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JUSTICE ADMINISTRATION AND HUMAN RIGHTS

UTTARAKHAND OPEN UNIVERSITY

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UNIT -1
INTRODUCTION OF CRIMINAL JUSTICE SYSTEM

1.1 INTRODUCTION.

An understanding of criminal justice necessitates an overview of the entire gamut of crimes, criminal law and criminal justice process and administration. It is a complex phenomenon dominated by different social and political systems and the values underlying them. In this module, an attempt has been made to introduce the basic aspects underlying criminal justice with focus on the purposes, approaches, models and fundamentals of the same. They may differ from country to country; nevertheless, these reflect the larger thought process governing criminal justice

1.2 OBJECTIVE

- To make the learners understand the aims and purposes of criminal justice.
- To make the learners acquainted with the fundamental of criminal justice.
  To make the learners understand the process and approaches to criminal justice.

1.3 AIMS OF CRIMINAL LAW AND CRIMINAL JUSTICE

Personal safety, particularly the security of life, liberty and property, is of utmost importance to any individual. Maintenance of peace and order is essential in any society for human beings to live peacefully and without fear of injury to life, limbs, and property (Vibhute, 2012). The instrument by which this task is maintained is undoubtedly the criminal law of the land. Criminal Law is an instrument of social control. It tends to regulate harmful, pernicious and anti- social behaviour in society. It, thereby, prohibits undesirable and harmful human conduct and punishes the perpetrators for the violations so committed. Pillai maintains that the essential object of criminal law is to protect society against criminals and lawbreakers. For this purpose, the law holds out threats of punishment to prospective law breakers as well as attempts to make the actual offender suffer the prescribed punishments for the crime (Pillai, 2014).

Nigel Walker lists out the purposes of criminal law to include the following (Walker, 1969):

- The protection of the human person against intentional violence
- The protection of people against some forms of unintended harm
- The protection of easily persuadable classes of people against abuse of their persons or property
- The prevention of acts which are regarded as _unnatural'.
- The prevention of acts which tend to shock other people
- The discouragement of behaviour which might provoke disorder
- The protection of property against theft, fraud or damage
- The defence of the state
- The protection of social institutions.

Criminal Law thus seeks to prohibit behaviour that represents a serious wrong against an individual or against some fundamental social value or institution. The responsibility is on the State to ensure the regulation of the society in accordance with the laws and thereby protect individuals and property etc. as well as prevent the occurrence of such behaviour. A set of agencies and processes are thus formulated by the state to achieve the end. Criminal Justice refers to the set of agencies and processes established by governments to control crime and impose penalties on those who violate laws. The purpose of the Criminal Justice System is to deliver justice for all, by convicting and punishing the guilty and helping them to stop offending, while protecting the innocent. It seeks to deliver an efficient, effective, accountable and fair justice process for the public. Andrew Sanders and Richard Young's writes, Criminal Justice 'is... a complex social institution which regulates potential, alleged and actual criminal activity within procedural limits supposed to protect people from wrongful treatment and wrongful conviction'.

1.4 AGENCIES OF CRIMINAL JUSTICE

As Davies, Croall and Tyrer stated, the criminal law does not enforce itself. Rather people working in particular agencies enforce it (Davies, Croall, & Tyrer, 2005). Most criminal justice systems have five agencies- police, prosecution, defence lawyers, courts and correctional administration. Of these, four are established and maintained by the State, namely the **police, prosecution, courts** and **corrections**. Defence advocates are a group of private practitioners who are engaged by the accused to defend the case. The State definitely has a responsibility to ensure that the accused is adequately represented in criminal trials and therefore, may allow, in specific instances and on the request of the accused, the services of an advocate at the expenses of the State to represent the accused.

The **Police** are primarily engaged in the task of prevention, detection and investigation of crimes. They take reports for crimes and investigate them. The police are empowered to arrest offenders, interrogate them, conduct search and seizures and thereby, gather evidences for the crime.

Prosecutors are lawyers who are appointed by the state to represent the latter in criminal cases. They review the evidences brought before them by the police and proceed with the filing of charges before the court. They present evidence in court, question witnesses and press the guilt of the accused.

The **defence lawyers** defend the accused against the charges drawn against him by the State. They are generally hired by the accused themselves, except in exceptional cases, where they are assigned by the court. While the prosecutor represents the state, the defence lawyer represents the accused at the trial.

The **courts** are the agencies which are entitled to decide on the innocence or guilt of the accused. They ensure that appropriate charges are put on the accused, evaluate the law and evidences put forth before them, and finally, pass an appropriate order based on appreciation of facts, law and evidence. They determine the sentence to be imposed on convicts as well as decide on issues of release of offenders on bail, probation etc.

1.5 CORRECTIONAL ADMINISTRATION

Refer to the system established by the state for the custody of convicted offenders. The correction officers are entrusted with the task of supervising the prisons or correctional homes where the convicted prisoners serve the custodial sentences passed by courts. They are required to ensure the safety and security of the convicts, as well as provide adequate facilities for their reformation and rehabilitation.

1.6 ADVERSARIAL AND INQUISITORIAL SYSTEMS

There are two broad approaches to criminal justice fact finding- the adversarial and the inquisitorial. Adversarial criminal justice is associated with common law systems, in countries such as Australia, New Zealand, United States, Canada, United Kingdom and India. Inquisitorial criminal justice is associated with civil law systems in countries such as Germany and France In an inquisitorial system, the dominant role in conducting a criminal inquiry is supposed to be played by the court. A dossier is prepared to enable the Judge taking the case to master its details. The judge then makes decisions about which witnesses to call and examines them in person, with the prosecution and the defence lawyers consigned to a subsidiary role. In some inquisitorial systems, the dossier is prepared by an examining magistrate, with wide investigative powers but more frequently, this is done by the prosecutor and police (Sanders, Young, & Burton, 2010).

In the adversarial system, the burden of preparing the case falls on the parties themselves. The judge acts as an umpire, listening to the evidence produced by the parties, ensuring that the proceedings are conducted with procedural propriety, and announcing a decision at the conclusion of the case. If the parties choose not to call a certain witness, then however relevant that person‘s evidence might have been, there is nothing the court can do about it. Indeed, it is sometimes said that adversarial systems focus on proof, and inquisitorial systems on truth. However, adversary system holds that ‗truth is best discovered by powerful statements on both sides of the question which are then evaluated by a passive and impartial adjudicator (Sanders et al., 2010).

In simple terms, the adversarial approach indicates that the two parties in the case - the prosecution and the defence —bring evidence before a magistrate, who decides the case based on the evidence and argument presented by the parties. Whereas in the other, the prosecutor or police officer assembles the case (or dossier), but the judge calls witnesses and examines them.

1.7 MODELS OF CRIMINAL JUSTICE

Herbert Packer developed two models of the criminal justice process, namely, the **Crime Control Model** and the **Due Process Model** in order to illuminate what he saw as the conflicting value systems that competed for priority in the operating of the criminal process. Neither purported to describe any specific system, and neither was to be taken as ideal. Rather, they represented extremes on a spectrum of possible ways of doing criminal justice (Sanders et al., 2010). The value system that underlies the Crime Control Model is based on the proposition that the repression of criminal conduct is by far the most important function to be performed by the criminal process. The failure of law enforcement to bring criminal conduct under tight control is viewed as leading to the breakdown of public order and thence to the disappearance of an important condition of human freedom. If the laws go unenforced—which is to say, if it is perceived that there is a high percentage of failure to apprehend and convict in the criminal process—a general disregard for legal controls tends to develop. The law- abiding citizen then becomes the victim of all sorts of unjustifiable invasions of his interests. His security of person and property is sharply diminished, and, therefore, so is his liberty to function as a member of society. The claim ultimately is that the criminal process is a positive guarantor of social freedom. In order to achieve this high purpose, the Crime Control Model requires that primary attention be paid to the efficiency with which the criminal process operates to screen suspects, determine guilt, and secure appropriate dispositions of persons convicted of crime.(Packer, 1964) The term efficiency in this context refers to the capacity of the system to apprehend, try, convict and dispose of a high proportion of criminal offenders. The criminal process, in this model, is seen as a screening process in which each successive state—pre-arrest investigation, arrest, post-arrest investigation, preparation for trial, trial or entry of plea, conviction, and disposition involves a series of routinized operations whose success is gauged primarily by their tendency to pass the case along to a successful conclusion. The presumption of guilt is what makes it possible for the system to deal efficiently with large numbers, as the Crime Control Model demands. The supposition is that the screening processes operated by police and prosecutors are reliable indicators of probable guilt. Once a man has been arrested and investigated without being found to be probably innocent, or, to put it differently, once a determination has been made that there is enough evidence of guilt to permit holding him for further action, then all subsequent activity directed toward him is based on the view that he is probably guilty.

The ideology of due process is far more deeply impressed on the formal structure of the law than is the ideology of crime control. The Due Process Model stresses on the possibility of error. People are notoriously poor observers of disturbing events—the more emotion-arousing the context, the greater the possibility that recollection will be incorrect; confessions and admissions by persons in police custody may be induced by physical or psychological coercion; witnesses may be animated by bias or interest. Considerations of this kind all lead to a rejection of informal fact-finding processes as definitive of factual guilt and to an insistence on formal, adjudicative, adversary fact- finding processes in which the factual case against the accused is publicly heard by an impartial tribunal and is evaluated only after the accused has had a full opportunity to discredit the case against him (Packer, 1964). Judicial officers are supposed to operate on a presumption of innocence, meaning that, they must ‗ignore the presumption of guilt ‘in their treatment of the accused. The Due Process model distinguishes between the factually and legally guilty. Factual guilt is based on evidence of a person‘s commission of a crime, whereas legal guilt is based not only on this evidence, but also that the State has acted legally in obtaining evidence and proving its case (Daly, 2012). Packer thus depicted two value systems in the criminal process- the Crime Control which is concerned with efficiency of the criminal process and the Due Process which is concerned with accuracy and reliability of the decisions made.

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1.9 FUNDAMENTALS OF CRIMINAL JUSTICE

It is often customary to start a discussion on the fundamentals of criminal justice on the maxim ‗*nullum crimen sine lege, nullum poena sine lege'*, ‗no crime without law, no punishment without law‘, known as the principle of legality. It signifies that an individual may not be criminally punished for an act that was not clearly condemned in a statute prior to the time that the individual committed the act. In other words, all wrongful behaviour must be criminalised and all punishments established before the commencement of any criminal prosecution. Dicey wrote, ―Englishmen are ruled by law alone; a man may with us be punished for a breach of law but can be punished for nothing else.‖(Nigam, 1965) Hall treats ‗legality‘ as synonymous with ‗rule of law‘. He states that it is in some ways the most fundamental of the principles since it qualifies the meaning of both crime and punishment and is, thus presupposed in all of criminal theory (Hall, 1947). The principle of legality is a phrase which is powerfully righteous and invoked in its minimal sense of ‗being governed by rules which are fixed, knowable and certain‘- thereby enhancing liberty and reducing arbitrariness by the State‘s organs. This is a fundamental principle, with both procedural and substantive implications (Ashworth & Horder, 2013).

The connotations of the principle of legality are wide ranging. Hall discusses the three basic elements of the principle which fall under the maxim *nulla poena sine lege*. The maxim demands, first, that no conduct may be held criminal unless it is precisely defined in a penal law. A corollary of this element is the requirement that penal statutes be strictly construed. Finally, the maxim commands that penal laws are not to be given retroactive effect. These requirements are subsumed under the proposition that: "The citizen must be able to ascertain beforehand how he stands with regard to the criminal law."' The three sub-propositions of the principle of legality amount to a requirement of fair notice of what the law is and what will happen if an individual violates the law (Potts, 1982). Hallevy adds a fourth principle to it, and which is basic to criminal justice, the presumption of innocence (Hallevy, 2010).

The principle of non- retroactivity. It means that no person shall be punished except in pursuance of a statute which fixes a penalty for a criminal conduct. This principle is of ancient origin and may be traced to the ancient Greeks. The underlying reason for the revulsion against retroactive penal law is that it is unjust that what was legal when done should be subsequently held criminal, that was punishable with a certain sanction when committed should later on be punished more severely, that procedural changes seriously disadvantageous to an accused should be applied retrospectively(Nigam, 1965). As stated by Hobbes: No law, made after a fact done, can make it a crime…for before the law, there is no transgression of the law.

The Principle of Maximum Certainty. If the law is certain and definite, people can regulate their conduct or behaviour in order to avoid the hazard of falling within the grip of penal law. This principle lays down an injunction to the legislators not to lay down the law in broad general terms so that anybody and everybody could be brought within its ambit at the whim of the prosecuting authorities or the judge. As stated by Lord Macaulay, ―uniformity where you can have it; diversity where you must have it; but in all cases certainty.
This principle of certainty emphasises on predictability, certainty and fair warning which guarantees
respect for a citizen as a rational and autonomous individual. He is not caught unawares, but is warned of the criminal law provisions. Certainty also ensures that the police and other agencies involved in criminal justice administration do not misuse the powers bestowed on them but are clearly and unambiguously limited within the confines of the criminal law provisions. When criminal offences are drafted in vague and ambiguous ways, citizens are not only faced with unpredictable behaviour by enforcement officials, they are also denied a fair opportunity to avoid punishment. Such a denial flouts, in the words of Ashworth, ―an incontrovertible minimum of respect for the principle of autonomy‖ (Claes & Krolikowski, 2009)

The Principle of Strict Construction. This is the third principle under the umbrella of legality. This principle relates to the courts‘task of interpreting legislation. The general rule is that a penal statute should be strictly interpreted, that is, if two possible and reasonable constructions can be put upon a penal provision, the court must lean towards a construction which exempts the subject from penalty rather than the one which imposes a penalty. It is not competent for the court to stretch the meaning of an expression used by the legislature in order to carry out the intention of the legislature. It is for the legislature and not for the court to define a crime and provide for its punishment (Vepa, 2010).
The rule as stated in as under (*The Gauntlet*, 1872):

―No doubt all penal statutes are to be construed strictly- that is to say, the court must see that the thing charged as an offence is within the plain meaning of the words used; must not strain the words on any notion that there has been a slip, that there has been a *casus omissus*; that the thing is so clearly within the mischief that it must have been intended to be included, and would have been included if thought of. On the other hand, the person charged has a right to say that the thing charged, though within the words is not within the spirit of the enactment. But where the thing is brought within the words and within the spirit, there a penal enactment is to be construed, like any other instrument.

According to the fair common-sense meaning of the language used; and the court is not to find or make any doubt or ambiguity in the language of a penal statute where such doubt or ambiguity would clearly not be found or made in the same language in any other instrument. Thereby, the principle attempts to preclude the law from being construed to the detriment of the accused. Observance of this canon is chiefly invoked to prevent the creation of offences by construction, that is, to restrain the courts from usurping the functions of the legislature by extending the words of a statute to acts or omissions not within its plain terms or manifest intention (Russell & Turner, 1958).

Presumption of Innocence. The presumption of Innocence is a fundamental principle of criminal jurisprudence which asserts that a person should be presumed innocent unless and until proved guilty. As stated by Sankey LC (*Woolmington v. DPP*, 1935), throughout the web of English criminal law, one golden thread is always to be seen- that it is the duty of the prosecution to prove the prisoner‘s guilt. It is a principle of procedural fairness in criminal law, whose justifications may be found in the social and legal consequences of being convicted of a crime, in which context the principle constitutes a measure of protection against error in the process and a counterweight to the immense power and resources of the State compared to the position of the defendant. Justice Dickson laid down that the presumption of innocence is a hallowed principle lying at the very heart of criminal law. The presumption of innocence protects the fundamental liberty and human dignity of any and every person accused by the State of criminal conduct. An individual charged with a criminal offence faces grave social and personal consequences, including potential loss of physical liberty, subjection to social stigma and ostracism from the community, as well as other social, psychological and economic harms. In light of the gravity of these consequences, the presumption of innocence is crucial. It ensures that until the State proves an accused's guilt beyond all reasonable doubt, he or she is innocent. This is essential in a society committed to fairness and social justice. The presumption of innocence confirms our faith in humankind; it reflects our belief that individuals are decent and law-abiding members of the community until proven otherwise.(*R. v. Oakes*, 1986 The rule, as it stands, enumerates that a person who is charged must be proved guilty, the accused stands innocent until he is proved guilty and his proof of guilt must displace all reasonable doubt. In saying that the accused person shall be proved guilty, it says also that he shall not be presumed guilty; that he shall be convicted only upon legal evidence, not tried upon prejudice; that he shall not be made the victim of the circumstances of suspicion which surround him, the effect of which it is always so difficult to shake off, circumstances which, if there were no emphatic rule of law upon the subject would be sure to operate heavily against him. He shall be convicted, this rule says, not upon any mere presumption, any taking matters for granted on the strength of these circumstances of suspicion; but he shall be proved guilty by legal evidence, and by legal evidence which is peculiarly clear and strong-clear beyond a reasonable doubt. The whole matter is summed up and neatly put by Chief-Justice Shaw in Webster's case "The burden of proof is upon the prosecutor. All the presumptions of law independent of evidence are in favour of innocence, and every person is presumed to be innocent until he is proved guilty. If upon such proof there is reasonable doubt remaining, the accused is entitled to the benefit of it by an acquittal."(Thayer, 1897)

Apart from these, there are certain other basic considerations which govern the working of the criminal justice process. These include the rule against double jeopardy, the right against self-incrimination and fair trial.

Double Jeopardy. This principle is based on the common law maxim, *nemo debet proeadem causa bis vexari*, which means that a man cannot be put twice in jeopardy for the same offence. It has been stated by Hawkins to mean that ―A man shall not be brought into danger for one and the same offence more than once.‖(Nigam, 1965). In *R. v. Miles* (1890), the court held that where a criminal charge has been adjudicated upon by a court having jurisdiction to hear and determine it, that adjudication, whether it takes the form of an acquittal or conviction, is final as to the matter so adjudicated upon, and may be pleaded in bar to any subsequent prosecution for the same offence. In order to determine whether in a particular case such a plea would be available, it is necessary to ask three questions, namely, first, was the accused in jeopardy on the first indictment? Secondly, was there a final verdict? And thirdly, was the previous charge substantially the same as the present one? If the answers to these questions are in the affirmative, the plea will succeed. The Court in Di Francesco(*United States v. Di Francesco*, 1980) referred to six different purposes served by the double jeopardy bar, namely, preserving the finality of judgments, protection against embarrassment, expense and ordeal of second trial, protection of the acquitted defendant, protection against prosecutorial manipulation to procure a second opportunity for the prosecution, protection of the valued right of retaining the first jury and the protection against multiple punishments(Pillai, 1988).

Right against Self Incrimination. An ancillary to the presumption of innocence is the right to silence. The right to silence is a principle of common law which means that normally courts or tribunals of fact should not be invited or encouraged to conclude, by parties or prosecutors, that a suspect or an accused is guilty merely because he has refused to respond to questions put to him by the police or the court. It is based on the principle, *nemo debet, prodere ipsum*, the privilege against self-incrimination. The privilege against self-incrimination confers immunity from an obligation to provide information tending to prove one‘s own guilt. A person is not bound to answer any question or produce any document or thing if that material would have the tendency to expose the person to conviction for a crime. As explained, the privilege is a prerogative of a defendant not to take the stand in his own prosecution; it is also an option of a witness not to disclose self-incriminating knowledge in a criminal case. It may also be a privilege to suppress substances removed from the body or admissions made in prior judicial proceedings or to the police.(McNaughton, 1960). It thereby prevents ― the employment of the legal process to extract from the person‘s own lips an admission of his guilt; which will thus take the place of other evidence…it exists mainly in order to stimulate the prosecution to a full and fair search for evidence procurable by their own exertions, and to deter them from a lazy and pernicious reliance upon the accused‘s testimony extracted by the force of law.‖(Kreitzberg, 1994) A number of rationales justify the existence of the privilege. It is intended to maintain a proper balance between the powers of the state and the rights and interests of citizens‖.(McDougall, 2008) Historically, in societies where freedom from self-incrimination is not available, coercive means have been used to compel a person to speak. The privilege is also intended to protect the adversarial system of criminal justice. The presumption of innocence until proven guilty underpins the privilege against self-incrimination. Those who allege an individual‘s guilt should not be able to compel them to give evidence against themselves. Further individuals are to be protected from being confronted by the ―cruel trilemma‘of punishment which refers to witness having to choose between refusing to answer questions (thereby risking punishment for contempt), answering honestly (thereby providing evidence of guilt), or lying (thereby risking punishment for perjury). The modern rationale frames the privilege in terms of human rights: specifically, the right to dignity, privacy and freedom. As stated by Murphy J.(*Rochfort v. Trade Practices Commission*, 1982) [T]he privilege against self-incrimination is a human right, based on the desire to protect personal freedom and human dignity‖.

Fair Trial. One principal object of criminal law is to protect society by punishing the offenders. However, justice and fair play require that no one be punished without a fair trial. A person might be under thick cloud of suspicion of guilt, he might have been caught red- handed, and yet he is not to be punished unless and until he is tried and adjudged to be guilty by a competent court. In the administration of justice, it is of prime importance that justice should not only be done but must also appear to have been done. Therefore, it becomes imperative that every person accused of crime is brought before the court for trial and that all the evidence appearing against him is made available to the court for deciding as to his guilt or innocence (Pillai, 2014). There is no easy answer to the question as to what makes a trial fair. The concept encapsulates within it a broad range of rights which spreads throughout the pre-trial, trial and sentencing stage. At the core of these rights is the fact that the parties to a case must have equal opportunity of being heard. There should not be any discrimination or bias in the process and the system should respond fairly to both the parties. That being so, in criminal trials, fairness is attached with the presumption of innocence of the accused, and therefore, unless the charges are proved beyond reasonable doubt in a court of law by means of admissible legal evidence, the accused is entitled to an acquittal. Furthermore, the presumption of innocence implies a right to be treated in accordance with the principle. It is, therefore, the duty of the authorities to refrain from pre-judging the outcome of the trial or act in a manner discriminatory to the accused. Fairness also emphasizes on information, accessibility and fair treatment. Hence, the accused is entitled to know, as of right, the charges framed against him. He must be communicated, at the time of arrest, the exact grounds on which he is being arrested. Another concomitant is the requirement of adequate representation of the accused in court. Any person accused of an offence before a criminal court has the right

to be defended by a lawyer. Such right extends not only at the time the proceedings are actually going on, but also prior to the initiation of the same. He should have reasonable opportunity, if in the custody of the police, of getting into communication with his legal adviser for the purposes of preparing his defence. If the accused is in police custody, he should be given access to legal advice. Thirdly, even in the course of a criminal investigation and trial, the accused continues to enjoy the fundamental rights and freedoms, albeit with some limitations. The accused has to be treated with dignity and respect, no inhuman treatment can be meted out to him in course of the proceedings. It also signifies that persons arrested, detained, or otherwise in the hands of the police or prosecuting authorities for purposes of interrogation into alleged criminal activities, either as suspects or witnesses, have the right to be treated in a humane manner and without being subjected to any psychological or physical violence, duress or intimidation.

In India, each of these basic principles have been incorporated in the criminal justice system of the country. Thus, Art 20(3) of the Constitution of India provides for non- retrospectivity, double jeopardy and self-incrimination. An accused has a constitutional right to challenge any law or provision thereof which violates any of the above. The provisions of the Code of criminal Procedure, 1973 and the Indian Evidence Act 1872 incorporate various provisions which provide lays down the basis of fair trial and investigation as well as rules of evidence in criminal trials.

1.10 CONCLUSION.

An exploration of criminal justice, thus, forays into myriad terrains of crime, criminal law, liability etc. It requires a deep understanding of the values governing the system and the working of the agencies. Criminal Justice also requires an appreciation of the fundamental principles. Since the very nature of criminal ‘law is deterrent and repressive, it becomes important that the system acts with fairness. Protecting the interests of individuals and society on the one hand and that of the accused, on the other, provides a challenging task for the criminal justice and an effective balancing of conflicting interests require that due recognition be given to the principles of legality, self-incrimination, double jeopardy etc.

REFERENCES:

Ashworth, A., & Horder, J. (2013). *Principles of Criminal Law*. Oxford University Press.

Claes, E., & Krolikowski, M. (2009). *The Limits of Legality in the Criminal Law*. Springer.

Daly, K. (2012). Aims of the Criminal Justice System. In *Crime and Justice: A Guide to Criminology* (4th ed.). Sydney: Lawbook Co.

Davies, M., Croall, H., & Tyrer, J. (2005). *Criminal justice: An introduction to the criminal justice system in England and Wales*. Pearson education.

Gaur, K. D. (1999). *Criminal law: cases and materials*. Butterworths India.

Hall, J. (1947). *General principles of criminal law*. The Bobbs-Merrill Company. Hallevy, G. (2010). *A modern treatise on the principle of legality in criminal law*. Springer Science & Business Media.

Kreitzberg, E. (1994). Privilege against Self-Incrimination.

McDougall, R. (2008, October). The Privilege Against Self-incrimination: a time for reassessment. Retrieved from http://www.austlii.edu.au/au/journals/NSWJSchol/2008/24.pdf

McNaughton, J. T. (1960). Privilege against Self-Incrimination, The. *J. Crim. L. Criminology & Police Sci.*, *51*, 138.

Nigam, R. C. (1965). *Law of crimes in India* (Vol. 1). Asia Pub. House.

Packer, H. L. (1964). Two models of the criminal process. *University of Pennsylvania Law Review*, *113*(1), 1–68.

Pillai, K. C. (1988). *Double Jeopardy Protection: A Comparative Overview* (Vol. 5). Mittal Publications.

Pillai, K. C. (2014). *RV Kelkar’s Criminal Procedure* (6th ed.). Lucknow: Eastern Book Company.

Potts, L. W. (1982). Criminal Liability, Public Policy, and the Principle of Legality in the

Republic of South Africa. *The Journal of Criminal Law and Criminology (1973)*, *73*(3), 1061–1108.

R. v. Miles, 24QBD 428 (1890).

R. v. Oakes, 1S.C.R. 103 (1986).

Roach, K. (1999). Four models of the criminal process. *The Journal of Criminal Law and Criminology (1973)*, *89*(2), 671–716

Rochfort v. Trade Practices Commission, HCA 66 (1982).

Russell, W. O., & Turner, J. W. C. (1958). *Russell on Crime*. Stevens. Retrieved from https://books.google.co.in/books?id=fw9NAAAAIAAJ

Sanders, A., Young, R., & Burton, M. (2010). *Criminal justice*. Oxford University Press.

Thayer, J. B. (1897). The Presumption of Innocence in Criminal Cases. *The Yale Law Journal*, *6*(4), 185–212.

The Gauntlet, 4C.P. 184 (1872).

United States v. DiFrancesco, 449U.S. 117 (U.S. Supreme Court 1980).

Vepa, P. S. (2010). *Interpretation of Statutes*. Lucknow: Eastern Book Company. Vibhute, K. I. (2012). *PSA Pillai's Criminal Law* (11th Edition). Nagpur: Lexis Nexis.

Walker, N. (1969). *Sentencing in a rational society*. Allen Lane London. Woolmington v. DPP, AC 462 (House of Lords 1935).

UNIT 2
HUMAN RIGHTS AND JUSTICE ADMINISTRATION

2.1 OBJECTIVES

- To make students aware about the vulnerable section of the society
- To analyse the position of vulnerable victims in the criminal justice system
- To assess the response of the criminal justice system in ensuring sufficient right and protection to the vulnerable.

2.2 INTRODUCTION

The word vulnerable contains the Latin words "vulnerare" and "abilities". It means "able to be wounded". It relates to all such people or victims who have experienced an invasion into the self with emotional, physical and/ or financial damage.1 In the words of Kirchhoff, "if victims were not vulnerable, they were not victims." Vulnerability carries with it an element of risk. „The vulnerable victims" was developed by Nils Christie, the Norwegian sociologist.

Criminal Justice System is a mechanism of social control through repression of the wrong doer. Traditionally the victim is not the centre of the system. It is an offender oriented system, though it primarily aims to protect the victim. There are two aspects of the victim being victimized and associated with the criminal justice system. First, if the victim is subject to violation of his rights, and approaches the criminal justice system for justice. Second, when the victim in course of interaction with the criminal justice system, faces victimization. In every case, the potentiality of being victimized increases due to the element of vulnerability.

People with impaired decision-making capacity are among the most vulnerable within our community. Such people are unlikely to be aware of criminal justice services, how to access them and may be unable to assist a police investigation or suffer from insufficient financial or emotional resources. At times such vulnerable victims do not even realize that a crime has been committed against them. As a result, as observed by Howard and Brien (2009), such persons are at greater risk than the others.2 In the opinion of Newburn (2003) cases of domestic violence, sexual offences and child abuse particularly brought vulnerable victims under spotlight.3 Due to various socio- economic and physical causes such groups of people face limitations and are unable to protect and preserve themselves. Such kinds of vulnerable groups who face discrimination and disability include-

- **Women,**
- **Children,**
- **Elderly,**
- **Scheduled Castes (SC), Scheduled Tribes (ST),**
- **Disabled,**
- **Internally Displaced and Disaster victims**
- **Minority groups and weaker sections**

2.2.1 WOMEN

Generally female victimization is considered to be restricted to sex related offences. But this narrow observation causes gross mistreatment to the victims who are in more than one occasion subject to victimization on grounds apart from sex. The discrimination that a woman is subject to at her work place in her professional growth, the disparity in wages that she suffers, the ill treatment done to women in homes behind closed doors are not manifestations of sexual offences but are definitely quite vocal about the vast range of victimizations of various nature to which she is subject. It majorly reflects the power imbalance in a patriarchal society. The male superiority and insecurity gets reflected in such kinds of victimization in every field of human life which ultimately calls for a special treatment and protection for women. The Dowry Prohibition Act, 1961, Immoral Traffic (Prevention) Act, 1986, Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 are few such legislations which aims at curbing various social vices like, dowry, trafficking, declining sex-ratio. All these laws ultimately aim at protecting and respecting the rights of women and womanhood.

The Protection of Women from Domestic Violence Act, 2005, was enacted for the protection of women from being victims of domestic violence. This law has addressed all sorts of abuses against women within the household i.e. physical, psychological, sexual and economic. It has provisions which speak of various relief measures to such victims like monetary relief, protection orders, residence order, conduct in camera proceedings etc. It states, “"monetary relief" means the compensation which the Magistrate may order the respondent to pay to the aggrieved person, at any stage during the hearing of an application seeking any relief under this Act”. The statute also provides that the Magistrate may pass interim orders which may include, “An order for interim monetary relief, including but not limited to payment of rent for the premises of the shared household, maintenance for you and your Domestic Violence Rules, 2005.

Some of the features of The Protection of Women from Domestic Violence Act are as follows:

- It is primarily a civil law for protection of women. However, the Act also provides that a breach of an order obtained under the Act is a criminal offence.
- It guarantees the woman the following rights
    - Protection from aid or commission of violence against her within and outside the home, communication with the woman, taking away her assets, and/or intimidation against her family and those assisting her
    - Right to residence in the shared household
    - It entitles the woman to monetary relief and maintenance, including loss of earnings, medical expenses, and damage to property.
    - Entitlement to damages for mental and physical injury
    - The court can grant interim, temporary or exparte orders in cases like custody of children etc.
    - The Act also entitles woman to free legal services under the Legal Services Authorities Act, 1987

In Vimlaben Ajitbhai v. Vatslaben the apex Court stated that the Act [rovides for a higher right for the wife. She not only has the right to be maintained but also acquires a right to residence, which is a higher right. In Jovita Olga Ignesia v. Ranjan Maria it was stated that the expression "domestic violence" has a very wide amplitude and it includes physical abuse, sexual abuse, verbal and emotional abuse, economic abuse which in turn, interalia, includes deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under the order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved persons and her children, if any, stridhan, the property jointly or separately owned by the aggrieved person, payment of rental to the shared household and maintenance.

The Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013 confers upon Women the Right to protection against Sexual Harassment along with ensuring their right to Livelihood. It also addresses the issue of prevention and redressal of complaints related to sexual harassment at workplace. The guidelines laid down by the Supreme Court in Vishaka vs. State of Rajasthan6 were the first initiative of its kind in India, which addressed the issue in conformity with the international standards as stipulated in Convention on the Elimination of all forms of Discrimination against Women (CEDWAW), 1979. The Supreme Court in the judgment prescribed preventive steps and provided for a complaints mechanism.

The employer is to take action within 60 days of the receipt of the recommendation.

The Sexual Harassment of Wen at Workplace (Prevention, Prohibition and Redressal) Act, 2013, which seeks to protect women from sexual harassment at their place of work, was ultimately passed by the Lok Sabha on September 3, 2012 and subsequently by the Rajya Sabha on February 26, 2013. The Act came into force on 22nd April, 2013 and replaced the Vishakha guidelines of 1997. It took around 16 years for the law to be enacted and finally the Delhi Gang rape incident of December 2012, finally speeded up the process.7

Some of the distinguishes features of the law:

- The Act brings within its ambit a vast category of employees which includes regular, temporary, ad-hoc, contractual worker, trainee, probationer etc.
- The term "workplace" is also defined very elaborately and includes all departments, undertakings, establishments, organizations, enterprises, institutions, offices, branches. It includes both public and private sector, whether organized and unorganized.
- The Act provides for Internal Complaints Committee and Local Complaints Committee.

WORKING OF THE MECHANIS

Internal Complaints Committee is to be constituted by every employer in every administrative units or offices and the Local Complaints Committee is to be set up by appropriate Governments at District levels to receive complains of sexual harassment from establishments which do not have an Internal Complaints Committee on account of having less than ten workers.

The victim is required to make a complaint to either of the two committees within three months of the incident and subsequently the relevant committee can forward the prima facie case to the police under section 509 IPC.

Factors like the mental distress, capacity of the accused to pay; medical expense etc shall be considered while determining the quantity of the compensation. However, in case of a false complaint, the woman too can be subject to action in accordance with service rules or as per the recommendation of the relevant committee.[8]

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The Indian Penal Code has numerous provisions which try to combat various kinds of offences committed against women. These provisions have been subject to Amendments over

In case the allegation is proved the Internal Complaints Committee or the Local Committee, will recommend to the employer the appropriate action to be taken against the respondent for sexual harassment as a misconduct in accordance with the provisions of the service rules or deduct from the salary or wages of the accused, such amount as it may consider appropriate in order to

the period of time. A quick glance through these provisions:
Sec 375-377: RAPE, CUSTODIAL RAPE, UNNATURAL OFFENCES
Sec 359-373: KIDNAPPING AND ABDUCTION
Sec 304B: DOWRY DEATH
Sec 509&354: WORDS GESTURES OR ACTS INTENDED TO INSULT THE MODESTY OF A WOMAN
Sec 354 A&B: SEXUAL HARRASSMENT
Sec 366B: IMPORTATION OF GIRLS (upto 21 years)
Sec 498A: MATERIMONAL CURELITY
Sec 354C: VOYEURISM
Sec 354D: STALKING

2.2.2 CHILDREN

Children are supposed to be the most vulnerable section of the society. Their biological age and physical and mental development makes them most vulnerable. They get subject to various types of victimization in the form of physical abuse, sexual abuse, economic exploitation. Some of the chronic concerns of the society centering child exploitation are child labour, child trafficking, child rape, child marriage etc. Criminal justice System has been responsive to the gravity of the issue and the administration, legislature and judiciary has been proactively responding to the needs of the hour.

The Juvenile Justice (Care and Protection of Children) Act, 2000, the primary ambition of which was to create for children within the criminal justice system a child friendly environment which will always work keeping in mind the best interest of the child and primarily focus on reformation and rehabilitation of child in need of care and protection rather than victimize the child in the course of criminal justice administration has been repealed by The Juvenile Justice (Care and Protection of Children) Act, 2015 which came into effect from 16th day of January, 2016. The Bill was passed by Lok Sabha on 7th day of May, 2015 and Rajya Sabha on 22nd day of December, 2015. The final Presidential assent was received on 31st day of December, 2015. The law came into light as an after effect of the massive outrage post nirbhaya incident of 2012 in New Delhi, where one of the accused was few months short of eighteen years.

HIGHLIGHTS OF JJ ACT, 2015

- The word „juvenile‟ is substituted with the word „child‟ throughout the Act.
- Special provisions for heinous offences committed by children above the age of sixteen year have been included. Accused children of 16 years or above are to be tried as adults in case of heinous offences i.e. offences which are punishable with imprisonment of seven years or more
- Juvenile Justice Boards and Child Welfare Committees to be set up in every district. "The Juvenile Justice Board is given the option to transfer cases of heinous offences by such children to a Children‟s Court (Court of Session) after conducting preliminary assessment. The provisions provide for placing children in a „place of safety‟ both during and after the trial till they attain the age of 21 years after which an evaluation of the child shall be conducted by the Children‟s Court. After the evaluation, the child is either released on probation and if the child is not reformed then the child will be sent to a jail for remaining term. The law will act as a

deterrent for child offenders committing heinous offences such as rape and murder and will protect the rights of victim".9

- Central Adoption Resource Authority (CARA) has been elevated to the status of a statutory body. Provisions related to adoption have been made more detailed and stringent.
- Numerous rehabilitation and social reintegration measures have been laid out for children in conflict with law and in need of care and protection. Various services including education, health, nutrition, de-addiction, treatment of diseases, vocational training, skill development, life skill education, counselling, etc are provided to children under institutional care to enable them to assume a constructive role in the society. The non-institutional provisions include: sponsorship and foster care for placing children in a family environment, which has to be selected, qualified, approved and supervised
- Several new offences like sale and procurement of children for any purpose including illegal adoption, corporal punishment in child care institutions, use of child by militant groups, offences against disabled children and, kidnapping and abduction of children, which were not adequately penalised in other laws have been brought within the ambit of the new legislation.

The Prohibition Of Child Marriage Act, 2006

As documented in the Handbook on The Prohibition Of Child Marriage Act, 2006, which came into force on 1st of November, 2007, "more than half of the women in India are married before the legal minimum age of 18. By contrast, men in the same age group get married at a median age of 23.4 years. Sixteen percent of men aged 20-49 are married by age 18 and 28 percent by age 20." The Child Marriage Restraint Act, 1929 tried to restrain solemnisation of child marriages in instead of preventing or prohibiting it. THE PROHIBITION OF CHILD MARRIAGE ACT, 2006 is enacted with the object to prevent child marriage making solemnization of child marriage a non bailable and cognizable offence. According to this Act, child marriage (i.e. bride being below 18 and groom being below 21 years of age) shall be declared to be void at the desire of either the bride or the groom.

It provides clear provisions for:

- Providing maintenance to the bride by the groom or his parents or guardians until the court pronounces the decree
- It also provides for the custody and maintenance of children who may have been born out of such a child marriage
- At the time of granting nullity to marriage the Court can order for the return of gifts and ornaments received at the time of marriage.
- It has strict penal provisions in case of a adult male marrying a child and for persons performing, abetting, promoting, attending, etc., a child marriage
- It declares child marriages to be automatically void in cases like the minor being is sold for the purpose of marriage, minor after being married is sold or trafficked or used for immoral purposes, etc.
- The Court has been bestowed with the power to grant injunction to prevent child marriages

The Protection of Children from Sexual Offence Act, 2012 aims to protect sexual victimization of children. This Act was passed by the Lok Sabha on 22nd of May, 2012. Prior the enactment of this Act, issues concerning sexual offences against children was taken care of IPC and there was no distinction between such offences being committed against children and adults.

Some of the salient features of this Act are:

- It protects children from offences which are in nature of sexual assault, sexual harassment and pornography
- The Act has made an elaborate categorization of various degrees of sexual assault on children. They are:
- Penetrative Sexual Assault,
- Aggravated Penetrative Sexual Assault,
- Sexual Assault,
- Aggravated Sexual Assault,
- Sexual Harassment of the Child,
- Use of Child for Pornographic Purposes
- Act provides that in appropriate cases, the Special Court may, in addition to the punishment, direct payment of compensation to the child for any physical or mental trauma caused to him or for immediate rehabilitation of such child.
- The Act adopts a child friendly approach and the best interest principle
- In camera trial
- No detention of the child in police custody at night
- Medical examination of a girl child to be conducted by a woman doctor and such examination in case of any child to be conducted in presence of their parents or any person in whom the child has trust.

Set up in March 2007, The National Commission for Protection of Child Rights (NCPCR), under the Commissions for Protection of Child Rights Act, 2005, aims to ensure that the relevant Laws, Policies, Programmes, and Administrative

Mechanisms are framed keeping in mind the Child Rights perspective, contained in the Indian Constitution and the UN Convention on the Rights of the Child.

Section 67B of The Information Technology Act, 2000, provides punishment for publishing or transmitting of material depicting children in sexually explicit act, etc., in electronic form up to five years and with a fine which may extend to ten lakh rupees for first conviction and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees, are few such examples which tries to protect the rights of children and prevent child victimization.

The Child Labour (Prohibition and Regulation) Amendment Bill, 2012 seeks to introduce some very strong amendments to Child Labour (Prohibition and Regulation) Act, 1986. The proposed amendment strongly forbids employment of children below fourteen years of age, except in non- hazardous family enterprises or the entertainment industry, unlike the law of 1986 which has provisions prohibiting children to be employed in hazardous industries only. Adolescents (14 and 18 years of age) are prohibited from being employed in hazardous occupations and processes.

In Re. Exploitation of Children in Orphanages in the State of Tamil Nadu V. Union of India (UOI) and Ors.11 it has been stated, "It is but obvious that the rights of children can be secured adequately only if the monitoring and controlling provisions contained in the three Acts, namely, The Commissions for Protection of Child Rights Act, 2005, The Right of Children to Free and Compulsory Education Act, 2009 and the Protection of Children from Sexual Offences Act, 2012 read with the Juvenile Justice (Care and Protection of Children) Act, 2000, are fully implemented."

The apex Court in Salil Bali v. Union of India (UOI) and Anr. (AIR2013SC3743) stated, "India developed its own jurisprudence relating to children and the recognition of their rights. With the adoption of the Constitution on 26thNovember 1949, constitutional safeguards, as far as weaker sections of the society, including children, were provided for. The Constitution has guaranteed several rights to children, such as equality before the law, free and compulsory primary education to children between the age group of six to fourteen years, prohibition of trafficking and forced labour of children and prohibition of employment of children below the age of fourteen years in factories, mines or hazardous occupations. The Constitution enables the State Governments to make special provisions for children. To prevent female foeticide, the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act was enacted in 1994. One of the latest enactments by Parliament is the Protection of Children from Sexual Offences Act, 2012".

2.2.3 ELDERLY

The obligations of the Government to protect the human rights of the elders and to ensure them the highest possible standard of health, dignity of life, free from neglect and all type of physical and mental abuse has been echoed in the United Nation‟s commitment in the UN Charter and International Bill of Human Rights, Universal Declaration of Human Rights, International Covenant on Economic Social and Cultural Rights, International Covenant on Civil and Political Rights, Convention on the Elimination of All Forms of Discrimination Against Women as well as in Vienna and Madrid Plan of Action in 1982 and 2002 respectively. India in 2007 has brought into light a central legislation for maintenance, welfare and care of the elderly by their children.

The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 aims to ensure maintenance and welfare of Parents and Senior Citizens. It upholds the basic principles guaranteed and recognized under the Indian Constitution. The drafters of the Constitution of India had considered the interest of the elderly people and accordingly incorporated Article 41 and 46 in the Constitution. Constitution of India under Directive Principles of State Policy under Article 41 clearly and specifically states: "The State shall within its limits of economic capacity and development make effective provisions for securing the right to work, to education and public assistance in case of unemployment, old age, sickness and disablement and in other cases of undeserved want." Article 46 aims to promote education and economic interest of other weaker sections by stating. "The State shall promote with special care the educational and economic interests of the weaker sections of the society… and shall protect them from social injustice and all forms of exploitation". As the elderly fall within the category of vulnerable class of the society who easily fall prey to victimization since they generally loose power, specially economic power, with age, the obligation of the State to ensure their protection and security is also covered under Art 46. Though, section 125 of the Criminal Procedure Code, 1973 also makes it obligatory for a person who has sufficient means to maintain his parents who are unable to maintain themselves. The most striking feature of the

Act is to make the maintenance of parents by their family a matter of legal obligation. The Act mainly focuses on maintenance, care and protection of the senior citizen by setting up Tribunals in every district. The Tribunal is required to ensure payment of maintenance by the children to the elderly parents and senior citizens. It also deals with complaints of neglect, physical injury, mental cruelty, desertion or separation from family and its restoration and other enquires requiring redressal. The interventions of various departments and authorized agencies play a significant role in time bound proceedings and speedy justice delivery mechanism against the guilty.

2.2.4 SCHEDULED CASTES (SC), SCHEDULED TRIBES (ST)

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is one such legislation which focuses on the rights and interests of a particular section of the society who are considered to be under privileged and deprived. The Act tries to prevent the offences leading to atrocities committed against the Scheduled Castes and the Scheduled Tribes. It provides for Special Courts for conducting such trial, for the grant of relief and rehabilitation of the victims of such offences and other matters related to such issue. 12 However, section 3 of the Act clearly provides, "Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe" thereby meaning that not only does the legislation try to prevent victimization of category of people but also forbids them from being prosecuted under this law, even if an act committed by the member of this community victimizes another member of the same community.

2.2.6 INTERNALLY DISPLACED AND DISASTER VICTIMS

Supreme Court while discussing the issue of compensation to the displaced victims had said that rehabilitation does not only concern about providing food, clothes and shelter but also includes extension of support to help such victims rebuild their livelihood. It was said to be a corollary to Art 21 (Narmada Bachao Andolan v. Union of India, 2000). The Supreme Court had also observed that the high projected benefits from the dam should not be considered as an explanation to deny the people who are ousted from their land their basic fundamental right and their rehabilitated should be at the earliest (1992 Supp (3) SCC 93).

Severe public concern on Land Acquisition issues and absence of a national law to provide for the rehabilitation, resettlement and compensation for loss of livelihood of those who are dependent on the land being acquired for facilitating land acquisition for industrialisation, infrastructure development and urbanisation caused the coming into existence of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

Act came into force on 01.01.2014 by repealing the Land Acquisition Act, 1894. It is the first National Law on the subject of Rehabilitation & Resettlement of families affected and displaced as a result of land acquisition. The rehabilitation and resettlement provisions under this Act come into operation when:

- Government acquires land for its own use, hold and control
- Government acquires land with the ultimate purpose to transfer it for the use of private companies for stated public purpose
- Government acquires land for Public Private Partnership Projects

However, in order to remove various impediments faced in the application of the Act, certain amendments were made in the Act while further strengthening the provisions to protect the interests of the „affected families‟. In view of the urgency, these were brought about by an Ordinance on 31.12.2014. Subsequently, on 10.03.2015 the Lok Sabha passed the Amendment Bill to replace the Ordinance. Changes in the provisions of the Act will facilitate farmers to get better compensation and rehabilitation and resettlement benefits in lieu of land compulsorily acquired by the appropriate Government.

Disaster Management Act enacted in 2005 focus on creating an enabling legislative environment to enhance the degree of preparedness and tries to adopt an approach which is more proactive preventive, mitigating and preparedness-driven. The Government of India through this Act tried to create a necessary institutional mechanism for monitoring and implementing disaster management plans. The Act provides for setting up of a National Disaster Management Authority (NDMA) under the Chairmanship of the Prime Minister, State Disaster Management Authorities (SDMAs) under the Chairmanship of the Chief Ministers, District Disaster Management Authorities (DDMAs) under the Chairmanship of Collectors/District Magistrates/Deputy Commissioners. The Act further provides for the constitution of different Executive Committee at national and state levels. Under its aegis, the National Institute of Disaster Management (NIDM) for capacity building and National Disaster Response Force (NDRF) for response purpose have been set up. It also mandates the concerned Ministries and Departments to draw up their own plans in accordance with the National Plan. The Act further contains the provisions for financial mechanisms such as creation of funds for response, National Disaster Mitigation Fund and similar funds at the state and district levels for the purpose of disaster management. The Act also provides specific roles to local bodies in disaster management. Our legislation or policy concerning disaster management has nowhere recognized the legal rights of the victims to claim compensation from state, unlike many of the other countries. The compensation which is granted to such victims is entirely based on the ex gratia principle.

2.2.5 DISABLED

The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 defines „person with disability‟as a person suffering from not less than forty per cent of any disability as certified by a medical authority. Further, section 2(i) of the Act, explaining the meaning of disability, includes blindness, low vision, leprosy-cured, hearing impairment, locomotor disability, mental retardation, mental illness within the concept of disability. According to the 2001 Census of India, 2.19 crore people were reported to be disabled constituting 2.13 per cent of the total population. This figure reached 26,814,994 according to 2011 Census.

The risk of being victimized is much higher for people suffering with disability when compared with others. Disabled women, children, elderly people, especially if they are not financially secure, are subject to maltreatment and harassment. In some cases, even if they are economically secure, they are exploited by their kith and kin, taking advantage of their vulnerability. Ratification of the UN Convention on Rights of Persons with Disabilities makes it obligatory for India to create an environment where people with disability can enjoy a status of a normal individual enjoying their basic human rights including legal rights, moral rights etc . It requires all the four disability-specific legislations i.e. The Mental Health Act 1987, Rehabilitation Council of India Act 1992, Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act 1995 and the National Trust Act 1999 to be harmonized in tune with the scope and spirit of UNCRPD. According to the Convention, "the states should provide disabled friendly voting machines to enable them to exercise their right to adult franchise, providing access to poverty reduction programs to enhance better standards of living, ensure right to health, education and work without discrimination based on disability. Compulsory sterilization of disabled persons needs to be prohibited and their right to adopt children ensured. Law and policy governing the disabled should be gender sensitive".

Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act 1995 was passed by Loksabha in 12th day of December, 1995 and came into force on 7th day of February,1996. This is the principal law governing the limited rights available to persons with disabilities and the obligations of the State.

The Act aims to

- Define responsibility of the state towards the prevention of disabilities, protection of rights, provision of medical care, education, training, employment and rehabilitation of persons with disabilities;
- To create a barrier free environment;
- To counteract any situation of abuse and exploitation of persons; and
- To make special provision for the integration of disabled persons into the society.

However, the Statute is subject to some of the following criticisms:

- It is not a „rights based" legislation.
- The Act fails to impose mandatory obligations on the appropriate government and leaves the realization of opportunities to the discretion of the various state governments.
- The rights for the disabled women and children provided in the convention for full and equal enjoyment of human rights are rights like right to privacy, reproductive rights, right to family, health care, prohibition of discrimination on grounds of disability in employment, political rights of right to vote and contest etc. are not adequately provided in the Act.
- The term „Disabilities" is narrowly defined and includes only blindness, low vision, leprosy-cured, hearing impairment, locomotor disability, mental retardation and mental illness, leading to labeling tendencies.

- It lacks any penal provisions for the non-implementation of the law.

The Rights of Persons with Disabilities Bill, 2014 was introduced in the Rajya Sabha on February 7, 2013 by the Minister of Social Justice and Empowerment, Mr. Mallikarjun Kharge. The Bill repeals the Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1995.14 The Act of 1995 is silent on silent on issues related to response of agencies of State on victimization of people with disability. The Bill of 2014 does contain measures to be taken by appropriate Government to protect disabled persons from violence, abuse and exploitation. However, it fails is laying down clear provisions for access, support and relief from the Criminal Justice System for the disabled.

Supreme Court in a recent judgment (Rajeev Kumar Gupta & Others Vs Union of India & Others, 2016) for the disabled has directed Government to extend 3 percent reservation for disabled persons in all posts.15 In Union of India & Anr. V. National Federation of the Blind & Ors., 2013, the Apex Court opined that, "The Union of India, the State Governments as well as the Union Territories have a categorical obligation under the Constitution of India and under various International treaties relating to human rights in general and treaties for disabled persons in particular, to protect the rights of disabled persons. Even though the Act was enacted way back in 1995, the disabled people have failed to get required benefit until today". It further observed, "the computation of reservation for persons with disabilities has to be computed in case of Group A, B, C and D posts in an identical manner viz., "computing 3% reservation on total number of vacancies in the cadre strength" which is the intention of the legislature. "It also stated, "That the non-observance of the scheme of reservation for persons with disabilities should be considered as an act of non-obedience and Nodal Officer in department/public sector undertakings/Government companies, responsible for the proper strict implementation of reservation for person with disabilities, be departmentally proceeded against for the default."

The Code of Criminal Procedure, 1973 does not provide any mandatory method of recording of statements of people with disability that the Magistrates are required to follow during inquiry or trial. The environment of Indian jails, too, is not friendly for people with disability. It does not pay any special attention for the needs of such people. Certain initiatives of the Criminal Law (Amendment) Act, 2013 is very promising though are very limited in scope. The amendment mandates video graphing of a woman victim with disability‟s statement in presence of an interpreter or special educator in cases of rape, acid attack, sexual harassment, stalking and the like.

2.2.7 MINORITY GROUPS AND WEAKER SECTIONS

Minority rights have gained greater visibility and relevance all over the world. India is no exception to it being a multi-ethnic, multi-religious, multi-linguistic and multi- cultural society. Diversity of all types is the very soul of India. It is in this context that minority rights have assumed added significance in post-independence India. When

India attained independence after its division on religious lines, religious minorities became very apprehensive of their identity. According to a survey (2001) at that time there were 11.67 per cent Muslims, 2.32 per cent Christians, 1.79 per cent Sikhs and considerable number of Buddhists (0.77 per cent), Parsees (0.4 per cent) and Jains

(0.43 per cent) in India. The Constitution of free India has give recognition to a number of languages in the Eighth Schedule and there are five religious groups which have been given the official status of National Minorities, namely, Muslims, Christians, Sikhs, Buddhists and Parsees. The framers of the Constitution bestowed Considerable thought and attention upon the minority problem in all its facets and provided constitutional safeguards; yet the issue has evaded solution till today.

United Nations Minorities Declaration of 1992 states, “minorities as based on national or ethnic, cultural, religious and linguistic identity, and provides that States should protect their existence”. No definition has been unanimously agreed upon describing which group constitutes minorities. Characterized by their own „national, ethnic, linguistic or religious identity‟ almost every state has a number of minority groups within their state distinguishably different from the majority population. Existence of a minority is a question of fact and definition should include both objective factors (like the existence of a shared ethnicity, language or religion) and subjective factors (including that individuals must identify themselves as members of a minority).

The Indian Constitution and several international human rights instruments have specifically provided for the protection of religious and ethnic minorities. Due to the pluralistic nature of the Indian society consisting of a large number of ethnic and religious groups it is imperative for the Criminal Justice System, to consider the Constitutional goals of secularism, humanism and common brotherhood. Criminal Justice System should be very sensitive and careful in its approach to avoid communal bias in matters involving two or more communities. Since minorities are more vulnerable of being victimized the criminal justice system should be very prompt and specially trained and equipped to deal with such cases. “It is desirable to evolve a „Best Practices Code‟ to be followed in difficult situations involving communal conflicts, to give minorities the confidence in the system in place. Special Prosecutors and Special Courts with specially trained staff may be entrusted to conduct criminal proceedings in the cases of violence against minorities and similar vulnerable groups.”

The National Commission for Minorities (NCM) was set up under the National Commission for Minorities Act, 1992. Muslims, Christians, Sikhs, Buddhists and Zoroastrians (Parsis) have been notified as minority communities by the Union Government. Further according to notification on 27th Jan 2014, Jains have also been included within the group of notified minority communities. The Commission comprises of one Chairperson and five Members representing the different communities. State Minorities Commissions have been set up in various states like Andhra Pradesh , Assam , Bihar, Chattisgarh, Delhi, Jharkhand, Karnataka, Maharashtra, Madhya Pradesh, Manipur, Rajasthan, Tamil Nadu, Uttarakhand, Uttar Pradesh and West Bengal. These Commissions function to safeguard and protect the interests of minorities. Aggrieved persons belonging to the minority communities may approach the National Commission for Minorities, after exhausting all remedies available to them.20

PREVENTION OF COMMUNAL AND TARGETED VIOLENCE (ACCESS TO JUSTICE AND REPARATIONS) BILL, 2011, was drafted post godhra riots to check riots taking place between majority and minorities. The Bill provides for relief, reparation, restitution and compensation. Compensation ranges from two lakhs to fifteen lakhs subject to the multiplier system provided in the Appendix I of the Bill. It also provides express provisions for the rights of the victims during the trial, protection of victims, informants and witnesses. The draft Bill has faced acidic criticism on account of it itself being communal in nature in the garb of being anti communal.

Some of the criticisms are:

- The provision of the Bill tries to protect minority communities based on religion and language along with Scheduled Castes and Scheduled Tribes. In the opinion of critics it simple tries to „target the majority‟ in course of protecting the minority.
- It is said to curb freedom of expression by stating, "Notwithstanding anything contained in any other law for the time being in force, whoever publishes, communicates or disseminates by words, either spoken or written, or by signs or by visible representation or otherwise acts inciting hatred causing clear and present danger of violence against a group or persons belonging to that group, in general or specifically, or disseminates or broadcasts any information, or publishes or displays any advertisement or notice, that could reasonably be construed to demonstrate an intention to promote or incite hatred or expose or is likely to expose the group or persons belonging to that group to such hatred, is said to be guilty of hate propaganda."
- It is believed the Bill if passed in the present form will hit the federal structure of the country. Law and order is a part of subject list and if Centre usurps this power and frames legislation on this aspect, it will lead to an unconstitutional Act and lead to regionalist tendencies subsequently.
- The offences under this law have been made to be non-bailable and cognizable, even if they are not so under IPC.

2.3 CONCLUSIONS

To conclude it can be said that the approach of the society should not be merely sympathetic but should rather be empathetic. It should be ensured that they are given their due rights as a matter of „right‟ rather than on ex gratia basis. Legislative framework and policy should focus on the particular needs of such vulnerable groups and draft accordingly. Vulnerables of the society need our support and respect and do not deserve neglect and apathy.

UNIT 3
FAIR TRIAL AND NATURAL JUSTICE

Unit Structure

3.18 Terminal Questions

3.19 References

3.1 Introduction

The administration of justice is one of the most fundamental functions of a democratic state. A legal system earns public confidence not merely by punishing offenders but by ensuring that justice is administered fairly, impartially, and in accordance with established legal principles. The concepts of fair trial and natural justice form the cornerstone of every civilized legal system and are indispensable for the protection of human rights, the rule of law, and constitutional governance. They ensure that every individual, irrespective of social, economic, political, religious, or cultural background, receives equal treatment before the law and an opportunity to defend his or her rights. The right to a fair trial is recognized as a universal human right and is embodied in numerous international human rights instruments, including the Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (1966). These instruments recognize that justice must not only be done but must also be seen to be done.

In India, the concept of a fair trial has evolved significantly through constitutional interpretation. Although the Constitution does not expressly define the term "fair trial," the Supreme Court has interpreted Articles 14, 20, 21, and 22 to encompass various procedural safeguards that collectively ensure fairness in judicial and quasi-judicial proceedings. Similarly, the principles of natural justice are deeply rooted in moral philosophy, equity, and common law traditions. The importance of fair trial and natural justice has become even more pronounced in the twenty-first century due to rapid technological advancements, digital surveillance, artificial intelligence, media trials, and increasing concerns regarding privacy, cybercrime, terrorism, and transnational criminal justice.

In India, judicial activism has played a pivotal role in strengthening procedural safeguards through Public Interest Litigation (PIL), expansion of legal aid services, protection of undertrial prisoners, recognition of the right to speedy trial, witness protection measures, and compensation for violations of constitutional rights. These developments demonstrate that fairness is no longer confined to courtroom procedures but extends throughout the criminal justice process—from investigation and arrest to trial, sentencing, appeal, and rehabilitation.

So, fair trial and natural justice are not merely technical legal principles; they are essential conditions for realizing human dignity, equality, accountability, and democratic governance. Without these principles, constitutional guarantees lose their practical significance, and justice risks becoming arbitrary or oppressive.

3.2 Learning Objectives

After studying this unit, learners will be able to:

- Explain the evolution and significance of the right to a fair trial in international and Indian legal systems.

- Identify the constitutional provisions that safeguard fair trial rights in India.
- Analyze the concept, objectives, and principles of natural justice.
- Evaluate the role of the judiciary in protecting procedural fairness.
- Assess contemporary challenges affecting fair trial and natural justice.

3.3 Concept of Fair Trial

A fair trial refers to a legal proceeding conducted according to established rules and procedures that guarantee equality, impartiality, transparency, and respect for the rights of all parties involved. It ensures that no individual is deprived of life, liberty, or property except through a procedure that is just, reasonable, and equitable. The right to a fair trial encompasses a range of procedural safeguards, including the right to be informed of charges, the right to legal representation, the right to present evidence, the right to cross-examine witnesses, the presumption of innocence, the right against self-incrimination, and the right to appeal against adverse decisions.

Unlike substantive rights, which determine the content of legal entitlements, fair trial rights primarily concern the procedures by which legal decisions are made. A legal outcome may appear substantively correct, but if the procedure adopted is arbitrary or biased, the legitimacy of the decision itself becomes questionable.

A fair trial therefore serves multiple objectives like, Protecting individual liberty, Preventing arbitrary exercise of state power, Ensuring equality before law, Promoting public confidence in the judiciary and Protecting victims' rights while safeguarding the accused.

3.4 Evolution of the Right to Fair Trial

The concept of fair trial has evolved gradually through centuries of legal development.

Its earliest foundations may be traced to ancient legal systems where rulers were expected to administer justice according to accepted customs and moral principles. Ancient Indian jurisprudence, reflected in texts such as the Arthashastra and Manusmriti, emphasized impartial adjudication, though procedural protections were not uniformly available.

A significant milestone occurred with the Magna Carta (1215) in England. Clause 39 declared that no free person could be imprisoned, dispossessed, or punished except by the lawful judgment of peers or according to the law of the land. Although originally intended to limit monarchical authority, this principle later evolved into the doctrine of due process of law. The English common law further developed procedural fairness through judicial decisions emphasizing impartial adjudication and protection against arbitrary executive action. Over time, these principles influenced constitutional democracies worldwide. The American Constitution incorporated procedural safeguards through the Fifth and Fourteenth Amendments, introducing the doctrine of due process, which requires fairness in both legislation and executive action.

Following the atrocities of the Second World War, the international community recognized that arbitrary trials had contributed significantly to widespread human rights violations. Consequently, the Universal Declaration of Human Rights (1948) recognized fair trial as a universal human right. This recognition was later strengthened by legally binding treaties, particularly the International Covenant on Civil and Political Rights (1966).

In India, the Constitution initially guaranteed procedural safeguards through Articles 20, 21, and 22. However, the transformative interpretation of Article 21 in *Maneka Gandhi v. Union of India* (1978) established that every procedure affecting personal liberty must be fair, just, and reasonable. This judgment fundamentally reshaped Indian constitutional jurisprudence and expanded the scope of procedural rights.

Today, the concept of fair trial extends beyond criminal proceedings to civil litigation, administrative adjudication, disciplinary proceedings, consumer disputes, environmental tribunals, and digital governance.

3.5 Importance of Fair Trial in Democratic Societies

A democratic society depends upon the rule of law rather than the arbitrary exercise of governmental power. Fair trial is indispensable for maintaining this principle because it ensures that state authority is exercised within constitutional limits and subject to judicial oversight. One of the primary objectives of a fair trial is the protection of individual liberty. Criminal prosecutions involve significant coercive powers, including arrest, detention, search, seizure, and imprisonment. Without procedural safeguards, these powers may be misused against political opponents, minorities, journalists, activists, or vulnerable groups. Fair trial also contributes to judicial legitimacy. Public confidence in courts depends not only on correct decisions but also on transparent and impartial procedures. When litigants believe that they have received a meaningful opportunity to present their case before an unbiased tribunal, they are more likely to accept judicial outcomes even if the decision is adverse.

Another important function of fair trial is preventing wrongful convictions. Procedural safeguards such as cross-examination, legal representation, disclosure of evidence, and appellate review reduce the possibility of innocent persons being convicted while ensuring that guilty persons are prosecuted according to law. Fair trial also protects victims by ensuring that investigations are conducted properly, evidence is evaluated objectively, and justice is delivered within a reasonable time. Delayed justice often causes severe psychological, financial, and social hardship for victims and their families.

From the perspective of human rights, fair trial reinforces the principles of equality, dignity, accountability, and non-discrimination. It ensures that justice is not influenced by wealth, political influence, social status, religion, caste, gender, ethnicity, or other irrelevant considerations. In the contemporary era, the importance of fair trial has expanded further due to globalization, transnational crime, cybercrime, artificial intelligence, digital evidence, and increased media scrutiny of judicial proceedings. Courts must constantly adapt procedural safeguards to ensure that technological developments do not compromise fundamental rights.

Thus, fair trial serves as the bridge between legal authority and constitutional morality. It transforms the administration of justice from a mere exercise of state power into an instrument for protecting human rights and maintaining democratic governance.

3.6 International Legal Framework on Fair Trial

The recognition of fair trial as a fundamental human right is one of the most significant achievements of the international human rights movement after the Second World War. International legal instruments establish minimum standards of procedural justice that all States are expected to respect. These standards seek to protect individuals from arbitrary arrest, unfair prosecution, and misuse of judicial or executive power while promoting equality before the law and access to justice.

The evolution of these international norms reflects the understanding that justice cannot exist without procedural fairness. Today, fair trial guarantees are recognized as an essential component of the rule of law and are binding upon many States through treaty obligations and customary international law.

3.6.1 Universal Declaration of Human Rights (UDHR), 1948

The **Universal Declaration of Human Rights (UDHR),** adopted by the United Nations General Assembly on 10 December 1948, is the first comprehensive international instrument recognizing fair trial as a fundamental human right. Although the Declaration itself is not legally binding, it has profoundly influenced national constitutions, international treaties, and customary international law.

Several provisions of the UDHR directly relate to the administration of justice.

Article 7 guarantees equality before the law and equal protection without discrimination. This provision establishes that every individual must receive equal treatment by courts and public authorities irrespective of race, religion, gender, nationality, or social status.

Article 8 recognizes the right to an effective remedy before competent national tribunals for acts violating fundamental rights guaranteed by the constitution or law.

Article 9 prohibits arbitrary arrest, detention, or exile. Arbitrary deprivation of liberty is considered incompatible with democratic governance and human dignity.

The most significant provision is **Article 10,** which states:

"Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal in the determination of his rights and obligations and of any criminal charge against him."

This provision identifies four essential characteristics of a fair trial:

- Equality before courts;
- Public hearing;
- Independent judiciary; and
- Impartial decision-making.

Article 11 further strengthens procedural safeguards by recognizing the **presumption of innocence** until guilt is proved according to law in a public trial where the accused has all guarantees necessary for defence.

The UDHR thus laid the normative foundation for modern criminal justice systems and inspired later legally binding conventions.

3.6.2 International Covenant on Civil and Political Rights (ICCPR), 1966

The **International Covenant on Civil and Political Rights (ICCPR),** adopted in 1966 and entering into force in 1976, transformed many principles of the UDHR into legally binding obligations for State Parties. India ratified the ICCPR in **1979**, thereby undertaking to respect and ensure the rights recognized under the Covenant. Among its provisions, **Article 14** constitutes one of the most detailed international statements on fair trial rights.

It guarantees:

- Equality before courts and tribunals.
- Fair and public hearing.
- Competent, independent, and impartial tribunal established by law.
- Presumption of innocence.
- Prompt information regarding criminal charges.
- Adequate time and facilities to prepare a defence.
- Trial without undue delay.
- Right to legal assistance of one's own choosing.
- Right to examine witnesses.
- Free assistance of an interpreter where necessary.
- Protection against compelled self-incrimination.
- Right to appeal against conviction and sentence.

The Covenant further recognizes that juvenile offenders should receive procedures appropriate to their age and rehabilitation.

Article 9 protects individuals against arbitrary arrest and detention by requiring that arrested persons be informed of the reasons for arrest, produced promptly before a judge, and allowed to challenge the legality of detention.

3.6.3 Other International Instruments

Apart from the UDHR and ICCPR, several international instruments reinforce fair trial guarantees.

The **Convention against Torture (CAT), 1984,** although not yet ratified by India, prohibits torture and cruel, inhuman, or degrading treatment. Evidence obtained through torture is generally considered inadmissible because it undermines the fairness of judicial proceedings.

The **Convention on the Rights of the Child (CRC), 1989**, to which India is a party, requires child-friendly justice systems that prioritize rehabilitation over punishment. Juveniles accused of offences must receive legal assistance, privacy protection, and procedures suited to their age and maturity.

The **United Nations Basic Principles on the Independence of the Judiciary (1985)** emphasize judicial independence, impartiality, competence, and freedom from external influence.

Similarly, the **UN Basic Principles on the Role of Lawyers (1990)** recognize the right of individuals to effective legal assistance and require governments to ensure access to competent legal representation, especially for disadvantaged persons. Collectively, these international instruments demonstrate that fair trial is not merely a procedural formality but a universally recognized human right essential for protecting liberty and dignity.

3.7 Fair Trial under the Indian Constitutional Framework

The Constitution of India does not explicitly use the expression "fair trial." Nevertheless, through judicial interpretation, particularly after **Menaka Gandhi v. Union of India (1978),** the Supreme Court has firmly established that fairness is an indispensable component of constitutional governance.

The constitutional guarantee of a fair trial primarily flows from Articles **14, 20, 21, and 22,** which collectively ensure equality, due process, and procedural safeguards.

Article 14: Equality before Law

Article 14 guarantees equality before the law and equal protection of the laws. It prohibits arbitrary state action and requires that all persons be treated fairly under similar circumstances.

In the context of criminal justice, Article 14 requires that all accused persons receive equal procedural protection, investigations be conducted impartially, courts remain unbiased, and similarly situated individuals be treated alike. The Supreme Court has repeatedly held that arbitrariness is antithetical to equality. Therefore, unfair procedures violate Article 14 even if they appear legally valid.

Article 20: Protection in Respect of Conviction for Offences

Article 20 provides three important safeguards for accused persons.

(a) **Protection against Ex Post Facto Laws:** No person can be convicted for an act that was not an offence when committed, nor can a greater punishment be imposed retrospectively. This principle protects legal certainty and prevents arbitrary criminal legislation.
(b) **Protection against Double Jeopardy:** No individual shall be prosecuted and punished more than once for the same offence. This safeguard prevents repeated harassment through multiple prosecutions.
(c) **Protection against Self-Incrimination:** Article 20(3) declares that no accused person shall be compelled to be a witness against himself. This constitutional guarantee preserves human dignity, prevents coercive interrogation, and supports the presumption of innocence.

Article 21: Protection of Life and Personal Liberty

Article 21 is regarded as the heart of Indian constitutional jurisprudence.

It states that ***"No person shall be deprived of his life or personal liberty except according to procedure established by law."***

Initially interpreted narrowly in **A.K. Gopalan v. State of Madras (1950)**, Article 21 underwent a revolutionary transformation through **Maneka Gandhi v. Union of India (1978)**. The Supreme Court held that the "procedure established by law" must be fair, just, reasonable, non-arbitrary, and consistent with Articles 14 and 19. This judgment introduced substantive due process into Indian constitutional law and expanded Article 21 to include numerous procedural safeguards. Thus, Article 21 has become the principal constitutional foundation of fair trial jurisprudence in India.

Article 22: Protection against Arbitrary Arrest

Article 22 provides procedural safeguards immediately following arrest. Every arrested person has the right to be informed of the grounds of arrest, to consult and be defended by a legal practitioner to be produced before the nearest magistrate within twenty-four hours not to be detained beyond twenty-four hours without judicial authorization. These safeguards reduce the possibility of arbitrary detention and custodial abuse.

However, Article 22 permits preventive detention under specified circumstances, though even preventive detention is subject to constitutional safeguards and judicial review.

3.8 Essential Components of a Fair Trial

a) Right to Legal Representation: The right to legal representation is one of the most fundamental safeguards of a fair trial. An accused person who is unaware of legal procedures or unable to defend himself effectively may suffer serious prejudice during judicial proceedings. Legal representation ensures that the accused understands the nature of the charges, the available legal remedies, procedural requirements, and the consequences of judicial decisions. The Constitution of India, under Article 22(1)**,** guarantees every arrested person the right to consult and be defended by a legal practitioner of his or her choice. The Supreme Court has consistently held that the right to free legal aid forms an integral part of Article 21. Legal aid contributes to fairness by reducing inequality between the prosecution and the defence, thereby promoting substantive justice rather than merely formal compliance with procedural rules.

b) Right to Speedy Trial: Justice delayed is often described as justice denied. Prolonged criminal proceedings impose severe emotional, financial, and social burdens upon accused persons, victims, witnesses, and society. Delays may also result in loss of evidence, fading memories, and reduced public confidence in the judicial system. Although the Constitution does not expressly mention the right to a speedy trial, the Supreme Court recognized it as a fundamental right under Article 21 in Hussainara Khatoon v. State of Bihar (1979)**.** The Court observed that an unreasonable delay in the administration of justice violates personal liberty. To address delays, India has introduced several institutional reforms, including Fast Track Courts, Special Courts, e-Courts, virtual hearings, alternative dispute resolution mechanisms, and case management techniques. Nevertheless, judicial backlog remains one of the most significant challenges confronting the Indian justice system.

c) Right Against Self-Incrimination: The right against self-incrimination protects individuals from being compelled to provide evidence against themselves during criminal proceedings. It reflects the principle that the prosecution bears the burden of proving guilt beyond reasonable doubt. Article 20(3) of the Constitution provides: *"No person accused of any offence shall be compelled to be a witness against himself."* This safeguard protects human dignity and prevents coercive interrogation techniques such as torture, threats, inducement, or psychological pressure.

d) Right to Appeal: The right to appeal provides an important safeguard against judicial error. Since courts are not infallible, appellate review allows higher courts to examine whether legal procedures were properly followed and whether the judgment is supported by evidence and law. The availability of appellate remedies strengthens public confidence in the justice system and reduces the possibility of miscarriage of justice.

e) Fair Investigation: A fair trial begins long before judicial proceedings commence. Investigation constitutes the foundation upon which the prosecution is built. If the investigation is biased, incomplete, or manipulated, the fairness of the entire trial may be compromised. The investigating agency must conduct investigations objectively, collect both inculpatory and exculpatory evidence, protect the rights of the accused, and avoid coercive methods. In Babubhai v. State of Gujarat (2010), the Supreme Court observed that fair investigation is an essential component of fair trial under Article 21. The Court has repeatedly emphasized that investigating agencies should function independently and free from political or extraneous influence.

f) Victims' Rights and Witness Protection: Traditionally, criminal justice systems focused primarily on the rights of the accused. Contemporary jurisprudence recognizes that victims and witnesses also require protection to ensure meaningful access to justice. Victims possess several important rights, including Right to dignity and respect, Right to participate in certain proceedings, Right to compensation in appropriate cases, Right to receive information regarding proceedings and Right to protection against intimidation. Similarly, witnesses play an indispensable role in criminal trials. Fear of retaliation frequently discourages witnesses from giving truthful testimony.

3.9 Concept of Natural Justice: Meaning and Definition

Natural justice refers to the fundamental principles of procedural fairness that govern decision-making by judicial, quasi-judicial, and administrative authorities. These principles are intended to prevent arbitrary exercise of power and ensure that every person affected by a decision receives fair treatment. Unlike statutory law, natural justice is not codified in a single enactment. Instead, it has evolved through judicial decisions based upon principles of equity, fairness, good conscience, and reasonableness.

The doctrine originated in English common law but has now become an integral part of constitutional democracies throughout the world. Indian courts have consistently treated natural justice as a basic feature of fair administrative and judicial processes. Natural justice applies whenever an authority exercises powers that may affect the rights, liberties, reputation, livelihood, or legitimate expectations of individuals.

3.10 Principles of Natural Justice

a) Rule Against Bias (Nemo Judex in Causa Sua): The Latin maxim Nemo Judex in Causa Sua means "No one should be a judge in his own cause." This principle requires that every decision-maker remain impartial and free from personal interest, prejudice, or bias. Justice must not only be done but must also appear to have been done. Even a reasonable apprehension of bias may invalidate judicial or administrative proceedings. Bias may arise in several forms.

b) Right to Fair Hearing (Audi Alteram Partem): The second and most important principle is Audi Alteram Partem**,** which literally means:"Hear the other side."No individual should be condemned or adversely affected without receiving a reasonable opportunity to present his or her case. This principle includes several procedural safeguards, Prior notice of proceedings, Disclosure of relevant allegations, Adequate opportunity to prepare a defence, Opportunity to produce evidence, Right to cross-examine witnesses where appropriate, Opportunity to present legal arguments, Representation by counsel where necessary. The right to hearing ensures that authorities make informed decisions based upon complete information rather than unilateral allegations.

c) Speaking Orders: Modern administrative law recognizes that fairness requires not only hearing the parties but also explaining the reasons for decisions. **A** speaking order is one that clearly states, Relevant facts, Applicable legal principles, Evaluation of evidence and Reasons supporting the conclusion. Reasoned decisions promote transparency, facilitate appellate review, discourage arbitrariness, and strengthen public confidence. The Supreme Court has repeatedly emphasized that recording reasons is an essential component of natural justice and good governance.

d) Doctrine of Legitimate Expectation: The doctrine of legitimate expectation protects individuals who reasonably expect consistent treatment from public authorities based on established policies, representations, or past practices. Although it does not create an absolute legal right, it requires authorities to act fairly before departing from previously established practices. For example, if a government consistently grants a hearing before cancelling licences, affected individuals may legitimately expect similar treatment in future cases.

e) Doctrine of Proportionality: The doctrine of proportionality requires that administrative actions should not be excessive relative to the objective sought to be achieved. Authorities must choose measures that are suitable, necessary, and proportionate. For instance, dismissing an employee for a minor procedural lapse may be disproportionate if a lesser penalty would adequately serve disciplinary objectives. Indian courts increasingly apply proportionality while reviewing administrative decisions affecting fundamental rights.

3.11 Relationship between Fair Trial and Natural Justice

Fair trial and natural justice are closely interconnected concepts that collectively uphold the rule of law and constitutional governance. While fair trial primarily governs judicial proceedings, natural justice extends its application to judicial, quasi-judicial, and administrative decision-making.

Natural justice constitutes the procedural foundation upon which the concept of a fair trial is built. Principles such as impartiality, the right to be heard, and reasoned decision-making are indispensable components of a fair trial.

Both doctrines pursue similar objectives, including:

- Prevention of arbitrary exercise of power.
- Protection of individual rights.
- Promotion of equality before law.
- Enhancement of public confidence in institutions.
- Strengthening accountability and transparency.

The relationship between the two concepts has been significantly developed through Indian constitutional jurisprudence. Following *Maneka Gandhi v. Union of India* (1978), the Supreme Court held that every procedure affecting personal liberty must be "right, just and fair." Consequently, natural justice became an inherent element of Article 21. Similarly, Article 14 prohibits arbitrariness, thereby reinforcing procedural fairness across all branches of government.

In contemporary governance, natural justice is increasingly applied beyond courts to regulatory authorities, disciplinary committees, environmental tribunals, educational institutions, tax authorities, and professional bodies. Consequently, the principles of fair trial now influence virtually every sphere of public administration.

3.12 Contemporary Challenges to Fair Trial and Natural Justice

a) Delay in Justice Delivery: India continues to face significant judicial backlog. Millions of cases remain pending before various courts, resulting in prolonged detention of under trial prisoners, increased litigation costs, and diminished public confidence. Strengthening judicial infrastructure, increasing judicial appointments, promoting alternative dispute resolution, and expanding digital courts remain essential reforms.

b) Media Trials: The growth of television debates, online news portals, and social media has contributed to the phenomenon of "media trials." Sensational reporting may influence public opinion, damage reputations, intimidate witnesses, and indirectly affect judicial proceedings. Although freedom of the press is constitutionally protected, responsible journalism is essential to preserve the presumption of innocence.

c) Under-trial Prisoners: A significant proportion of India's prison population consists of under trial prisoners who have not yet been convicted. Factors such as poverty, inadequate legal representation, delayed investigation, and overcrowded courts often prolong detention. Strengthening legal aid and ensuring speedy trials remain essential for addressing this challenge.

d) Access to Legal Aid: Despite constitutional guarantees, many economically disadvantaged individuals remain unaware of their legal rights or unable to access competent legal representation. Enhancing legal literacy, expanding legal aid clinics, strengthening Lok Adalats, and improving awareness regarding the National Legal Services Authority (NALSA) can improve access to justice.

e) Digital Evidence and Artificial Intelligence: Modern criminal investigations increasingly rely upon digital evidence such as emails, CCTV footage, mobile phone records, social media content, biometric information, and artificial intelligence-based technologies. While technological innovations improve efficiency, they also raise concerns regarding, Privacy, Data protection, Authenticity of electronic evidence, Cybersecurity and Transparency in automated decision-making. Courts must ensure that technological advancements do not compromise procedural fairness.

f) Witness Intimidation: Threats, harassment, and social pressure often discourage witnesses from giving truthful testimony. Effective implementation of witness protection programmes remains essential for preserving the integrity of criminal justice.

g) Balancing National Security and Human Rights: Governments frequently face the challenge of combating terrorism, organized crime, cybercrime, and transnational criminal networks while respecting constitutional liberties. Although extraordinary measures may occasionally be necessary, procedural safeguards should not be sacrificed unnecessarily. Democratic societies must continuously balance collective security with individual rights.

3.13 Summary

Fair trial and natural justice constitute the foundation of constitutional democracy and the rule of law. They ensure that justice is administered through procedures that are fair, transparent, impartial, and consistent with human dignity. The right to a fair trial extends beyond criminal proceedings and encompasses civil, administrative, and quasi-judicial processes.The Constitution of India, particularly Articles 14, 20, 21, and 22, provides the constitutional basis for procedural fairness. Through progressive judicial interpretation, the Supreme Court has expanded these guarantees to include legal aid, speedy trial, humane treatment of prisoners, fair investigation, and protection against arbitrary state action.

Natural justice complements the concept of fair trial by requiring impartial decision-makers, reasonable opportunity of hearing, and reasoned decisions. Although these principles are flexible and subject to limited exceptions, they remain indispensable safeguards against arbitrariness. Contemporary challenges such as judicial delays, media trials, technological advancements, and access to justice require continuous legal reforms. Ultimately, the protection of fair trial and natural justice strengthens public confidence in the legal system, safeguards fundamental rights, and reinforces democratic governance.

3.14 Glossary

Fair Trial- A judicial proceeding conducted according to principles of fairness, impartiality, and due process.

Natural Justice- Fundamental principles ensuring fairness in judicial and administrative decision-making.

Audi Alteram Partem- The principle that every person must be given an opportunity to be heard before an adverse decision is made.

Nemo Judex in Causa Sua- The rule that no one should be a judge in his or her own cause.

Presumption of Innocence- The principle that an accused person is considered innocent until proven guilty according to law.

Legal Aid- Free legal assistance provided to persons who cannot afford legal representation.

Speaking Order- A decision that clearly records the reasons supporting the conclusion reached.

Rule of Law- The principle that all persons and authorities are subject to and governed by law.

3.15 SAQs (Short Answer Questions)

1. Define the concept of a fair trial.
2. Explain the principle of *Audi Alteram Partem*.
3. What is meant by the presumption of innocence?
4. Discuss the constitutional basis of fair trial under the Indian Constitution.
5. What is a speaking order, and why is it important?

3.16 MCQs (Multiple Choice Questions)

1. Which Article of the Indian Constitution primarily guarantees protection of life and personal liberty?

(a) Article 19
(b) Article 20
(c) Article 21
(d) Article 22

2. The principle "No one should be a judge in his own cause" is known as:

(a) Res Judicata
(b) Nemo Judex in Causa Sua
(c) Audi Alteram Partem
(d) Habeas Corpus

3. Which landmark case recognized the right to speedy trial as part of Article 21?

(a) Maneka Gandhi v. Union of India
(b) Hussainara Khatoon v. State of Bihar
(c) A.K. Kraipak v. Union of India
(d) D.K. Basu v. State of West Bengal

4. Article 14 of the Constitution guarantees:

(a) Freedom of speech
(b) Equality before law
(c) Freedom of religion
(d) Protection against double jeopardy

5. Which international instrument first comprehensively recognized the right to a fair trial as a human right?

(a) ICCPR
(b) UN Charter
(c) Universal Declaration of Human Rights
(d) Convention against Torture

Answers: 1.C 2.B 3.B 4.B 5.C

3.17 True/False

1. Natural justice applies only to criminal courts.
2. The right to legal aid forms part of Article 21 of the Constitution.
3. A biased judge satisfies the requirements of natural justice.
4. The right to speedy trial has been recognized by the Supreme Court as a fundamental right.
5. Fair trial protects only the rights of the accused and not those of victims.

Answers: 1.F 2.T 3.F 4.T 5.F

3.18 Terminal Questions

1. Explain the concept, significance, and essential components of a fair trial.
2. Discuss the constitutional and international legal framework relating to the right to a fair trial.
3. Examine the principles of natural justice and their significance in administrative law.
4. Critically analyse the role of the Indian judiciary in strengthening fair trial rights through landmark judgments.
5. Discuss the contemporary challenges affecting fair trial and natural justice in India and suggest suitable reforms.

3.19 References

Garg, A. A. (2022). Fair Trial Concerning Natural Justice. *Jus Corpus LJ*, *3*, 135.

Solum, L. B. (2006). Natural justice. *Am. J. Juris.*, *51*, 65.

Harris, D. (1967). The right to a fair trial in criminal proceedings as a human right. *International & Comparative Law Quarterly*, *16*(2), 352-378.

The Constitution of India (as amended up to the Constitution (106th Amendment) Act, 2023). Government of India.

Universal Declaration of Human Rights, 1948.

International Covenant on Civil and Political Rights, 1966.

Legal Services Authorities Act, 1987.

National Legal Services Authority. (2018). *Witness Protection Scheme, 2018*.

https://www.juscorpus.com/wp-content/uploads/2023/03/24.-Aniruddh-Atul-Garg.pdfhttps://nja.gov.in/Concluded_Programmes/2019-20/P-1163_PPTs/1.Right to Fair Trial_Handout.pdf

UNIT 4
RIGHTS OF THE ACCUSED AND VICTIMS

Unit Structure

4.1 Introduction

The criminal justice system is founded on the principle that justice must be administered fairly, impartially, and in accordance with the rule of law. In every criminal proceeding, two principal stakeholders require legal protection: the accused, who faces the coercive power of the State, and the victim, who has suffered harm as a result of the alleged offence. A balanced criminal justice system seeks to protect the rights of both, ensuring that the accused receives a fair trial while the victim obtains justice, protection, and appropriate remedies.

Historically, criminal justice systems largely focused on the prosecution of offenders, treating crimes as offences against the State rather than against individual victims. Consequently, victims often played a limited role in criminal proceedings, while the accused was afforded various procedural safeguards to prevent arbitrary conviction and abuse of state power. Over time, however, developments in constitutional law, human rights jurisprudence, and victimology have shifted the focus toward a more balanced approach that recognizes the rights and interests of both parties.

In India, judicial activism has played a crucial role in expanding the rights of both accused persons and victims. The Supreme Court has recognized the right to speedy trial, free legal aid, protection against custodial violence, fair investigation, witness protection, victim compensation, and privacy of victims of sexual offences. Legislative reforms, including the Bharatiya Nyaya Sanhita, 2023 (BNS), the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), and the Bharatiya Sakshya Adhiniyam, 2023 (BSA), have further modernized criminal justice procedures while emphasizing fairness, transparency, and efficiency.

The challenge before every democratic society is to strike an appropriate balance between protecting the rights of accused persons and ensuring justice for victims. Excessive emphasis on either side may undermine public confidence in the legal system. A criminal justice system that ignores the rights of the accused risks arbitrary punishment and misuse of state power, whereas a system that neglects victims may fail to provide meaningful justice and public trust.

Therefore, understanding the rights of both accused persons and victims is essential for appreciating the broader objectives of human rights, constitutional governance, and the rule of law.

4.2 Objectives

After studying this unit, learners will be able to:

- Explain the concept and significance of the rights of the accused.
- Describe the constitutional and statutory framework protecting accused persons in India.
- Identify the major procedural safeguards available to accused persons.
- Examine the legal and institutional mechanisms for the protection of victims.
- Discuss the international legal framework relating to the rights of accused persons and victims.
- Evaluate contemporary challenges in balancing the rights of accused persons and victims.

4.3 Concept of the Rights of the Accused

The rights of the accused refer to the legal and constitutional safeguards available to a person who is suspected, arrested, charged, or prosecuted for committing an offence. These rights are intended to protect individuals from arbitrary arrest, unlawful detention, coercive investigation, unfair trial, and wrongful conviction.

The recognition of these rights is based on the principle that every person is presumed innocent until proven guilty by a competent court of law. An accusation alone does not deprive an individual of fundamental rights or human dignity. Consequently, the criminal justice system imposes strict procedural obligations upon investigating agencies, prosecutors, and courts to ensure fairness throughout the criminal process.

4.4 Importance of the Rights of the Accused

The rights of the accused are indispensable for preserving constitutional democracy and preventing arbitrary exercise of state power. Criminal investigations involve significant coercive powers, including arrest, detention, interrogation, search, seizure, and imprisonment. Without adequate safeguards, these powers may be misused against political opponents, journalists, minorities, human rights defenders, or vulnerable communities.

The protection of accused persons serves several important purposes. First, it safeguards individual liberty and human dignity. Second, it ensures that criminal convictions are based upon reliable evidence rather than coercion or prejudice. Third, it promotes public confidence in the judicial system by ensuring transparency and fairness. Fourth, it reduces the possibility of wrongful convictions. It also, reinforces the constitutional principle that the rule of law governs all state action.

A criminal justice system that respects the rights of the accused ultimately benefits society as a whole by strengthening legitimacy, accountability, and public trust.

4.5 Constitutional and Legal Framework Protecting the Rights of the Accused

The Indian legal system provides extensive constitutional and statutory safeguards for accused persons. These protections are derived primarily from the Constitution, criminal procedure laws, evidence law, and judicial decisions.

a) Article 14, Equality Before Law: Article 14 guarantees equality before the law and equal protection of the laws. Every accused person, regardless of caste, religion, gender, language, nationality, or socio-economic status, is entitled to equal treatment before courts and investigating agencies. The principle prohibits arbitrary discrimination and requires that criminal laws be applied uniformly. Judicial decisions have consistently held that arbitrariness is inconsistent with Article 14.

b) Article 20, Protection in Respect of Conviction for Offences: Article 20 provides three important constitutional safeguards: **Protection Against Ex Post Facto Laws, Protection Against Double Jeopardy, Protection Against Self-Incrimination**

c) Article 21, Protection of Life and Personal Liberty: Article 21 provides that no person shall be deprived of life or personal liberty except according to a procedure established by law. The Supreme Court, particularly in Maneka Gandhi v. Union of India (1978), interpreted this provision expansively, holding that the procedure must be fair, just, and reasonable. Thus, Article 21 has become the principal constitutional source of procedural rights in India.

d) Article 22, Protection Against Arbitrary Arrest and Detention: Article 22 guarantees important safeguards immediately after arrest. According to this every arrested person has the right, to be informed of the grounds of arrest, to consult and be defended by a legal practitioner of his or her choice, to be produced before the nearest magistrate within twenty-four hours of arrest (excluding travel time), not to be detained beyond twenty-four hours without the authorization of a magistrate. These safeguards seek to prevent arbitrary detention, illegal confinement, and custodial abuse.

4.6 Major Rights of the Accused

The rights of the accused are fundamental safeguards designed to ensure fairness, prevent arbitrary exercise of state power, and uphold the rule of law. These rights operate throughout the criminal justice process from investigation and arrest to trial, sentencing, appeal, and even imprisonment. They not only protect individual liberty but also enhance the legitimacy and credibility of the criminal justice system.

a) Presumption of Innocence: The presumption of innocence is one of the oldest and most fundamental principles of criminal jurisprudence. It means that every accused person is presumed innocent until proven guilty by a competent court of law. This principle places the burden of proof upon the prosecution, which must establish the guilt of the accused beyond reasonable doubt. The accused is not required to prove innocence; rather, the prosecution must prove guilt through legally admissible evidence. The presumption of innocence protects individuals from wrongful conviction based on suspicion, public opinion, or media narratives. It also reinforces the constitutional guarantee of dignity and equality before law. Internationally, this principle is recognized under Article 11 of the Universal Declaration of Human Rights (UDHR) and Article 14(2) of the International Covenant on Civil and Political Rights (ICCPR).

b) Right to Equality Before Law: Every accused person is entitled to equal treatment before the law regardless of religion, caste, gender, ethnicity, language, nationality, economic status, or political affiliation. Article 14 of the Constitution ensures that criminal laws are applied uniformly and prohibits arbitrary discrimination by investigating agencies, prosecutors, or courts. Equality before law also requires that similarly situated accused persons receive similar treatment in matters such as bail, sentencing, legal aid, and procedural safeguards.

c) Right to be Informed of the Grounds of Arrest and Charges: An accused cannot effectively defend himself or herself without knowing the reasons for arrest or the nature of the allegations. Article 22(1) of the Constitution guarantees that every arrested person must be informed of the grounds of arrest as soon as possible. Similarly, criminal procedure requires that the accused be informed of the charges framed against them in clear and understandable language. This enables adequate preparation of the defence and prevents surprise during trial.

d) Right to Legal Representation and Free Legal Aid: The right to legal representation ensures that an accused receives professional legal assistance throughout criminal proceedings. Article 22(1) guarantees the right to consult and be defended by a legal practitioner of one's choice. However, access to justice should not depend solely upon financial capacity. Therefore, Article 21, as interpreted by the Supreme Court, requires the State to provide free legal aid to persons who cannot afford legal services.

e) Right Against Arbitrary Arrest and Detention: Arbitrary arrest constitutes one of the gravest threats to personal liberty. Constitutional and statutory safeguards seek to ensure that arrest is carried out only according to lawful procedures. In D.K. Basu v. State of West Bengal (1997), the Supreme Court laid down detailed guidelines governing arrest and detention. These include preparation of an arrest memo, informing relatives or friends of the arrested person, conducting medical examinations, maintaining arrest records, and ensuring judicial oversight.

f) Right Against Self-Incrimination: Article 20(3) of the Constitution provides that no accused person shall be compelled to be a witness against himself or herself. This protection prevents investigating agencies from obtaining confessions through torture, coercion, threats, inducements, or psychological pressure. However, this protection does not prohibit authorities from collecting physical evidence such as fingerprints, handwriting samples, voice samples, or DNA evidence through lawful procedures.

g) Right to Silence: Closely associated with the privilege against self-incrimination is the right to silence. An accused person cannot be compelled to confess guilt or answer incriminating questions. Silence alone cannot ordinarily be treated as evidence of guilt. The right to silence protects the dignity and autonomy of the individual while preserving the burden of proof upon the prosecution. This principle is recognized in many constitutional democracies and forms an essential component of fair trial rights.

h) Right to a Fair Investigation: A fair trial is impossible without a fair investigation. Investigation constitutes the foundation upon which criminal prosecution is built. Investigating agencies must act impartially and collect both incriminating and exculpatory evidence. They should avoid selective investigation, fabrication of evidence, coercive interrogation, and political interference. The Supreme Court has repeatedly emphasized that fairness in investigation is an integral part of Article 21.

i) Right to Speedy Trial: Delays in criminal proceedings may result in prolonged detention, financial hardship, emotional distress, and deterioration of evidence. Recognizing this problem, the Supreme Court declared the right to speedy trial as part of Article 21 in Hussainara Khatoon v. State of Bihar (1979). But judicial delays continue to remain a significant challenge in India due to heavy pendency of cases, shortage of judges, procedural complexity, and inadequate infrastructure. Measures such as Fast Track Courts, e-Courts, virtual hearings, and case management systems have been introduced to improve judicial efficiency.

j) Right to Bail: Bail is an important safeguard against unnecessary pre-trial detention. The principle underlying bail is that an accused person is presumed innocent until proven guilty and should ordinarily not remain in custody unless detention is necessary to ensure appearance at trial, prevent tampering with evidence, or protect public safety. Indian courts have repeatedly emphasized that "bail is the rule and jail is the exception."

k) Right to Appeal: The right to appeal provides an opportunity for judicial review of convictions and sentences. Higher courts examine whether legal procedures were properly followed, evidence was correctly appreciated, constitutional safeguards were respected, and the punishment imposed is lawful and proportionate. The appellate process serves as an important mechanism for correcting judicial errors and preventing wrongful convictions.

The Court has also recognized compensation as a constitutional remedy for custodial violence in appropriate cases.

l) Right to Humane Treatment During Detention: Loss of personal liberty does not imply loss of human dignity. Prisoners retain all fundamental rights except those necessarily restricted by lawful incarceration. The Supreme Court has repeatedly held that prisoners possess the right to:

- adequate medical care;
- sanitation;
- food and clothing;
- communication with family;
- legal consultation;
- protection against abuse; and
- humane living conditions.

m) Right to Privacy and Confidentiality: Modern criminal investigations increasingly involve digital devices, electronic communication, biometric information, and personal data. Authorities must balance investigative needs with the constitutional right to privacy recognized in Justice K.S. Puttaswamy (Retd.) v. Union of India (2017). Searches, seizures, surveillance, and collection of personal information should be conducted only according to lawful procedures and subject to judicial oversight where required.

4.7 Concept of Victims' Rights

A victim is a person who has suffered physical injury, emotional trauma, mental anguish, economic loss, or impairment of fundamental rights as a result of a criminal act or abuse of power. Victimization may arise from offences such as homicide, assault, sexual violence, domestic violence, trafficking, cybercrime, terrorism, financial fraud, environmental crimes, or other unlawful acts.

The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) defines victims as persons who have suffered harm, individually or collectively, including physical or mental injury, emotional suffering, economic loss, or substantial impairment of their fundamental rights through acts or omissions that violate criminal laws. Traditionally, criminal law regarded crimes primarily as offences against the State. Consequently, the role of victims was generally confined to reporting offences and appearing as witnesses. Modern criminal justice systems, however, increasingly recognize victims as rights-bearing individuals entitled to justice, protection, participation, compensation, and rehabilitation.

Victims' rights seek to restore dignity, reduce secondary victimization, and ensure that victims receive appropriate legal, social, psychological, and financial support throughout the criminal justice process.

4.8 Rights of Victims

Modern criminal justice systems recognize that victims possess independent rights throughout criminal proceedings. These rights seek to ensure fairness, protection, participation, and effective remedies.

a) Right to Access Justice: Every victim has the right to approach competent authorities for investigation and prosecution of offences. Access to justice requires Easy reporting of offences, Registration of complaints, Fair investigation, Efficient prosecution, Judicial remedies and Non-discriminatory treatment. Economic, social, gender-based, linguistic, or geographical barriers should not prevent victims from obtaining justice.

b) Right to Fair and Respectful Treatment: Victims should be treated with dignity, compassion, courtesy, and respect throughout criminal proceedings. Authorities must avoid insensitive questioning, humiliation, discrimination, or unnecessary delay. Respectful treatment reduces psychological trauma and encourages cooperation with the justice system.

c) Right to Information: Victims should receive timely and accurate information regarding, Registration of the case, Progress of investigation, Filing of charge sheet, Dates of hearings, Available support services, etc. Access to information enables victims to participate meaningfully in criminal proceedings and reduces uncertainty.

d) Right to Participate in Criminal Proceedings: Contemporary criminal justice systems increasingly recognize victims as active participants rather than passive witnesses. Victims may have opportunities to Present relevant information, Engage legal counsel where permitted, Challenge certain judicial orders and Participate in compensation proceedings. Victim participation contributes to procedural fairness while ensuring that their interests are adequately represented.

e) Right to Protection: Many victims face intimidation, threats, harassment, or retaliation from offenders. Protection measures may include:

- Police protection;
- Confidentiality of identity;
- Secure transportation;
- Video conferencing;
- In-camera proceedings;
- Relocation in exceptional cases; and
- Witness protection measures.

The objective is to enable victims to participate freely without fear.

f) Right to Compensation: Victim compensation recognizes that criminal punishment alone may not adequately address the harm suffered. The Supreme Court has emphasized that victim compensation forms an important component of restorative justice. Various statutory schemes and state compensation programmes seek to provide financial assistance to victims, particularly survivors of sexual offences, acid attacks, trafficking, and violent crimes.

g) Rights of Women Victims: Women frequently encounter unique forms of victimization requiring gender-sensitive responses. Indian law provides several procedural safeguards, including Recording statements by women police officers where appropriate, Protection of identity of survivors, Medical and psychological assistance, Compensation schemes and Protection against secondary victimization.

h) Rights of Child Victims: Children require special procedural protections because of their age, vulnerability, and developmental needs. Child-friendly procedures include:

- Recording evidence in a supportive environment;
- Avoiding repeated questioning;
- Ensuring confidentiality;
- Presence of support persons where appropriate;
- Psychological counselling; and
- Speedy disposal of cases.

The Protection of Children from Sexual Offences (POCSO) Act, 2012 establishes child-sensitive procedures for investigation and trial.

i) Witness Protection: Victims frequently serve as important witnesses. Fear of retaliation often discourages truthful testimony. Recognizing this challenge, the Supreme Court approved the Witness Protection Scheme, 2018 in Mahender Chawla v. Union of India (2018). The Witness Protection measures include Concealment of identity, Relocation, Police security, Confidential proceedings and Secure transportation. An effective witness protection strengthens both victims' rights and the administration of justice.

4.9 Contemporary Challenges in Protecting the Rights of the Accused and Victims

The administration of criminal justice has become increasingly complex due to changing social conditions, technological advancements, globalization, and emerging forms of crime. While legal systems have expanded the rights of both accused persons and victims, several practical and institutional challenges continue to hinder their effective realization.

Delay in Criminal Justice: One of the most persistent challenges in India is the delay in the disposal of criminal cases. A large number of cases remain pending before various courts due to shortage of judges, procedural delays, inadequate infrastructure, and increasing litigation. For the accused, prolonged proceedings may result in lengthy pre-trial detention, loss of employment, financial hardship, and psychological stress. For victims, delayed justice prolongs trauma, weakens confidence in the legal system, and may reduce the availability of evidence due to fading memories or disappearance of witnesses. Measures such as Fast Track Courts, e-Courts, alternative dispute resolution mechanisms (where appropriate), increased judicial appointments, and improved case management systems are essential for addressing this challenge.

Overcrowding of Prisons and Under trial Prisoners: A significant proportion of India's prison population consists of under trial prisoners who have not yet been convicted. Many remain in custody due to poverty, inability to furnish bail, or delays in investigation and trial. Overcrowded prisons adversely affect living conditions, healthcare, sanitation, and rehabilitation. Such conditions may amount to violations of the constitutional guarantee of dignity under Article 21. Reducing unnecessary pre-trial detention, strengthening legal aid services, and promoting timely disposal of cases are necessary to safeguard the rights of accused persons.

Inadequate Access to Legal Aid: Although the Constitution and the Legal Services Authorities Act, 1987 provide for free legal aid, many economically disadvantaged individuals remain unaware of these services or face practical barriers in accessing competent legal representation. Legal literacy campaigns, expansion of legal aid clinics, strengthening the

National Legal Services Authority (NALSA), and improving the quality of legal assistance are essential to ensure equal access to justice.

Custodial Violence and Police Misconduct: Despite constitutional safeguards and judicial guidelines, incidents of custodial violence, torture, illegal detention, and excessive use of force continue to be reported. Such practices violate human dignity, undermine public confidence in law enforcement agencies, and may result in false confessions or wrongful convictions. Strict compliance with judicial guidelines, independent investigation of custodial deaths, installation of surveillance mechanisms, police reforms, and accountability measures remain crucial for preventing abuse.

Media Trials: The rapid growth of television news, digital media, and social networking platforms has intensified public scrutiny of criminal cases. While media plays an important role in promoting transparency and public awareness, sensational reporting may prejudice public opinion, undermine the presumption of innocence, influence witnesses, invade victims' privacy etc. Responsible journalism and adherence to ethical standards are necessary to balance freedom of expression with the right to a fair trial.

Protection of Victims and Witnesses: Victims and witnesses frequently face intimidation, harassment, and social pressure, particularly in cases involving organized crime, terrorism, sexual offences, domestic violence, or influential accused persons. Although India has adopted the Witness Protection Scheme, effective implementation remains a challenge due to financial, administrative, and logistical constraints. Strengthening witness protection mechanisms is essential for ensuring truthful testimony and successful prosecution.

Gender-Based Violence: Women and girls continue to face serious forms of victimization, including domestic violence, sexual harassment, trafficking, acid attacks, and sexual offences. Although significant legislative reforms have strengthened legal protections, social stigma, delayed reporting, inadequate victim support services, and low conviction rates continue to pose challenges. Gender-sensitive investigation, victim counselling, legal aid, compensation, rehabilitation, and speedy trials are essential components of an effective response.

4.10 Summary

The rights of the accused and victims constitute two indispensable pillars of a fair, humane, and democratic criminal justice system. The rights of the accused safeguard individuals against arbitrary arrest, unlawful detention, coercive investigation, and unfair conviction through constitutional guarantees such as equality before law, fair trial, legal aid, protection against self-incrimination, speedy trial, and judicial oversight. At the same time, modern criminal justice increasingly recognizes that victims possess independent rights to dignity, access to justice, information, participation, protection, compensation, restitution, rehabilitation, and witness protection. The Constitution of India, particularly Articles 14, 20, 21, and 22, together with judicial interpretation and legislative reforms, provides a comprehensive framework for safeguarding the rights of accused persons. Similarly, statutory provisions, victim compensation schemes, witness protection measures, and judicial activism have enhanced the recognition of victims' rights.

The challenge before contemporary criminal justice systems lies in maintaining an appropriate balance between protecting individual liberty and ensuring justice for victims. Fair investigation, impartial courts, effective legal aid, victim support services, technological adaptation, and institutional reforms are essential for achieving this objective. Ultimately, a criminal justice system that simultaneously respects the rights of the accused and the dignity of victims strengthens public confidence, upholds constitutional values, and reinforces the rule of law.

4.11 Glossary

Accused – A person who has been charged with or is suspected of committing a criminal offence but whose guilt has not been established by a court of law.

Victimology- The scientific study of victims, victimization, and the relationship between victims, offenders, and the criminal justice system.

Presumption of Innocence- A legal principle under which every accused person is considered innocent until proven guilty according to law.

Legal Aid- Free legal assistance provided to eligible persons who cannot afford legal representation.

Restitution- Restoration of property or compensation by the offender to the victim for losses resulting from the offence.

Victim Compensation- Financial assistance provided by the State or ordered by a court to compensate victims for harm suffered due to crime.

Witness Protection- Legal and administrative measures designed to protect witnesses and victims from intimidation, threats, or retaliation.

Restorative Justice- An approach to justice that emphasizes repairing harm through participation of victims, offenders, and the community, where appropriate.

4.12 Short Answer Questions

1. Define the rights of the accused and explain their significance in the criminal justice system.
2. What is meant by victim compensation? Discuss its objectives.
3. Explain the concept of the presumption of innocence.
4. Discuss the importance of legal aid for accused persons.
5. What is restorative justice, and how does it differ from the traditional criminal justice approach?

4.13 MCQs (Multiple Choice Questions)

1. Which Article of the Constitution protects an accused person against self-incrimination?

(a) Article 14
(b) Article 19
(c) Article 22
(d) Article 20(3)

2. The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power was adopted in:

(a) 1948
(b) 1966
(c) 1985
(d) 1989

3. Which landmark judgment recognized the right to speedy trial as a fundamental right under Article 21?

(a) Maneka Gandhi v. Union of India
(b) Hussainara Khatoon v. State of Bihar
(c) D.K. Basu v. State of West Bengal
(d) Nipun Saxena v. Union of India

4. The scientific study of victims and victimization is known as:

(a) Criminology
(b) Penology
(c) Victimology
(d) Forensic Science

5. Which of the following is primarily associated with restoring harm suffered by victims?

(a) Restorative justice
(b) Preventive detention
(c) Double jeopardy
(d) Ex post facto law

Answers: 1.D 2.C 3.B 4.C 5.A

4.14 True/False

1. Every accused person is presumed guilty until proven innocent.

2. Free legal aid is recognized as an important component of Article 21 by the Supreme Court.

3. Victims have no right to compensation under modern criminal justice systems.

4. Witness protection contributes to a fair and effective criminal justice process.

5. Restorative justice focuses only on punishing offenders.

Answers: 1.F 2.T 3.F 4.T 5.F

4.15 Terminal Questions

1. Explain the constitutional and statutory safeguards available to accused persons in India.
2. Discuss the evolution, significance, and major rights of victims in the criminal justice system.
3. Examine the role of international human rights instruments in protecting the rights of accused persons and victims.
4. Critically analyse the role of the Indian judiciary in strengthening the rights of accused persons and victims through landmark judgments.
5. Discuss the contemporary challenges in balancing the rights of accused persons and victims in India. Suggest suitable reforms.

4.16 References

Basu, D. D. (2023). *Introduction to the Constitution of India* (27th ed.). LexisNexis.

Jain, M. P. (2022). *Indian Constitutional Law* (9th ed.). LexisNexis.

Kelkar, R. V. (2023). *Criminal Procedure* (7th ed.). Eastern Book Company.

Paranjape, N. V. (2022). *Criminology and Penology with Victimology* (19th ed.). Central Law Publications.

The Constitution of India (as amended up to the Constitution (106th Amendment) Act, 2023). Government of India.

Bharatiya Nyaya Sanhita, 2023.

Bharatiya Nagarik Suraksha Sanhita, 2023.

Bharatiya Sakshya Adhiniyam, 2023.

Legal Services Authorities Act, 1987.

Protection of Children from Sexual Offences Act, 2012.

Universal Declaration of Human Rights, 1948.

International Covenant on Civil and Political Rights, 1966.

United Nations. (1985). *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*.

Convention on the Rights of the Child, 1989.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979.

UNIT 5

CUSTODIAL VIOLENCE AND CONSTITUTIONAL SAFEGUARDS

Unit Structure

5.1 Introduction

The protection of life, liberty, and human dignity is the cornerstone of every democratic society governed by the rule of law. The Constitution of India, as well as international human rights law, recognizes that every individual possesses inherent dignity and fundamental rights that cannot be arbitrarily violated by the State. However, one of the most serious threats to these constitutional values is custodial violence, which refers to the abuse, torture, or ill-treatment of persons while they are in the custody of police, prisons, or other law enforcement agencies.

Custodial violence represents a grave violation of human rights because it involves the misuse of State authority against individuals who are under its protection and control. Persons in custody are particularly vulnerable, as they are deprived of their liberty and are dependent upon public authorities for their safety, health, and well-being. The use of physical assault, mental torture, illegal detention, coercive interrogation, sexual violence, and custodial deaths undermines not only the rights of individuals but also public confidence in the criminal justice system.

The issue of custodial violence is not confined to any single country. It remains a global concern despite constitutional guarantees and international human rights standards. International organizations, including the United Nations, have consistently emphasized that torture and cruel, inhuman, or degrading treatment can never be justified, even during emergencies, armed conflicts, or investigations of serious crimes. Instruments such as the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), and the United Nations Convention against Torture (1984) establish universal standards for the protection of persons deprived of liberty.

Despite the constitutional, statutory, and judicial safeguards, custodial violence continues to pose serious challenges. Factors such as excessive use of force during investigation, lack of accountability, delay in prosecution of offenders, inadequate training of law enforcement personnel, prison overcrowding, and limited awareness of legal rights contribute to the persistence of custodial abuse.

5.2 Objectives

After studying this unit, learners will be able to:

- Explain the meaning, nature, and forms of custodial violence.
- Identify the constitutional safeguards available against custodial violence in India.
- Examine the statutory framework governing arrest, detention, and protection of persons in custody.
- Analyse the role of the judiciary in protecting persons against custodial abuse.
- Evaluate the role of the National Human Rights Commission and other institutions in preventing custodial violence.
- Identify contemporary challenges in addressing custodial violence.

5.3 Concept of Custodial Violence

5.3.1 Meaning and Definition

Custodial violence refers to any act of physical, psychological, emotional, or sexual abuse inflicted upon a person who is under the custody or control of law enforcement authorities or other public officials. It includes acts committed during police custody, judicial custody, prison detention, juvenile homes, detention centres, or any institution where an individual has been deprived of personal liberty by lawful authority.

The expression "custody" signifies the control exercised by the State over an individual. Once a person is arrested or detained, the State assumes a legal and moral responsibility to ensure his or her safety, dignity, and well-being. Any unlawful use of force or abuse by officials during this period constitutes custodial violence. Although Indian law does not provide a single comprehensive statutory definition of custodial violence, the term has been interpreted broadly by courts and human rights institutions to include torture, cruel treatment, degrading punishment, illegal detention, custodial rape, denial of medical care, forced confessions, and custodial deaths.

The National Human Rights Commission defines custodial violence as any form of abuse, torture, or violation of human rights occurring while a person is under the custody of public authorities.

5.3.2 Nature of Custodial Violence

Custodial violence extends far beyond physical assault. It encompasses a wide range of abusive practices that violate human dignity and constitutional guarantees.

(a) Physical Violence

Physical violence includes acts intended to inflict bodily pain or injury, such as:

- Beating with sticks or belts;
- Kicking and punching;
- Electric shocks;
- Suspension in painful positions;
- Burning;
- Use of excessive restraints;
- Assault causing fractures or internal injuries.

Such practices often aim to extract confessions or intimidate detainees.

(b) Psychological or Mental Torture

Mental torture may be equally harmful and includes:

- Threats against family members;
- Sleep deprivation;
- Solitary confinement without justification;
- Humiliation;
- Verbal abuse;
- Mock executions;
- Continuous interrogation;
- Denial of communication with relatives.

Psychological torture may result in long-term emotional trauma, anxiety, depression, and post-traumatic stress disorder.

(c) Sexual Violence

Custodial sexual violence includes:

- Sexual assault;
- Custodial rape;
- Sexual harassment;
- Forced nudity;
- Gender-based humiliation.

Women, children, transgender persons, and other vulnerable groups are particularly susceptible to such abuse.

(d) Illegal Detention

Detaining individuals without lawful authority or beyond the period permitted by law also constitutes custodial violence.

Examples include:

- Failure to produce the arrested person before a magistrate within the prescribed period;
- Secret detention;
- Unrecorded arrests;
- Arbitrary confinement.

Illegal detention violates Articles 21 and 22 of the Constitution.

(e) Custodial Death

Custodial death represents the gravest form of custodial violence.

Deaths may result from:

- Torture;
- Excessive force;
- Medical negligence;
- Suicide due to abuse;
- Failure to provide timely medical treatment.

Every custodial death requires prompt, impartial, and independent investigation.

(f) Denial of Basic Human Needs

Custodial violence may also occur through deliberate deprivation of essential necessities, including:

- Food;

- Drinking water;
- Medical care;
- Sanitation;
- Sleep;
- Communication with family;
- Legal assistance.

Such deprivation violates the inherent dignity of persons deprived of liberty.

5.3.3 Causes of Custodial Violence

Custodial violence arises due to a combination of institutional, legal, administrative, and socio-cultural factors. Pressure to Solve Crimes Police officers often face intense public and political pressure to solve serious crimes quickly. This may encourage the use of coercive interrogation techniques to obtain confessions or information. However, forced confessions undermine the integrity of criminal investigations and frequently lead to wrongful convictions.

a) **Inadequate Professional Training:** Insufficient training in scientific investigation, forensic techniques, and human rights standards may result in excessive reliance upon physical coercion. Modern policing requires investigators to depend upon evidence-based methods rather than custodial interrogation.

b) **Weak Accountability Mechanisms:** In some instances, delayed disciplinary proceedings, ineffective prosecution, inadequate independent oversight, and institutional reluctance to investigate police misconduct contribute to impunity. Effective accountability is essential for preventing abuse of power.

c) **Lack of Awareness of Human Rights:** Both law enforcement personnel and detainees may lack adequate awareness regarding constitutional safeguards and international human rights obligations. Human rights education and continuous professional training are therefore indispensable.

d) **Prison Overcrowding and Poor Infrastructure:** Overcrowded prisons, shortage of staff, inadequate medical facilities, and poor living conditions may contribute to neglect, abuse, and violence within custodial institutions. Improving prison infrastructure and ensuring humane living conditions are essential components of custodial reform.

e) **Social and Institutional Attitudes:** Public perception that harsh treatment is necessary to combat crime sometimes leads to tacit acceptance of custodial violence. However, constitutional democracy requires that even persons accused of serious offences retain their fundamental rights and human dignity until deprived of those rights through lawful procedures. The legitimacy of criminal justice depends not upon the severity of punishment during investigation but upon fair, impartial, and lawful administration of justice.

f) **Technological and Investigative Limitations:** Inadequate access to forensic laboratories, digital investigation tools, and scientific evidence may encourage overreliance on confession-based investigations. Strengthening forensic infrastructure can significantly reduce dependence on coercive interrogation.

5.3.4 Constitutional Safeguard against Custodial Violence

The Constitution of India embodies the fundamental values of human dignity, liberty, equality, and justice. These constitutional guarantees form the primary legal foundation for protecting individuals against custodial violence. Although the Constitution does not explicitly use the expression custodial violence or torture, the Supreme Court has interpreted several provisions expansively to prohibit torture, illegal detention, custodial deaths, and other forms of abuse by State authorities.

The constitutional framework ensures that every person, including those accused of crimes or deprived of liberty, continues to enjoy fundamental rights except to the extent lawfully restricted. The responsibility of the State towards persons in custody is therefore both legal and constitutional.

a) Article 14 (Equality Before Law and Equal Protection of Laws): Article 14 guarantees equality before the law and equal protection of the laws to every person within the territory of India. This provision applies equally to persons in police custody, judicial custody, prisons, detention centres, juvenile institutions, and correctional homes. An individual does not lose constitutional protection merely because he or she has been arrested or convicted. Article 14 prohibits arbitrary exercise of police powers and requires that arrest, detention, interrogation, and investigation be conducted according to fair and reasonable procedures.

b) Article 20 (Protection in Respect of Conviction for Offences): Article 20 provides important safeguards against abuse during criminal investigations and prosecutions.

Protection Against Ex Post Facto Laws

Article 20(1) prohibits retrospective criminal laws. A person cannot be punished for an act that was not an offence when committed, nor can a greater punishment be imposed retrospectively.

Protection Against Double Jeopardy

Article 20(2) ensures that no person shall be prosecuted and punished more than once for the same offence.

Protection Against Self-Incrimination

Article 20(3) provides that no accused person shall be compelled to be a witness against himself or herself.

This safeguard has direct relevance to custodial violence because torture is often inflicted to obtain confessions. The constitutional prohibition against compelled self-incrimination reinforces the principle that investigations must rely upon lawful and scientific methods rather than coercion.

c) Article 21 (Protection of Life and Personal Liberty): Article 21 is the most significant constitutional safeguard against custodial violence. It provides that no person shall be deprived of life or personal liberty except according to a procedure established by law. Initially interpreted narrowly, Article 21 acquired a much broader meaning after the landmark decision in **Maneka Gandhi v. Union of India (1978)**. The Supreme Court held that any procedure depriving a person of liberty must be **fair, just, and reasonable**, and not arbitrary, oppressive, or fanciful.

d) Article 22 (Protection Against Arbitrary Arrest and Detention): Article 22 provides procedural safeguards immediately after arrest. Every arrested person has the right, to be informed of the grounds of arrest, to consult and be defended by a legal practitioner of his or her choice, to be produced before the nearest magistrate within twenty-four hours of arrest (excluding travel time) and not to be detained beyond twenty-four hours without judicial authorization. These safeguards reduce the possibility of illegal detention and custodial abuse by ensuring prompt judicial supervision over police action.

e) Article 32 and 226 (Constitutional Remedies): Article 32 guarantees the right to move the Supreme Court for enforcement of fundamental rights. Victims of custodial violence or their family members may approach the Supreme Court through writ petitions seeking protection of fundamental rights, compensation, independent investigation, production of detainees through habeas corpus, directions against unlawful detention. Dr. B. R. Ambedkar described Article 32 as the "heart and soul" of the Constitution because it provides an effective remedy against violations of fundamental rights.

Similarly article 226 empowers High Courts to issue writs for enforcement of fundamental rights as well as other legal rights.

f) Directive Principles of State Policy and Fundamental Duties: Although the Directive Principles of State Policy (Part IV) are not enforceable by courts, they guide the State in establishing a humane and welfare-oriented legal system. Several Directive Principles support protection against custodial violence by emphasizing social justice, humane conditions of work, public health equal justice and free legal aid.

Similarly, the Fundamental Duties encourage citizens to uphold constitutional values and promote harmony, indirectly reinforcing respect for human dignity and human rights.

5.3.5 Statutory Safeguards Against Custodial Violence

In addition to constitutional guarantees, several statutes regulate arrest, detention, investigation, prison administration, legal aid, and protection of human rights. Together, these laws create a comprehensive legal framework aimed at preventing custodial violence and ensuring accountability.

<u>Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)</u>

The Bharatiya Nagarik Suraksha Sanhita, 2023, which replaced the Code of Criminal Procedure, contains several safeguards intended to protect persons in custody. Important procedural protections include:

- communication of the grounds of arrest;
- preparation of arrest records;
- production before a magistrate within the prescribed time;
- regulation of police custody and judicial custody;
- medical examination of arrested persons where required;
- rights relating to bail;
- judicial supervision over detention.

The BNSS also promotes greater use of technology, electronic records, and audio-visual methods in criminal proceedings, thereby enhancing transparency and reducing opportunities for abuse.

Bharatiya Nyaya Sanhita, 2023 (BNS)

The Bharatiya Nyaya Sanhita defines offences and prescribes punishments applicable to public servants who misuse official authority. Acts such as:

- causing hurt;
- grievous hurt;
- wrongful confinement;
- assault;
- sexual offences;
- criminal intimidation; and
- culpable homicide or murder, may attract criminal liability if committed by officials while exercising custodial powers.

The BNS therefore reinforces accountability by ensuring that law enforcement officials remain subject to the criminal law.

Bharatiya Sakshya Adhiniyam, 2023 (BSA)

The Bharatiya Sakshya Adhiniyam lays down rules governing admissibility and evaluation of evidence. The law discourages reliance upon involuntary confessions obtained through coercion or torture. Courts are expected to examine the voluntariness and reliability of statements before relying upon them. Scientific evidence, forensic investigation, electronic records, and objective documentation reduce dependence upon confession-based investigation and thereby discourage custodial torture.

Protection of Human Rights Act, 1993: The Protection of Human Rights Act, 1993 established National Human Rights Commission (NHRC), State Human Rights Commissions (SHRCs) and Human Rights Courts. The Act empowers these institutions to:

- inquire into complaints of human rights violations;
- investigate custodial deaths;
- inspect prisons and detention centres;
- review safeguards;
- recommend compensation;
- advise governments regarding policy reforms.

Although many of the Commission's recommendations are advisory, they carry significant persuasive value and have contributed substantially to improving custodial accountability.

Prison Laws and Prison Manuals: Prisons are governed by statutory provisions, prison manuals, and administrative regulations prescribing standards regarding, accommodation, food, sanitation, healthcare, discipline, interviews with family members etc. Judicial decisions have repeatedly held that prison administration must respect constitutional guarantees of dignity and humane treatment.

Role of the National Human Rights Commission (NHRC) and State Human Rights Commissions (SHRCs): The NHRC has played a pioneering role in addressing custodial violence. It has issued detailed guidelines regarding, reporting of custodial deaths, mandatory magisterial inquiries, post-mortem examinations, videography of autopsies, preservation of evidence, compensation etc. State Human Rights Commissions perform similar functions at the state level and monitor compliance with human rights standards.Their recommendations have encouraged greater transparency in police and prison administration.

5.4 International Human Rights Framework

Custodial violence is universally recognized as a serious violation of human rights. The prohibition of torture and cruel, inhuman, or degrading treatment is regarded as a peremptory norm (jus cogens) of international law, meaning that no State can justify or derogate from it under any circumstances, including war, terrorism, or public emergencies. Several international instruments establish standards for the treatment of persons deprived of liberty and guide national legal systems in protecting detainees.

a) Universal Declaration of Human Rights (UDHR), 1948

The Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly on 10 December 1948, laid the foundation of modern international human rights law. Several provisions are directly relevant to custodial violence:

- Article 3 recognizes the right to life, liberty, and security of person.
- Article 5 states that no one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment.
- Article 9 prohibits arbitrary arrest, detention, or exile.
- Article 10 guarantees the right to a fair and public hearing before an independent and impartial tribunal.
- Article 11 recognizes the presumption of innocence until proven guilty.

Although the UDHR is not legally binding, it has significantly influenced constitutional jurisprudence, international treaties, and domestic legislation across the world, including India.

b) International Covenant on Civil and Political Rights (ICCPR), 1966

India ratified the ICCPR in 1979, thereby undertaking to respect internationally recognized civil and political rights. Important provisions include:

- Article 7: Absolute prohibition of torture and cruel, inhuman, or degrading treatment or punishment.

- Article 9: Protection against arbitrary arrest and detention.
- Article 10: Persons deprived of liberty shall be treated with humanity and respect for their inherent dignity.
- Article 14: Right to a fair trial and presumption of innocence.

Indian courts have frequently relied upon the ICCPR while interpreting Articles 21 and 22 of the Constitution.

c) <u>United Nations Convention Against Torture (UNCAT), 1984</u>

The Convention Against Torture (CAT) is the principal international treaty dealing specifically with torture. It defines torture as any act by which severe physical or mental pain or suffering is intentionally inflicted by or with the consent of a public official for purposes such as:

- obtaining information;
- extracting confessions;
- punishment;
- intimidation; or
- discrimination.

The Convention requires States to:

- criminalize torture;
- investigate allegations promptly;
- prosecute offenders;
- provide remedies and compensation to victims; and
- prevent torture through institutional safeguards.

India signed the Convention in 1997 but has not yet ratified it. Nevertheless, Indian courts have repeatedly emphasized that constitutional protections substantially reflect the principles embodied in the Convention.

d) <u>United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)</u>

Revised in 2015, the Nelson Mandela Rules establish internationally accepted standards governing prison administration. They emphasize:

- humane treatment of prisoners;
- prohibition of torture;
- adequate healthcare;
- sanitation;
- nutrition;
- access to legal assistance;
- communication with family;
- independent inspection of prisons.

These Rules reinforce the principle that imprisonment involves deprivation of liberty—not deprivation of dignity.

e) Code of Conduct for Law Enforcement Officials (1979)

The UN Code of Conduct establishes ethical standards for police and other law enforcement personnel. It requires officials to:

- respect human dignity;
- protect human rights;
- use force only when strictly necessary;
- avoid torture;
- maintain professional integrity.

These principles have influenced police training programmes worldwide.

5.5 Contemporary Challenges in Preventing Custodial Violence

Despite constitutional guarantees, statutory safeguards, judicial interventions, and international human rights standards, custodial violence continues to pose a significant challenge to the criminal justice system in India. The persistence of such incidents highlights the gap between legal protections and their implementation. Several structural, institutional, and socio-economic factors contribute to this problem.

a) **Overreliance on Confession-Based Investigation:** One of the major causes of custodial violence is the continued dependence on confessions rather than scientific investigation. In some cases, investigating agencies resort to coercive interrogation methods to obtain information quickly, especially in high-profile or serious offences. Modern criminal investigation should rely on forensic science, digital evidence, DNA analysis, cyber forensics, fingerprint examination, and other scientific techniques instead of coercion. Strengthening forensic infrastructure can significantly reduce the likelihood of custodial abuse.

b) **Delay in Investigation and Trial:** The heavy pendency of criminal cases often results in prolonged police and judicial custody. Delayed investigations and lengthy trials not only affect the rights of accused persons but also increase the possibility of custodial abuse and mental trauma. Judicial delays also undermine public confidence in the justice system and affect victims awaiting justice.

c) Prison Overcrowding: Indian prisons continue to face severe overcrowding, with a large proportion of inmates being undertrial prisoners. Overcrowded prisons often lead to inadequate healthcare, poor sanitation, insufficient accommodation, increased violence among inmates, psychological stress and limited access to rehabilitation programmes. Reducing unnecessary pre-trial detention, granting bail where appropriate, and improving prison infrastructure are essential reforms.

d) **Lack of Accountability:** Although custodial violence is punishable under law, disciplinary and criminal proceedings against erring officials are sometimes delayed or ineffective. Fear of institutional repercussions, reluctance to report misconduct, and procedural complexities may discourage accountability. Independent investigations, prompt prosecution, and transparent disciplinary mechanisms are necessary to deter abuse of authority.

e) **Vulnerability of Marginalized Groups:** Persons belonging to economically weaker sections, Scheduled Castes, Scheduled Tribes, minorities, migrants, women, children, persons with disabilities, and transgender persons may face greater vulnerability in custodial settings. Language barriers, illiteracy, lack of legal awareness, and limited access to legal representation often increase the risk of abuse. Ensuring equal protection and non-discriminatory treatment remains a constitutional obligation.

f) **Public Perception and Social Acceptance:** In some sections of society, custodial violence is mistakenly viewed as an effective means of controlling crime. Such attitudes weaken respect for constitutional principles and encourage unlawful practices. A democratic society governed by the rule of law cannot justify torture or illegal methods, regardless of the nature of the offence.

5.6 Preventive Measures and Reforms

a) Strengthening Police Reforms

Effective police reforms are fundamental to preventing custodial violence and ensuring professional law enforcement. Reforms should focus on enhancing institutional independence, transparency, accountability, merit-based recruitment, regular capacity-building, and ethical policing. The implementation of the Supreme Court's directions in *Prakash Singh v. Union of India* (2006) can significantly improve police functioning by reducing external interference and promoting professionalism and respect for human rights.

b) Scientific Investigation

The use of scientific methods of investigation reduces dependence on confession-based interrogation and minimizes the risk of custodial torture. Modern investigative techniques such as DNA profiling, fingerprint analysis, cyber forensics, digital evidence, forensic laboratories, and proper crime scene management improve the accuracy, credibility, and fairness of criminal investigations while ensuring that evidence, rather than coercion, forms the basis of prosecution.

c) Installation of CCTV Cameras

The installation of CCTV cameras in police stations, lock-ups, and interrogation rooms promotes transparency and accountability in custodial settings. Continuous video recording discourages torture and other forms of custodial abuse, protects police personnel from false allegations, preserves valuable evidence, and strengthens public confidence in the criminal justice system. Proper maintenance and secure preservation of recordings are equally essential.

d) Strengthening Judicial Oversight

Judicial oversight serves as an important safeguard against custodial violence. Magistrates should carefully examine arrested persons during their production before the court, inquire about allegations of ill-treatment, order medical examinations whenever necessary, ensure access to legal representation, and verify compliance with legal procedures relating to arrest and detention. Active judicial supervision helps prevent abuse of authority and protects constitutional rights.

e) Effective Legal Aid

Timely access to legal assistance is an essential safeguard against unlawful detention and custodial abuse. Free and competent legal representation from the earliest stage of arrest enables accused persons to challenge illegal detention, seek medical assistance where required, and ensure compliance with constitutional and statutory safeguards. Strengthening legal aid institutions and promoting legal awareness can significantly improve access to justice.

f) Independent Investigation of Custodial Deaths

Every custodial death or allegation of torture should be investigated promptly by an independent agency to ensure impartiality and public confidence. Independent investigations help preserve evidence, identify responsible officials, establish accountability, and provide justice to victims and their families. Such investigations also serve as an effective deterrent against future violations.

g) Human Rights Education

Regular human rights education and training programmes should be organized for police officers, prison officials, prosecutors, judicial officers, and medical professionals. Such programmes enhance awareness of constitutional values, international human rights standards, ethical policing practices, and lawful methods of investigation, thereby reducing the likelihood of custodial violence.

h) Prison Reforms

Comprehensive prison reforms are essential for protecting the rights and dignity of persons in custody. Measures such as reducing overcrowding, improving healthcare and sanitation, providing vocational and educational programmes, strengthening mental health services, and ensuring regular prison inspections contribute to a more humane correctional system. A rehabilitative approach is more consistent with constitutional principles than a purely punitive one.

i) Ratification of the Convention Against Torture

Although India signed the United Nations Convention Against Torture (UNCAT) in 1997, it has not yet ratified it. Ratification of the Convention, along with the enactment of comprehensive domestic legislation specifically criminalizing torture, would strengthen India's legal framework and reinforce its commitment to preventing custodial violence in accordance with international human rights standards.

j) Public Awareness and Civil Society Participation

Civil society organizations, legal aid institutions, academic bodies, the media, and human rights organizations play a crucial role in promoting transparency and accountability within the criminal justice system. Public awareness regarding constitutional rights and available legal remedies empowers individuals to report violations, seek justice, and actively participate in safeguarding human rights, thereby contributing to the prevention of custodial violence.

5.7 Summary

Custodial violence is one of the gravest violations of human rights because it involves abuse of authority by institutions entrusted with protecting the law. It encompasses physical torture, psychological abuse, sexual violence, illegal detention, denial of medical care, and custodial deaths. Such practices undermine the rule of law, erode public confidence in the justice system, and violate the constitutional guarantees of dignity, liberty, and equality. The Constitution of India provides robust safeguards through Articles 14, 20, 21, 22, 32, and 226, while statutes such as the Bharatiya Nagarik Suraksha Sanhita, 2023, the Bharatiya Nyaya Sanhita, 2023, the Bharatiya Sakshya Adhiniyam, 2023, the Protection of Human Rights Act, 1993, and the Legal Services Authorities Act, 1987 establish additional procedural protections. International instruments such as the UDHR, ICCPR, UNCAT, and the Nelson Mandela Rules further reinforce these standards.

However, persistent challenges such as delayed investigations, prison overcrowding, inadequate accountability, insufficient training, and limited forensic capacity continue to impede effective implementation. Addressing these issues requires comprehensive police reforms, judicial vigilance, technological innovation, independent oversight, legal awareness, and a firm commitment to constitutional values.

Ultimately, the protection of persons in custody is not merely a legal obligation but a reflection of the maturity of a democratic society governed by the rule of law. Respect for human dignity must remain the guiding principle of all criminal justice institutions.

5.8 Glossary

Custodial Violence – Physical, mental, sexual, or psychological abuse inflicted on a person while under the custody or control of law enforcement or prison authorities.

Custodial Death – The death of a person while in police, judicial, or other authorized custody.

Torture – Intentional infliction of severe physical or mental pain or suffering by a public official to obtain information, punishment, intimidation, or coercion.

Judicial Custody – Detention of an accused person under the authority and supervision of a judicial magistrate or court.

Police Custody – Custody of an accused person under the control of the police for investigation, subject to legal limitations.

Habeas Corpus – A constitutional writ requiring authorities to produce a detained person before a court to determine the legality of detention.

Human Dignity – The inherent worth and value of every individual, requiring respectful and humane treatment under all circumstances.

Forensic Investigation – Scientific examination and analysis of evidence to assist criminal investigations and judicial proceedings.

5.9 SAQs (Short Answer Questions)

1. Define custodial violence and explain its various forms.

2. Discuss the constitutional significance of Article 21 in preventing custodial violence.
3. What are the major functions of the National Human Rights Commission in relation to custodial violence?
4. Explain the importance of the D.K. Basu guidelines.
5. How can forensic investigation help reduce custodial violence?

5.10 MCQs (Multiple Choice Questions)

1. Which Article of the Constitution is regarded as the principal source of protection against custodial violence?

(a) Article 15
(b) Article 19
(c) Article 21
(d) Article 25

2. The landmark judgment that laid down detailed guidelines governing arrest and detention is:

(a) Joginder Kumar v. State of U.P.
(b) D.K. Basu v. State of West Bengal
(c) Nilabati Behera v. State of Orissa
(d) Sunil Batra v. Delhi Administration

3. The Protection of Human Rights Act was enacted in:

(a) 1987
(b) 1991
(c) 1993
(d) 1997

4. Which international treaty specifically addresses torture?

(a) ICCPR
(b) CEDAW
(c) Convention Against Torture (CAT)
(d) Convention on the Rights of the Child

5. The National Human Rights Commission was established under the:

(a) Bharatiya Nagarik Suraksha Sanhita, 2023
(b) Legal Services Authorities Act, 1987
(c) Bharatiya Nyaya Sanhita, 2023
(d) Protection of Human Rights Act, 1993

Answers: 1.C 2.B 3.C 4.C 5.D

5.11 True/False

1. Persons in custody lose all their fundamental rights after arrest.

2. Article 21 has been interpreted by the Supreme Court to include protection against torture and inhuman treatment.

3. The NHRC has no role in investigating custodial deaths.

4. The D.K. Basu judgment established important procedural safeguards relating to arrest and detention.

5. Scientific investigation can reduce dependence on confession-based interrogation.

Answers: 1.F 2.T 3.F 4.T 5.T

5.12 Terminal Questions

1. Explain the constitutional and statutory safeguards available against custodial violence in India.
2. Discuss the international human rights framework relating to the prevention of torture and custodial violence.
3. Critically analyse the role of the Supreme Court of India in protecting persons against custodial violence through landmark judgments.
4. Examine the causes and consequences of custodial violence and suggest suitable reforms.
5. Evaluate the role of the National Human Rights Commission in preventing custodial violence and protecting prisoners' rights.

5.13 References

Sharma, D. K. (2016). RIGHT AGAINST TORTURE AND CUSTODIAL VIOLENCE.
Jain, A. D. (2025). Criminal Justice and Human Rights: A Discussion of Custodial Violence, Pretrial Detention and Capital punishment. *Journal of Legal Research and Polity*, *2*(2), 15-30.
https://www.iilsindia.com/blogs/custodial-violence-in-india-a-human-rights-crisis-and-the-call-for-legal-education-reform/
https://www.svpnpa.gov.in/static/gallery/docs/14_custodiandeaths.pdf
https://www.lawjournals.net/assets/archives/2025/vol7issue2/7059.pdf
Basu, D. D. (2023). Introduction to the Constitution of India (27th ed.). LexisNexis.
Jain, M. P. (2022). Indian Constitutional Law (9th ed.). LexisNexis.
Kelkar, R. V. (2023). Criminal Procedure (7th ed.). Eastern Book Company.
Paranjape, N. V. (2022). Criminology and Penology with Victimology (19th ed.). Central Law Publications.

UNIT- 6

JUVENILE JUSTICE AND PROTECTION OF CHILDREN

Structure

6.1 INTRODUCTION

Children occupy a unique position in law and society. They are recognized as individuals possessing inherent rights, yet they are also acknowledged as being in a stage of physical, psychological, and emotional development that renders them vulnerable and in need of special protection and care. This dual recognition of children as rights-holders and as a category requiring protective intervention forms the conceptual foundation of juvenile justice and child protection frameworks worldwide.

Juvenile justice refers to the specialized system of laws, institutions, and processes designed to deal with children who come into conflict with the law, as well as those who require care and protection due to circumstances of abuse, neglect, exploitation, or abandonment. Unlike the adult criminal justice system, which is primarily punitive in orientation, juvenile justice systems are built around principles of rehabilitation, reintegration, and the best interests of the child, recognizing that children who commit offences often do so as a result of social, economic, or familial circumstances beyond their control, and that punitive measures are frequently counterproductive to their long-term development and reintegration into society.

This unit examines the historical evolution of juvenile justice, the international and national legal frameworks that govern it, the key principles underlying child protection systems, the institutional architecture established to implement these frameworks, and the persistent challenges that continue to affect the realization of children's rights worldwide.

6.2 LEARNING OBJECTIVES

By the end of this unit, learners should be able to:

1. Understand the concept and evolution of juvenile justice as a distinct legal and social framework.

2. Identify the key international and national instruments governing the rights and protection of children.

3. Explain the structure, institutions, and processes involved in juvenile justice administration.

4. Analyze the guiding principles underlying child protection and juvenile justice systems.

5. Critically evaluate the challenges facing juvenile justice systems and propose measures for reform.

6.3 HISTORICAL EVOLUTION OF JUVENILE JUSTICE

Early Approaches

Historically, children who committed offences were often tried and punished within the same legal framework as adults, with little recognition of their distinct developmental needs. It was only in the late nineteenth and early twentieth centuries that reformist movements in various parts of the world began advocating for separate legal treatment of children, arguing that the state should act as parens patriae a guardian of last resort for children who lacked adequate parental care or who had come into conflict with the law.

Emergence of Specialized Juvenile Courts

This reformist movement led to the establishment of the world's first juvenile courts in the late nineteenth century, which were designed to handle child offenders separately from adults, with an emphasis on rehabilitation, informal proceedings, and individualized assessment rather than adversarial criminal trials. This model gradually spread internationally, influencing the development of juvenile justice systems in numerous countries throughout the twentieth century.

Post-War International Development

The aftermath of the Second World War and the subsequent expansion of international human rights law brought renewed attention to the rights of children as a distinct category requiring international legal protection, culminating in a series of international instruments that progressively articulated children's rights and standards for juvenile justice administration.

6.4 INTERNATIONAL LEGAL FRAMEWORK

The United Nations Convention on the Rights of the Child (UNCRC), 1989

The UNCRC is the most widely ratified human rights treaty in the world and represents the cornerstone of international child rights law. It articulates a comprehensive framework of civil, political, economic, social, and cultural rights for children, organized around four guiding principles: non-discrimination, the best interests of the child, the right to survival and development, and the right to participation. The Convention specifically addresses juvenile justice, requiring states to establish a minimum age of criminal responsibility, ensure that detention of children is used only as a measure of last resort and for the shortest appropriate period, and promote the establishment of specialized laws, procedures, and institutions for children in conflict with the law.

The Beijing Rules (1985)

Formally known as the UN Standard Minimum Rules for the Administration of Juvenile Justice, the Beijing Rules provide detailed guidance on the administration of juvenile justice, emphasizing the need for specialized personnel, proportionality in sentencing, and the promotion of the well-being of the juvenile as the primary consideration in all proceedings.

The Riyadh Guidelines (1990)

The UN Guidelines for the Prevention of Juvenile Delinquency, known as the Riyadh Guidelines, emphasize a preventive approach, calling for comprehensive social policies addressing the root causes of juvenile delinquency, including poverty, family breakdown, and lack of access to education, rather than relying solely on punitive or corrective measures after offences have occurred.

The Havana Rules (1990)

The UN Rules for the Protection of Juveniles Deprived of their Liberty, known as the Havana Rules, establish minimum standards for the treatment of children in detention, emphasizing humane conditions, access to education and healthcare, contact with family, and safeguards against abuse within institutional settings.

Optional Protocols to the UNCRC

Additional protocols to the UNCRC address specific areas of concern, including the involvement of children in armed conflict, and the sale of children, child prostitution, and child pornography, reflecting the evolving understanding of the diverse threats to children's safety and well-being.

6.5 NATIONAL LEGAL FRAMEWORKS: THE INDIAN EXAMPLE

Many countries have enacted domestic legislation to give effect to international child rights obligations. India's legal framework offers a useful illustrative example of how these international principles are translated into national law.

The Juvenile Justice (Care and Protection of Children) Act

India's principal legislation governing juvenile justice establishes a comprehensive framework addressing both children in conflict with law and children in need of care and protection. It defines a "child" as any person below the age of eighteen years and establishes distinct institutional mechanisms for handling each category of children.

Children in Conflict with Law

The Act establishes Juvenile Justice Boards (JJBs) as specialized quasi-judicial bodies responsible for handling cases involving children alleged to have committed offences. These Boards typically comprise a judicial member and two social work experts, at least one of whom must be a woman, reflecting the emphasis on a multidisciplinary and welfare-oriented approach rather than a purely adversarial legal process. The law also incorporates provisions allowing certain older adolescents accused of heinous offences to be tried through a specialized preliminary assessment process, reflecting an ongoing tension between rehabilitative ideals and public concerns regarding serious crimes committed by older juveniles.

Children in Need of Care and Protection

For children who have been abandoned, orphaned, trafficked, abused, or otherwise require protective intervention, the law establishes Child Welfare Committees (CWCs) as the primary decision-making bodies responsible for determining appropriate rehabilitation and protection measures, including institutional care, foster care, sponsorship, or adoption.

Adoption Framework

The law also establishes a streamlined and centralized adoption framework, overseen by a specialized statutory authority, to facilitate both domestic and inter-country adoption in a manner that prioritizes the best interests of the child and prevents illegal or unregulated adoption practices.

Special Legislation on Child Sexual Abuse

Recognizing the particular vulnerability of children to sexual offences, many jurisdictions have enacted specialized legislation providing for child-friendly procedures in the investigation, prosecution, and trial of sexual offences against children, including provisions for in-camera proceedings, the presence of support persons, and mandatory reporting requirements for known or suspected abuse.

6.6 GUIDING PRINCIPLES OF JUVENILE JUSTICE AND CHILD PROTECTION

Best Interests of the Child

This foundational principle requires that all actions concerning children whether by courts, administrative authorities, or legislative bodies must treat the well-being and welfare of the child as the primary consideration, guiding every stage of decision-making in juvenile justice and child protection systems.

Principle of Non-Stigmatization

Juvenile justice systems generally emphasize the need to protect children from the stigma associated with formal criminal processes, favouring confidentiality of proceedings, sealed records, and rehabilitative language over punitive labelling of children as "criminals" or "offenders."

Principle of Proportionality

This principle requires that any measures imposed on a child in conflict with the law must be proportionate not only to the circumstances and gravity of the offence, but also to the child's age, maturity, and individual circumstances, ensuring that responses are calibrated rather than uniformly punitive.

Right to Participation

Children have the right to be heard and to participate meaningfully in decisions affecting them, in a manner appropriate to their age and maturity, reflecting the broader recognition of children as active rights-holders rather than passive subjects of adult decision-making.

Presumption of Innocence and Doli Incapax

Most legal systems establish a minimum age of criminal responsibility below which children are presumed incapable of forming criminal intent (doli incapax), recognizing that very young children lack the cognitive and moral development necessary to be held criminally responsible for their actions.

Diversion and Restorative Justice

Contemporary juvenile justice systems increasingly emphasize diversion redirecting children away from formal judicial processes toward community-based or restorative interventions and restorative justice approaches that focus on repairing harm, encouraging accountability, and facilitating reconciliation between the child, the victim, and the community, rather than emphasizing retribution.

Institutionalization as a Last Resort

International standards consistently emphasize that deprivation of liberty, including institutional detention, should be used only as a measure of last resort and for the shortest appropriate period, with preference given to community-based alternatives wherever possible.

6.7 INSTITUTIONAL ARCHITECTURE FOR CHILD PROTECTION

Juvenile Justice Boards

As noted above, these specialized bodies adjudicate cases involving children in conflict with the law, applying welfare-oriented procedures distinct from adult criminal courts.

Child Welfare Committees

These committees serve as the primary authority for determining the appropriate care, protection, treatment, and rehabilitation of children in need of care and protection, including those who are orphaned, abandoned, trafficked, or subjected to abuse.

Specialized Police Units

Many jurisdictions have established Special Juvenile Police Units or Child Welfare Police Officers, trained specifically to handle cases involving children in a manner sensitive to their developmental needs, minimizing trauma during investigation and ensuring compliance with child-friendly procedural safeguards.

Observation Homes, Special Homes, and Shelter Homes

Institutional facilities are established to provide temporary or long-term residential care for children, ranging from observation homes for children pending inquiry, to special homes for children found to require extended rehabilitative placement, to shelter homes providing immediate protective custody for children in urgent need of care.

Child Protection Services and Helplines

Government-run child protection services, often supported by dedicated helplines, provide mechanisms for reporting cases of child abuse, neglect, or exploitation, facilitating rapid intervention and connecting children with appropriate protective and rehabilitative services.

Role of Civil Society and NGOs

Non-governmental organizations play a critical complementary role in child protection systems, often operating shelter homes, providing counselling and rehabilitation services, conducting awareness campaigns, and advocating for policy reform, frequently filling gaps left by under-resourced state institutions.

6.8 KEY CHILD PROTECTION CONCERNS

Child Labour

Despite widespread legal prohibitions, child labour remains a persistent global challenge, particularly in agriculture, domestic work, and informal industrial sectors. Addressing child labour requires not only legal enforcement but also broader interventions addressing poverty, access to education, and family economic security.

Child Trafficking

Children remain particularly vulnerable to trafficking for purposes including forced labour, sexual exploitation, and illegal adoption. Combating trafficking requires coordinated action across law enforcement, judicial systems, and social welfare agencies, along with cross-border cooperation given the often transnational nature of trafficking networks.

Child Sexual Abuse and Exploitation

Child sexual abuse remains significantly underreported due to stigma, fear, and lack of awareness. Specialized legal frameworks, child-friendly investigative and judicial procedures, and mandatory reporting requirements aim to improve detection, prosecution, and support for child survivors.

Street Children and Homelessness

Children living or working on the streets face heightened risks of exploitation, violence, and lack of access to education and healthcare, requiring targeted outreach and rehabilitation programs tailored to their unique circumstances.

Child Marriage

Child marriage remains prevalent in various regions, disproportionately affecting girls, and is associated with adverse consequences including interrupted education, early pregnancy risks, and heightened vulnerability to domestic abuse. Legal prohibitions on child marriage require complementary social and economic interventions to be effective.

Online Safety and Digital Exploitation

The growing use of digital technology has introduced new dimensions of risk for children, including online sexual exploitation, cyberbullying, and exposure to harmful content, necessitating updated legal frameworks and digital literacy initiatives to protect children in online spaces.

6.9 CHALLENGES IN JUVENILE JUSTICE AND CHILD PROTECTION SYSTEMS

Resource and Capacity Constraints

Juvenile justice and child protection institutions in many countries suffer from inadequate funding, insufficient trained personnel, and overburdened infrastructure, undermining the quality and timeliness of care and adjudication.

Delays in Case Resolution

Despite legal mandates for expeditious handling of cases involving children, procedural delays remain common, prolonging children's uncertainty and, in cases involving institutional placement, extending unnecessary periods of confinement.

Gaps in Implementation

There is often a significant gap between the protective standards articulated in law and their practical implementation, due to weak monitoring mechanisms, inadequate coordination between agencies, and insufficient accountability for non-compliance.

Social Stigma and Reintegration Barriers

Children who have been in conflict with the law, or who have experienced institutional care, often face significant social stigma that impedes their successful reintegration into families, schools, and communities, undermining the rehabilitative goals of the system.

Data and Monitoring Deficiencies

Many child protection systems lack robust data collection and monitoring mechanisms, making it difficult to accurately assess the scale of child protection concerns, track outcomes, and design evidence-based policy interventions.

Balancing Rehabilitation with Public Safety Concerns

Juvenile justice systems frequently face public and political pressure to adopt more punitive approaches in response to serious offences committed by older adolescents, creating tension between rehabilitative ideals and demands for harsher accountability measures.

6.10 SUMMARY

Juvenile justice and child protection systems occupy a distinctive space within law and social policy, reflecting the dual recognition of children as both rights-holders and a category requiring specialized protective intervention. This framework has evolved considerably since the establishment of the first specialized juvenile courts, shaped significantly by international instruments such as the UN Convention on the Rights of the Child, the Beijing Rules, the Riyadh Guidelines, and the Havana Rules, which collectively establish principles of best interests, proportionality, non-stigmatization, participation, and institutionalization as a measure of last resort.

National legal frameworks, exemplified by legislation such as India's Juvenile Justice (Care and Protection of Children) Act, translate these international principles into domestic institutional architecture, including Juvenile Justice Boards for children in conflict with the law, Child Welfare Committees for children in need of care and protection, specialized police units, and a range of residential care institutions. These systems must contend with significant and persistent challenges, including child labour, trafficking, sexual abuse, child marriage, and emerging risks associated with digital exploitation, all while grappling with resource constraints, implementation gaps, social stigma, and the ongoing tension between rehabilitative ideals and public safety concerns. Strengthening these systems requires sustained investment in institutional capacity, preventive interventions, inter-agency coordination, and restorative approaches that prioritize the long-term welfare and successful reintegration of children into society.

6.11 REFERENCES

United Nations. *Convention on the Rights of the Child.* New York: United Nations, 1989.

United Nations. *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules).* New York: United Nations, 1985.

United Nations. *United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines).* New York: United Nations, 1990.

United Nations. *United Nations Rules for the Protection of Juveniles Deprived of their Liberty (The Havana Rules).* New York: United Nations, 1990.

United Nations Children's Fund (UNICEF). *State of the World's Children.* New York: UNICEF.

Government of India. *The Juvenile Justice (Care and Protection of Children) Act, 2015.*

Government of India. *The Protection of Children from Sexual Offences Act, 2012.*

International Labour Organization (ILO). *World Report on Child Labour.* Geneva: ILO.

Freeman, Michael. *Article 3: The Best Interests of the Child.* Martinus Nijhoff Publishers, 2007.

Cipriani, Don. *Children's Rights and the Minimum Age of Criminal Responsibility: A Global Perspective.* Ashgate Publishing, 2009.

United Nations Office on Drugs and Crime (UNODC). *Global Report on Trafficking in Persons.* Vienna: UNODC.

6.12 GLOSSARY

- **Juvenile Justice** – The specialized system of laws, institutions, and processes designed to address children in conflict with the law and children requiring care and protection.

- **Best Interests of the Child** – The foundational principle requiring that the welfare of the child be the primary consideration in all decisions affecting them.

- **Doli Incapax** – A legal presumption that children below a specified age are incapable of forming criminal intent and therefore cannot be held criminally responsible.

- **Parens Patriae** – A legal doctrine under which the state acts as guardian for individuals, such as children, who are unable to protect their own interests.

- **Juvenile Justice Board (JJB)** – A specialized quasi-judicial body responsible for adjudicating cases involving children alleged to be in conflict with the law.

- **Child Welfare Committee (CWC)** – A statutory body responsible for determining appropriate care, protection, and rehabilitation measures for children in need of care and protection.
- **Diversion** – The process of redirecting children away from formal judicial proceedings toward community-based or informal interventions.
- **Restorative Justice** – An approach to justice that emphasizes repairing harm, accountability, and reconciliation between the offender, victim, and community, rather than punishment alone.
- **Child Trafficking** – The recruitment, transport, or harboring of children through force, fraud, or coercion for purposes of exploitation.
- **Child in Conflict with Law** – A child alleged or found to have committed an offence.
- **Child in Need of Care and Protection** – A child who is abandoned, orphaned, abused, or otherwise requires protective intervention by the state.
- **Institutionalization** – The placement of a child in a residential care facility, generally regarded under international standards as a measure of last resort.

6.13 SELF-ASSESSMENT QUESTIONS

Short-Answer Questions

1. Define juvenile justice and explain how it differs from the adult criminal justice system.
2. What is the doctrine of parens patriae, and how is it relevant to juvenile justice?
3. Identify the four guiding principles of the UN Convention on the Rights of the Child.
4. What is the purpose of the Beijing Rules in the administration of juvenile justice?
5. Distinguish between a "child in conflict with law" and a "child in need of care and protection."

Extended-Response Questions

1. "Juvenile justice systems should prioritize rehabilitation over punishment, regardless of the severity of the offence." Critically discuss this statement with reference to the principles covered in this unit.
2. Evaluate the role of international instruments such as the UNCRC, Beijing Rules, and Havana Rules in shaping national juvenile justice frameworks.

3. Discuss the institutional architecture for child protection in a jurisdiction of your choice, highlighting both strengths and gaps.

4. Analyze the challenges of balancing rehabilitative ideals with public safety concerns in cases involving serious offences committed by older adolescents.

5. Propose a set of reforms that could strengthen the effectiveness of child protection systems in addressing emerging risks, such as online exploitation.

True/False Questions

1. The UN Convention on the Rights of the Child is the most widely ratified human rights treaty in the world. (True/False)

2. Under international standards, institutionalization of children should be used as a first resort rather than a last resort. (True/False)

3. Child Welfare Committees primarily handle cases involving children in conflict with the law. (True/False)

4. The principle of doli incapax presumes that very young children are incapable of forming criminal intent. (True/False)

5. Restorative justice approaches focus solely on punishing the offender rather than repairing harm. (True/False)

UNIT-7
STRUCTURE OF CRIMINAL JUSTICE SYSTEM IN INDIA

7.1 INTRODUCTION

The criminal justice system of any state is the set of agencies and processes established by governments for administration of criminal justice aimed at controlling crime and imposing punishment on persons who violate the law. The Union of India is a Federal State currently consisting of the Central government and the State governments in the twenty nine states. The states have their own powers and functioning under the Constitution of India. The Police and Prison are the state subjects. However, the Federal laws are followed by the Police, Judiciary, and Correctional Institutes, which form the basic organs of the Criminal Justice System. The system followed in India for dispensation of criminal justice is the adversarial system of common law inherited from the British Colonial Rulers. In the Indian Criminal Justice Administration, the Police investigate, while the Judge's role is like a neutral umpire and a fact finder and he also imposes the sentence. The execution of the sentence is bestowed on the Correctional institutes

7.2 OBJECTIVE /LEARNING OUTCOME:

- To make the learners understand the structure of the police in India
- To acquaint the learners with the structure of the courts
To make the learners understand the structure of the Prison

7.3 STRUCTURE OF CRIMINAL JUSTICE SYSTEM

The structure of Criminal Justice system consists of the four main pillars namely, investigation by Police, Prosecution of case by the Prosecutors, determination of guilt by the Courts and finally the correction through prisons system. Article 246 of the Constitution of India places the police, public order, courts, prisons, reformatories, borstal and other allied institutions in the State List. Investigation by Police The very crux of the Criminal trial is laid down by the investigation done by the police. The information of the offence is registered in the local police station under Section 161 of the Code of Criminal Procedure 1973(CrPC). Thereafter the police starts the investigation under section 156 CrPC. Section 161CrPC empowers the investigation officer to examine any person supposed to be acquainted with the facts and circumstances of the case and record the statement in writing. However, section 162 of the Code provides that it is only the accused that can make use of such a statement. So far as the prosecution is concerned, the statement can be used only to contradict the maker of the statement in accordance with Section 145 of the Evidence Act. Any confession made by the accused before the Police officer is not admissible and cannot be made use of during the trial of the case. The statement of the accused recorded by the police can be used as provided under Section 27 of the Evidence Act to the limited extent that led to the discovery of any fact. (Malimath Comittee Report, 2003).The police can arrest a person for commission of cognizable offence under section 41CrPc in accordance to the procedure given under section 46 CrPC. In the course of investigation the Police officer may search any premise under sections 165 and 166 where there is an expectation to anything (documents, materials) in connection with a cognizable offence. Any such items may be seized by the police under section 102 CrPC. Police has the discretion to discharge a person arrested on executing a bond under section 169 CrPc , in case the officer feels that there is not enough incriminating materials against such persons. Finally, all such statements of the witnesses, and the evidence collected through the investigation alongwith the copy of the First Information Report is made into a Police report and submitted under section 173 to the Magistrate for taking cognizance there upon. Apart from this the Police also conducts the inquest where an information of death is received under section 174 CrPC The police is a state subject and its organization and working are governed by rules and regulations framed by the state governments. These rules and regulations are outlined in the Police Manuals of the state police forces. Each State/Union Territory has its separate police force. Despite the diversity of police forces, there is a good deal that is common amongst them. This is due to four main reasons: Š The structure and working of the State Police Forces are governed by the Police Act of 1861, which is applicable in most parts of the country, or by the State Police Acts modeled mostly on the 1861 legislation. The Indian Police Service (IPS) is an All India Service, which is recruited, trained and managed by the Central Government and which provides the bulk of senior officers to the State Police Forces. Š The quasi-federal character of the Indian polity, with specific provisions in the Constitution, allows a coordinating and counseling role for the Centre in police matters and even authorizes it to set up certain central police organizations (Commonwealth Human Rights Initiatives, 2001). Superintendence over the police force in the state is exercised by the State Government (Section 3, The Police Act, 1861). The head of the police force in the state is the Director General of Police (DGP), who is responsible to the state government for the administration of the police force in the state and for advising the government on police matters. Field Establishment States are divided territorially into administrative units known as districts. An officer of the rank of Superintendent of Police heads the district police force. A group of districts form a range, which is looked after by an officer of the rank of Deputy Inspector General of Police. Some states have zones comprising two or more ranges, under the charge of an officer of the rank of an Inspector General of Police Every district is divided into sub-divisions. A sub-division is under the charge of an officer of the rank of ASP/ Dy.S.P. Every sub-division is further divided into a number of police stations, depending on its area, population and volume of crime. Between the police station and the subdivision, there are police circles in some states - each circle headed generally by an Inspector of Police. The police station is the basic unit of police administration in a district. Under the Criminal Procedure Code, all crime has to be recorded at the police station and all preventive, investigative and law and order work is done from there. A police station is divided into a number of beats, which are assigned to constables for patrolling, surveillance, collection of intelligence etc. The officer in charge of a police station is an Inspector of Police, particularly in cities and metropolitan areas. Even in other places, the bigger police stations, in terms of area, population, crime or law and order problems, are placed under the charge of an Inspector of Police. In rural areas or smaller police stations, the officer in charge is usually a Sub-Inspector of Police.

7.4 COMMISSIONERATE SYSTEM OF POLICING

The commissionarate system of policing was introduced by in certain metropolitan areas like Calcutta, Bombay, Madras and Hyderabad. Under this system, the

responsibility for policing the city/area is vested in the Commissioner of Police. While the commissionarate system initially existed in four cities in the last century, it has been extended to many areas since Independence (Commonwealth Human Rights Initiatives, 2001).

7.5 CRIMINAL INVESTIGATION DEPARTMENT (CID)

Criminal Investigation Departments or CIDs, as they are popularly known, are specialized branches of the police force. They have two main components - the Crime Branch and the Special Branch. The officer in charge of the CID generally supervises the work of both branches, though some states appoint a separate officer in charge of the Special Branch. The Crime Branch is the most important investigation agency of the state police. It investigates certain specialised crimes like counterfeiting of

currency, professional cheating, activities of criminal gangs, crimes with interdistrict or inter-state ramifications etc. In fact, when certain major crimes remain unsolved or when the public demands investigation by an agency other than the local police, the government or the head of the police force transfers cases for investigation from the district police to the CID. The Special Branch, on the other hand, collects, collates and disseminates intelligence from the security point of view. Its main role is to keep a watch over the subversive activities of persons, parties and organisations and keep all concerned informed (Commonwealth Human Rights Initiatives, 2001).

7.6 CENTRAL BUREAU OF INVESTIGATION (CBI)

What is known today as the CBI was originally set up as the Special Police Establishment (SPE) in 1941 to investigate cases of bribery and corruption involving the employees of the War and Supply Department of the Government of India during the Second World War. Even after the war was over, the need to continue the agency to investigate corruption charges involving government servants was felt. The Delhi Special Police Establishment Act was passed in 1946 to give the organisation a statutory base. Its jurisdiction was extended to cover cases of corruption involving employees of all departments of the Government of India. The role of the SPE was gradually extended and by 1963, it was authorised to investigate offences under 97 Sections of the Indian Penal Code, offences under the Prevention of Corruption Act and 16 other Central Acts. In 1963, the Government of India set up the Central Bureau of Investigation (constituted by the Government of India's Resolution No. 4/ 31/61-T dated April 1, 1963). This new organisation's charter includednot only the work done by the Delhi Special Police Establishment but also additional investigation work relating to breach of central fiscal laws, major frauds in central government departments, public joint stock companies, passport frauds, crimes on the high seas and in the air and organised crimes committed by professional gangs. It was also given the work of maintaining crime statistics, collecting intelligence relating to certain types of crimes, working as the National Crime Bureau (NCB) of the country for the International Police Organisation (INTERPOL) (Commonwealth Human Rights Initiatives, 2001).

Presently, the CBI consists of the following divisions:

- Anti-Corruption Division
- Economic Offences Division
- Special Crimes Division
- Legal Division v. Coordination Division
- Administration Division
- Policy and Organisation Division
- Technical Division
- Central Forensic Science Laboratory

The legal powers of investigation of the CBI are derived from the Delhi Special Police Establishment Act, 1946 (DPSE Act). The organisation can investigate only such offences as are notified by the central government under Section 3 of the DPSE Act. The powers, duties, privileges and liabilities of the members of the organisation are the same as those of the police officers of the union territories in relation to the notified offences. While exercising such powers, members of the CBI of and above the rank of Sub-Inspectors are deemed to be officers in charge of the police station. The Central Government is authorised to extend the powers and jurisdiction of the members of CBI to any area, including railway areas, for the investigation of offences notified under Section 3 of the District Special Police Establishment Act, subject to the consent of the government of the concerned state (Commonwealth Human Rights Initiatives, 2001)

7.7ROLE OF THE PROSECUTOR

Prior to the enactment of the Criminal Procedure Code of 1973, public prosecutors were attached to the police department and they were responsible to the District Superintendent of Police. However, after the new Code of Criminal Procedure came into force in 1973, the prosecution wing has been totally detached from the police department. The prosecution wing in a state is now headed by an officer designated as the Director of Prosecutions under section 25A of CrPC. In Sessions Courts, the cases are prosecuted by Public Prosecutors. The District Magistrate prepares a panel of suitable lawyers in consultation with the Sessions Judge to be appointed as public prosecutors. The state government appoints public prosecutors out of the panel prepared by the District Magistrate and the Sessions Judge. It is important to mention that public prosecutors who prosecute cases in the Sessions Courts do not fall under the jurisdiction and control of the Director of Prosecutions (Sharma, Madan Lal). Prepared by the District Magistrate and the Sessions Judge. It is important to mention that public prosecutors who prosecute cases in the Sessions Courts do not fall under the jurisdiction and control of the Director of Prosecutions (Sharma, Madan Lal). The state government also appoints public prosecutors in the High Court. The appointments are made in consultation with the High Court as per section 24 of the Code. The most senior law officer in a state is the Advocate General who is a constitutional authority. He is appointed by the governor of a state under Article 165. He has the authority to address any court in the state. The Assistant Public Prosecutors, Grade-I and Grade-II, are appointed by a state government under section 25 CrPC on the basis of a competitive examination conducted by the State Public Service Commission (Sharma, Madan Lal).

Public prosecution is an important component of the Criminal Justice System. Prosecution of an offender is the duty of the executive which is carried out through the institution of the Public Prosecutor. The Supreme Court of India has defined the role and functions of a public prosecutor in *Shiv Nandan Paswan vs. State of Bihar & Others (*AIR 1983 SC 1994) as under: The Prosecution of an offender is the duty of the executive which is carried out through the institution of the Public Prosecutor.

Withdrawal from prosecution is an executive function of the Public Prosecutor (section 321 CrPC).

Discretion to withdraw from prosecution is that of the Public Prosecutor and that of none else and he cannot surrender this discretion to anyone.

The Government may suggest to the Public Prosecutor to withdraw a case, but it cannot compel him and ultimately the discretion and judgement of the Public Prosecutor would prevail.

The Public Prosecutor may withdraw from prosecution not only on the ground of paucity of evidence but also on other relevant grounds in order to further the broad ends of public justice,

Public order and peace.

The Public Prosecutor is an officer of the Court and is responsible to it.

The prosecutor has a very significant role. To start with there is a presumption of innocence in favour of the accused. On the basis of the facts proved by the oral, documentary and forensic evidence, the public prosecutor tries to substantiate the charges against the accused and tries to drive home the guilt against him. If there is a statutory law regarding presumptions against the accused, the public prosecutor draws the court’s attention towards that and meshes it with other evidence on record. Throughout the trial he has the burden of proof and the standard of such proof is quite high in India, as it has to be beyond a reasonable ground. He has to prove the circumstances, and then he has to draw the inferences and convince the court that the arraigned accused alone is guilty of the offences that he has been charged with.

7.8 JUDICIARY

The role of the judge or the Court in India starts from the stage of taking cognizance of the criminal case under section 190 CrPc, followed by making over of the case (section 192) to the appropriate court having jurisdiction to try the case or commitment to the Court of sessions under section 209 CrPC. This is followed by the issue of process under section 204 either by summons or warrant as the case may be. Once all the actors of the Criminal Justice Administration, that is the accused represented by the defence counsel, the prosecutor representing the Sate as well as the victim and the Judge come face to face, the trial unfolds. At this stage the Court frames the charge if the evidence submitted to it and from the opening statements and the two sides, it comes to the conclusion that the evidence is sufficient enough to start the trial. Conversely, discharges the accused person if the evidence is not sufficient. During the whole process of trial the court's duty is finding of the facts that are relevant from the evidence presented by the prosecutor and the defence and come to the conclusion of the guilt by making a balance sheet of the aggravating and mitigating factors. Once the judgment is reached and in case it is a guilty verdict, the Court proceeds to pronounce the sentence applying its discretion based again on the aggravating and mitigating factors, the antecedents and probability of reform of the offender.

Structure of the Judiciary

The Judiciary has the Supreme Court (S.C) at the apex having three-fold jurisdiction namely, original , appellate and advisory . Supreme Courts and High Courts have only appellate criminal jurisdiction. Below the S.C are the High Courts at state level, followed by subordinate courts in the districts. The courts of session exercise both original and appellate jurisdiction. Major offences like murder, dacoity, robbery, rape etc cannot be tried in a court below the sessions.The appellate jurisdiction of the S.C. covers constitutional, civil and criminal cases. In criminal matters, an appeal lies to the Supreme Court from any judgement or order of the High Court if the latter (a) has on appeal reversed an order of acquittal and sentenced the accused to death or imprisonment for life or for a period of not less than 10 years; or (b) has withdrawn for trial before itself any case and has in such trial sentenced the accused person to death; (c) certified that the case is fit for appeal. In any case, the Supreme Court, under Article 136 of the Constitution, can grant special leave to appeal from any judgment, decree, determination, sentence or order in any matter passed or made by any court or tribunal in the territory of India. The consultative jurisdiction of the S.C. is in respect of matters, which are referred for its opinion and advice by the President of India under Article 143 of the Constitution (Commonwealth Human Rights Initiatives, 2001). The High Court exercises appellate jurisdiction in criminal cases under section 374(appeal from an order of conviction) and section 378 (appeal from an order of acquittal).Apart from that the High Court also have inherent powers under section 482 to give effect to an order under the Code, to prevent abuse of the process of Court and to otherwise secure the ends of justice. The jurisdiction of the trial courts are determined on the basis of the sentencing jurisdiction of the courts in accordance to sections 28 and 29CrPC

Correctional (Prison) system The Court determines the guilt of the accused and pronounces the appropriate sentence. In case the court comes to the conclusion owing to the facts and circumstances of the case as well as the convict that it is better for the rehabilitative prospect of the person to release him on probation under the Probation of offenders Act 1958 read with section 360 of CrPC, then the court may release such convict under probation. However, in case a sentence of imprisonment is pronounced then the final wing of the Criminal Justice System is activated, that is the correctional wing through the prisons system. The sentence of imprisonment in India is not punitive rather it is for using the period of incarceration for the reformation and rehabilitation of the prisoner. This is achieved through therapeutic treatment of education, labour, vocational training and yoga and meditation, so that the prisoner is reformed internally not to choose the path of crime once he goes out of the prison. Prison and its administration is a State Subject as it is covered by item 4 under List II in Schedule VII of the Constitution of India. Prison Establishments in different States/UTs comprise several tiers of jails. The most common and standard jail institutions which are in existence in the States/UTs are better known as central jails, district jails and sub jails. The other types of jail establishments are women jails, borstal schools, open jails and special jails (Crime in India, 2014) Prison and its administration is a State Subject as it is covered by item 4 under List II in Schedule VII of the Constitution of India. Prison Establishments in different States/UTs comprise several tiers of jails. The most common and standard jail institutions which are in existence in the States/UTs are better known as central jails, district jails and sub jails. The other types of jail establishments are women jails, borstal schools, open jails and special jails(Crime in India, 2014).

District jails serve as the main prisons in some of the States/UTs. States which have considerable number of district jails are Uttar Pradesh (56) followed by Madhya Pradesh (33), Bihar (31), Rajasthan (25), Maharashtra (27), Assam (22), Karnataka (19), Jharkhand (17), Haryana (16) and West Bengal (12) (Prison Statistics in India, 2014).

Nine States have reported comparatively higher number of sub-jails revealing a well organized prison set-up even at lower formation. These States are Maharashtra (100), Andhra Pradesh (99), Tamil Nadu (96), Madhya Pradesh (78), Odisha (73), Karnataka (70), Rajasthan (60) and West Bengal & Telangana (33 each) while 7 States/UTs have no sub-jails (namely Arunachal Pradesh, Haryana, Meghalaya, Mizoram, Sikkim, Chandigarh and Delhi) (Prison Statistics in India, 2014).

Women jails exclusively for women prisoners exist only in 13 States/UT (Table 1.2). Tamil Nadu & Kerala have 3 women jails each and Rajasthan & West Bengal have 2 women jails each. Andhra Pradesh, Bihar, Gujarat, Maharashtra, Odisha, Punjab, Telangana, Uttar Pradesh and Delhi have one women jail each(Prison Statistics, 2014). Special jail means any prison provided for the confinement of a particular class or particular classes of prisoners which are broadly as follows: i) Prisoners who have committed serious violations of prison discipline. ii) Prisoners showing tendencies towards violence and aggression. iii) Difficult discipline cases of habitual offenders. iv) Difficult discipline cases from a group of professional/organised criminals(Prison Statistics, 2014)

The Custodial staffs in the prison is responsible for the maintenance of discipline and compliance of prison rules. At the very top is the Inspector General of police and the deputies. The custodial staffs which remain present inside the prison premises is headed by the superintendant of Prisons, Jailor and warder.

The non-custodial staffs in the prison who are responsible for the well being of the inmates include the medical staffs, and the treatment staffs, who ensure that the inmates are reformed and rehabilitated during their stay in the prison.

7.9 CONCLUSION

The functioning of the criminal justice system is the true reflection of the peace and order that the members of the state are enjoying. The Indian Criminal Justice System, although of a common law origin but in its structure and functioning both it has now evolved into a hybridized system. It has inculcated many inquisitorial elements where the judges have the power of inquiry and through that they are actually, participating in the truth finding process rather than the being mere fact finders. The archaic laws like the Police Act of 1861 still govern the structure and functioning of the police and so is the Prison Act 1894 in case of the prisons, which affects the efficiency dimensions of the Criminal Justice system. In every State the Criminal Justice System is expected to provide the maximum sense of security to the people at large by tackling crimes and criminals effectively, quickly and legally. More specifically, the aim is to reduce the level of crime in society by ensuring maximum detection of reported crimes, apprehension of the accused, conviction of the accused persons without delay, awarding appropriate punishments to the convicted to meet the ends of justice and their proper treatment in the prison to prevent recidivism. Clearly defined hierarchy and roles of the different actors of the various wings of the Criminal Justice System is very significant and a proper coordination between all the wings of the Criminal Justice System is the key to an efficient system

REFERENCES

1. Malimath Committee Report 2003 retrieved from http://www.mha.nic.in/hindi/sites/upload_files/mhahindi/files/pdf/criminal_jus tice_system.pdf

2. Sharma, Madan Lal , (n.d.)*The Role and Function of Prosecution in Criminal Justice* retrieved from www.unafei.or.jp/english/pdf/RS_No53/No53_21PA_Sharma.pdf

3. Police Organisation in India - Commonwealth Human Rights Initiative,2001, retrieved from http://www.humanrightsinitiative.org/publications/police/police_organisations .pdf Data on Police Organisations in India, (2001), published by the Bureau of Police Research & Development, Ministry of Home Affairs, Government of India, February, retrieved at

4. http://www.bprd.nic.in/WriteReadData/userfiles/file/20160712123517412530 3FinalDATABOOKSMALL2015.pdf

UNIT 8

POLICE ADMINISTRATION AND INVESTIGATION

Structure

8.10 International Human Rights Standards Relevant to Policing

8.11 Forensic Science and Modern Investigation Techniques

8.12 Witness Protection and Victim-Centred Investigation

8.13 Community Policing and Preventive Approaches

8.14 Women in the Police Force

8.15 Conclusion

8.16 Summary

8.17 Glossary

8.18 References

8.19 Short Answer Questions

8.20 Terminal Questions

8.21 True/False

8.0 Introduction

The police occupy a pivotal position in the administration of criminal justice. As the first point of contact between the citizen and the machinery of the State, the police are entrusted with the prevention and detection of crime, the maintenance of public order, and the investigation of offences so that the guilty may be brought to justice. At the same time, because the police wield coercive powers of arrest, search, seizure, interrogation and detention, they are also the agency most capable of violating the very rights they are meant to protect. This dual character of the police, as protector and potential violator of human rights, makes the study of police administration central to any understanding of human rights within the criminal justice system. This Unit examines the constitutional and statutory framework governing the police in India, the structure of police administration at the Union and State levels, the process of criminal investigation, the human rights concerns that arise at each stage of policing, and the reforms that have been proposed and partially implemented to make policing more accountable, professional and rights-respecting.

8.1 Learning Objectives

After completing this unit, students will be able to:

1. Define the concepts of **police administration** and **criminal investigation**.
2. Explain the **organization, structure, and functions** of the police system.
3. Describe the **roles and responsibilities** of police officers in maintaining law and order.
4. Understand the **process of criminal investigation**, including FIR registration, evidence collection, interrogation, and preparation of the charge sheet.
5. Identify the importance of **crime scene management** and **forensic science** in criminal investigations.
6. Differentiate between **cognizable and non-cognizable offences** and explain the legal procedures involved.
7. Discuss the significance of **community policing**, ethical policing, and public cooperation in crime prevention.
8. Evaluate the challenges faced by police administration and suggest measures to improve the effectiveness of policing and criminal investigations.

8.2 Constitutional and Legal Framework of Police in India

Under the Constitution of India, 'Police' is a State subject listed in Entry 2 of List II (State List) of the Seventh Schedule. This means that the primary responsibility for organising and maintaining the police force rests with the State Governments, and each State has its own police force governed by its own police legislation, rules and regulations. The Union Government, however, retains jurisdiction over certain matters through Entry 8 of List I (Union List), which deals with Central Bureau of Investigation, and other entries relating to the administration of Union Territories, the Railway Protection Force, and para-military and central armed police forces such as the Central Reserve Police Force, Border Security Force and Central Industrial

Security Force.

Beyond the distribution of legislative power, several provisions of the Constitution directly restrain the manner in which police power may be exercised. Article 21 guarantees that no person shall be deprived of life or personal liberty except according to procedure established by law, and the Supreme Court has read into this guarantee a requirement that any such procedure be fair, just and reasonable. Article 22 provides specific safeguards against arrest and detention, including the right to be informed of the grounds of arrest, the right to consult and be defended by a legal practitioner of one's choice, and the right to be produced before the nearest magistrate within twenty-four hours of arrest. Article 20 protects persons from ex post facto laws, double jeopardy and self-incrimination, the last of which is of direct relevance to police interrogation practices. Articles 14 and 19 further inform the standard of fairness and reasonableness that must attend all police action.

At the statutory level, the principal legislation governing investigation, arrest and other police functions in criminal matters has historically been the Code of Criminal Procedure, 1973 (CrPC), now substantially replaced by the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), along with the Indian Evidence Act, 1872 (now the Bharatiya Sakshya Adhiniyam, 2023) and the substantive penal law, presently the Bharatiya Nyaya Sanhita, 2023, which succeeded the Indian Penal Code, 1860. The organisation and discipline of the police force itself continues to be governed in most States by the colonial-era Police Act of 1861, supplemented in some States by their own Police Acts.

8.3 Structure of Police Administration

8.3.1 State Police Administration

Since police is primarily a State subject, the structure of police administration is broadly similar across States though details vary. At the apex of the State police hierarchy is the Director General of Police (DGP), who is the head of the State police force and is responsible for its overall administration, discipline and efficiency. Below the DGP, the State is typically divided into Ranges headed by an Inspector General or Deputy Inspector General of Police, and further into Districts headed by a Superintendent of Police (SP), or a Commissioner of Police in metropolitan areas where the commissioner ate system operates. Each district is further divided into sub-divisions headed by an Assistant or Deputy Superintendent of Police, and into police stations, which are the basic operational units of policing headed by a Station House Officer, usually of the rank of Inspector or Sub-Inspector.

The police station is of critical importance from a human rights perspective because it is the site at which the vast majority of citizen-police interaction occurs: registration of complaints, recording of the First Information Report, initial arrest, and often the first phase of custodial interrogation. Conditions of policing at the station level, including the training, sensitisation, workload and accountability of station-level officers, therefore have an outsized effect on the human rights record of the police as an institution.

8.3.2 Central Police Organisations

At the Union level, several specialised organisations support and supplement State police functions. The Central Bureau of Investigation (CBI) investigates cases of corruption, economic offences and specially notified serious crimes, often on the direction of constitutional courts. The Intelligence Bureau and Research and Analysis Wing handle domestic and external intelligence respectively. The National Investigation Agency (NIA) was created after the 2008 Mumbai terror attacks to investigate offences related to terrorism and other scheduled offences having national and international ramifications. Central Armed Police Forces, including the CRPF, Border Security Force, Indo-Tibetan Border Police, Sashastra Seema Bal and Central Industrial Security Force, assist in internal security, border management and the protection of vital installations. Coordinating bodies such as the Bureau of Police Research and Development (BPR&D) work on training, forensic science and modernisation of the police forces across the country.

8.4 The Police Act of 1861 and the Need for Reform

The Police Act, 1861 was enacted by the colonial government in the aftermath of the 1857 uprising with the primary objective of creating a centrally controlled, disciplined force that would serve as an instrument of colonial control rather than a service accountable to the citizenry. The Act vests superintendence of the police in the State Government, without providing any insulation of operational police functions from political direction, and it does not contain any provision for an independent complaints mechanism, security of tenure for police officers, or a transparent process for postings and transfers. Successive committees, including the National Police Commission (1977-1981), have observed that this framework has fostered a culture of political interference, arbitrary transfers used as instruments of reward and punishment, and an orientation of the police towards pleasing the ruling establishment rather than serving the public and enforcing the law impartially.

The National Police Commission, in its eight reports submitted between 1979 and 1981, made wide-ranging recommendations including the constitution of State Security Commissions to insulate the police from illegitimate political interference, fixed tenures for key police officers, a separate mechanism for handling complaints against the police, and the functional separation of law and order duties from investigation duties. Very few of these recommendations were implemented by State Governments in the following decades.

8.5 The Model Police Act, 2006 and Police Reform

In 2006, in the landmark case of Prakash Singh v. Union of India, the Supreme Court of India, responding to a writ petition that had remained pending for over a decade, issued a set of binding directions to the Union and State Governments aimed at insulating the police from arbitrary political interference, ensuring functional autonomy, and improving accountability. The seven directions required State Governments to: constitute a State Security Commission to lay down broad policy and evaluate police performance; ensure that the Director General of Police is selected through a merit-based process from a panel prepared by the Union Public Service Commission and given a minimum tenure of two years; provide a minimum tenure of two years to other key police officers holding operational posts; separate the investigating police from the law and order police to improve the quality of investigation; set up a Police Establishment Board to decide transfers, postings and promotions of officers and to provide a mechanism for redressing grievances of the police personnel; establish independent Police Complaints Authorities at the State and district levels to inquire into public complaints of police misconduct, including custodial death, grievous hurt and rape in custody; and constitute a National Security Commission at the Union level for the selection and placement of chiefs of Central Armed Police Forces.

Following the judgment, the Union Government prepared a Model Police Act, 2006 as a template for States to replace the 1861 Act. The Model Act envisaged the police as a professional, service-oriented and accountable agency, functionally autonomous from illegitimate political control, and subject to civilian oversight through security commissions and complaints authorities. However, implementation across States has been slow, uneven and in several instances designed in a manner that dilutes the substance of the Supreme Court's directions, for instance by giving the executive dominant representation on Security Commissions and Police Establishment Boards, or by making the recommendations of Complaints Authorities non-binding. Civil society groups and successive monitoring reports, including those compiled by the Common Cause organisation together with the Centre for the Study of Developing Societies, have repeatedly highlighted this gap between the letter and the spirit of police reform in India.

8.6 Investigation of Crime

Investigation is the process by which the police collect evidence with a view to ascertaining the facts of an alleged offence and determining whether a case should be placed before a court. The process, governed principally by the CrPC/BNSS, moves through several distinct stages, at each of which human rights considerations arise.

8.6.1 Registration of the First Information Report (FIR)

The investigative process typically begins with the registration of the First Information Report under the relevant provision of the Code (Section 154 CrPC, now Section 173 BNSS), which records the earliest information received by the police regarding the commission of a cognizable offence. The Supreme Court, in Lalita Kumari v. Government of Uttar Pradesh (2014), held that registration of an FIR is mandatory if the information discloses a cognizable offence, and that no preliminary inquiry is permissible in such cases except in a limited category of matters, such as matrimonial and commercial disputes or cases involving delay, where a preliminary inquiry may be conducted to ascertain whether a cognizable offence is disclosed, but such inquiry must be completed within a fixed and short time frame. This ruling was significant because refusal to register FIRs has historically been used to deny victims, particularly from marginalised communities, access to the criminal justice system altogether.

8.6.2 Arrest

Arrest is one of the most invasive powers exercised by the police, as it involves the deprivation of personal liberty even before guilt is established. The CrPC/BNSS lays down the circumstances in which a police officer may arrest a person without a warrant, and Section 41A CrPC (as introduced by the 2010 amendment, now continued under BNSS) requires the police, in cases where arrest is not required, to issue a notice of appearance rather than arresting the accused, in respect of offences punishable with imprisonment of up to seven years. This provision was designed to curb the routine and unnecessary use of arrest as a first resort, following the Supreme Court's observations in Joginder Kumar v. State of U.P. (1994) that arrest cannot be justified merely because it is lawful to do so, and that the police officer must be satisfied, on the basis of some reasonable justification, that arrest is necessary.

Article 22(1) and (2) of the Constitution, along with Sections 50, 56 and 57 of the CrPC, mandate that an arrested person be informed of the grounds of arrest, be permitted to consult a legal practitioner of choice, and be produced before the nearest magistrate within twenty-four hours, excluding travel time. The Supreme Court in D.K. Basu v. State of West Bengal (1997) laid down eleven specific requirements to be followed in all cases of arrest and detention, including preparation of an arrest memo attested by a witness, informing a friend or relative of the arrestee, entitlement to medical examination at the time of arrest and thereafter every forty-eight hours, and maintenance of a diary at the place of detention recording particulars of the arrest. These D.K. Basu guidelines have since been incorporated, in substantial part, into the statutory framework.

8.6.3 Search and Seizure

The power to search premises and seize property is governed by Sections 100, 102 and related provisions of the CrPC. The law requires that searches ordinarily be conducted in the presence of independent witnesses (panchas) and that a list of items seized be prepared and signed. These safeguards are intended to prevent fabrication of evidence and abuse of the search power, though non-compliance in practice remains a recurring criticism, particularly in cases involving planted evidence.

8.6.4 Interrogation and the Privilege Against Self-Incrimination

Article 20(3) of the Constitution guarantees that no person accused of an offence shall be compelled to be a witness against himself. This privilege against self-incrimination is a core safeguard against coercive interrogation practices, and the Supreme Court has held in Nandini

Satpathy v. P.L. Dani (1978) that this protection extends to the stage of police interrogation, not merely to trial, and that even indirect forms of compulsion, such as sustained and hostile questioning, may violate the guarantee. Despite this, the use of custodial violence, popularly termed 'third degree' methods, to extract confessions or information continues to be one of the most persistent human rights concerns associated with Indian policing.

8.6.5 Case Diary and Charge Sheet

The investigating officer is required to maintain a case diary recording the day-to-day progress of investigation, and upon completion of investigation, to file a final report, commonly called a charge sheet, under Section 173 CrPC (Section 193 BNSS) before the magistrate, either concluding that a case is made out for the accused to be tried or that no offence is disclosed. Delay in completion of investigation and filing of charge sheets is a significant contributor to prolonged pre-trial detention of undertrial prisoners, a matter of considerable human rights concern discussed further in the context of prison administration.

8.7 Human Rights Concerns in Policing

8.7.1 Custodial Violence and Torture

Custodial violence, encompassing physical assault, torture and, in extreme cases, death in police custody, remains one of the gravest human rights violations associated with the police in India. Data compiled by the National Human Rights Commission (NHRC) and by civil society organisations such as the National Campaign Against Torture indicate that custodial deaths, both in police and judicial custody, number in the hundreds each year. India has signed but not ratified the United Nations Convention Against Torture, and repeated attempts to enact a standalone anti-torture law, following the recommendations of the Law Commission of India in its 273rd Report (2017), have not resulted in legislation. In the absence of a specific statute, victims of custodial torture must rely on general provisions of the penal code relating to hurt, wrongful confinement and, in cases of death, culpable homicide, along with constitutional remedies for compensation.

8.7.2 Extra-Judicial Killings ('Encounters')

The practice of police officers killing suspects in alleged 'encounters,' claimed to be acts of self-defence during an exchange of fire, has been repeatedly criticised as a euphemism for extra-judicial execution, particularly in regions affected by insurgency and organised crime. The Supreme Court, in PUCL v. State of Maharashtra (2014), laid down sixteen guidelines requiring, among other things, mandatory registration of an FIR, independent investigation by an agency such as the CID, mandatory magisterial inquiry into every death in a police encounter, and prompt intimation to the NHRC or State Human Rights Commission, in an effort to bring such incidents within the framework of accountability and away from the perception of extra-judicial impunity.

8.7.3 Arbitrary Arrest, Illegal Detention and Fabrication of Evidence

Beyond violence, arbitrary and unnecessary arrests, prolonged and unrecorded detention prior to formal arrest, and the fabrication or planting of evidence to secure convictions or to intimidate persons perceived as troublesome remain persistent concerns, disproportionately affecting persons from marginalised castes, religious minorities, tribal communities and the economically disadvantaged, who typically lack the resources to challenge such action promptly.

8.7.4 Bias, Discrimination and Gender Insensitivity

Studies of police attitudes, including the periodic 'Status of Policing in India' reports published by Common Cause and the Centre for the Study of Developing Societies, have documented persistent bias among sections of the police against Muslims, Dalits, Adivasis and other marginalised groups, as well as inadequate sensitivity in handling complaints of sexual violence, domestic violence and offences against women and children. Such attitudes undermine both the fairness of investigation and public confidence in the police as a rights-respecting institution.

8.8 Judicial Safeguards Against Police Excesses

Indian constitutional courts have played an active role in curbing police excesses through a body of jurisprudence developed under Articles 21, 32 and 226. In Nilabati Behera v. State of Orissa (1993), the Supreme Court held that the State is liable to pay compensation for custodial death as a public law remedy distinct from and in addition to any private law remedy in tort, on the ground that such a death constitutes a violation of the fundamental right to life. In D.K. Basu, the Court characterised custodial violence as 'a crime against humanity' and issued the detailed procedural safeguards referred to above, directing that they be followed in all cases of arrest and detention and be given wide publicity, including display at every police station and interrogation centre. In Joginder Kumar, the Court emphasised that the fact that a power of arrest exists is one thing, and the justification for its exercise is quite another, thereby restraining arbitrary use of the arrest power. These decisions collectively establish that constitutional courts function as a crucial external check on police power where internal departmental accountability mechanisms have proved weak.

8.9 Police Accountability Mechanisms

Accountability of the police operates, at least in principle, through several channels: internal departmental inquiry and disciplinary action; oversight by the executive through the Home Department; judicial oversight through criminal prosecution, writ jurisdiction and compensation claims; oversight by the National and State Human Rights Commissions, which can inquire into complaints of human rights violations by public servants including police officers; and, where implemented, oversight by independent Police Complaints Authorities as directed in Prakash Singh. In practice, each of these mechanisms suffers limitations:

departmental inquiries are often perceived as protecting the institution rather than the complainant; prosecutions of police officers require sanction under Section 197 CrPC in many circumstances and face long delays; and Human Rights Commissions have only recommendatory, not binding, powers in most cases. Strengthening independent, adequately resourced and binding accountability mechanisms therefore remains one of the central unfinished tasks of police reform in India.

8.10 International Human Rights Standards Relevant to Policing

International instruments relevant to policing include the UN Code of Conduct for Law Enforcement Officials (1979), the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990), and the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), to which India is a signatory though not yet a ratifying party. These instruments articulate standards such as the use of force only when strictly necessary and in proportion to the legitimate objective, respect for and protection of human dignity, and an absolute prohibition on torture that admits of no exception even in times of war or public emergency. While not directly enforceable in Indian courts in the absence of ratification and domestic legislation, these standards have persuasive value and have been referred to by Indian courts and the NHRC in shaping domestic jurisprudence and policy on custodial rights.

8.11 Forensic Science and Modern Investigation Techniques

The quality of criminal investigation, and consequently the fairness of the trial that follows, depends heavily on the availability of reliable scientific evidence rather than reliance on confession alone. Forensic science laboratories at the Central and State levels analyse physical evidence such as bloodstains, fingerprints, ballistics, questioned documents, narcotics and, increasingly, DNA material, to corroborate or disprove allegations independently of witness testimony, which is often unreliable, subject to hostility, or unavailable in cases involving intimidation of witnesses. The Justice Malimath Committee on Reforms of the Criminal Justice System (2003) specifically recommended greater investment in forensic infrastructure, training of investigating officers in the collection and preservation of scientific evidence, and the creation of a cadre of specially trained investigators, precisely because reliance on confession-driven investigation has historically been closely correlated with custodial coercion. The introduction of the DNA Technology (Use and Application) Regulation Bill, considered by Parliament in recent years, and the expansion of the Central Forensic Science Laboratories and the National Forensic Sciences University, reflect a gradual, if still incomplete, shift towards evidence-based investigation as a substitute for confession-based investigation, with corresponding benefits for the protection of the rights of the accused.

At the same time, forensic techniques themselves carry human rights implications that require regulation. Nabco-analysis, polygraph and brain-mapping tests, once used with some frequency by investigating agencies, were held by the Supreme Court in Selvi v. State of

Karnataka (2010) to be permissible only with the free and informed consent of the subject, and never as a matter of compulsion, since involuntary administration of such tests amounts to a violation of the right against self-incrimination under Article 20(3) and of the right to privacy and personal liberty under Article 21. The Selvi judgment is a significant illustration of how scientific advancement in investigation must remain subordinate to, rather than a means of circumventing, constitutional safeguards.

8.12 Witness Protection and Victim-Centred Investigation

Effective investigation and prosecution frequently depend on the willingness of witnesses to depose truthfully, yet witnesses, particularly in cases involving powerful accused persons, organised crime, or offences against women and children, are often subjected to threats, inducement or intimidation, leading to hostility at trial and consequent acquittal despite a genuine offence having occurred. Recognising this problem, the Supreme Court in Mahender Chawla v. Union of India (2018) approved a Witness Protection Scheme, 2018, framed by the Union Government, which provides for categorisation of witnesses according to the threat perceived, measures such as concealment of identity, relocation, and police protection during and after trial, and the constitution of a Witness Protection Fund and dedicated cells within the State police to implement such measures. Alongside witness protection, victim-centred investigation requires that the police treat the complainant or victim with dignity, record statements without unnecessary delay or repeated questioning that may cause secondary trauma, and, in cases of sexual offences, ensure that the victim's statement is recorded by a woman police officer, as mandated under Section 154(1) of the CrPC as amended in 2013 following the recommendations of the Justice Verma Committee constituted after the December 2012 Delhi gang rape case.

8.13 Community Policing and Preventive Approaches

Alongside reforms directed at curbing police excess, a complementary strand of reform has focused on reorienting the police towards a preventive, service-oriented and community-engaged model of policing, on the premise that a police force that is seen as approachable and trustworthy is both more effective at preventing crime and less likely to resort to coercive methods. Initiatives such as the Community Policing programme in Kerala (Janamaithri Suraksha Project), the Maithri initiative and similar schemes in other States, encourage regular interaction between police personnel and local residents, beat-level engagement, and the involvement of citizens in identifying local security concerns. While such initiatives remain limited in scale relative to the size of the police force nationally, they represent an important conceptual shift away from a purely enforcement-oriented model of policing towards one that treats the maintenance of public trust as central to effective law enforcement and to the protection of human rights in the course of everyday policing.

8.14 Women in the Police Force

The representation of women within the police force itself has a direct bearing on the human rights sensitivity of policing, particularly in relation to offences against women and children, and to the treatment of women in custody. Although the Bureau of Police Research and Development has recommended that women constitute at least thirty-three percent of State police forces, actual representation remains considerably lower in most States, and dedicated women's police stations, though established in several States to encourage women to report offences such as domestic violence and sexual harassment without inhibition, remain unevenly distributed and inadequately staffed. The presence of women police personnel is also a specific statutory requirement in certain contexts, such as the search of a woman under Section 51(2) CrPC, which mandates that any search of the person of a woman be conducted by another woman with strict regard to decency, illustrating the intersection between gender representation in the force and the practical protection of rights of persons subjected to police action.

8.15 Conclusion

Police administration sits at the intersection of the State's duty to maintain order and enforce the law, and its correlative duty to respect the fundamental rights of every individual, including those suspected or accused of crime. The constitutional and statutory framework in India provides a reasonably robust set of formal safeguards, ranging from the requirements of Article 22 to the detailed procedural directions in D.K. Basu and the structural reforms mandated in Prakash Singh. The persistent gap between this formal framework and everyday policing practice, however, points to the continuing importance of institutional reform: functional separation of investigation from law and order duties, genuine insulation of the police from illegitimate political interference, independent and binding complaints mechanisms, adequate training and sensitisation, and a shift in institutional culture from a colonial model of control towards a democratic model of service. Sustained attention to these reforms is essential if the police are to function as genuine protectors, rather than potential violators, of human rights.

8.16 Summary

This Unit examined the constitutional placement of police as a State subject, the parallel constitutional safeguards under Articles 20, 21 and 22 that constrain police power, the structure of police administration from the Director General of Police down to the police station, and the continuing shortcomings of the colonial-era Police Act, 1861. It traced the stages of criminal investigation, from registration of the FIR through arrest, search and seizure, interrogation and filing of the charge sheet, highlighting the human rights safeguards applicable at each stage. It surveyed the principal human rights concerns associated with policing, namely custodial violence, extra-judicial killings, arbitrary arrest and bias, and reviewed the judicial response through landmark decisions such as D.K. Basu, Joginder Kumar, Nilabati Behera and PUCL v. State of Maharashtra. Finally, it discussed the structural reforms directed in Prakash Singh v. Union of India and the continuing gap in their implementation, along with the relevance of international human rights standards to domestic policing.

8.17 Glossary

- First Information Report (FIR): The document recording information given to police about the commission of a cognizable offence, which sets the investigative process in motion.
- Custodial Violence: Physical or psychological abuse inflicted on a person while in police or judicial custody.
- Encounter Killing: The killing of a suspect by police personnel, claimed to have occurred in an exchange of fire, often alleged to be extra-judicial in nature.
- Police Complaints Authority: An independent body, directed to be constituted in Prakash Singh v. Union of India, to inquire into public complaints against police personnel.
- Third Degree Methods: Coercive and often violent interrogation techniques used to extract confessions or information.

8.18 References

Ghosh, S. K. (1973). *Police administration: Organisation and procedure*. Eastern Law House. (Krimdok)

Sharma, P. D. (1977). *Indian police: A developmental approach*. Research Publications.

Sen, S. (1994). *Indian police today*. Ashish Publishing House. (ggscw.ac.in)

Srivastava, A. (1999). *Role of police in a changing society*. A.P.H. Publishing Corporation. (ggscw.ac.in)

Dempsey, J. S., & Forst, L. S. (2005). *An introduction to policing* (4th ed.). Thomson/Wadsworth. (ggscw.ac.in)

Cordner, G. W. (2019). *Police administration*. Routledge. (Grafiati)

Government of India. (2023). *Bharatiya Nagarik Suraksha Sanhita, 2023*. Government of India.

Government of India. (2023). *Bharatiya Sakshya Adhiniyam, 2023*. Government of India.

8.19 Short Answer Questions

1. What is police administration?
2. Define criminal investigation.
3. What are the primary functions of the police?
4. What is an FIR?
5. What is the importance of crime scene investigation?

8.20 Terminal Questions

1. Discuss the constitutional and statutory framework governing the police in India, with particular reference to the safeguards against arbitrary arrest and detention.
2. Explain the directions issued by the Supreme Court in Prakash Singh v. Union of India and assess the extent to which they have been implemented by the States.
3. Critically examine the phenomenon of custodial violence in India and the adequacy of existing legal remedies to address it.
4. Describe the stages of criminal investigation under Indian law and identify the human rights safeguards applicable at each stage.
5. Discuss the role of the judiciary in checking police excesses, with reference to at least three landmark decisions.

8.21 True/False

1. Police administration is responsible for maintaining law and order. **(True)**
2. An FIR can be registered only after the arrest of the accused. **(False)**
3. Criminal investigation aims to collect evidence related to a crime. **(True)**
4. The police have no role in crime prevention. **(False)**
5. A charge sheet is filed after completing the investigation. **(True)**

UNIT - 9

COURTS, JUDICIARY AND LEGAL AID

9.0 INTRODUCTION

If the police represent the point of entry into the criminal justice system, the courts represent the forum in which the guilt or innocence of the accused is adjudicated, and in which the rights of both the accused and the victim are ultimately vindicated or denied. The judiciary in India, structured as an integrated and largely unified hierarchy, is entrusted not only with adjudication but also with the enforcement of fundamental rights, including the rights of persons caught up in the criminal process. Because access to competent legal representation is a precondition for the meaningful exercise of the right to a fair trial, the institution of legal aid, developed both through constitutional interpretation and through dedicated legislation, occupies a place of special importance in ensuring that justice is not, in practice, available only to those who can afford it. This Unit examines the structure of the Indian judiciary as it relates to criminal justice, the hierarchy of criminal courts, and the constitutional, statutory and institutional framework for legal aid in India.

9.1 STRUCTURE OF THE INDIAN JUDICIARY

India has a single, integrated judicial system, in contrast to federal systems that maintain wholly separate court structures for the Union and the constituent States. At the apex stands the Supreme Court of India, established under Article 124 of the Constitution, which is the final court of appeal in both civil and criminal matters, the guardian and final interpreter of the Constitution, and a court of record with the power to punish for contempt of itself. The Supreme Court exercises original jurisdiction in disputes between the Union and the States and between States inter se, appellate jurisdiction in constitutional, civil and criminal matters, and a wide advisory jurisdiction under Article 143. Of particular relevance to human rights and criminal justice is its jurisdiction under Article 32, which empowers any person to approach the Supreme Court directly for enforcement of fundamental rights, and under which the Court has developed remedies such as compensation for custodial death and detailed directions on police and prison reform.

Below the Supreme Court, each State (or, in some cases, a group of States and Union Territories) has a High Court, established or continued under Article 214, which exercises both original and appellate jurisdiction and, under Article 226, possesses an even wider power than the Supreme Court to issue writs for the enforcement of fundamental rights as well as for any other purpose, since Article 226 is not confined to fundamental rights alone. High Courts also exercise general superintendence over all courts and tribunals within their territorial jurisdiction under Article 227, and confirm death sentences passed by Sessions Courts under Section 366 CrPC (Section 407 BNSS), an important safeguard given the irreversibility of capital punishment.

Below the High Court lies the subordinate or district judiciary, comprising civil and criminal courts at the district and lower levels, which handle the overwhelming majority of litigation in the country, including nearly all criminal trials at first instance.

9.2 HIERARCHY OF CRIMINAL COURTS

The Code of Criminal Procedure (and now the BNSS) establishes a specific hierarchy of criminal courts, distinct from the general hierarchy of civil courts, designed to try offences according to their gravity. At the head of the criminal courts in each district is the Court of Session, presided over by a Sessions Judge, who may be assisted by Additional and Assistant Sessions Judges. The Sessions Court tries the most serious offences, including those punishable with death, life imprisonment or imprisonment for a term exceeding seven years, and is the only court empowered to pass a sentence of death, subject to confirmation by the High Court.

Below the Sessions Court, in each district, is the Court of the Chief Judicial Magistrate (CJM), or the Chief Metropolitan Magistrate in metropolitan areas designated as such under Section 8 of the CrPC, who supervises and distributes work among the subordinate magistracy. Judicial Magistrates of the First Class, and Metropolitan Magistrates in metropolitan areas, exercise jurisdiction over offences punishable with imprisonment up to three years, and Judicial Magistrates of the Second Class, where constituted, exercise more limited jurisdiction, typically over offences punishable with imprisonment up to one year. In addition, Executive Magistrates, who are part of the executive rather than the judiciary, exercise certain preventive and administrative functions, such as maintenance of public order under Sections 107 to 110 and 144 of the CrPC, a functional separation that was itself introduced to give effect to the constitutional principle, under Article 50, of separating the judiciary from the executive.

This tiered structure ensures that the gravity of the offence is matched to the seniority and sentencing power of the court, while also enabling a large volume of minor offences to be disposed of expeditiously at the magisterial level, leaving the Sessions Courts to concentrate on the most serious matters.

9.3 Special Courts and Fast Track Courts

Beyond the ordinary hierarchy, Indian law provides for a range of special courts constituted to try particular categories of offences, often reflecting a legislative or judicial recognition that ordinary trial processes are inadequate to the needs of certain victims or the complexity of certain offences. These include Special Courts under the Protection of Children from Sexual Offences (POCSO) Act, 2012, designed to try offences of child sexual abuse in a child-friendly and expeditious manner; Special Courts under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, intended to ensure speedy trial and adequate protection for victims and witnesses belonging to Scheduled Castes and Scheduled Tribes; Special Courts under the Narcotic Drugs and Psychotropic Substances Act, 1985; and Special Courts and Tribunals dealing with terrorism-related offences under legislation such as the Unlawful Activities (Prevention) Act, 1967.

Fast Track Courts (FTCs) and Fast Track Special Courts (FTSCs) have also been established, particularly following the widely reported gang rape and murder case in Delhi in December 2012, to expedite the trial of cases involving sexual offences against women and children and to reduce the pendency that ordinarily leaves victims of such offences waiting years for justice. The Nirbhaya Fund, set up by the Union Government following that incident, has been used, among other purposes, to finance the establishment of such Fast Track Special Courts across several States, along with One Stop Centres and other victim support infrastructure.

9.4 Independence and Accountability of the Judiciary

The independence of the judiciary is a foundational feature of the Indian constitutional scheme, protected through security of tenure for judges, a constitutionally prescribed and difficult process for removal by impeachment, protection of judicial salaries from being varied to their disadvantage during their term of office, and the collegium system evolved through a series of judicial decisions, commonly referred to as the Three Judges Cases, under which the appointment and transfer of judges of the Supreme Court and High Courts is primarily determined by a body of senior judges rather than solely by the executive. This insulation from executive control is regarded as essential to the judiciary's capacity to protect fundamental rights, including the rights of persons in the criminal process, even against the State itself. At the same time, mechanisms of judicial accountability, such as the process for removal of judges for proved misbehaviour or incapacity, and internal mechanisms for addressing complaints against judicial officers of the subordinate judiciary, exist to guard against the misuse of this independence, though critics have long argued that these mechanisms, particularly at the higher judiciary, remain underdeveloped and insufficiently transparent.

9.5 Legal Aid: Concept and Constitutional Basis

Legal aid refers to the provision of free or subsidised legal assistance to persons who are unable to afford legal representation, so that access to justice is not determined by economic capacity. The constitutional foundation for legal aid in India lies in Article 39A, inserted by the Forty-second Amendment in 1976, which directs the State to secure that the operation of the legal system promotes justice on a basis of equal opportunity, and in particular to provide free legal aid, by suitable legislation or schemes, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. Although Article 39A is a Directive Principle of State Policy and therefore not directly enforceable in a court of law, the Supreme Court has, through a series of decisions, read the substance of the right to legal aid into the fundamental right to life and personal liberty under Article 21, and into the fundamental right to a fair trial implicit in that Article, thereby giving it enforceable constitutional status in the specific context of criminal proceedings.

In M.H. Hoskot v. State of Maharashtra (1978), the Supreme Court held that free legal aid at State expense is a fundamental right of a person facing a possible term of imprisonment, implicit in the guarantee of a reasonable, fair and just procedure under Article 21, and that this right extends to the provision of a lawyer for the purpose of filing and arguing an appeal, and to the supply of a free transcript of the judgment for that purpose. In Hussainara Khatoon v. State of Bihar (1979), a case that also exposed the appalling condition of undertrial prisoners languishing in Bihar's jails for periods far exceeding the maximum sentence for their alleged offences, the Court held that the right to a speedy trial and the right to free legal aid are both integral to the guarantee of a reasonable, fair and just procedure, and directed the State to provide free legal services to indigent accused persons at the State's expense. In Khatri v. State of Bihar (1981), the Court went further and held that the right to free legal aid arises not merely at the trial stage but at the stage of production of the accused before the magistrate for the first time, and even earlier if the circumstances so require, and that this obligation exists irrespective of whether the accused applies for it, since an accused who is poor and ignorant may not know of the right at all. In Suk Das v. Union Territory of Arunachal Pradesh (1986), the Court held that failure to inform the accused of the right to free legal aid, where he is unable to engage a lawyer on account of poverty, would vitiate the trial as violative of Article 21, underscoring that the right is not merely formal but must be substantively secured.

9.6 The Legal Services Authorities Act, 1987

To give statutory effect to the constitutional mandate of Article 39A, Parliament enacted the Legal Services Authorities Act, 1987, which came into force in 1995. The Act establishes a nationwide network of legal services institutions with the specific object of providing free and competent legal services to weaker sections of society, organising Lok Adalats to secure the settlement of disputes, and ensuring that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

9.6.1 National Legal Services Authority (NALSA)

At the apex of this network is the National Legal Services Authority (NALSA), constituted under Section 3 of the Act, with the Chief Justice of India as its Patron-in-Chief and a serving or retired judge of the Supreme Court, nominated by the President in consultation with the Chief Justice, as its Executive Chairman. NALSA lays down policies and principles for making legal services available under the Act, frames effective and economical schemes, and allocates funds to State Legal Services Authorities and other agencies for implementing legal aid programmes.

9.6.2 State, District and Taluk Legal Services Authorities

Each State has a State Legal Services Authority (SLSA), headed by the Chief Justice of the High Court as Patron-in-Chief and a serving or retired judge of the High Court as Executive Chairman, which implements NALSA's policies within the State and conducts Lok Adalats and legal literacy programmes at the State level. At the district level, District Legal Services Authorities (DLSAs) are constituted under the chairmanship of the District Judge, and function as the primary point of access for individuals seeking legal aid, including through legal aid clinics and front offices located in courts, jails and other institutions. Taluk Legal Services Committees function at the sub-district level to extend the reach of legal aid to rural areas.

9.6.3 Eligibility for Legal Aid

Section 12 of the Act specifies the categories of persons entitled to free legal services, which include members of Scheduled Castes and Scheduled Tribes; victims of trafficking in human beings or of begar as referred to in Article 23 of the Constitution; women and children; persons with disabilities as defined under applicable disability legislation; victims of mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; industrial workmen; persons in custody, including in protective homes, juvenile homes or psychiatric hospitals; and persons whose annual income is below a limit specified by the respective State Government (or, for proceedings before the Supreme Court, below the limit prescribed by the Union Government), thereby covering both categories defined by social vulnerability and categories defined by economic need.

9.7 Lok Adalats and Permanent Lok Adalats

The Act also institutionalises the Lok Adalat, literally 'people's court,' as a forum for the amicable settlement of disputes through conciliation, drawing on an older tradition of community-based dispute resolution. Lok Adalats have jurisdiction to settle any matter pending before a court, as well as disputes at a pre-litigation stage, provided the parties agree, and an award of a Lok Adalat has the force and effect of a decree of a civil court, is final, and is not appealable, though it may be challenged in limited circumstances through a writ petition. Compoundable criminal offences and matters such as motor accident claims compensation, matrimonial disputes and disputes relating to public utility services are commonly referred to Lok Adalats, decongesting the regular court system while providing quicker resolution to litigants.

The Act was later amended in 2002 to provide for Permanent Lok Adalats for public utility services, such as transport, postal, telegraph and electricity services, which have jurisdiction to adjudicate disputes relating to such services even in the absence of agreement between the parties, subject to a monetary ceiling, thereby providing a compulsory, though summary and less formal, mechanism for resolving disputes concerning essential public services.

9.8 Para-Legal Volunteers and Legal Literacy

Recognising that formal legal aid schemes often fail to reach the most marginalised because of lack of awareness, NALSA has developed a scheme for the training and deployment of Para-Legal Volunteers (PLVs), typically drawn from local communities, who are trained to create legal awareness, assist in identifying persons in need of legal aid, and act as a bridge between the community and the legal services institutions, including in villages, slums, prisons and other institutions where formal legal literacy may be low. Legal literacy clubs in schools and colleges, legal aid clinics in law schools operating under the supervision of law teachers, and the deployment of legal aid counsel at police stations in some States to advise arrested persons of their rights, represent further institutional efforts to extend the practical reach of the right to legal aid beyond the courtroom.

9.9 Legal Aid, Undertrial Prisoners and Access to Justice

Despite this elaborate institutional architecture, the practical delivery of legal aid in India continues to face significant challenges. These include inadequate remuneration for legal aid counsel, which affects the quality and diligence of representation; low levels of awareness among the eligible population regarding their entitlement to free legal aid; an acute shortage of legal aid lawyers relative to the volume of cases, particularly in rural and remote areas; and a persistent gap between the formal availability of legal aid and its effective utilisation, particularly for undertrial prisoners, many of whom remain in custody for want of even the modest assistance needed to secure bail. The National Legal Services Authority has, in recent years, run periodic 'legal aid clinics in prisons' and 'undertrial review committee' initiatives, mandated under Section 55A of the Prisons Act as amended, and under directions of the Supreme Court, to periodically review the cases of undertrial prisoners with a view to securing their release on bail or expediting their trial, reflecting a recognition that legal aid must be actively and periodically extended to those in custody rather than merely made available on paper.

9.10 Right to Fair Trial and Speedy Trial

The right to a fair trial, though not expressly enumerated as a distinct fundamental right in the text of the Constitution, has been read by the Supreme Court as an essential ingredient of the guarantee of a reasonable, fair and just procedure under Article 21, and encompasses a bundle of specific entitlements, including the presumption of innocence until proven guilty, the right to be tried by an independent and impartial court, the right to be present at one's own trial, the right to cross-examine prosecution witnesses, the right to lead defence evidence, and the right to a public trial except in circumstances, such as trials involving offences against women or children, where in-camera proceedings are permitted or required to protect the dignity of the victim. The right to a speedy trial, recognised as a distinct facet of Article 21 in Hussainara Khatoon and subsequently elaborated in Abdul Rehman Antulay v. R.S. Nayak (1992), requires that criminal proceedings, from investigation through trial and appeal, be concluded within a reasonable time, failing which the accused may seek appropriate relief, including in appropriate cases the quashing of proceedings, though the Court has cautioned that no fixed outer time limit can be laid down for all cases and that the matter must be assessed having regard to the nature of the offence, the number of accused and witnesses, and the conduct of the parties.

Chronic delay remains, however, one of the most significant practical impediments to the realisation of both fair and speedy trial guarantees in India. High rates of judicial vacancy at both the High Court and subordinate court levels, an inadequate judge-to-population ratio compared to international benchmarks, procedural adjournments, and the sheer volume of pending litigation, contribute to a pendency of tens of millions of cases across Indian courts, a substantial proportion of which are criminal matters. The consequences of this delay fall disproportionately on undertrial prisoners, who may spend years in custody awaiting trial for offences of which they are ultimately acquitted, and on victims and witnesses, whose memory of events fades and whose willingness to pursue a remedy diminishes with the passage of time.

9.11 Plea Bargaining and Alternative Trial Mechanisms

In an effort to reduce the burden on the trial courts and to provide for the expeditious disposal of less serious offences, Chapter XXI-A was inserted into the CrPC in 2005, introducing the concept of plea bargaining into Indian criminal procedure. Under this mechanism, an accused facing trial for an offence, other than an offence punishable with death, life imprisonment or imprisonment exceeding seven years, and other than offences affecting the socio-economic condition of the country or committed against a woman or a child below fourteen years, may apply to the court for disposal of the case through a negotiated settlement, whereupon the court, after satisfying itself that the application has been made voluntarily, may work out a mutually acceptable disposition involving payment of compensation to the victim and a reduced sentence for the accused. Although plea bargaining has been used comparatively sparingly since its introduction, in part owing to unfamiliarity among the bar and the bench and in part owing to the specific procedural conditions attached to the mechanism, it represents a recognition that the ordinary process of full trial is not always necessary or proportionate for the disposal of less serious offences, and that expeditious disposal may itself serve the interests of both the accused and the victim.

9.12 Victim Compensation Schemes

The Code of Criminal Procedure, as amended in 2009 following the recommendations of the Justice Malimath Committee, introduced Section 357A, requiring every State Government, in coordination with the Union Government, to prepare a Victim Compensation Scheme for the purpose of providing funds for compensation to victims of crime and their dependants who have suffered loss or injury as a result of the crime, and who require rehabilitation, irrespective of whether the offender is convicted, apprehended or even identified. Compensation under this Scheme, disbursed through the District or State Legal Services Authority upon recommendation of the trial court or upon direct application by the victim, is distinct from, and in addition to, any fine that may be imposed upon and recovered from a convicted accused, and reflects a shift in the criminal justice system's orientation, traditionally focused overwhelmingly upon the punishment of the offender, towards giving due weight to the restitution and rehabilitation of the victim. Special schemes, such as the compensation scheme for victims of acid attacks mandated by the Supreme Court in Laxmi v. Union of India (2013), and compensation frameworks under the POCSO Act and the SC/ST (Prevention of Atrocities) Act, further illustrate this victim-centred evolution of the law.

9.13 Challenges Facing the Judiciary

Notwithstanding its constitutionally protected independence and its expansive record of rights-protective jurisprudence, the Indian judiciary faces significant institutional challenges that bear directly on its capacity to deliver timely and accessible justice, particularly in criminal matters. These include a persistently high rate of judicial vacancies, particularly in the subordinate judiciary where the bulk of criminal trials take place; a judge-to-population ratio considerably lower than that recommended by the Law Commission of India; inadequate physical and digital infrastructure in many trial courts, especially in rural areas; the slow pace of adoption of e-courts and virtual hearing technology, notwithstanding some acceleration during and after the COVID-19 pandemic; and continuing under-representation of women and of marginalised social groups within the higher judiciary. The e-Courts Mission Mode Project, initiated by the Union Government in phases since 2007, has sought to address some of these infrastructural challenges through computerisation of case records, digital filing, and virtual hearings, and represents an important, though still incomplete, effort at modernising judicial administration in a manner that can also improve access to justice for litigants who would otherwise face the cost and inconvenience of repeated physical appearance before distant courts.

9.14 Conclusion

The Indian judiciary, structured as an integrated hierarchy from the Supreme Court through the High Courts to the subordinate criminal courts, functions as both the adjudicator of criminal guilt and the guardian of the fundamental rights of the accused and of victims within that process. Legal aid, evolved from a Directive Principle under Article 39A into an enforceable dimension of the right to a fair trial under Article 21 through decisions such as Hoskot, Hussainara Khatoon, Khatri and Suk Das, and institutionalised through the Legal Services Authorities Act, 1987 and the network of NALSA, SLSAs, DLSAs and Taluk Legal Services Committees, represents one of the most significant efforts to make the constitutional promise of equal access to justice a lived reality rather than a formal entitlement. The continuing challenges of quality, awareness and reach in the delivery of legal aid, however, indicate that this promise remains a work in progress, requiring sustained institutional attention alongside the structural reforms discussed in relation to policing and the wider criminal justice system.

9.15 Summary

This Unit outlined the integrated structure of the Indian judiciary, from the Supreme Court and High Courts to the subordinate judiciary, and the specific hierarchy of criminal courts comprising the Sessions Court, the Chief Judicial Magistrate, and Judicial and Metropolitan Magistrates of the First and Second Class. It discussed the role of Special Courts and Fast Track Courts in addressing offences requiring specialised or expedited treatment, and the constitutional guarantees of judicial independence and accountability. It then traced the constitutional foundation of legal aid in Article 39A and its judicial elevation into an enforceable facet of Article 21 through landmark decisions, before examining the statutory framework of the Legal Services Authorities Act, 1987, the institutional network of NALSA, SLSA, DLSA and Taluk Legal Services Committees, the functioning of Lok Adalats and Permanent Lok Adalats, and the role of para-legal volunteers in extending legal literacy and access to justice, particularly for undertrial prisoners and other vulnerable groups.

9.16 Glossary

- Article 39A: The constitutional directive principle requiring the State to secure equal justice and free legal aid.
- NALSA: The National Legal Services Authority, the apex body constituted under the Legal Services Authorities Act, 1987.
- Lok Adalat: A forum for amicable, conciliatory settlement of disputes whose award has the force of a civil court decree.
- Undertrial Prisoner: A person held in judicial custody during the pendency of investigation or trial, not yet convicted.
- Para-Legal Volunteer (PLV): A community-based volunteer trained by legal services authorities to spread legal awareness and facilitate access to legal aid.

9.17 References

1. Government of India. (2024). *The Constitution of India*. Ministry of Law and Justice. https://legislative.gov.in/constitution-of-india/
2. Government of India. (1987). *Legal Services Authorities Act, 1987*. India Code. https://www.indiacode.nic.in/
3. National Legal Services Authority. (n.d.). *About legal aid*. https://nalsa.gov.in/
4. Government of India. (n.d.). *Department of Justice*. https://doj.gov.in/
5. Jain, M. P. (2019). *Indian constitutional law* (8th ed.). LexisNexis.
6. Basu, D. D. (2018). *Introduction to the Constitution of India* (22nd ed.). LexisNexis.

9.18 Short Answer Questions

1. What is the judiciary?
2. What are the main functions of courts?
3. What is the difference between civil and criminal courts?
4. What is the Supreme Court?
5. What is the role of the High Court?

9.19 Terminal Questions

1. Describe the hierarchy of criminal courts in India and the distribution of jurisdiction among them under the Code of Criminal Procedure.
2. Trace the evolution of the right to free legal aid from a Directive Principle under Article 39A to an enforceable right under Article 21, with reference to relevant case law.
3. Explain the institutional structure created under the Legal Services Authorities Act, 1987, from NALSA down to the Taluk Legal Services Committees.
4. What is a Lok Adalat? Discuss its jurisdiction, procedure and the legal effect of its award.
5. Examine the challenges in the effective delivery of legal aid to undertrial prisoners in India and the measures taken to address them.

9.20 True/False

1. The Supreme Court is the highest court in India. **(True)**
2. Legal aid is available only to rich people. **(False)**
3. Courts protect the rights of citizens. **(True)**
4. High Courts are below District Courts. **(False)**
5. PIL stands for Public Interest Litigation. **(True)**

UNIT 10

PRISON AND CORRECTIONAL ADMINISTRATION

10.1INTRODUCTION

Prison and correctional administration is a vital component of the criminal justice system, responsible for the management, supervision, and rehabilitation of individuals who have been convicted of crimes. Its primary objective extends beyond merely confining offenders; it seeks to ensure public safety while promoting the reformation and reintegration of prisoners into society. Modern correctional administration emphasizes humane treatment, respect for human rights, and the provision of educational, vocational, and psychological support to help inmates become responsible citizens.

An effective correctional system requires efficient administration, trained personnel, adequate infrastructure, and well-defined legal and institutional frameworks. Prison administrators are responsible for maintaining security and discipline, safeguarding the rights and welfare of inmates, preventing violence and escapes, and implementing rehabilitation and correctional programs. The administration must also address challenges such as overcrowding, inadequate resources, mental health concerns, and the needs of vulnerable groups, including women, juveniles, and elderly prisoners.

In contemporary criminal justice, the philosophy of corrections has evolved from punishment to rehabilitation and restorative justice. As a result, prison and correctional administration plays a crucial role in reducing recidivism and supporting successful social reintegration. A well-managed correctional system ultimately contributes to justice, public confidence, and the development of a safer and more equitable society.

10.2 OBJECTIVES

After reading the Unit the learners will be able to understand

- About secure correctional institutions by ensuring discipline, order, and the protection of inmates, staff, and the public.
- To rehabilitate and reform offenders through educational, vocational, psychological, and behavioral development programs that encourage positive change.
- To uphold the rights and dignity of prisoners by ensuring humane treatment in accordance with national laws and international human rights standards.
- To facilitate the successful reintegration of offenders into society by providing correctional services, counseling, skill development, and post-release support.
- To reduce recidivism by addressing the underlying causes of criminal behavior and promoting responsible citizenship through effective correctional interventions.
- To enhance the efficiency and accountability of correctional administration through proper management, staff training, policy implementation, and the effective use of available resources.

10.3 OBJECTIVE OF PRISON AND CORRECTIONAL ADMINISTRATION

The foremost objective of prison and correctional administration is to maintain safe and secure correctional institutions by ensuring discipline, order, and the protection of inmates, correctional staff, and the public. A secure prison environment is essential for the effective functioning of the correctional system, as it enables administrators to carry out rehabilitation programs while minimizing the risks of violence, escapes, and criminal activities within the institution. Security and discipline form the foundation upon which all correctional services are built.

Maintaining discipline within correctional institutions involves enforcing prison rules, regulations, and codes of conduct fairly and consistently. Every inmate is expected to comply with institutional policies designed to promote orderly living and mutual respect. Correctional officers play a central role in supervising inmates, preventing misconduct, resolving conflicts, and ensuring that daily activities such as meals, work assignments, education, and recreation proceed without disruption. A well-disciplined environment reduces incidents of violence, intimidation, and gang-related activities, thereby creating conditions that support rehabilitation and personal development.

Security in correctional institutions encompasses both physical and procedural measures. Physical security includes secure prison walls, surveillance cameras, electronic monitoring systems, controlled entry and exit points, perimeter fencing, alarm systems, and regular inspections. Procedural security involves inmate classification, regular headcounts, searches for contraband, risk assessments, emergency response planning, and strict control over the movement of inmates and visitors. These measures help prevent escapes, unauthorized access, and the introduction of prohibited items such as weapons, drugs, and communication devices.

The protection of inmates is a fundamental responsibility of correctional administration. Although prisoners have been deprived of their liberty through lawful conviction or detention, they retain their basic human rights, including the right to life, dignity, and protection from abuse. Prison authorities must ensure that inmates are safeguarded from violence, bullying, sexual abuse, discrimination, self-harm, and exploitation. Adequate healthcare, mental health services, proper nutrition, sanitation, and access to legal assistance are also essential components of inmate welfare. Special attention should be given to vulnerable groups, including women, juveniles, elderly prisoners, and persons with disabilities, to ensure their safety and well-being.

Equally important is the protection of correctional staff who work in challenging and often high-risk environments. Correctional officers must receive professional training in security procedures, conflict resolution, crisis management, communication skills, and the lawful use of force. Providing appropriate safety equipment, clear operational guidelines, and psychological support enhances staff confidence and reduces occupational stress. A safe working environment improves morale, professionalism, and the overall effectiveness of prison administration.

The security of correctional institutions also directly affects public safety. Effective prison management prevents escapes, disrupts criminal networks operating from within prisons, and reduces the likelihood of offenders committing further crimes while incarcerated. Secure institutions contribute to public confidence in the criminal justice system by demonstrating that offenders are held accountable while being managed in accordance with the law. Furthermore, maintaining order creates a stable environment in which educational, vocational, and rehabilitation programs can be implemented successfully, preparing inmates for lawful and productive lives after release.

Maintaining safe and secure correctional institutions is the cornerstone of effective prison administration. Through strict discipline, efficient security systems, the protection of inmates and staff, and a commitment to public safety, correctional institutions can fulfill their dual mission of ensuring security and promoting offender rehabilitation. A balanced approach that combines firm control with respect for human dignity ultimately strengthens the correctional system and contributes to a safer and more just society.

10.3.1 REHABILITATE AND REFORMS FOR OFFENDERS

One of the fundamental objectives of prison and correctional administration is to rehabilitate and reform offenders by addressing the underlying causes of criminal behavior and preparing them to lead law-abiding lives after their release. Modern correctional philosophy recognizes that imprisonment should not be limited to punishment alone. Instead, correctional institutions should provide opportunities for personal growth, skill development, and behavioral change so that offenders can successfully reintegrate into society. Rehabilitation reduces the likelihood of reoffending, promotes public safety, and contributes to social and economic development.

Education is one of the most effective tools for offender rehabilitation. Many inmates enter correctional institutions with low levels of education, limited literacy, or inadequate academic qualifications. Correctional education programs offer basic literacy classes, secondary education, higher education opportunities, and digital literacy training. These programs improve inmates' knowledge, enhance critical thinking, and increase their chances of obtaining lawful employment after release. Education also develops self-confidence, decision-making abilities, and a sense of responsibility, enabling offenders to make positive life choices. Studies have consistently shown that inmates who participate in educational programs are less likely to return to criminal activities.

Vocational training is another essential component of rehabilitation. Correctional institutions provide practical skills in areas such as carpentry, tailoring, plumbing, electrical work, agriculture, computer applications, food processing, handicrafts, and automobile repair. These training programs equip inmates with employable skills that can help them earn a legitimate livelihood upon release. Gainful employment reduces financial insecurity, which is often a contributing factor to criminal behavior. Vocational programs also instill discipline, teamwork, time management, and a strong work ethic, all of which support successful reintegration into society.

Psychological development programs are equally important because many offenders experience mental health challenges, substance abuse, trauma, anger management issues, or emotional instability. Professional psychologists, counselors, and social workers provide individual counseling, group therapy, cognitive behavioral therapy (CBT), addiction treatment, stress management, and emotional support. These interventions help offenders understand the consequences of their actions, manage negative emotions, improve interpersonal relationships, and develop healthier coping strategies. Addressing psychological needs significantly enhances the effectiveness of rehabilitation efforts and reduces the risk of repeated offending.

Behavioral development programs focus on changing attitudes, values, and patterns of behavior associated with criminal conduct. Correctional institutions implement life skills training, moral education, conflict resolution workshops, restorative justice initiatives, communication skills development, and programs that encourage responsibility, empathy, and respect for others. Religious and spiritual guidance may also be offered to inmates who voluntarily choose to participate, helping them develop ethical values, self-discipline, and a renewed sense of purpose. Such programs encourage offenders to recognize the impact of their crimes on victims, families, and communities while motivating them to adopt positive behaviors.

Effective rehabilitation requires collaboration among correctional administrators, educators, psychologists, social workers, healthcare professionals, non-governmental organizations, employers, and community agencies. Pre-release planning, employment assistance, family counseling, and community supervision further support successful reintegration after incarceration. Continuous assessment and individualized rehabilitation plans ensure that each offender receives programs suited to their specific needs, abilities, and risk factors.

The rehabilitation and reformation of offenders are central to the mission of modern correctional administration. Through educational opportunities, vocational skill development, psychological counselling, and behavioural improvement programs, correctional institutions help individuals transform their lives and become productive members of society. By focusing on positive change rather than punishment alone, correctional systems contribute to lower recidivism, stronger communities, and a more humane and effective criminal justice system

10.3.2 THE RIGHTS AND DIGNITY OF PRISONERS

One of the other primary objectives of prison and correctional administration is to uphold the rights and dignity of prisoners by ensuring humane treatment in accordance with national laws and international human rights standards. Although imprisonment restricts an individual's freedom of movement, it does not deprive prisoners of their fundamental human rights. Every prisoner is entitled to be treated with respect, fairness, and dignity, regardless of the nature of the offence committed. A humane correctional system reflects the principles of justice, equality, and respect for human rights while promoting rehabilitation and social reintegration.

National constitutions, prison laws, and judicial decisions provide legal safeguards to protect the rights of prisoners during incarceration. In India, for example, the Constitution guarantees the right to life and personal liberty under Article 21, which has been interpreted by the courts to include the right to live with dignity, even while in custody. The judiciary has consistently emphasized that prisoners retain all fundamental rights except those lawfully restricted by imprisonment. Correctional authorities are therefore responsible for ensuring that inmates are not subjected to torture, cruel, inhuman, or degrading treatment or punishment.

At the international level, several human rights instruments establish standards for the treatment of prisoners. The **United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)** provide comprehensive guidelines on prison management, accommodation, healthcare, discipline, access to legal assistance, contact with family members, and rehabilitation. Similarly, the **Universal Declaration of Human Rights (1948)** and the **International Covenant on Civil and Political Rights (1966)** recognize the inherent dignity and equal rights of every human being, including those deprived of their liberty. These international standards encourage governments to maintain correctional institutions that respect human dignity and promote rehabilitation rather than unnecessary suffering.

Humane treatment requires correctional institutions to provide safe and hygienic living conditions, adequate food, clean drinking water, proper sanitation, clothing, and suitable accommodation. Prisoners should have access to quality healthcare services, including medical examinations, mental health care, emergency treatment, and preventive healthcare. Special attention must be given to vulnerable groups such as women, children living with incarcerated mothers, elderly prisoners, persons with disabilities, and inmates with chronic illnesses or mental health disorders. Providing these essential services protects the physical and psychological well-being of prisoners and supports their rehabilitation.

Respect for prisoners' dignity also involves protecting them from violence, abuse, discrimination, exploitation, and harassment by prison staff or fellow inmates. Correctional administrators must establish transparent complaint mechanisms, conduct regular inspections, and ensure accountability for misconduct within prisons. Prisoners should be allowed reasonable opportunities to communicate with their families, legal representatives, and authorized visitors, as maintaining social connections contributes to emotional stability and successful reintegration into society. Access to education, vocational training, religious practices, recreational activities, and counseling services further enhances their personal development and sense of self-worth.

Correctional staff play a vital role in safeguarding prisoners' rights. They must receive professional training in human rights principles, ethical conduct, communication skills, conflict resolution, and non-discriminatory practices. Respectful interactions between staff and inmates reduce tensions, promote institutional discipline, and create an environment conducive to rehabilitation. Effective prison administration balances security requirements with the protection of individual rights, ensuring that security measures remain lawful, necessary, and proportionate.

In conclusion, upholding the rights and dignity of prisoners is a fundamental responsibility of modern correctional administration. By ensuring humane treatment in accordance with national laws and international human rights standards, correctional institutions promote justice, respect for human dignity, and successful rehabilitation. A prison system that protects the rights of inmates not only strengthens the rule of law but also contributes to safer communities by encouraging offenders to return to society as responsible and law-abiding citizens.

10.3.4 POLICY FOR REINTEGRATION OF OFFENDERS INTO SOCIETY

The successful reintegration of offenders into society is one of the most important objectives of modern prison and correctional administration. The correctional process does not end with the completion of a prison sentence; rather, it extends beyond incarceration by preparing offenders to become responsible, self-reliant, and law-abiding members of society. Effective reintegration reduces recidivism, enhances public safety, and enables former offenders to contribute positively to their families and communities. Achieving this objective requires a comprehensive approach that includes correctional services, professional counseling, skill development, and sustained post-release support.

Correctional services are designed to address the personal, educational, social, and behavioral needs of offenders during their period of incarceration. These services include educational programs, vocational training, healthcare, psychological treatment, substance abuse rehabilitation, recreational activities, and moral development initiatives. Through these interventions, correctional institutions seek to transform offenders by improving their attitudes, developing life skills, and encouraging lawful behaviour. Individualized correctional plans based on an offender's background, risks, and rehabilitation needs ensure that appropriate services are provided to facilitate personal growth and successful reintegration.

Counseling plays a critical role in helping offenders overcome emotional, psychological, and social challenges that may have contributed to their criminal behaviour. Many inmates have experienced poverty, family conflict, trauma, addiction, mental health disorders, or social exclusion before entering prison. Professional counsellors, psychologists, and social workers provide individual counseling, group therapy, anger management programs, addiction treatment, family counseling, and cognitive behavioural therapy. These interventions help offenders develop emotional stability, improve decision-making abilities, build healthy relationships, and adopt positive coping mechanisms. Counseling also strengthens self-esteem and motivates individuals to pursue lawful and productive lives after release.

Skill development is another essential component of offender reintegration. Many prisoners lack marketable skills or employment experience, making it difficult for them to secure stable jobs after release. Correctional institutions therefore provide vocational training in areas such as carpentry, tailoring, plumbing, electrical work, agriculture, computer applications, food processing, hospitality, and small-scale entrepreneurship. These programs equip offenders with practical skills that increase their employability and financial independence. Skill development not only provides economic opportunities but also promotes discipline, responsibility, teamwork, and self-confidence, reducing the likelihood of reoffending.

Post-release support is equally important because former offenders often face significant challenges when returning to society. They may encounter unemployment, social stigma, housing difficulties, financial hardship, and strained family relationships. Without adequate support, these obstacles can increase the risk of returning to criminal activities. Effective post-release services include employment assistance, job placement, housing support, legal aid, continued counseling, community supervision, mentorship programs, and family reintegration services. Probation and parole officers, social welfare agencies, non-governmental organizations, employers, and community groups work together to provide guidance and practical assistance during the transition from prison to community life. Community acceptance and family support also play a vital role in helping former offenders rebuild their lives and maintain positive social relationships.

Successful reintegration requires coordination among correctional institutions, government agencies, civil society organizations, educational institutions, healthcare providers, and employers. Public awareness programs that reduce discrimination against rehabilitated offenders encourage social inclusion and create opportunities for meaningful employment and community participation. Continuous monitoring and follow-up support further help individuals overcome challenges during the early stages of reintegration.

Facilitating the successful reintegration of offenders into society is a central goal of modern correctional administration. Through comprehensive correctional services, professional counseling, vocational skill development, and structured post-release support, correctional institutions help offenders rebuild their lives and become responsible citizens. A well-planned reintegration process benefits not only former offenders but also their families, communities, and society by reducing recidivism, strengthening public safety, and promoting social harmony and sustainable development.

10.3.5 RECIDIVISM

Recidivism, or the tendency of former offenders to commit crimes again after their Reducing release, is one of the principal objectives of prison and correctional administration. A high rate of recidivism indicates that correctional institutions have not successfully rehabilitated offenders or addressed the factors that contributed to their criminal behaviour. Modern correctional administration recognizes that crime often results from a combination of social, economic, psychological, educational, and environmental factors. Therefore, effective correctional interventions aim not only to punish offenders but also to identify and address these underlying causes while promoting responsible citizenship and lawful behavior.

Many offenders enter the criminal justice system because of circumstances such as poverty, unemployment, lack of education, substance abuse, family instability, peer pressure, mental health disorders, or exposure to violence. These factors increase the likelihood of criminal involvement and make successful reintegration into society more difficult. Correctional institutions conduct comprehensive assessments of offenders to identify their individual risks, needs, and personal circumstances. Based on these assessments, individualized rehabilitation plans are developed to address the specific issues that contribute to criminal conduct.

Educational and vocational training programs play a significant role in reducing recidivism by improving the employability and self-confidence of offenders. Literacy programs, formal education, vocational courses, and life skills training equip inmates with the knowledge and practical abilities needed to obtain lawful employment after release. Stable employment provides financial security and reduces the temptation to engage in criminal activities. At the same time, educational programs encourage critical thinking, personal responsibility, and informed decision-making, enabling offenders to make positive life choices.

Psychological and behavioral interventions are equally important in preventing repeat offending. Many offenders struggle with anger management, impulsive behavior, substance addiction, trauma, or emotional instability. Professional counseling, cognitive behavioral therapy, mental health treatment, addiction recovery programs, and stress management workshops help individuals understand the consequences of their actions and develop healthier patterns of thinking and behavior. These interventions encourage offenders to accept responsibility for their actions, improve emotional regulation, and strengthen problem-solving skills, thereby reducing the likelihood of future criminal conduct.

Correctional institutions also promote responsible citizenship by encouraging offenders to develop respect for the law, ethical values, and social responsibility. Programs focusing on moral education, civic responsibility, conflict resolution, communication skills, and restorative justice help inmates understand the impact of their crimes on victims, families, and communities. Participation in community service initiatives, where appropriate, and educational activities on citizenship fosters empathy, accountability, and respect for the rights of others. Religious and spiritual programs, when voluntarily chosen by inmates, may further support moral development and encourage positive behavioral change.

Effective correctional interventions extend beyond imprisonment. Successful reintegration requires post-release supervision, employment assistance, family counseling, housing support, and continued access to healthcare and counseling services. Probation and parole officers, social workers, community organizations, employers, and family members all play an important role in supporting former offenders during their transition back into society. Community acceptance and opportunities for lawful employment significantly reduce the risk of reoffending and help individuals establish stable, productive lives.

Continuous evaluation of correctional programs is essential to ensure their effectiveness in reducing recidivism. Evidence-based practices, trained correctional staff, individualized treatment plans, and collaboration among government agencies and community organizations contribute to better rehabilitation outcomes. A correctional system that prioritizes rehabilitation alongside security is more likely to produce lasting behavioral change.

Reducing recidivism requires a comprehensive approach that addresses the root causes of criminal behavior while promoting responsible citizenship through effective correctional interventions. By providing education, vocational training, psychological counseling, behavioral development, and post-release support, correctional institutions help offenders become law-abiding and productive members of society. Such efforts not only improve the lives of former offenders but also strengthen public safety, reduce crime, and contribute to a more just and secure society.

10.3.6 EFFICIENT CORRECTIONAL ADMINISTRATION

The effectiveness of prison and correctional administration largely depends on its ability to operate efficiently while maintaining transparency, accountability, and professionalism. Efficient correctional administration ensures that prisons function safely, rehabilitation programs are implemented successfully, and public resources are utilized responsibly. Accountability, on the other hand, promotes ethical conduct, compliance with legal standards, and public confidence in the correctional system. These objectives can be achieved through proper management, continuous staff training, effective policy implementation, and the optimal use of available resources.

Proper management is the foundation of an efficient correctional system. Prison administrators are responsible for planning, organizing, directing, and monitoring all aspects of prison operations. This includes inmate classification, security management, rehabilitation programs, healthcare services, financial administration, infrastructure maintenance, and personnel management. Effective leadership enables administrators to establish clear objectives, coordinate institutional activities, and respond promptly to operational challenges. Sound management practices also ensure that correctional institutions maintain discipline, protect the rights of inmates, and provide a secure environment for staff and visitors.

Staff training is another critical factor in improving correctional administration. Correctional officers and prison personnel perform demanding duties that require specialized knowledge, technical skills, and ethical judgment. Comprehensive training programs should include prison laws, human rights standards, security procedures, conflict resolution, crisis management, emergency response, communication skills, mental health awareness, rehabilitation techniques, and the lawful use of force. Continuous professional development enables staff to adapt to changing correctional policies, technological advancements, and emerging security challenges. Well-trained personnel are more capable of managing inmates effectively, preventing violence, resolving disputes peacefully, and supporting rehabilitation efforts.

The successful implementation of correctional policies is essential for maintaining consistency, fairness, and accountability within correctional institutions. Policies and procedures provide clear guidelines for prison operations, inmate management, disciplinary measures, healthcare services, rehabilitation programs, and staff responsibilities. Effective implementation requires regular supervision, monitoring, and evaluation to ensure that institutional practices comply with legal requirements and administrative standards. Transparent decision-making, accurate record-keeping, and regular internal and external inspections strengthen accountability and help prevent corruption, abuse of authority, and administrative negligence. Independent oversight bodies, judicial review, and grievance redressal mechanisms further ensure that correctional institutions remain accountable to the law and the public.

Efficient use of available resources is equally important for achieving the objectives of correctional administration. Many correctional systems operate under financial and infrastructural constraints, making resource management a significant challenge. Administrators must allocate budgets carefully, maintain prison facilities, utilize modern technology, and ensure that available personnel, equipment, and services are used effectively. The adoption of digital record management systems, electronic surveillance, biometric identification, and data-driven decision-making can improve operational efficiency while reducing administrative errors. Partnerships with government agencies, educational institutions, healthcare providers, and non-governmental organizations can also enhance the delivery of rehabilitation programs and specialized services without placing excessive strain

on institutional resources.
Performance evaluation and accountability mechanisms are essential for measuring the effectiveness of correctional administration. Regular audits, staff performance assessments, inmate feedback, and program evaluations help identify areas for improvement and promote continuous organizational development. Ethical leadership, transparency in decision-making, and strict adherence to legal and professional standards foster a culture of responsibility and integrity within correctional institutions. Public confidence in the correctional system increases when prison administration demonstrates fairness, efficiency, and respect for the rule of law.
In conclusion, enhancing the efficiency and accountability of correctional administration is essential for achieving the broader goals of justice, security, and rehabilitation. Through effective management, continuous staff training, consistent policy implementation, and the responsible use of available resources, correctional institutions can operate more effectively while safeguarding the rights of inmates and maintaining public trust. A well-managed and accountable correctional system not only improves institutional performance but also contributes to safer communities, successful offender rehabilitation, and the overall effectiveness of the criminal justice system.

10.4 SUMMARY

Prison and correctional administration is an essential component of the criminal justice system, aiming to ensure security, rehabilitation, and the successful reintegration of offenders into society. Its primary responsibility is to maintain safe and secure correctional institutions through effective discipline, order, and the protection of inmates, staff, and the public. Modern correctional administration emphasizes rehabilitation by providing educational, vocational, psychological, and behavioral development programs that help offenders develop positive attitudes and acquire skills for lawful living. It also upholds the rights and dignity of prisoners by ensuring humane treatment in accordance with national laws and international human rights standards, recognizing that imprisonment does not deprive individuals of their fundamental rights. Effective correctional services, counseling, skill development, and structured post-release support facilitate the successful reintegration of offenders into society and reduce the likelihood of reoffending. Furthermore, correctional interventions address the underlying causes of criminal behavior, promote responsible citizenship, and contribute to lower recidivism rates. The efficiency and accountability of correctional administration are strengthened through sound management practices, continuous staff training, effective policy implementation, transparent governance, and the optimal use of available resources. Collectively, these objectives create a correctional system that balances security with rehabilitation, protects human dignity, enhances public safety, and contributes to a more just, humane, and law-abiding society.

10.5 GLOSSARY

Correctional Administration: The system of managing prisons and correctional institutions, including the supervision of inmates, maintenance of security, implementation of rehabilitation programs, and enforcement of prison laws and policies.
Rehabilitation: The process of helping offenders develop positive attitudes, skills, education, and behaviors that enable them to reintegrate into society as law-abiding and productive citizens.
Recidivism: The tendency of a previously convicted offender to commit another crime after release from prison or completion of a correctional sentence. Reducing recidivism is a major objective of correctional administration.
Reintegration: The process of preparing and supporting offenders to return successfully to

society after imprisonment through counseling, employment opportunities, education, and community support services.

Human Rights of Prisoners: The fundamental rights retained by individuals during imprisonment, including the right to dignity, humane treatment, healthcare, legal protection, and freedom from torture or degrading treatment, as guaranteed by national laws and international human rights standards.

Correctional Intervention: Programs, services, and strategies implemented within correctional institutions—such as counseling, education, vocational training, psychological treatment, and behavioral therapy—to reduce criminal behavior, promote rehabilitation, and improve public safety.

10.6 REFERENCES

Coyle, A. (2009). *A human rights approach to prison management: Handbook for prison staff* (2nd ed.). International Centre for Prison Studies.

Cullen, F. T., & Gendreau, P. (2000). Assessing correctional rehabilitation: Policy, practice, and prospects. *Criminal Justice, 3*, 109–175.

Haney, C. (2006). *The wages of prison: Effects of incarceration policy on prisoners and correctional employees*. Oxford University Press.

International Committee of the Red Cross. (2018). *Water, sanitation, hygiene and habitat in prisons: Supplementary guidance*. International Committee of the Red Cross.

Maguire, M., & Raynor, P. (2017). Offender management in and after prison: The end of the end of the line? *Criminology & Criminal Justice, 17*(4), 385–402. https://doi.org/10.1177/1748895816665435

Ministry of Home Affairs, Government of India. (2016). *Model prison manual 2016*. Bureau of Police Research and Development.

National Institute of Corrections. (2017). *Evidence-based policy, practice, and decisionmaking: Implications for corrections*. U.S. Department of Justice.

Petersilia, J. (2003). *When prisoners come home: Parole and prisoner reentry*. Oxford University Press.

Reitz, K. R., & Rhine, E. E. (Eds.). (2020). *American prisons: A critical analysis*. Cambridge University Press.

United Nations. (1948). *Universal Declaration of Human Rights*. United Nations.

United Nations. (1966). *International Covenant on Civil and Political Rights*. United Nations.

United Nations Office on Drugs and Crime. (2015). *The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*. United Nations.

United Nations Office on Drugs and Crime. (2018). *Introductory handbook on the prevention of recidivism and the social reintegration of offenders*. United Nations.

Welch, M. (2005). *Corrections: A critical approach*. McGraw-Hill.

World Health Organization. (2014). *Prisons and health*. World Health Organization

10.7 SUGGESTED READINGS

1. **Paranjape, N. V.** (2019). *Criminology and Penology with Victimology*. Central Law Publications, Allahabad.
2. **Sutherland, E. H., Cressey, D. R., & Luckenbill, D. F.** (Adapted in Indian criminology texts). *Principles of Criminology*. (Useful for understanding crime, criminal behavior, and correctional theories).
3. **Ratanlal & Dhirajlal.** (2022). *The Indian Penal Code*. LexisNexis. *(Provides understanding of criminal law principles connected with punishment and corrections.)*

4. **K. N. Chandrasekharan Pillai.** (2019). *General Principles of Criminal Law*. Eastern Book Company, Lucknow.
(Useful for understanding punishment, criminal responsibility, and justice administration.)
5. **N. V. Paranjape.** (2020). *Criminology, Penology and Victimology*. Central Law Publications, Allahabad.
(Discusses theories of punishment, prison systems, rehabilitation, and correctional approaches.)
6. **A. P. Singh.** (2016). *Criminology and Penology*. Allahabad Law Agency.
(Covers crime prevention, prison administration, correctional institutions, and offender treatment.)
7. **B. K. Sharma.** (2019). *Criminal Justice Administration*. Atlantic Publishers, New Delhi.
(Explains the functioning of police, courts, prisons, and correctional agencies in India.)
8. **K. Padmanabhaiah Committee Report.** (2000). *Report of the Committee on Reforms of Criminal Justice System*. Government of India.
(Important for understanding reforms in criminal justice administration and correctional systems.)
9. **Justice V. R. Krishna Iyer.** (1980). *Human Rights and Inhuman Wrongs*. B. R. Publishing Corporation.
(Provides perspectives on prisoners' rights, humane treatment, and constitutional protections.)
10. **Justice A. N. Mulla Committee.** (1983). *Report of the All India Committee on Jail Reforms (1980–1983)*. Government of India.
(A major source on prison reforms, rehabilitation, prison conditions, and correctional administration in India.)
11. **K. D. Gaur.** (2020). *Criminal Law: Cases and Materials*. LexisNexis.
(Provides background on criminal justice principles and legal approaches to punishment.)
12. **R. Deb.** (2018). *Criminology and Penology*. Eastern Book Company.
(Discusses criminological theories, punishment systems, and correctional practices.)

Important Indian Reports and Manuals

- **Bureau of Police Research and Development (BPR&D).** (2016). *Model Prison Manual 2016*. Ministry of Home Affairs, Government of India.
- **Government of India.** (1983). *Report of the All India Committee on Jail Reforms (Mulla Committee Report)*.
- **National Human Rights Commission (NHRC), India.** *Reports on Prison Administration and Prisoners' Rights*.
- **Bureau of Police Research and Development (BPR&D).** *Prison Statistics India Reports*. National Crime Records Bureau (NCRB).

10.8 SHORT ANSWERS QUESTIONS

1. What is the primary objective of prison and correctional administration?

2. Define the term **rehabilitation** in the context of correctional institutions.

3. What is recidivism, and why is its reduction important in the correctional system?

4. Explain the importance of protecting the rights and dignity of prisoners.

5. How do educational and vocational training programs help in the reintegration of offenders into society?

10.9 TERMINAL QUESTIONS

1. Explain the objectives and significance of prison and correctional administration in the criminal justice system. Discuss how modern correctional approaches balance security, punishment, and rehabilitation.

2. Discuss the role of educational, vocational, psychological, and behavioral development programs in the rehabilitation and reformation of offenders. How do these programs contribute to reducing recidivism?

3. Explain the importance of protecting the rights and dignity of prisoners. Discuss the role of national laws and international human rights standards in ensuring humane treatment of inmates.

4. Describe the various measures required for the successful reintegration of offenders into society. Discuss the importance of counseling, skill development, correctional services, and post-release support.

5. Examine the ways in which correctional administration can improve efficiency and accountability through effective management, staff training, policy implementation, and proper utilization of resources.

10.10 TRUE AND FALSE

1. The main objective of modern correctional administration is only to punish offenders and does not include rehabilitation.
   Answer: False
2. Educational and vocational training programs in prisons help offenders develop skills for lawful employment after release.
   Answer: True
3. Prisoners lose all their fundamental human rights after being sentenced to imprisonment.
   Answer: False
4. Reducing recidivism is an important goal of effective correctional interventions.
   Answer: True
5. Staff training and proper management have no role in improving the efficiency and accountability of correctional institutions.
   Answer:- False

UNIT 11
ROLE OF COURTS IN HUMAN RIGHTS PROTECTION

11.1 INTRODUCTION

Human rights are the basic rights and freedoms that belong to every individual by virtue of being human, irrespective of nationality, religion, race, gender, or social status. These rights include the right to life, liberty, equality, dignity, and freedom from discrimination and exploitation. The protection of human rights is essential for maintaining justice, democracy, and the rule of law in any society. While constitutions and international human rights instruments recognize these rights, their effective enforcement largely depends on an independent and impartial judiciary. Courts play a pivotal role in interpreting constitutional provisions, safeguarding fundamental rights, and ensuring that governments and public authorities act within the limits of the law. Through judicial review, public interest litigation, and progressive interpretation of legal principles, courts provide remedies to individuals whose rights have been violated and hold state institutions accountable. In many democratic countries, including India, the judiciary has significantly expanded the scope of human rights by recognizing new dimensions of dignity, privacy, environmental protection, and access to justice. Thus, courts serve not only as adjudicators of disputes but also as guardians of constitutional values and protectors of individual freedoms. Their proactive role strengthens public confidence in the legal system and promotes the realization of human rights in both law and practice.

11.2 OBJECTIVES

After reading the unit the learners will be able -

- To examine the concept and significance of human rights and their recognition under constitutional and international legal frameworks.
- To analyze the role of courts in the protection and enforcement of human rights, with particular emphasis on judicial review and constitutional remedies.
- To study the contribution of the judiciary in interpreting and expanding the scope of fundamental and human rights through landmark judicial decisions.
- To evaluate the effectiveness of Public Interest Litigation (PIL) as a judicial mechanism for ensuring access to justice and protecting the rights of vulnerable and marginalized groups.
- To identify the challenges and limitations faced by courts in safeguarding human rights, including issues such as judicial delays, enforcement of judgments, and institutional constraints.

- To suggest measures for strengthening the role of the judiciary in human rights protection, with a view to enhancing access to justice, judicial independence, and effective enforcement of human rights.

11.3 ROLE OF COURTS IN HUMAN RIGHTS PROTECTION

11.3.1 THE CONCEPT AND SIGNIFICANCE OF HUMAN RIGHTS AND THEIR RECOGNITION UNDER CONSTITUTIONAL AND INTERNATIONAL LEGAL FRAMEWORKS.

Human rights are the inherent rights and freedoms that belong to every individual solely by virtue of being human. These rights are universal, inalienable, indivisible, and interdependent, meaning they apply equally to all people regardless of nationality, race, religion, gender, language, or social status. The concept of human rights is founded on the principles of human dignity, equality, justice, and freedom. They aim to protect individuals from arbitrary actions by the State and other authorities while ensuring conditions necessary for the full development of human personality. Human rights encompass civil, political, economic, social, and cultural rights, including the rights to life, liberty, equality, education, health, work, freedom of expression, and protection from discrimination and exploitation. The significance of human rights lies in their role as the foundation of a democratic and just society. They promote respect for human dignity, protect vulnerable and marginalized groups, and ensure equal treatment before the law. Human rights also strengthen the rule of law by limiting the arbitrary exercise of governmental power and providing legal remedies against violations. The protection of these rights contributes to social harmony, political stability, and sustainable development. Furthermore, respect for human rights encourages accountability, transparency, and good governance while fostering peace and international cooperation.

In India, the constitutional recognition of human rights is primarily reflected in the Constitution of India. The Preamble guarantees justice, liberty, equality, and fraternity, which form the philosophical basis of human rights protection. Part III of the Constitution, dealing with Fundamental Rights, guarantees essential civil and political rights such as the right to equality (Articles 14–18), the right to freedom (Articles 19–22), the right against exploitation (Articles 23–24), the right to freedom of religion (Articles 25–28), cultural and educational rights (Articles 29–30), and the right to constitutional remedies under Article 32. Dr. B. R. Ambedkar described Article 32 as the "heart and soul" of the Constitution because it empowers individuals to approach the Supreme Court for the enforcement of their fundamental rights. In addition, Part IV, containing the Directive Principles of State Policy, guides the State in promoting social and economic justice, thereby complementing the protection of human rights.

The recognition of human rights also extends to the international legal framework. The adoption of the Universal Declaration of Human Rights (UDHR) by the United Nations General Assembly in 1948 marked a historic milestone in the global human rights movement. Although the UDHR is not legally binding, it has inspired numerous constitutions and international treaties. It laid the foundation for legally binding instruments such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), both adopted in 1966. Together with the UDHR, these instruments constitute the International Bill of Human Rights. Other important international conventions include the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the Convention against Torture (CAT), all of which seek to safeguard specific categories of human rights.

India, as a responsible member of the international community, has ratified several international human rights treaties and has increasingly harmonized its domestic laws with international standards. Indian courts have also relied on international conventions and principles while interpreting constitutional rights, particularly where domestic law is silent or ambiguous. This harmonious relationship between constitutional guarantees and international human rights norms has significantly strengthened the protection of individual rights. Therefore, the recognition of human rights under both constitutional and international legal frameworks establishes a comprehensive system for safeguarding human dignity, promoting equality, and ensuring justice for all members of society.

11.3.2 THE ROLE OF COURTS IN THE PROTECTION AND ENFORCEMENT OF HUMAN RIGHTS

Courts play a vital role in the protection and enforcement of human rights by ensuring that constitutional guarantees are effectively implemented and that public authorities act within the limits of the law. In a democratic system governed by the rule of law, the judiciary functions as the guardian of the Constitution and the protector of individual rights. Human rights would have little practical value if individuals were unable to seek legal remedies against their violation. Courts provide an impartial forum where citizens can challenge arbitrary or unlawful actions of the State, obtain relief for violations of their rights, and hold public authorities accountable. Through judicial interpretation and enforcement, courts ensure that constitutional values such as justice, equality, liberty, and dignity are translated into meaningful protections for individuals.

One of the most significant powers exercised by the judiciary is **judicial review**, which enables courts to examine the constitutionality of legislative enactments and executive actions. Judicial review ensures that laws and governmental decisions conform to constitutional principles and do not infringe upon fundamental rights. In India, the power of judicial review is derived from Articles 13, 32, 131–136, 226, and 227 of the Constitution. If a law or executive action is found to be inconsistent with the Constitution, the courts have the authority to declare it unconstitutional and void. This power serves as an effective safeguard against the misuse of governmental authority and preserves the supremacy of the Constitution. The doctrine of judicial review also reinforces the principle of separation of powers by ensuring that each organ of the State functions within its constitutional limits.

The Supreme Court and the High Courts have played an active role in expanding the scope of human rights through progressive constitutional interpretation. Article 21 of the Constitution, which guarantees the right to life and personal liberty, has been interpreted broadly to include the right to live with dignity, the right to privacy, the right to a clean environment, the right to education, the right to legal aid, and the right to livelihood. Through purposive interpretation, the judiciary has transformed fundamental rights into dynamic and evolving protections that respond to changing social conditions and contemporary human rights challenges.

Constitutional remedies constitute another essential mechanism for the enforcement of human rights. Article 32 of the Constitution empowers individuals to approach the Supreme Court directly for the enforcement of their fundamental rights, while Article 226 grants similar powers to the High Courts, with a wider jurisdiction extending beyond fundamental rights. Dr. B. R. Ambedkar described Article 32 as the "heart and soul" of the Constitution because it guarantees an effective remedy against violations of fundamental rights. Courts may issue constitutional writs such as **Habeas Corpus**, **Mandamus**, **Prohibition**, **Certiorari**, and **Quo Warranto** to prevent unlawful detention, compel public authorities to perform legal duties, restrain excesses of jurisdiction, quash illegal orders, and challenge the unlawful occupation of public office. These writs provide immediate and effective judicial protection against violations of constitutional and legal rights.

The judiciary has further strengthened human rights protection through the development of

Public Interest Litigation (PIL), which has made justice accessible to disadvantaged and marginalized sections of society. By relaxing the traditional rules of locus standi, courts have enabled public-spirited individuals and organizations to seek judicial intervention on behalf of those unable to approach the courts themselves. PIL has contributed significantly to the protection of the rights of prisoners, bonded labourers, women, children, environmental victims, and other vulnerable groups.

In conclusion, courts are indispensable institutions for the protection and enforcement of Through judicial review, constitutional remedies, and progressive interpretation of fundamental rights, they uphold constitutional supremacy, ensure governmental accountability, and provide effective legal remedies to victims of human rights violations. Their proactive role strengthens democracy, reinforces the rule of law, and promotes a society founded on justice, equality, and respect for human dignity.

11.3 3 THE CONTRIBUTION OF THE JUDICIARY.

The judiciary has played a transformative role in interpreting and expanding the scope of fundamental and human rights in India. As the guardian of the Constitution, the Supreme Court and the High Courts have ensured that constitutional rights remain dynamic and responsive to changing social, economic, and technological conditions. Through judicial interpretation, the courts have broadened the meaning of fundamental rights, particularly those guaranteed under Part III of the Constitution, thereby strengthening the protection of human dignity, equality, and liberty. Judicial activism and innovative constitutional interpretation have enabled the judiciary to address emerging human rights concerns and provide effective remedies where legislative action has been inadequate.

One of the most significant contributions of the judiciary is the expansive interpretation of **Article 21**, which guarantees the right to life and personal liberty. Initially interpreted narrowly, Article 21 underwent a major transformation in **Maneka Gandhi v. Union of India (1978)**. The Supreme Court held that the expression "procedure established by law" must be fair, just, and reasonable, thereby linking Articles 14, 19, and 21 into a unified framework for the protection of individual liberty. This judgment marked a turning point in Indian constitutional law and greatly expanded the scope of human rights by recognizing that the right to life includes the right to live with dignity rather than mere animal existence.

Following the *Maneka Gandhi* decision, the Supreme Court recognized several derivative rights under Article 21. In **Olga Tellis v. Bombay Municipal Corporation (1985)**, the Court declared that the right to livelihood forms an integral part of the right to life because deprivation of livelihood would ultimately deprive a person of life itself. Similarly, in **Unni Krishnan v. State of Andhra Pradesh (1993)**, the Court recognized the right to education as a fundamental right, which later led to the insertion of Article 21A through the Eighty-sixth Constitutional Amendment. In **Justice K. S. Puttaswamy (Retd.) v. Union of India (2017)**, a nine-judge Bench unanimously recognized the right to privacy as a fundamental right inherent in Article 21, affirming that privacy is essential to individual dignity, autonomy, and personal liberty in the digital age.

The judiciary has also made significant contributions to gender justice and the protection of women's rights. In **Vishaka v. State of Rajasthan (1997)**, the Supreme Court laid down comprehensive guidelines to prevent sexual harassment at the workplace in the absence of specific legislation. The Court relied upon constitutional guarantees as well as international human rights principles contained in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). These guidelines remained legally binding until the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. This decision demonstrated the judiciary's willingness to bridge legislative gaps for the effective protection of human rights.

Environmental protection has also been recognized as an essential component of the right to life. In **M. C. Mehta v. Union of India**, the Supreme Court developed important environmental principles such as the "Polluter Pays Principle," the "Precautionary Principle," and the doctrine of absolute liability. The Court held that a clean and healthy environment is indispensable for the enjoyment of the right to life under Article 21. These judgments significantly advanced environmental jurisprudence while integrating ecological protection with human rights.

The judiciary has further expanded access to justice through the development of **Public Interest Litigation (PIL)**. In **Bandhua Mukti Morcha v. Union of India (1984)**, the Supreme Court intervened to protect the rights of bonded labourers and emphasized that the State has a constitutional obligation to ensure humane working conditions and social justice. Similarly, in **Hussainara Khatoon v. State of Bihar (1979)**, the Court recognized the right to a speedy trial as a fundamental right and directed the release of numerous undertrial prisoners who had been detained for prolonged periods without trial. These decisions reflected the judiciary's commitment to protecting the rights of marginalized and economically weaker sections of society.

Another landmark decision is **Kesavananda Bharati v. State of Kerala (1973)**, in which the Supreme Court evolved the Basic Structure Doctrine. The Court held that while Parliament possesses wide powers to amend the Constitution, it cannot alter or destroy its basic structure, including principles such as the rule of law, judicial review, democracy, secularism, and the protection of fundamental rights. This doctrine has become one of the strongest constitutional safeguards against arbitrary constitutional amendments that may undermine human rights.

In conclusion, the Indian judiciary has made an extraordinary contribution to the development of human rights jurisprudence through progressive constitutional interpretation and landmark judicial decisions. By expanding the scope of fundamental rights, protecting vulnerable groups, strengthening environmental justice, promoting gender equality, and ensuring constitutional supremacy, the courts have transformed the Constitution into a living document capable of responding to contemporary challenges. These judicial interventions have reinforced the rule of law, enhanced public confidence in the legal system, and significantly advanced the protection of human rights in India.

11.3.4 ROLE OF PUBLIC INTEREST LITIGATION IN PROTECTING THE RIGHTS OF VULNERABLE AND MARGINALIZED GROUPS.

Public Interest Litigation (PIL) has emerged as one of the most significant judicial innovations in India for protecting human rights and ensuring access to justice. Introduced during the late 1970s and early 1980s, PIL transformed the traditional legal system by relaxing the strict rules of *locus standi*, thereby allowing public-spirited individuals, social activists, and non-governmental organizations to approach the courts on behalf of persons who are unable to seek legal remedies due to poverty, illiteracy, social disadvantage, or other forms of marginalization. Through PIL, the judiciary has become an active guardian of constitutional rights, particularly those of the weaker sections of society. It has played a vital role in making justice accessible, affordable, and effective, thereby strengthening the constitutional commitment to equality, dignity, and social justice.

The effectiveness of PIL lies primarily in its ability to provide access to justice for disadvantaged and marginalized communities. Before the development of PIL, only an aggrieved person could approach the courts, which often prevented poor and vulnerable individuals from seeking legal protection. The Supreme Court, under the leadership of judges such as Justice P. N. Bhagwati and Justice V. R. Krishna Iyer, liberalized the concept of standing by permitting any public-spirited citizen to file petitions in matters involving public interest or violations of fundamental rights. This progressive approach enabled the judiciary to address issues affecting bonded labourers, prisoners, women, children, tribal communities, environmental victims, and other socially and economically weaker sections.

One of the earliest and most influential PIL cases was **Hussainara Khatoon v. State of Bihar (1979)**, where the Supreme Court recognized the right to a speedy trial as an essential part of the right to life and personal liberty under Article 21 of the Constitution. The Court ordered the release of thousands of undertrial prisoners who had been detained for years without trial, thereby reinforcing the principle that justice delayed is justice denied. Similarly, in **Bandhua Mukti Morcha v. Union of India (1984)**, the Supreme Court intervened to eradicate bonded labour and directed the Government to implement welfare measures for labourers working under inhuman conditions. The judgment emphasized that the State has a constitutional obligation to protect the dignity and fundamental rights of every individual.

PIL has also significantly contributed to environmental protection, recognizing that a healthy environment is essential for the enjoyment of the right to life. In a series of decisions in **M. C. Mehta v. Union of India**, the Supreme Court issued directions for controlling industrial pollution, protecting rivers, improving air quality, and ensuring environmental sustainability. These judgments introduced important principles such as the "Polluter Pays Principle," the "Precautionary Principle," and the doctrine of absolute liability, thereby integrating environmental protection with human rights jurisprudence.

The judiciary has further utilized PIL to promote gender justice and child welfare. In **Vishaka v. State of Rajasthan (1997)**, the Supreme Court framed comprehensive guidelines to prevent sexual harassment at the workplace in the absence of specific legislation. Likewise, in **Sheela Barse v. State of Maharashtra (1983)**, the Court issued directions for safeguarding the rights of women prisoners and ensuring humane treatment during detention. PIL has also addressed issues relating to child labour, custodial violence, rehabilitation of displaced persons, and the rights of persons with disabilities, thereby expanding the scope of constitutional protection.

Despite its remarkable achievements, PIL has also faced certain challenges. Over time, the increasing number of PIL petitions has led to judicial delays and a growing backlog of cases. Some litigants have misused PIL for personal, political, or publicity-oriented purposes, resulting in what the courts have termed "Publicity Interest Litigation" or "Private Interest Litigation." Recognizing this concern, the Supreme Court has evolved safeguards to ensure that PIL is invoked only in genuine cases involving public interest and protection of constitutional rights.

Overall, Public Interest Litigation has proved to be an effective judicial mechanism for promoting social justice and protecting human rights. It has democratized access to the legal system by empowering citizens to seek judicial intervention on behalf of vulnerable and marginalized groups. Through PIL, the judiciary has expanded the scope of fundamental rights, strengthened governmental accountability, and ensured the enforcement of constitutional guarantees. Although certain reforms are necessary to prevent misuse and improve judicial efficiency, PIL continues to remain one of the most powerful instruments for realizing the constitutional vision of justice, equality, and human dignity in India.

11.3.5 THE CHALLENGES AND LIMITATIONS FACED BY COURTS IN SAFEGUARDING HUMAN RIGHTS

The judiciary plays a central role in protecting and enforcing human rights by interpreting constitutional provisions, providing remedies against violations, and ensuring accountability of public authorities. Despite its significant contributions, courts face numerous challenges and limitations that affect their ability to safeguard human rights effectively. Judicial delays, difficulties in the enforcement of judgments, institutional constraints, limited access to justice, and increasing case backlogs often reduce the effectiveness of judicial protection. Addressing these challenges is essential for ensuring that constitutional guarantees and human rights are translated into meaningful realities for all citizens.

One of the most serious challenges faced by the judiciary is **judicial delay**. Indian courts are burdened with a large number of pending cases, resulting in prolonged litigation and delayed justice. Since human rights cases often involve issues of personal liberty, livelihood, dignity, and equality, delayed adjudication can cause irreparable harm to the affected individuals. The well-established legal principle that "justice delayed is justice denied" is particularly relevant in cases involving unlawful detention, custodial violence, discrimination, and violations of socio-economic rights. Although the judiciary has introduced measures such as fast-track courts, virtual hearings, and case management systems, delays continue to remain a significant obstacle to effective human rights protection.

Another major limitation is the **difficulty in enforcing judicial decisions**. While courts possess the authority to declare laws unconstitutional and issue binding directions, the implementation of their judgments often depends upon the executive and administrative machinery. In many cases, government agencies fail to implement court orders promptly because of bureaucratic inefficiency, lack of political will, inadequate financial resources, or administrative delays. As a result, victims of human rights violations may continue to suffer despite obtaining favourable judicial decisions. Effective enforcement requires coordination between the judiciary, executive authorities, and law enforcement agencies, without which judicial remedies may remain largely symbolic.

Institutional constraints also limit the capacity of courts to protect human rights. Many courts suffer from inadequate infrastructure, shortage of judges, insufficient staff, and limited technological resources. The vacancy of judicial posts at various levels contributes significantly to the growing backlog of cases. Additionally, lower courts in rural and remote areas often face logistical challenges that affect the timely disposal of cases. These structural deficiencies reduce the efficiency of the judicial system and hinder access to justice, particularly for economically weaker sections of society.

Another challenge relates to the **high cost and complexity of litigation**. Although constitutional remedies and Public Interest Litigation (PIL) have expanded access to justice, many individuals continue to face financial and procedural barriers in approaching the courts. Legal expenses, lengthy procedures, lack of legal awareness, and geographical distance discourage many victims of human rights violations from seeking judicial remedies. While legal aid services provided under Article 39A of the Constitution and the Legal Services Authorities Act, 1987 have improved access to justice, their implementation remains uneven across different regions of the country.

The judiciary also faces criticism regarding **judicial overreach and the limits of judicial activism**. While proactive judicial intervention has significantly expanded the protection of human rights, excessive interference in matters traditionally within the domain of the legislature or executive may raise concerns regarding the principle of separation of powers. Courts must therefore maintain a careful balance between protecting constitutional rights and respecting the constitutional functions of other organs of the State. Judicial restraint and constitutional accountability are essential to preserve public confidence in the judicial system.

Furthermore, emerging challenges such as cybercrime, digital surveillance, artificial intelligence, environmental degradation, terrorism, and transnational human rights violations require courts to continuously adapt legal principles to changing social and technological realities. The absence of comprehensive legislation in certain areas often compels courts to rely on constitutional interpretation, which may not always provide complete or immediate solutions. Consequently, judicial effectiveness depends not only on constitutional powers but also on legislative support and institutional capacity.

In conclusion, although the judiciary remains the principal guardian of human rights, its effectiveness is constrained by judicial delays, enforcement difficulties, institutional weaknesses, limited access to justice, and evolving legal challenges. Strengthening judicial infrastructure, filling vacancies, promoting alternative dispute resolution, improving legal aid, enhancing technological capacity, and ensuring timely implementation of court orders are essential for overcoming these limitations. By addressing these challenges, the judiciary can continue to uphold constitutional values, reinforce the rule of law, and provide effective protection for the human rights and fundamental freedoms of all individuals.

11.3.6 MEASURES FOR STRENGTHENING THE ROLE OF THE JUDICIARY IN HUMAN RIGHTS PROTECTION

The judiciary occupies a central position in the protection and enforcement of human rights by ensuring that constitutional guarantees are effectively implemented and that the rule of law is upheld. However, the increasing complexity of human rights issues, growing judicial workload, and institutional challenges require continuous reforms to strengthen the capacity of courts. Enhancing access to justice, preserving judicial independence, improving the enforcement of judicial decisions, and modernizing the justice delivery system are essential for ensuring effective protection of human rights. A strong and independent judiciary not only safeguards individual liberties but also reinforces public confidence in democratic governance.

One of the foremost measures is the **strengthening of judicial independence**. Judicial independence is a fundamental principle of constitutional democracy and is essential for impartial adjudication of human rights disputes. Judges must be free from political influence, executive interference, and external pressures while deciding cases. Transparent procedures for judicial appointments, promotions, transfers, and disciplinary mechanisms should be maintained to preserve the integrity of the judiciary. Adequate financial autonomy and institutional security further enable courts to perform their constitutional responsibilities without fear or favour. An independent judiciary inspires public confidence and ensures that constitutional rights are protected irrespective of the identity or status of the parties involved.

Improving **access to justice** is another essential requirement for effective human rights protection. Many individuals, particularly those belonging to economically weaker sections, rural communities, women, children, persons with disabilities, and marginalized groups, continue to face barriers in approaching courts. Strengthening legal aid services under Article 39A of the Constitution and the Legal Services Authorities Act, 1987 is necessary to ensure that justice is not denied on the ground of poverty or lack of resources. Legal awareness programmes, community legal clinics, mobile courts, and digital legal services should be expanded to educate citizens about their constitutional rights and available legal remedies. Simplification of court procedures and reduction of litigation costs would also improve access to justice.

Reducing **judicial delays and case backlogs** is another important reform. Timely justice is an essential component of human rights protection. The appointment of adequate numbers of judges, filling vacant judicial posts without delay, improving court infrastructure, and increasing administrative efficiency are necessary to reduce the pendency of cases. The use of technology through e-courts, electronic filing, virtual hearings, digital case management systems, and artificial intelligence-based administrative support can significantly improve judicial efficiency while maintaining transparency and accountability. Alternative Dispute Resolution (ADR) mechanisms, including mediation, arbitration, and conciliation, should also be encouraged to reduce the burden on regular courts and ensure quicker resolution of disputes.

Effective **implementation and enforcement of judicial decisions** is equally important. Judicial protection of human rights loses its significance if court orders are not implemented promptly. Governments and administrative authorities should establish mechanisms to monitor compliance with judicial directions. Greater coordination among the judiciary, executive agencies, police authorities, and human rights institutions is necessary to ensure the effective execution of judgments. Strengthening contempt jurisdiction, monitoring compliance through periodic reporting, and improving institutional accountability can enhance the practical enforcement of human rights.

Capacity building within the judiciary is another significant measure. Judges should receive continuous training on constitutional interpretation, international human rights law, emerging technologies, environmental law, cyber law, gender justice, and the rights of vulnerable communities. Judicial academies should regularly conduct programmes to familiarize judges with evolving human rights standards and comparative constitutional jurisprudence. Greater engagement with international human rights principles and comparative judicial decisions can further enrich domestic human rights jurisprudence.

The judiciary should also continue to encourage responsible use of **Public Interest Litigation (PIL)** while preventing its misuse. Genuine PILs have greatly expanded access to justice for disadvantaged groups and strengthened the enforcement of socio-economic rights. At the same time, courts should discourage frivolous or politically motivated petitions by imposing appropriate safeguards. A balanced approach will preserve the credibility of PIL as an instrument of social justice while ensuring that judicial resources are utilized effectively.

In conclusion, strengthening the role of the judiciary in human rights protection requires comprehensive institutional, procedural, and structural reforms. Judicial independence, accessible justice, timely adjudication, effective enforcement of judgments, technological modernization, continuous judicial education, and responsible use of Public Interest Litigation together create a robust framework for protecting fundamental and human rights. By adopting these measures, the judiciary can more effectively uphold constitutional values, reinforce the rule of law, and ensure that justice, equality, dignity, and liberty remain meaningful realities for every individual in society.

11.4 SUMMARY

Human rights are universal and inalienable rights that ensure the dignity, equality, liberty, and overall well-being of every individual. The Constitution of India, particularly through its Fundamental Rights and Directive Principles of State Policy, provides a strong framework for the protection of these rights. At the international level, instruments such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR) have significantly influenced the development of human rights jurisprudence in India.

The judiciary plays a crucial role in protecting and enforcing human rights by acting as the guardian of the Constitution. Through judicial review and constitutional remedies under Articles 32 and 226, courts ensure that legislative and executive actions remain consistent with constitutional principles. Landmark judgments such as *Kesavananda Bharati v. State of Kerala*, *Maneka Gandhi v. Union of India*, *Vishaka v. State of Rajasthan*, *Justice K. S. Puttaswamy v. Union of India*, and *Bandhua Mukti Morcha v. Union of India* have expanded the scope of fundamental rights, recognizing rights such as dignity, privacy, education, livelihood, and a clean environment.

Public Interest Litigation (PIL) has emerged as an effective judicial mechanism for promoting access to justice and safeguarding the rights of vulnerable and marginalized communities. By relaxing the traditional rule of locus standi, the judiciary has enabled greater public participation in protecting constitutional rights and ensuring social justice.

Despite these achievements, the judiciary continues to face challenges such as judicial delays, case backlogs, inadequate infrastructure, and difficulties in enforcing judgments, and institutional constraints, all of which reduce the effectiveness of human rights protection. Strengthening judicial independence, improving legal aid, modernizing court infrastructure, promoting technological innovation, ensuring timely implementation of judgments, and expanding judicial training are essential measures for enhancing the role of courts. A strong, independent, and efficient judiciary remains indispensable for upholding the rule of law, protecting constitutional values, and ensuring the effective realization of human rights in a democratic society.

11.5 GLOSSARY

1. **Human Rights** Human rights are the fundamental rights and freedoms inherent to every individual by virtue of being human. These rights include the rights to life, liberty, equality, dignity, freedom of expression, and protection from discrimination, and are recognized under national constitutions and international human rights instruments.

2. **Judicial Review** Judicial review is the power of the judiciary to examine the constitutionality of legislative enactments and executive actions. If any law or government action is found to be inconsistent with the Constitution, the courts have the authority to declare it unconstitutional and void.

3. **Public Interest Litigation (PIL)** Public Interest Litigation (PIL) is a legal mechanism that allows any public-spirited individual or organization to approach the courts on behalf of persons or groups whose rights have been violated and who are unable to seek justice themselves. It aims to promote access to justice and protect public welfare.

4. **Constitutional Remedies** Constitutional remedies are legal remedies provided under Articles 32 and 226 of the Constitution of India that enable individuals to approach the Supreme Court or High Courts for the enforcement of their fundamental rights through writs such as Habeas Corpus, Mandamus, Certiorari, Prohibition, and Quo Warranto.

5. **Judicial Independence** Judicial independence refers to the ability of judges and courts to perform their constitutional functions impartially and without interference from the executive, legislature, political authorities, or any external influence. It is an essential feature of the rule of law and constitutional democracy.

6. **Rule of Law** The rule of law is a constitutional principle that requires all individuals, institutions, and government authorities to act in accordance with the law. It ensures equality before the law, accountability of public authorities, protection of fundamental rights, and the fair administration of justice.

11.6 REFERENCES

Ambedkar, B. R. (1949). *Constituent Assembly Debates (Vol. VII).* Government of India.

Baxi, U. (1982). *The crisis of the Indian legal system.* Vikas Publishing House.

Baxi, U. (2002). *The future of human rights* (2nd ed.). Oxford University Press.

Baxi, U. (2012). *Human rights in a posthuman world: Critical essays.* Oxford University Press.

Basu, D. D. (2018). *Introduction to the Constitution of India* (24th ed.). LexisNexis.

Constitution of India. (1950). Government of India.

Deva, S. (2005). Public interest litigation in India: A critical review. *Civil Justice Quarterly, 24*(1), 19–40.

Donnelly, J. (2013). *Universal human rights in theory and practice* (3rd ed.). Cornell University Press.

Gandhi, M. P. (2019). *Human rights and constitutional law in India.* Eastern Book Company.

Harris, D., O'Boyle, M., Bates, E., & Buckley, C. (2018). *Law of the European Convention on Human Rights* (4th ed.). Oxford University Press.

International Covenant on Civil and Political Rights. (1966). United Nations.

International Covenant on Economic, Social and Cultural Rights. (1966). United Nations.

Mertus, J. (2009). *The United Nations and human rights: A guide for a new era* (2nd ed.). Routledge.

National Legal Services Authority Act, 1987. Government of India.

OHCHR. (1948). *Universal Declaration of Human Rights.* United Nations.

Pillai, P. S. A. (2019). *Criminal law* (15th ed.). LexisNexis.

Sathe, S. P. (2002). *Judicial activism in India: Transgressing borders and enforcing limits.* Oxford University Press.

Seervai, H. M. (2015). *Constitutional law of India: A critical commentary* (4th ed.). Universal Law Publishing.

Shukla, V. N. (2020). *Constitution of India* (13th ed.). Eastern Book Company.

United Nations. (1965). *International Convention on the Elimination of All Forms of Racial Discrimination.* United Nations.

United Nations. (1979). *Convention on the Elimination of All Forms of Discrimination against Women.* United Nations.

United Nations. (1989). *Convention on the Rights of the Child.* United Nations.

United Nations. (2006). *Convention on the Rights of Persons with Disabilities.* United Nations.

Verma, S. K. (2017). *Human rights and the Constitution of India.* Deep & Deep Publications.

Landmark Cases (APA Legal Citation Style)

Bandhua Mukti Morcha v. Union of India, AIR 1984 SC 802.

Hussainara Khatoon v. State of Bihar, AIR 1979 SC 1360.

Justice K. S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225.

M. C. Mehta v. Union of India, AIR 1987 SC 965.

Maneka Gandhi v. Union of India, AIR 1978 SC 597.

Olga Tellis v. Bombay Municipal Corporation, AIR 1986 SC 180.

Unni Krishnan v. State of Andhra Pradesh, (1993) 1 SCC 645.

Vishaka v. State of Rajasthan, AIR 1997 SC 3011.

11.7 SUGGESTED READINGS

1. **Baxi, U. (2002). *The Future of Human Rights*. Oxford University Press.**
2. **Sathe, S. P. (2002). *Judicial Activism in India: Transgressing Borders and Enforcing Limits*. Oxford University Press.**
3. **Seervai, H. M. (2015). *Constitutional Law of India: A Critical Commentary* (4th ed.). Universal Law Publishing.**
4. **Basu, D. D. (2018). *Introduction to the Constitution of India*. LexisNexis.**
5. **Shukla, V. N. (2020). *Constitution of India*. Eastern Book Company.**
6. **Jain, M. P. (2022). *Indian Constitutional Law*. LexisNexis.**
7. **Mishra, B. K. (2018). *Human Rights Law in India*. Central Law Publications.**
8. **Gandhi, M. P. (2019). *Human Rights and Constitutional Law in India*. Eastern Book Company.**
9. **Vijapur, A. P. (2008). *Human Rights in International Relations*. Manak Publications.**
10. **Kashyap, S. C. (2011). *Our Constitution: An Introduction to India's Constitution and Constitutional Law*. National Book Trust.**
11. **Chandra, U. (2012). *Human Rights*. Oxford University Press.**
12. **Seth, M. (2008). *Human Rights: The Concept and Issues*. Eastern Book Company.**
13. **Jaising, I. (2006). *Human Rights and the Indian Constitution*. Universal Law Publishing.**
14. **Dhavan, R. (1986). *The Supreme Court of India: A Socio-Legal Critique of Its Juristic Techniques*. N. M. Tripathi.**
15. **Tripathi, P. K. (1972). *Some Insights into Fundamental Rights*. N. M. Tripathi.**

11.8 SHORT ANSWERS QUESTIONS

What are human rights?
What is the role of judicial review in human rights protection?
What is Public Interest Litigation (PIL)?
Explain the importance of Article 32 of the Indian Constitution.

Name any two landmark cases related to human rights protection in India..

11.9 **TERMINAL QUESTIONS**

- Explain the concept and significance of human rights. Discuss their recognition and protection under the constitutional and international legal frameworks.
- Analyze the role of courts in the protection and enforcement of human rights with special reference to judicial review and constitutional remedies under the Indian Constitution.
- Discuss the contribution of the Indian judiciary in expanding the scope of fundamental rights through landmark judicial decisions. Explain with suitable case laws.
- Examine the effectiveness of Public Interest Litigation (PIL) as a judicial mechanism for ensuring access to justice and protecting the rights of vulnerable and marginalized sections of society.
- Critically analyze the challenges and limitations faced by courts in safeguarding human rights. Suggest measures for strengthening the role of the judiciary in ensuring effective human rights protection.

11.10 TRUE AND FALSE

1. Human rights are universal rights that belong to every individual irrespective of nationality, religion, gender, or social status.
Answer: True

2. Judicial review prevents courts from examining the validity of laws and executive actions.
Answer: False

3. Public Interest Litigation (PIL) helps vulnerable and marginalized groups access justice by relaxing the traditional rule of locus standi.
Answer: True

4. Article 32 of the Indian Constitution provides the right to approach the Supreme Court for enforcement of Fundamental Rights.
Answer: True

5. The judiciary has no role in protecting human rights because only the legislature can enforce rights.
Answer: False

UNIT – 12
JUDICIAL ACTIVISM AND PUBLIC INTEREST LITIGATION

12.1 INTRODUCTION

Judicial activism and Public Interest Litigation (PIL) represent significant developments in the evolution of modern constitutional governance. Judicial activism refers to the proactive role played by courts in interpreting laws, protecting fundamental rights, and ensuring justice, particularly when legislative or executive actions fail to address social concerns. Instead of limiting themselves to a narrow interpretation of legal provisions, courts adopting an activist approach often expand the scope of constitutional principles to safeguard individual liberties and promote social welfare.

Public Interest Litigation emerged as an important instrument through which courts allow individuals, organizations, and public-spirited citizens to seek judicial remedies for matters affecting the larger public interest. It has enabled marginalized communities and disadvantaged groups to access justice by relaxing traditional rules of legal standing. PIL has been widely used to address issues such as environmental protection, human rights violations, corruption, and the rights of vulnerable sections of society.

In countries like India, the Supreme Court and High Courts have played a crucial role in shaping public policy and strengthening constitutional values through judicial activism and PIL. While these mechanisms have contributed greatly to social justice and accountability, they have also raised debates regarding judicial overreach and the separation of powers. Thus, judicial activism and PIL remain vital yet complex features of contemporary constitutional democracy.

12.2 OBJECTIVES

After reading the unit learner will be able -

- To examine the concept and evolution of judicial activism and Public Interest Litigation (PIL) within the framework of constitutional law.

- To analyse the role played by the judiciary in protecting fundamental rights and promoting social justice through judicial activism and PIL.
- To study the development of Public Interest Litigation as a mechanism for providing access to justice for marginalized and disadvantaged sections of society.
- To evaluate the contribution of the Supreme Court and High Courts in addressing issues of public importance through judicial interventions.
- To identify the advantages and limitations of judicial activism, including concerns related to judicial overreach and the separation of powers.
- To assess the impact of judicial activism and Public Interest Litigation on governance, accountability, and the protection of constitutional values.

12.3 JUDICIAL ACTIVISM AND PUBLIC INTEREST LITIGATION

12.3.1 THE CONCEPT AND EVOLUTION OF JUDICIAL ACTIVISM AND PUBLIC INTEREST LITIGATION

Judicial activism and Public Interest Litigation (PIL) are among the most significant developments in the field of constitutional law, particularly in democratic societies where courts play an important role in protecting rights and ensuring justice. Judicial activism refers to the approach adopted by the judiciary where courts actively interpret constitutional provisions and legal principles to address social, economic, and political issues. It involves a proactive role of judges in safeguarding fundamental rights, filling legislative gaps, and ensuring that constitutional values are effectively implemented.

The concept of judicial activism originated primarily in the United States during the twentieth century, where courts began expanding the interpretation of constitutional rights. Over time, this approach influenced other democratic countries, including India. In India, judicial activism developed as a response to the need for protecting individual liberties and promoting social justice. The Indian Constitution provides an independent judiciary with the power of judicial review under Articles 13, 32, and 226, enabling courts to examine the constitutional validity of legislative and executive actions.

The evolution of judicial activism in India can be traced to the period after independence when the judiciary initially followed a conservative approach. However, during the 1970s, the Supreme Court gradually adopted a more active role in interpreting constitutional provisions. The expansion of the meaning of Article 21, which guarantees the right to life and personal liberty, became a major foundation for judicial activism. The Court interpreted this provision broadly to include rights such as the right to live with dignity, the right to a clean environment, the right to education, and the right to livelihood.

Public Interest Litigation emerged as a significant tool for implementing judicial activism and improving access to justice. Traditionally, only a person directly affected by a legal violation could approach the court. However, PIL relaxed the traditional rule of locus standi, allowing any public-spirited individual or organization to file petitions on behalf of persons or communities who were unable to approach the judiciary themselves. This transformation made the judicial system more accessible, particularly for poor, disadvantaged, and marginalized groups.

The development of PIL in India began in the late 1970s and early 1980s through the efforts of judges who recognized the need for social justice-oriented litigation. Cases such as Justice V. R. Krishna Iyer and Justice P. N. Bhagwati played a crucial role in shaping the concept of PIL. The Supreme Court used PIL as a means to address issues including bonded labour, environmental degradation, prison reforms, child rights, and government accountability.

Judicial activism and PIL have significantly contributed to strengthening constitutional governance by ensuring that the principles of equality, liberty, and justice are not merely theoretical but are effectively protected. Through innovative interpretations and public-oriented judgments, courts have expanded the scope of fundamental rights and provided remedies for violations affecting large sections of society.

However, the growth of judicial activism has also generated debates regarding judicial overreach. Critics argue that excessive judicial intervention may interfere with the functions of the legislature and executive, disturbing the principle of separation of powers. Supporters, on the other hand, maintain that judicial activism is necessary when other organs of the state fail to protect constitutional rights.

Thus, judicial activism and Public Interest Litigation represent a dynamic evolution of constitutional law. They demonstrate the judiciary’s role as a protector of constitutional values and an institution committed to delivering justice. While maintaining constitutional boundaries remains essential, these mechanisms continue to serve as powerful instruments for promoting democracy, accountability, and social justice.

12.3.2 ROLE PLAYED BY THE JUDICIARY IN PROTECTING FUNDAMENTAL RIGHTS AND PROMOTING SOCIAL JUSTICE THROUGH JUDICIAL ACTIVISM AND PIL.

The judiciary plays a vital role in a constitutional democracy by acting as the guardian of the Constitution and protector of fundamental rights. In India, the judiciary has been entrusted with the responsibility of ensuring that the rights guaranteed under Part III of the Constitution are effectively protected. Through judicial activism and Public Interest Litigation (PIL), courts have expanded the scope of constitutional protections and have contributed significantly to the promotion of social justice, equality, and human dignity.

Judicial activism has enabled the judiciary to adopt a progressive approach in interpreting constitutional provisions. Instead of restricting itself to a limited interpretation of laws, the judiciary has actively addressed social issues and protected citizens against violations of their rights. The power of judicial review under Articles 13, 32, and 226 empowers the Supreme Court and High Courts to examine the validity of legislative and executive actions and strike down measures that violate constitutional principles. This role has strengthened the rule of law and ensured that government authorities remain accountable.

One of the most significant contributions of judicial activism has been the broad interpretation of Article 21 of the Constitution, which guarantees the right to life and personal liberty. The judiciary has transformed this provision from a narrow protection against unlawful deprivation of life into a comprehensive guarantee of a dignified existence. Through various judgments, courts have recognized rights such as the right to privacy, right to education, right to a clean environment, right to legal aid, and right to livelihood as essential components of the right to life.

Public Interest Litigation has further strengthened the role of the judiciary in promoting social justice. PIL allows individuals, social organizations, and public-spirited citizens to approach courts on behalf of people whose rights have been violated but who may lack the resources or ability to seek legal remedies. By relaxing the traditional requirement of locus standi, the judiciary has made justice more accessible to disadvantaged sections of society, including workers, prisoners, women, children, and economically weaker groups.

Through PIL, courts have addressed several important social issues. In cases relating to bonded labour, the judiciary directed authorities to protect workers from exploitation and ensure their freedom and dignity. Environmental PILs have resulted in important measures for protecting forests, controlling pollution, and preserving ecological balance. Similarly, judicial interventions in areas such as prison reforms, child labour, and women's rights have contributed to improving the lives of vulnerable communities.

The judiciary has also played an important role in ensuring government transparency and accountability. Through judicial activism, courts have examined administrative decisions and required public authorities to perform their constitutional duties. This has helped prevent misuse of power and promoted responsible governance. The judiciary's willingness to intervene in matters affecting public welfare has reinforced public confidence in constitutional institutions.

However, the increasing role of courts through judicial activism and PIL has also led to debates regarding judicial overreach. Critics argue that excessive intervention may interfere with the functions of the legislature and executive and disturb the principle of separation of powers. Therefore, judicial activism must operate within constitutional limits while respecting the responsibilities of other branches of government.

Despite these concerns, the contribution of the judiciary in protecting fundamental rights and advancing social justice remains significant. Judicial activism and PIL have transformed the judiciary from merely an institution for dispute resolution into an active protector of constitutional values. By ensuring access to justice, defending individual liberties, and addressing social inequalities, the judiciary continues to play a crucial role in strengthening democracy and upholding the ideals of justice, liberty, equality, and dignity.

12.3.3 THE DEVELOPMENT OF PUBLIC INTEREST LITIGATION AS A MECHANISM FOR PROVIDING ACCESS TO JUSTICE FOR MARGINALIZED AND DISADVANTAGED SECTIONS OF SOCIETY.

Public Interest Litigation (PIL) has emerged as one of the most significant developments in constitutional law, transforming the traditional understanding of access to justice. It represents a judicial innovation designed to ensure that legal remedies are available not only to individuals whose rights have been directly violated but also to disadvantaged groups who are unable to approach courts due to social, economic, or educational barriers. Through PIL, the judiciary has played a crucial role in promoting social justice, protecting human rights, and ensuring accountability of public authorities.

Traditionally, the legal system followed the principle of locus standi, according to which only a person directly affected by an issue could approach the court for relief. This approach often prevented poor and marginalized communities from seeking justice because they lacked financial resources, awareness, or social support. Recognizing these limitations, the Indian judiciary gradually relaxed the rule of locus standi and allowed public-spirited individuals, social organizations, and legal activists to file petitions on behalf of those who could not represent themselves. This marked the beginning of Public Interest Litigation in India.

The development of PIL in India can be traced to the late 1970s and early 1980s when the judiciary adopted a more socially responsive approach. The Supreme Court recognized that constitutional rights would remain ineffective unless mechanisms were created to make justice accessible to all sections of society. Judges such as Justice P. N. Bhagwati and Justice V. R. Krishna Iyer played a significant role in expanding the scope of PIL and encouraging a rights-based approach to judicial remedies.

PIL became an effective instrument for protecting the rights of marginalized communities, including bonded labourers, prisoners, children, women, workers, and economically weaker sections. Through PIL petitions, courts have addressed issues such as exploitation of labourers, poor conditions in prisons, child labour, environmental pollution, and violations of human dignity. By allowing concerned citizens and organizations to represent vulnerable groups, PIL has helped bridge the gap between constitutional promises and social realities.

One of the major contributions of PIL has been its role in enforcing fundamental rights guaranteed under the Constitution. The judiciary has used PIL to expand the interpretation of Article 21, which protects the right to life and personal liberty. Through various judgments, courts have recognized that the right to life includes the right to live with dignity, access to a healthy environment, education, legal assistance, and protection from exploitation. PIL has therefore become a powerful mechanism for ensuring that constitutional rights reach those who need them most.

Environmental protection is another important area where PIL has made a significant impact. Public interest cases have encouraged judicial intervention in matters relating to pollution control, conservation of natural resources, and protection of ecological balance. Similarly, PIL has strengthened government accountability by requiring public authorities to perform their constitutional and legal duties effectively.

Despite its achievements, PIL has also faced criticism. Concerns have been raised regarding misuse of PIL for personal interests, publicity, or political purposes. There have also been debates about whether excessive judicial intervention may interfere with the functions of the legislature and executive. Therefore, courts have emphasized the need to maintain a balance between judicial activism and constitutional limitations.

Public Interest Litigation has revolutionized the concept of justice by making courts more accessible to marginalized and disadvantaged sections of society. It has transformed the judiciary into an institution that actively protects human rights and promotes social welfare. Although challenges remain, PIL continues to serve as an essential tool for achieving equality, accountability, and meaningful access to justice in a constitutional democracy.

12.3.4 THE CONTRIBUTION OF THE SUPREME COURT AND HIGH COURTS IN ADDRESSING ISSUES OF PUBLIC IMPORTANCE THROUGH JUDICIAL INTERVENTIONS.

The Supreme Court and High Courts of India have played a significant role in addressing matters of public importance through judicial interventions. As constitutional courts, they are entrusted with the responsibility of protecting fundamental rights, maintaining the rule of law, and ensuring that government authorities function within constitutional limits. Through judicial review, judicial activism, and Public Interest Litigation (PIL), these courts have expanded access to justice and contributed significantly to social, economic, and environmental welfare.

The Constitution of India grants the Supreme Court and High Courts extensive powers to protect citizens' rights. Article 32 empowers the Supreme Court to issue writs for the enforcement of fundamental rights, while Article 226 provides High Courts with broader powers to issue writs not only for fundamental rights but also for other legal rights. These constitutional provisions have enabled courts to intervene in matters affecting public interest and to provide remedies where administrative or legislative actions fail to protect citizens.

The Supreme Court has emerged as a key institution in shaping public policy and safeguarding constitutional values. Through judicial interventions, it has addressed various issues relating to human rights, environmental protection, governance, and social justice. The Court's interpretation of Article 21 has greatly expanded the scope of the right to life and personal liberty. It has recognized several rights as part of a dignified life, including the right to a clean environment, the right to education, the right to privacy, and the right to livelihood.

Public Interest Litigation has been one of the most important mechanisms through which the Supreme Court has addressed issues affecting society at large. By relaxing the traditional rule of locus standi, the Court has allowed individuals and organizations to approach it on behalf of disadvantaged communities. This approach has enabled judicial intervention in cases involving bonded labour, prison conditions, child exploitation, women's rights, and protection of vulnerable groups. PIL has transformed the judiciary into an institution that actively responds to social concerns and provides remedies for collective grievances.

The Supreme Court has also made significant contributions in the field of environmental protection. Through various judicial decisions, it has emphasized the importance of sustainable development, environmental conservation, and the responsibility of authorities to prevent ecological damage. Judicial interventions have resulted in stronger environmental regulations and greater public awareness regarding environmental rights.

High Courts across India have similarly contributed to addressing public issues through their constitutional powers. They have intervened in matters relating to public health, education, land rights, municipal administration, human rights violations, and government accountability. Since High Courts have wider territorial jurisdiction, they often provide quicker access to justice for citizens facing violations of their rights at the local and state levels.

Judicial interventions by the Supreme Court and High Courts have also strengthened administrative accountability. Courts have directed public authorities to perform their legal duties, prevented misuse of power, and ensured transparency in governance. Their decisions have often compelled governments to implement welfare measures and protect the interests of marginalized sections of society.

However, judicial intervention in public matters has also raised concerns regarding judicial overreach. Critics argue that courts should respect the separation of powers and avoid entering areas primarily reserved for elected institutions. Therefore, judicial activism must be exercised carefully while maintaining a balance between protecting constitutional rights and respecting institutional boundaries.

The Supreme Court and High Courts have made remarkable contributions in addressing issues of public importance through judicial interventions. By protecting fundamental rights, promoting social justice, and ensuring governmental accountability, they have strengthened the constitutional framework of India. Judicial interventions continue to serve as an important means of achieving justice and ensuring that constitutional principles are effectively realized for all sections of society.

12.3.5 THE ADVANTAGES AND LIMITATIONS OF JUDICIAL ACTIVISM

Judicial activism refers to the proactive role played by the judiciary in interpreting laws, protecting constitutional rights, and addressing issues of public importance. It involves a broader approach where courts do not merely interpret existing laws but also ensure that constitutional principles are effectively implemented. In democratic societies like India, judicial activism has become an important mechanism for safeguarding fundamental rights and promoting social justice. However, while it has contributed significantly to constitutional development, it has also raised concerns regarding judicial overreach and the balance of power among different organs of the state.

One of the major advantages of judicial activism is the protection of fundamental rights. Courts have played an essential role in ensuring that individual liberties guaranteed by the Constitution are not violated by legislative or executive actions. Through creative interpretation of constitutional provisions, particularly Article 21, the judiciary has expanded the meaning of the right to life and personal liberty to include rights such as privacy, education, a clean environment, and human dignity. This approach has strengthened the protection of citizens' rights and ensured that constitutional promises are meaningful.

Another important advantage of judicial activism is the promotion of social justice. In situations where vulnerable sections of society are unable to effectively access legal remedies, judicial activism has provided relief and representation. Through Public Interest Litigation

(PIL), courts have addressed issues relating to bonded labour, environmental protection, prisoners' rights, child welfare, and discrimination against marginalized groups. Judicial intervention has helped bring attention to social problems and encouraged authorities to take corrective measures.

Judicial activism also contributes to maintaining government accountability. Courts act as a check on the misuse of governmental power by reviewing administrative decisions and ensuring that public authorities comply with constitutional and legal obligations. This strengthens the rule of law and prevents arbitrary actions by the state. In cases where legislative or executive institutions fail to address important concerns, judicial activism has served as a means of protecting public interest.

Despite these advantages, judicial activism has certain limitations. The most significant concern is the possibility of judicial overreach. Judicial overreach occurs when courts go beyond their constitutional role and interfere with matters that fall primarily within the domain of the legislature or executive. Critics argue that excessive judicial intervention may result in courts making policy decisions rather than merely interpreting laws. This may affect the democratic principle that elected representatives should formulate public policies.

Another limitation relates to the principle of separation of powers. The Constitution divides governmental authority among the legislature, executive, and judiciary to maintain a system of checks and balances. While judicial review is necessary for protecting constitutional values, excessive interference by courts may disturb this balance. The judiciary must ensure that its interventions remain within constitutional boundaries and do not replace the functions of other branches of government.

Judicial activism may also create practical difficulties when courts issue directions requiring administrative implementation. Since courts generally lack direct mechanisms for executing policies, excessive involvement in governance matters may lead to challenges in effective implementation. Additionally, misuse of Public Interest Litigation for personal motives, political interests, or publicity purposes can reduce the effectiveness and credibility of judicial processes.

Therefore, judicial activism requires a careful balance between judicial responsibility and institutional restraint. The judiciary must continue protecting constitutional rights and addressing failures of governance while respecting the authority and functions of other organs of the state.

Judicial activism has played a vital role in strengthening democracy, protecting rights, and promoting social justice. Its advantages are significant, particularly in ensuring accountability and providing justice to disadvantaged groups. However, concerns regarding judicial overreach and separation of powers highlight the need for responsible and balanced judicial intervention. A constructive relationship among the legislature, executive, and judiciary is essential for maintaining constitutional harmony and effective governance.

12.3.6 THE IMPACT OF JUDICIAL ACTIVISM AND PUBLIC INTEREST LITIGATION ON GOVERNANCE, ACCOUNTABILITY, AND THE PROTECTION OF CONSTITUTIONAL VALUES.

Judicial activism and Public Interest Litigation (PIL) have significantly influenced the functioning of constitutional democracy by strengthening governance, promoting accountability, and protecting fundamental values enshrined in the Constitution. In India, the judiciary has moved beyond the traditional role of merely interpreting laws and has actively contributed to ensuring that the principles of justice, equality, liberty, and dignity are effectively realized. Through judicial interventions, courts have addressed issues affecting society at large and have acted as a safeguard against arbitrary actions by state authorities.

One of the major impacts of judicial activism and PIL has been the improvement of governance.

The judiciary has often intervened in situations where administrative authorities have failed to perform their constitutional and legal duties. Through judicial review and PIL proceedings, courts have directed governments and public institutions to take necessary actions for protecting citizens' rights and ensuring effective implementation of welfare measures. These interventions have encouraged transparency, efficiency, and responsibility in public administration.

Public Interest Litigation has transformed the traditional approach to justice by making the judicial system more accessible to ordinary citizens. Earlier, legal remedies were mainly available to individuals who had the resources and capacity to approach courts. PIL changed this approach by allowing public-spirited individuals and organizations to raise issues affecting disadvantaged groups. As a result, marginalized communities, including poor labourers, prisoners, women, children, and socially weaker sections, have gained greater protection of their rights.

Judicial activism has also played an important role in promoting accountability of government institutions. The judiciary acts as a constitutional check on the powers of the legislature and executive by examining whether their actions comply with constitutional principles. Through various judgments, courts have required public authorities to act fairly, reasonably, and within the limits of law. This has strengthened the concept of responsible governance and reinforced public confidence in democratic institutions.

Another significant impact of judicial activism and PIL is the protection and expansion of constitutional values. The judiciary has interpreted fundamental rights in a broad and meaningful manner, particularly the right to life and personal liberty under Article 21. Courts have recognized that constitutional protection extends beyond mere physical existence and includes the right to live with dignity. Judicial decisions have contributed to the recognition of rights relating to privacy, education, environmental protection, legal aid, and livelihood, thereby strengthening the social justice objectives of the Constitution.

Environmental protection is one area where PIL has had a remarkable impact. Courts have addressed issues such as pollution control, conservation of natural resources, and protection of public health through judicial interventions. These decisions have encouraged sustainable development and emphasized the responsibility of both governments and citizens towards environmental preservation.

Judicial activism and PIL have also contributed to protecting vulnerable groups from exploitation and injustice. Courts have intervened in matters involving bonded labour, child labour, custodial violence, discrimination, and violations of human dignity. By providing remedies to those who are unable to effectively represent themselves, PIL has become an important instrument for achieving substantive equality.

However, the impact of judicial activism has also generated debates regarding the limits of judicial power. Concerns have been raised that excessive judicial intervention may lead to judicial overreach and interfere with the functions of the legislature and executive. The principle of separation of powers requires each organ of the state to perform its constitutional responsibilities independently. Therefore, judicial activism must be balanced with judicial restraint to maintain institutional harmony.

Judicial activism and Public Interest Litigation have had a profound impact on governance, accountability, and the protection of constitutional values. They have strengthened democracy by ensuring that state actions remain within constitutional boundaries and by providing justice to those who need it most. While maintaining respect for the separation of powers, these mechanisms continue to serve as essential tools for upholding the ideals of justice, equality, liberty, and dignity guaranteed by the Constitution.

12.4 SUMMARY

Judicial activism and Public Interest Litigation (PIL) are important developments in constitutional law that have transformed the role of the judiciary in protecting rights and promoting social justice. Judicial activism refers to the proactive approach adopted by courts in interpreting constitutional provisions, protecting fundamental rights, and addressing issues where legislative or executive actions fail to ensure justice. Public Interest Litigation, on the other hand, provides a mechanism through which individuals, organizations, and public-spirited citizens can approach courts on behalf of disadvantaged sections of society who are unable to seek legal remedies themselves.

The evolution of PIL in India marked a significant shift from the traditional rule of locus standi, allowing courts to become more accessible to marginalized communities. Through PIL, the judiciary has addressed various issues including bonded labour, environmental protection, human rights violations, prisoners' rights, child welfare, and government accountability. The Supreme Court and High Courts have played a crucial role in expanding the scope of fundamental rights, particularly Article 21, by recognizing rights related to dignity, privacy, education, livelihood, and a healthy environment.

Judicial activism and PIL have strengthened governance by ensuring transparency, accountability, and responsible functioning of public authorities. Courts have acted as guardians of the Constitution by reviewing government actions and preventing misuse of power. These mechanisms have helped protect constitutional values such as justice, equality, liberty, and human dignity while providing remedies to vulnerable groups.

Despite their significant contributions, judicial activism and PIL also face challenges. Concerns regarding judicial overreach arise when courts interfere excessively in matters reserved for the legislature and executive. Maintaining a balance between judicial intervention and the principle of separation of powers is essential for preserving constitutional harmony.

Overall, judicial activism and Public Interest Litigation have played a vital role in strengthening democracy and ensuring access to justice. By protecting fundamental rights, promoting social welfare, and holding authorities accountable, they continue to serve as powerful instruments for realizing the objectives of the Constitution.

12.5 GLOSSARY

Judicial Activism – A proactive approach adopted by courts where judges interpret laws broadly to protect constitutional rights, address social issues, and ensure justice.

Public Interest Litigation (PIL) – A legal mechanism that allows individuals or organizations to approach courts on behalf of the public or disadvantaged groups whose rights are affected.

Fundamental Rights – Basic rights guaranteed by the Constitution to individuals, including rights to equality, liberty, and protection of life and personal freedom.

Judicial Review – The power of courts to examine the validity of legislative and executive actions and declare them unconstitutional if they violate constitutional principles.

Locus Standi – The legal principle that a person must have a direct connection or interest in a matter to approach the court for a remedy.

Judicial Overreach – A situation where courts are considered to exceed their constitutional role by interfering excessively in the functions of the legislature or executive.

12.6 REFERENCES

Baxi, U. (1980). *The Supreme Court under a new constitutional order: The Indian experience*. Indian Law Institute.

Baxi, U. (1985). Taking suffering seriously: Social action litigation in the Supreme Court of India. *Third World Legal Studies, 4*(1), 107–132.

Bhatia, G. (2019). *The transformative Constitution: A radical biography in nine acts*. HarperCollins India.

Datar, A. P. (2010). *Datar on Constitution of India*. LexisNexis Butterworths Wadhwa.

Jain, M. P. (2018). *Indian constitutional law* (8th ed.). LexisNexis.

Kashyap, S. C. (2011). *Our Constitution: An introduction to India's Constitution and constitutional law*. National Book Trust.

Krishna Iyer, V. R. (1979). *Justice at crossroads*. National Book Trust.

Mishra, B. (2015). *Public interest litigation: A critical analysis*. Universal Law Publishing.

Sathe, S. P. (2002). *Judicial activism in India: Transgressing borders and enforcing limits*. Oxford University Press.

Seervai, H. M. (2015). *Constitutional law of India: Constitutional law of India (4th ed., Vols. 1–3)*. Universal Law Publishing.

Shukla, V. N. (2017). *Constitution of India* (13th ed.). Eastern Book Company.

Singh, M. P., & Saxena, R. (2013). *Indian politics: Constitutional foundations and institutional functioning*. PHI Learning.

Supreme Court of India. (n.d.). *Supreme Court of India: Judgments and constitutional resources*. https://main.sci.gov.in

United Nations. (1948). *Universal Declaration of Human Rights*. https://www.un.org/en/about-us/universal-declaration-of-human-rights

Verma, S. K. (2004). *Public interest litigation in India: Growth and prospects*. Indian Law Institute.

Important Case References

Maneka Gandhi v. Union of India, 1978 AIR 597 (Supreme Court of India).

Hussainara Khatoon v. State of Bihar, 1979 AIR 1369 (Supreme Court of India).

Bandhua Mukti Morcha v. Union of India, 1984 AIR 802 (Supreme Court of India).

Olga Tellis v. Bombay Municipal Corporation, 1986 AIR 180 (Supreme Court of India).

M. C. Mehta v. Union of India, 1987 AIR 1086 (Supreme Court of India).

Vishaka v. State of Rajasthan, 1997 AIR 3011 (Supreme Court of India).

Justice K. S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1 (Supreme Court of India).

12.7 SUGGESTED READINGS

1. **Jain, M. P. (2018).** ***Indian Constitutional Law*** **(8th ed.). LexisNexis.**
2. **Sathe, S. P. (2002).** ***Judicial Activism in India: Transgressing Borders and Enforcing Limits*****. Oxford University Press.**
3. **Seervai, H. M. (2015).** ***Constitutional Law of India: Constitutional Law of India*** **(4th ed.). Universal Law Publishing.**
4. A **Baxi, Upendra. (1985).** ***Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India*****. Third World Legal Studies.**
5. **Basu, D. D. (2019).** ***Introduction to the Constitution of India*****. LexisNexis.**
6. **Shukla, V. N. (2017).** ***Constitution of India*** **(13th ed.). Eastern Book Company.**
7. **Krishna Iyer, V. R. (1979).** ***Justice at Crossroads*****. National Book Trust.**
8. **Mishra, B. (2015).** ***Public Interest Litigation: A Critical Analysis*****. Universal Law Publishing.**
9. **Datar, A. P. (2010).** ***Datar on Constitution of India*****. LexisNexis Butterworths Wadhwa.**
10. **H. R. Khanna. (1980).** ***Making of India's Constitution*****. Eastern Book Company.** Additional Suggested Indian Legal Journals and Sources

12.8 SHORT ANSWERS QUESTIONS

1. What is Judicial Activism?

2. Define Public Interest Litigation (PIL).

3. Who can file a Public Interest Litigation in India?

4. Mention any two objectives of Judicial Activism.

5. What is the role of the Supreme Court in promoting PIL?

12.9 TERMINAL QUESTIONS

1. Explain the concept of Judicial Activism. Discuss its significance in protecting the rights of citizens in India.

2. Define Public Interest Litigation (PIL). Explain its features, objectives, and importance in ensuring social justice.

3. Discuss the evolution of Public Interest Litigation (PIL) in India. Highlight the role of the Supreme Court in its development.

4. Examine the relationship between Judicial Activism and Public Interest Litigation. 5.

5. How has PIL become an instrument of Judicial Activism?
Critically evaluate the advantages and limitations of Judicial Activism and Public Interest Litigation in strengthening democracy and the rule of law in India.

12.10 TRUE AND FALSE

1. Judicial Activism allows courts to play an active role in protecting the rights of citizens. Answer: True

2 .Only a person directly affected by an issue can file a Public Interest Litigation (PIL). Answer: False

3. Public Interest Litigation (PIL) aims to promote social justice and protect public welfare. Answer: True

4. The Supreme Court and High Courts in India can entertain Public Interest Litigation (PIL). Answer: True
5. Judicial Activism weakens the enforcement of Fundamental Rights in India. Answer: False

UNIT-13
ROLE OF SUPREME COURT IN PROTECTING HUMAN RIGHTS

13.1 Introduction

Supreme Court of India is the apex of large number of courts functioning across the country. The court has been bestowed with the power of formulating the rules and procedures applicable to all the courts. In a way within the apparatus of judiciary, the Supreme Court to a large extent, determines the nature and quality of dispensing the justice. Hence around the role of Supreme Court, the question of enforcement of human rights discussed. The module provides a brief description of interrelationship between law, executive and supreme court and their impact on the enforcement of human rights in the first part of the module. After brief review of historical context of constitution making and its impact on the drafting of fundamental rights, the independence of judiciary and its power of judicial review of constitutional validity of laws are discussed in order to lay down the foundational arrangements for enforcement of rights. In the second part of the module, the role of Supreme Court in democratizing the rule of law and expanding it towards protecting various fundamental rights are discussed.

13.2 Foundational Arrangements for Human Rights

Modern states have taken upon themselves the task of enforcing human rights. The ability of state to implement the rights of citizens gives the legitimacy to it as a democratic dispensation. Rights of citizens are to be enforced by the state. This task of state requires clearly specified laws and regulations and mechanisms in place.

The enforceable and justiciable rights derive from the laws. But beginning a debate on enforcement of human rights within the framework of ordinary statutes is inadequate as most unacceptable regimes of past like colonialism and racialism were also legal. Among the set of laws that govern a society, foundational laws are different. While ordinary laws are made from time to time depending on the social and political requirements of the society, Constitutions, the mother of all laws is made during important historical transformations of society which define the nature of future social order. The Indian Constitution was made under the influence of such historical struggles and national aspirations against the colonialism.

13.3 Historical Context

In modern times all the governments are governments of laws but not of socially and economically powerful people. The concept of limited government has its origin in the struggle against unlimited powers of kings and aristocrats in the medieval period. The status societies of medieval period were governed by the laws of religion, patriarchy and aristocracy in which the rights of individuals are subjected to age old traditions. The medieval societies were organized on the basis of traditional rules and laws, which structured different social groups in hierarchical model. In this model individuals were non-entities and had no rights, apart from the social status of their communities. The kings governed the society on the basis of these traditional rules and customs. The revolt of freedom loving individuals and communities against the traditional inequalities gradually forced the powerful to accept the written constitutions as the consensual and foundational laws to govern the affairs of society. Thus constitutions emerged as the limitations on the powers of the state. The separation of powers between different organs of the state- executive, legislature and judiciary are organized, distributed and limited by the constitutions. The nature of these arrangements is determined by the particular historical context in which the constitutions are framed.

13.4 Indian Context

Indian constitution was framed after a long historical struggle of independence movement against the British colonialism. The right against racial inequality, right to political independence, right against repression by the state and right to freedom of expression are the important aspirations that united the diverse social masses of the Indian subcontinent against the British colonialism. The notion of independence from British was not only an emotionally abstract idea but also a concrete one in terms of better future for all individuals and social groups. The memories of suppression of civil liberties by colonial state, communal violence during partition of subcontinent into India and Pakistan and horrors of world war were fresh and determining factors during framing of constitution.

The constituent assembly considered Supreme Court as the watchdog of democracy and as an instrument to guarantee the fundamental rights of citizens from the executive. This high expectation of constitution makers consequently resulted in granting the supreme court the jurisdiction of widest amplitude. According to Law Commission of India, "the Supreme Court of India enjoys widest jurisdiction including the novel jurisdiction hitherto not enjoyed by any court in any country of having original jurisdiction to grant relief in case of violation of fundamental rights. And the right to move court itself is guaranteed as fundamental right" (Para 1.3 of LCI 125: Supreme Court: A Fresh Look 1988). The court further expanded its jurisdiction by conferring upon itself the epistolary jurisdiction to entertain the social action litigation. This particular jurisdiction of the court to protect the fundamental rights of citizens is considered to have made the Supreme Court of India into Supreme of Court of People.

13.5 Independence of Judiciary

The constituent assembly's expectation from the Supreme Court also determined its relationship with the executive and legislature. Thus Assembly debated about the separation of judiciary and executive and rejected the proposal to elect the judges through the two-thirds majority in the parliament. The trend of interfering into the administration of justice by the executive was observed during colonial period and checks against it were proposed. It ruled out the possibility of election of chief justice of India by the council of states as it would be giving primacy to the legislature over the judiciary. It also prevented the possibility of acceptance of any office of profit after retirement by judges in order to ensure their integrity and avoid quid pro quo between two organs. To secure impartiality in the appointment, tenure and transfer of judges, appropriate provisions are made. After prolonged debate, it was accepted that the judges of Supreme Court should be appointed by the president in consultation with the chief justice of India. This was proposed by Dr. Ambedkar to ensure the independence of the judiciary and that was intended to achieve superiority of neither executive nor the judiciary.

13.6 Right to Constitutional Remedies: Article 32

The part of III of the Constitution provides for fundamental rights of the citizens. The law of fundamental rights will remain a mere statement of intent unless a specified mechanism to enforce the rights is not provided. To fulfil this requirement, article 32 of the constitution provided the citizens the right to move the Supreme Court for the enforcement of the rights. This right to move the apex court can be considered as the mother of all rights given its vital importance. The Court has been given power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, for the enforcement of the rights conferred by the constitution. The citizens can appeal to Supreme Court by a special leave petition under article 136 of the Constitution. Under article 134(1)(c), the court can entertain criminal appeals in the cases in which a substantial question of law of general importance are involved. Though the parliament has the power to confer the powers of Supreme Court on any other court, the superiority of Supreme Court in enforcing the rights of citizens has been respected. This right to constitutional remedy through Supreme Court cannot be suspended by the parliament under any circumstances except as provided by the constitution itself.

The Constitution-makers' expectation of Supreme as the guardian of democracy and constitutional order had taken serious beating during the internal Emergency of 1975. The Presidential order of 27 June 1975 under article 359 imposing Emergency resulted in repression of thousands of political dissidents and their arrests under Maintenance of Internal Security Act, 1971. The fundamental rights of the citizens were suspended and constitutional remedies under articles 32 and 226 of the constitution were also removed by the government. Unfortunately, the Supreme Court could not stand by the convictions of the constitution makers and citizens. In ADM Jabalpur v Shivakant Shukla, 1976 (AIR 1976 SC 1207) case, popularly known as habeas carpus case, the court held that “no person has any locus standi to move any writ petition under Article 226 before a High Court for habeas corpus or any other writ or order or direction to challenge the legality". It also upheld constitutional validity of the section 16A (9) of the Maintenance of Internal Security

Act. The people of India considered that the Supreme Court seriously compromised its independence as well as the rights of the citizens.

13.7 The Power of Judicial Review

The judiciary enforces the fundamental rights on the basis of statutes, which in turn depends on the principles of the Constitution. The Constitution also delineates the powers of judiciary and fundamental rights of the citizens. While enforcement of human rights depends on the law, the one crucial question we have to ask is what if the law itself is violative of fundamental rights of citizens? The article 32 (4) of the constitution mandates that the rights guaranteed by the article 32 should not be suspended except as provided for by the constitution. Under the article 32, the Supreme Court went on exercising the power of judicial review of constitutional validity of laws made by the government of India. For instance the legislations of land regulation had been struck down by Supreme Court in the name of protection of individual right to property. The power of the judiciary was seen as an obstacle by then executive-government. In order to take away the power of judicial review, the government of India amended the constitution through 42 Amendment Act 1976.

The Forty-second Amendment Act 1976 inserted 32A baring the Supreme Court from considering the constitutional validity of any state law in the proceedings for the enforcement of fundamental rights. Insertion of article 131A and 226A deprived the High Courts of their jurisdiction to decide the constitutional validity of any central law. Article 228A stipulated at least five judges for deciding constitutional validity of any state law and mandated a special majority for a judgment invalidating such a law. These restrictions seriously compromise the independence of judiciary and consequently the rights of citizens are also in danger. The same constitutional legislation also conferred sweeping powers on parliament to make laws in the name of anti-national activities. All the changes made to Constitution under this Amendment were repealed through the Constitution (forty-third amendment) Act, 1977 in order to protect the intent of constitutional makers and ensure the independence of judiciary.

In L. Chandra Kumar vs Union Of India And Others, 1997, the Supreme Court held that the power of judicial review of the Supreme Court under article 32 and of the High Courts under Articles 226/227 cannot be excluded as they form part of the inviolable basic structure of the Constitution. The first ingredient of this principle is that the power of the High Courts and of the Supreme Court to test the constitutional validity of legislation can never be ousted or excluded.

13.8 The Power to Make laws: Article 141

The process of making constitution and statutes do not exhaust the need for making new laws to meet the demands of changing society and rights of individuals. The constitutional makers thought the apex court can also discover vacuum in the statutes in the process of adjudication and undertake the responsibility of filling it. Article 141 of the Constitution confers the legislative power on the Supreme Court, until the parliament enacts a new law to fill the gap. Such law declared by the Supreme Court is binding on all the courts within the territory of India. Similarly under article 412, the Supreme Court has the power to pass any order to do complete justice in any matter pending before it. The judgments of D. K. Basu and Visaka Guidelines, right to education and right to legal aid are the best example of enforcement of human rights of citizens in the absence of any specific law for the purpose.

The apex court recognized the vulnerability of the persons in police custody and rampant misuse of power of arrest in this regard by the state. It also took cognizance of the fact that all accused are innocent until proved otherwise in the court of law and are entitled for all the fundamental rights enlisted in part three of the constitution. But there was no specific statute to ensure the right to life and dignity of the citizens in the specific circumstances of the custody. To ensure the constitutional right to life and dignity, the apex court felt that there is a need for specific rules and to fill the void it laid down the detailed guidelines in DK Basu Judgment. These guidelines were followed by the enforcement agencies and some of them later were incorporated as part of the law by the parliament.

Similarly the apex court recognized the possibility of rampant sexual harassment of women at work places. Often the sexual harassments are subtle and invisible but their effects are real and tangible. The harassment violates rights of women in terms of their career, physical and psychological harm and depressions. Democratizing work spaces to ensure the right to dignity and equality of women is necessary but there was no specific law that penalizes sexual harassment. More over there is need to recognize particular forms of these violations which are beyond the reach of law. The Supreme Court understood the working conditions of women even in modern spaces and laid down guideline in Visaka judgment and provided for a mechanism to enforce the rights of women.

In Vishakha v. State of Rajasthan[x], (AIR 1997 SC 3011 : (1997) 6 SCC 241) the Supreme Court has declared sexual harassment of a working woman at her work as amounting to violation of rights of gender equality and rights to life and liberty which is clear violation of Articles 14, 15 and 21 of the Constitution. In the landmark judgment, the court in the absence of enacted law to provide for effective enforcement of basic human rights of gender equality and guarantee against sexual harassment laid down the guidelines.

13.9 Expansion of Right to Life: the Ark of all fundamental Rights

In this section, the specific role of Supreme Court in the protection and enforcement of human rights with reference most important right to life is discussed. Its role as expansive interpreter of meaning of law and its making are touched.

13.10 Principle of interpretations

All laws including constitutions are made at particular times, social contexts and for political needs. The original intent of the framers of constitution are determined by those historical times but over a period of time, new contexts demand fresh look at the meaning of law but the power to interpret is bestowed on the shoulders of Supreme Court by the Constitution. But what could be the principle of interpretation to be followed by the court? It cannot be in a constricted sense. It has to be wide and liberal to accommodate the changing circumstances and purposes. This is also necessary if the provisions of constitution do not become atrophied but remain flexible enough to adapt to new challenges posed by the society from time to time. The American Constitutional expert Ronald Dworkin felt that for meaningful interpretation of Constitution, the judges needed to be aware of historical and sociological process of society and just the knowledge of law was not enough. This perspective of interpretation of law is more applicable to right to life of citizens and communities more than any other provisions of law. The broad and expansive spirit with which the court interpreted the provision of right to life has actually invested it with significance and vitality to endure for years. It has enhanced the dignity and worth of citizens in principle. (Francis Coralie Mullin vs The Administrator, Union ... on 13 January, 1981)

13.11 Right to Life and Role of Supreme Court

The article 21 has been regarded as the heart and soul of Indian Constitution. It reads as follows: “No person shall be deprived of his life or personal liberty except according to a procedure established by law.” The right has several components in it. This right is applicable to all 'persons' but not just to citizens of this country. It secures two rights: life and liberty. It also implicitly guarantees all persons the right to rule of law. The word deprivation connotes it can only be claimed when a person is denied her life and personal liberty by the state. The meaning of the state is covered by article 12 of the constitution.

Indian Supreme court has never been as creative as with the interpretation of this article. It has actively opened-up a new angle to it when it said in Maneka Gandhi's Case that the article is not only a guarantee against the actions of the state without law, but is also a restriction on the nature of law made. The fundamental question raised is whether any law is enough to justify the deprivation of right to life and liberty of persons? What if that law is undemocratic in terms of procedures followed and not in conformity with procedures of principles of natural justice? It is not just some semblance of law that is required to be complied with article 21. The court made it clear that the procedure prescribed by law must be reasonable, fair and just. If the law does not reflect these qualities, it would be void as violating the guarantee of article 21. The expansion of the scope of the right to life and personal liberty further widened the possibility for enlarging other fundamental rights.

What constitutes deprivation of right to liberty?

Life and personal liberty are integral to each other. One cannot be imagined without the other. The constitutional makers perhaps rightly conceived the organic link between life and personal liberty of persons and provided for both of them in the same article. It is difficult to identify them distinctively from each other. Imagining right to dignified life being intact while the personal liberty of persons is treated cruelly is very hard. The right to personal liberty is more often at risk from the actions of the executive than the right to life per se, though the later bound to suffer.

In the popular imagination, the deprivation of personal liberty by the executive does not go beyond the gates of police station and prisons. The court rightly pointed out that deprivation is not an act which is complete once and for all. In fact the deprivation of personal liberty begins at the gates of executive but lasts as long as the persons are in their custody. The deprivation can only be physical deprivation of personal liberty and it cannot inflict any damage to any limb or faculties of thinking and feeling. Hence any action of the executive, which injures or interferes with the use of any faculties of the person in custody attracts the article 21. The physical deprivation of personal liberty should ensure the preservation of dignified life of the person. Once the tone and tenor of its approach towards right to life was set, the apex court invoked it on all issues of paramount importance to expand and ground the fundamental rights. The right to minimum wages, social security and protection of family, right against handcuffing, right to education, right against illegal detention and right to clean environment are some of the important rights which were interpreted by the court in the light of expansion of right to life. An elaborated discussion of the expansion of the rights would be taken up another module that follows.

13.12 Summary

All modern democracies emerged against the arbitrary powers of erstwhile regimes. The constitutional democracies are based on separation of powers between executive, legislature and judiciary. Indian constitution provided prominent position for Supreme Court as the guardian of democracy. The powers of restricting arbitrary actions and legislations of government are entrusted to the Supreme Court. It has travelled far from the criticism in 1960s and 1970s that its decisions created road blocks in the way of improving the conditions of the tillers of the soils by blocking zamindari abolition statutes and persons of humble origin and low economic status were unlikely to get justice to public interest litigations. It tried to creatively interpret the article 21 and expand its ambit from human rights perspective.