and other forms of assistance to victims in distress. Even as NGOs engage in advocacy on human rights. This shapes, feeds into and strengthens the NGO's campaign and advocacy initiatives. Some initiatives may include-

- Fighting for individual violations of human rights either directly or by supporting particular cases through relevant courts
- Providing direct assistance to those whose rights have been violated
- Lobbying for changes to national, regional or international law
- Helping to develop the substance of those laws
- Promoting knowledge of, and respect for, human rights among the population.

13.8 SOME INSTANCES OF SUCCESSFUL ACTIVISM

a) **Centre on Housing Rights and Evictions (COHRE)-** This human rights organisation established in 1994 work for the protection of housing rights and the prevention of forced evictions around the world. COHRE and its partners around the world provide analysis, advocacy, public education, training and litigation work in relation to:

- forced evictions
- security of tenure

- water and sanitation
 - litigation and legal advocacy
 - access to land
 - women and housing rights
 - the impact of mega events on housing rights.
 - restitution and return
- b) **Environmental concerns in Switzerland**-On May 14 2000, around 100 Greenpeace activists occupied the Bonfol chemical landfill site, near Basel, Switzerland, agitating and demanding that the chemical companies that dumped toxic waste at the site take full responsibility for cleaning it up. Further the activists declared that they would occupy the site until the chemical companies committed themselves to cleaning it up in a manner that would not pose any further risk to human health or the environment.
- c) **Wheelchair ramps in Tuzla**- In the year 1996, NGO working for disabled in Tuzla, Bosnia Herzegovina, decided to run a campaign for traffic awareness. Lotos, the organisation, aimed to raise awareness for disabled people and traffic issues, and identified several concrete objectives, like special parking spaces for disabled people, better access on public transport, and accessible pavements and roads.

13.9 SOME EXAMPLES OF HUMAN RIGHTS ISSUES AROUND THE WORLD IN RECENT TIMES

There are certain instances in the recent times whereby violation of human rights has been alleged to be violated and NGOs are rendering their services for the protection of human rights, some examples are –

- Rohingya crisis
- Afghanistan takeover
- Ethiopian crisis
- Uighur Muslim issues in China

13.10 SUMMARY

The Second World War has been one of the most remarkable developments in contemporary International scenario. Every human being is entitled to some basic rights. Thus, there is universal acceptance of human rights in principle in domestic and international plane Non-governmental organizations (NGOs) were always active in cultural promotion, health, education and humanitarian relief in times of natural disaster, in different times in history. NGOs in India increased during the colonial rule of the British, with a focus on providing literacy, education and various aspects of social welfare. During emergency period human rights were curtailed, and fundamental rights that were guaranteed by the Indian Constitution

were infringed through constitutional amendments and promulgation of ordinances. Under the garb of ‘preventive detention’, thousands of people were illegally detained, arrested and jailed, and often tortured by curtailing their rights. Non-governmental organizations (NGOs) work to address social issues and human rights, and other issues including environmental issues. Non-governmental organizations (NGOs) can be further categorized on the basis of their orientation, such as their goals and how they operate. The United Nations has defined internationally accepted rights, including civil, cultural, economic, political and social rights. It has also established mechanisms to promote and protect these rights and to assist states in carrying out their responsibilities. Right to life, freedom of expression, protection against enslavement, and right to education are the basic human rights having universal recognition.

13.11 GLOSSARY

1. UDHR- Universal Declaration of Human Rights
2. NGOs- Non-governmental organizations
3. ICCPR- International Covenant on Civil and Political Rights
4. ICESCR- International Covenant on Economic, Social and Cultural Rights\
5. ESCR- economic, social, and cultural rights

13.12 MCQs

1. Which of the following is a major function of human rights NGOs?
 - a) Promoting military action
 - b) Protecting the environment only
 - c) Monitoring human rights violations
 - d) Collecting taxes**Answer:** c) Monitoring human rights violations
2. What does Amnesty International primarily focus on?
 - a) Trade regulations
 - b) Arms deals
 - c) Political campaigns
 - d) Human rights advocacy**Answer:** d) Human rights advocacy
3. NGOs typically provide which of the following to victims of human rights abuse?
 - a) Weapons
 - b) Legal aid and counseling
 - c) Tax relief
 - d) Stock market advice**Answer:** b) Legal aid and counselling

4. Which type of rights do NGOs commonly work to protect?

- a) Cultural only
- b) Economic, social, and political rights
- c) Property rights only
- d) None of the above

Answer: b) Economic, social, and political rights

5. Which global NGO is known for its work in medical emergencies and human rights advocacy?

- a) Greenpeace
- b) Doctors Without Borders (MSF)
- c) NATO
- d) UNICEF

Answer: b) Doctors Without Borders (MSF)

13.13 TRUE OR FALSE

1. NGOs do not play any role in reporting human rights abuses.

Answer: False

2. NGOs often collaborate with the United Nations to protect human rights.

Answer: True

3. All NGOs are profit-driven organizations.

Answer: False

4. NGOs can work both at the grassroots and international levels.

Answer: True

5. Human rights NGOs are only concerned with political rights.

Answer: False

13.14 SAQ'S

1. What is the primary goal of human rights NGOs?

2. Name two international NGOs that work in the field of human rights.

3. How do NGOs help victims of human rights violations?

4. Mention one way NGOs create awareness about human rights.

5. What role do NGOs play in policy making?

13.15 TERMINAL QUESTIONS

1. Explain the major functions of NGOs in the protection and promotion of human rights. Give suitable examples.
2. Discuss the role of international human rights NGOs like Amnesty International and Human Rights Watch in exposing and addressing global human rights violations.
3. How do NGOs support victims of human rights abuses? Describe their role in advocacy, legal aid, and rehabilitation.
4. In what ways do NGOs influence government policy and international law regard human rights issues?
5. Describe the challenges faced by NGOs in protecting human rights, especially in conflict zones or under authoritarian regimes.

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13.17 SUGGESTED READINGS

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UNIT 14

CUSTODIAL VIOLENCE, TERRORISM AND HUMAN RIGHTS

STRUCTURE

14.1 INTRODUCTION

14.2 OBJECTIVES

14.3 HUMAN RIGHTS AND ROLE OF POLICE

14.4 FUNCTIONS OF POLICE

14.5 HUMAN RIGHTS AND POLICE

14.6 CUSTODIAL VIOLENCE

14.6.1 TYPES OF CUSTODIAL VIOLENCE

14.6.2 CUSTODIAL VIOLENCE AND HUMAN RIGHTS IN INDIA

14.6.3 GUIDELINES ON POLICE ENCOUNTERS

14.6.4 CAUSES OF CUSTODIAL VIOLENCE IN INDIA

14.7 TERRORISM AND HUMAN RIGHTS

14.7.1 TYPES OF TERRORISM

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14.12 TRUE/ FALSE

14.13 TERMINAL QUESTIONS

14.14 SUGGESTED READINGS

14.1 INTRODUCTION

The recognition of fundamental rights and certain freedoms in municipal laws and their safeguard is an essential condition for the recognition of Human Rights on a Universal basis and Police is an agency supervising and protecting these rights by adopting certain measures in implementing Human Rights. In a modern society democratic policing is does not give unfettered rights to the police rather certain duties and responsibilities are fixed for the police to respect the rights of human beings. There are certain functions of the police in the modern society which would sub serve the rights of citizens. The Universal Declaration enumerates the basic postulates and principles of human rights in a most comprehensive manner comprising of civil and political rights and economic and social rights. The role and functions of the police shall broadly be classified as-

- to stop and manage behaviour that is commonly acknowledged as endangering life and property,
- to uphold and enforce the law impartially,
- to protect life, liberty, property, human rights, and dignity of the members of the society,
- to protect people who are in eminent danger of getting hurt physically, for example robbery victims,
- to promote and preserve public order,
- to protect internal security, to prevent and control terrorist activities,
- to defend constitutional protections.

Police need to respect the rights of an individual who are either suspects or the convicted ones but in certain instances cases of violence in custody are seen. Custodial violence mainly refers to violence in police custody and judicial custody. Custodial violence includes torture, death and other excesses in police custody or prison. There are certain kinds of custodial violence which includes physical violence, psychological violence and sexual violence.

Terrorism is also violence having direct impact upon the human rights of the individuals, with consequences for the enjoyment of the right to life, liberty and physical integrity of individuals. Although there is no agreed definition but terrorism can be understood as a method of coercion or threat to spread fear and thereby attain political or ideological goals.

14.2 OBJECTIVES

This Chapter comprises a brief study of the role of police in the protection of human rights along with various factors involved in implementation of the human rights with other features

and aspects of the policing. This unit is to make you aware of human rights while dealing with police in various capacities. After reading this unit you will know:

- The role and functions of police in a democratic society;
- How and when you can file a complaint with the police and in case of refusal where can you go;
- The expectations from police to conduct investigations and what precautions they have to take;
- What rights and safeguards are available to persons in case they have to be arrested or detained?

This chapter would include study of custodial death, types and other aspects of custodial death. Terrorism is also a human rights issue because it involves deliberate attacks on person causing death and serious injury therefore affects the right to life and the right to physical integrity. The terrorism, its kinds and effects are also to be studied herein comprising its impact upon human rights.

14.3 HUMAN RIGHTS AND ROLE OF POLICE

One of the basic function of the state is to ensure that it meets its' obligations under international law to promote and protect the human rights of its people. Police are also one of the means by which governments fulfil this function. In international humanitarian standards, a significant aspect of police work in democratic processes and forms of government is very much related with human rights. Police need to respect the rights of suspects and arrested people within the ambit of rule of law. The police are given ample power for upholding the peace and liberty of individuals. Therefore, an integral part of police is the commitment of the force in respecting and upholding various constitutional safeguards concerning the rights of citizens.

14.4 FUNCTIONS OF POLICE

It has been observed in many circumstances that sometimes by abusing process of the forces exerts excessive force beyond need and it has also been found that there is a tendency-

- to use extra overwhelming force in putting down demonstrations,
- making fake encounters on the pretext of one or another.
- to exert physical pressure to extract information from detainees,
- unnecessary use of force and fire arm,
- to use excessive force to secure arrest,
- torturing under-trials,
- sometimes makes an arrest without good and sufficient cause.
- violation of human rights

On the other hand, the purpose and objectives of a police organization deriving their function can be stated as:

- The prevention and detection of crime
- To maintain public order
- To render humanitarian assistance in emergency situations
- Promotion and protection of human rights.

But it is essential and expected from the police that in general law enforcement and maintenance of 'public order must be compatible with:

In accordance with domestic laws such as constitution, criminal codes and police Act.

- To demonstrate commitment to the rule of law in practice
- Respect for, and obedience to, law
- To uphold the dignity of human person
- Respect for and protection of human rights.

14.5 HUMAN RIGHTS AND POLICE

Police officials, while protecting human rights have to be careful so as not to violate any human rights in following cases-

- While recording complaints,
- While making any arrest,
- While detaining alleged suspect,
- While investigating cases.

RESPONSIBILITIES OF POLICE

The United Nations Basic Principles on the use of Force and Firearms by Law Enforcement Officials is a legal instrument governing use of force by the police. There are certain responsibilities of the police which can be summarised as follows-

1. **Protection of vulnerable-** Police is under an obligation to protect the vulnerable groups within the purview of law, primarily the vulnerable groups include women, children, minorities and the LGBTQ community. **Use of Force and Firearms appropriately-** Use of unnecessary force and firearms is not expected from the police and can use lethal force as a last option.
2. **Respect Rights-** Police is under obligation to respect the rights of individuals and freedoms enshrined in municipal laws and their safeguard is an essential condition for the recognition of human rights.

3. **Know the Law-** Police must know how to apply human rights principles and understand their legal powers and limitations.

14.6 CUSTODIAL VIOLENCE

Custodial violence primarily refers to violence in police custody and includes the police encounter along with torture, death and other excesses in police custody or prison. Custodial violence can be in any form and same may be understood in following points-

- Custodial violence is the violence that takes place in judicial and police custody, whereby any individual who had either convicted or alleged to commit any crime suffers violence, tortured mentally or physically
- In many cases custodial deaths were attributed to reasons other than custodial torture, for example suicide and death in hospitals during improper treatment
- A big issue with custodial violence is that it has put human rights at stake. This crime is an outburst against humanity and is against the spirit of democracy and civilized society
- Custodial violence remains the common cause of deaths in prisons and lock-ups when in certain cases police encounters took place.
- With a view to securing evidence or confessions, police often resort to third-degree methods including torture and techniques of arrests by infringing the right to life, liberty, equality and dignity.

14.6.1 TYPES OF CUSTODIAL VIOLENCE

There are different types of custodial violence. Discussed below are the same:

1. Physical Violence- Through physical force or bashing which may lead to the exhaustion and fear of death example use of third degree and encounter.
2. Psychological Violence- mentally torturing them or humiliation of any kind and threats of life and liberty.
3. Sexual Violence- This includes verbal sexual abuse and humiliation of one's dignity.

14.6.2 CUSTODIAL VIOLENCE AND HUMAN RIGHTS IN INDIA

There are certain rights of the individuals which help them in upholding and protecting their human rights, these are-

1. Right to be informed- the suspect is having a right of information that police must inform the arrested person the reason of his arrest at the earliest.
2. Right to a Lawyer- Any arrested person is having a right of advocate to whom they may consult of their choice.
3. Right to be produced before a Magistrate- Any arrested person is to be compulsorily produced before the magistrate within 24 hours of arrest.
4. A person is having right to remain silent and cannot be compelled to make statement against themselves.
5. Police cannot torture people in their custody.
6. A person cannot be detained by the police without a magistrates' authority.

14.6.3 GUIDELINES ON POLICE ENCOUNTERS

The Supreme Court of India has issued certain guidelines which would be a safeguard in custodial violence.

1. **Compensation-** The scheme of compensation may be applied for the dependents of victim who died in police encounter.
2. **Forensic Analysis-** The weapons and other materials used in the encounters may be surrendered for forensic and ballistic analysis by the officers involved in the encounter.
3. **NHRC involvement-** The NHRC may be involved when there is a serious doubt about the impartiality of the investigation.
4. **Legal services-** If the family needs legal services or counselling, they should be offered.

14.6.4 CAUSES OF CUSTODIAL VIOLENCE IN INDIA

There are different reasons which have led to the increased cases of custodial and judicial violence in the country. Few of them are as follows-

- Absence of Strict Laws
- No Solid Prison Reforms
- Work Pressure on police
- Not following International Standards

14.7 TERRORISM AND HUMAN RIGHTS

No definition of terrorism has gained universal agreement. Terrorism in general or broader sense means use of violence against civilians for specific purposes which has negative impact upon the human rights of the individuals. The issue of terrorism has been a concern of the United Nations for decades. In recent years, as the threat of terrorism has intensified, UN programmes and agencies have raised efforts to strengthen international engagement to fight against terrorism at the legal and political level. Terrorism is basically a human rights issue because it involves deliberate attacks on civilians causing death and serious injury and so affects the right to life and the right to physical liberty.

Terrorism has a direct impact on human rights, affecting the enjoyment of the right to life, liberty and physical integrity of individuals, especially sufferers or victims of terrorism. It destabilises and undermines entire societies, jeopardise peace and security and threaten social and economic development. States owe a duty to protect the lives of their citizens and the integrity of the state and must take appropriate measures against terrorism. The compelling reasons generating terrorism are poverty, persecution, lack of human rights, and ideologies), religion, and ethnic discrimination. The impacts of a terrorist event last long after the incident itself has finished, for example-

- Loss of Life & Property Damage.
- Long Term Psychological Damage and mental agony
- Loss or Effect in business, either due to real or perceived threats.

14.7.1 TYPES OF TERRORISM

Thus, despite no unified definition the surrounding conditions underlying the categorization, following types of terrorism is seen:

The New Terrorism: The modern terrorist activities arose from transnational religious solidarity, and redefined moral justifications for political violence or example the September 11, 2001 terrorist attacks in New York City.

State Terrorism: Terrorism sponsored by governments against perceived enemies. State terrorism can be directed expressly against adversaries in the international plane against domestic enemies.

Dissident Terrorism: Terrorism by nonstate movements and groups against governments, religious groups, and other perceived enemies etc.

Religious Terrorism: terrorist violence for the greater glory of the faith. Religious terrorism is usually based on thinking of believers to consider supremacy of their religion.

- **Ideological Terrorism:** Terrorism motivated by political systems of belief (ideologies), whereby philosophical justifications are given for violence.
- **International Terrorism:** Terrorism that spreads over the world at large. Targets are selected because of their value as symbols of international interests, either within own country or across the borders.
- **Gender-Selective Terrorism:** Terrorism directed against an enemy population's men or women whereby systematic violence is used against men because of the perceived threat posed by males as potential soldiers or sources of opposition.

14.7.2 GUIDELINES ON HUMAN RIGHTS AND THE FIGHT AGAINST TERRORISM

Committee of Ministers of the Council of Europe on human rights and the fight against terrorism adopted certain guidelines. The following guidelines were adopted to ensure that they are widely disseminated among all authorities responsible for the fight against terrorism among them some of the key guidelines which would relate with human rights are as follows-

- States' obligation to protect everyone against terrorism- This is the obligation of the state to protect the life and liberty of everyone.
- Prohibition of arbitrariness- Against the fight against terrorism rule of law and human rights must be considered, there shall be no discrimination of any kind.
- Lawfulness of anti-terrorist measures- All measures taken by States to combat terrorism must be lawful.
- Absolute prohibition of torture- The use of torture or of inhuman treatment or punishment is absolutely prohibited, in all circumstances, and in particular during the arrest.
- Measures which interfere with privacy- Measures used in the fight against terrorism that interfere with privacy must be within the limits permitted by law.
- Arrest and police custody- A person suspected of terrorist activities may only be arrested if there are reasonable suspicions and it is necessary that he/she must be informed of the reasons for the arrest.
- Regular supervision of pre-trial detention- A person suspected of terrorist activities and detained in pending trial is entitled to be regularly supervised of the lawfulness of his or her detention by a court.
- Legal proceedings- A person accused of terrorist activities has also the right to a fair hearing, within a reasonable time, by an independent, impartial court or authority established by law.
- Penalties incurred- No heavier penalty may be imposed than the one that was applicable at the time when the criminal offence was committed
- Detention- A person deprived of his/her liberty for alleged terrorist activities must in all circumstances be treated with due respect for human dignity
- Extradition- Extradition with other states is an essential procedure for effective international co-operation in the fight against terrorism.

- Right to property- The use of the property of persons or organisations suspected of terrorist activities may be either suspended or limited, by such measures as freezing orders or seizures, by the relevant authorities.
- Compensation for victims of terrorist acts- The State must contribute to the compensation of the victims of attacks that took place on its territory

From the above guidelines we can conclude that human rights of the suspects of terrorism have been considered for the protection of their human rights within the ambit of law and moreover these rights get protected nearly over worldwide.

14.8 SUMMARY

In a modern society democratic policing is does not give unfettered rights to the police rather certain duties and responsibilities are fixed for the police to respect the rights of human beings. The Universal Declaration enumerates the basic postulates and principles of human rights in a most comprehensive manner comprising of civil and political rights and economic and social rights. Police need to respect the rights of an individual who are either suspects or the convicted ones but in certain instances cases of violence in custody are seen. Custodial violence mainly refers to violence in police custody and judicial custody. There are certain kinds of custodial violence which includes physical violence, psychological violence and sexual violence. Terrorism is also violence having direct impact upon the human rights of the individuals, with consequences for the enjoyment of the right to life, liberty and physical integrity of individuals. One of the basic function of the state is to ensure that it meets its' obligations under international law to promote and protect the human rights of its people. Police are also one of the means by which governments fulfil this function. In international humanitarian standards, a significant aspect of police work in democratic processes and forms of government is very much related with human rights. It has been observed in many circumstances that sometimes by abusing process of the law exert excessive force beyond need Police officials, while protecting human rights have to be careful so as not to violate any human rights. Custodial violence primarily refers to violence in police custody and includes the police encounter along with torture, death and other excesses in police custody or prison. There are different types of custodial violence. Discussed below are the same:

1. Physical Violence- Through physical force or bashing which may lead to the exhaustion and fear of death example use of third degree and encounter.
2. Psychological Violence- mentally torturing them or humiliation of any kind and threats of life and liberty.
3. Sexual Violence- This includes verbal sexual abuse and humiliation of one's dignity.

The Supreme Court of India has issued certain guidelines which would be a safeguard in custodial violence. No definition of terrorism has gained universal agreement. Terrorism in general or broader sense means use of violence against civilians for specific purposes which has negative impact upon the human rights of the individuals The impacts of a terrorist event last long after the incident itself has finished, for example- Loss of Life & Property Damage,

Long Term Psychological damage and mental agony. Loss or effect in business either due to real or perceived threats.

14.9 GLOSSARY

State- Government

Custody- in detention of police

Custodial violence- different types of violence during custody

Terrorism- Use of violence against individuals causing loss to their life and liberty.

14.10 MCQs

1. Which of the following is considered a violation of human rights?
 - a) Right to legal aid
 - b) Fair trial
 - c) Torture in police custody
 - d) Right to education**Answer:** c) Torture in police custody

2. What is 'custodial violence'?
 - a) Crime by civilians
 - b) Violence by police or authorities during custody
 - c) Violence in public protests
 - d) Violence during elections**Answer:** b) Violence by police or authorities during custody

3. Which article of the Indian Constitution guarantees the right to life and personal liberty?
 - a) Article 14
 - b) Article 19
 - c) Article 21
 - d) Article 15**Answer:** c) Article 21

4. What is the primary responsibility of police in a democracy?
 - a) Punish the accused
 - b) Collect taxes
 - c) Maintain law and order while protecting citizens' rights
 - d) Enforce military laws**Answer:** c) Maintain law and order while protecting citizens' rights

5. Which of the following can lead to human rights violations during counter-terrorism operations?

- a) Judicial oversight
- b) Use of excessive force and unlawful detention
- c) Proper legal procedures
- d) Humanitarian aid

Answer: b) Use of excessive force and unlawful detention

14.11 SAQ's

1. What do you understand by custodial violence?
2. How does police misuse of power impact human rights?
3. Mention two legal safeguards against custodial violence.
4. How can human rights be protected during anti-terrorism operations?
5. What role does the judiciary play in checking custodial violence?

14.12 TRUE OR FALSE

1. Custodial torture is a violation of human rights.
True
2. Police can detain a person indefinitely without a warrant.
False
3. Anti-terror laws always guarantee protection of human rights.
False
4. Article 21 of the Indian Constitution is related to the right to life and personal liberty.
True
5. Human rights are only for law-abiding citizens.
False

14.13 TERMINAL QUESTIONS

1. What are the responsibilities of police?
2. What are different types of custodial violence?
3. Write rights of person in custody.
4. What are different types of terrorism?

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