KARNATAKA STATE OPEN UNIVERSITY

Mukthagangotri, Mysore- 570 006

DEPARTMENT OF STUDIES & RESEARCH IN POLITICAL SCIENCE

FIRST B.A. & B.COM.

INDIAN CONSTITUTION, HUMAN RIGHTS AND ENVIRONMENTAL STUDIES

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Introduction

Dear Student,

I am extremly happy to welcome you to this course. In this course you will study a thrilling paper entitled Indian Constitution, Human Rights and environmental studies. In this fascinating paper you will study three different aspects in one paper mentioned above. The first part of the paper deals with Indian Constitution its importance and Historical development. It is such a sacred document consisting of various aspects of human life. It deals with National Integration, Reorganisation of states, preamble and Directive Principles of state policy. Since there is a constitutional supremacy, it gives direction to ruler as well as ruled. It contains Directive Princples of state policy which give directions to state legislature in making laws. It consists of socialistic principles, Gandhian principles and liberal principles for the welfare of the people. The second important aspect introduced in this paper regarding the importance of universal declaration of Human Rights. Since 1979 special mechanism have been created by the united nation to examine the position of Human Rights in different countries. The presence of Human Rights is global and the context of Human Rights encompasses in the least and the most deprived. But it is hard to say whether the Human Rights situation in the world has actually improved. While in some countries freedom, Democracy and the Rule of law have certainly gained ground, there are other countries where the situation is worse than ever. The united Nations Human Right experts fought towards the realisation of Human Rights as the highest aspiration of the common people as the universal declaration of Human Rights proclaimed. To implement and execute the Nationl Human Right Commission was constituted on October 1993. The third component of this paper gain full support from supreme court verdict to make environmental studies compulsory at the under graduate level. According to environment act 1986 it includes all the physical and biological surroundings of an organism along with their interactions. Its components include Biology, Geology, Chemistry, Physics, Engineering, Health, Anthoropology, Economics and Philosophy.Along with it we will study the two components of environment natural and manmade including Abiotic. and Biotic components. Discussion is also there in this paper about environmental pollution and remidial measures.

This paper contains three different aspects, Indian Constitution, Human Rights and Environmental studies.

There can be no states without a constitution which contains the fundamental principles

of governance and provides rights to the people. It is regarded as the sacred document of the land, which every citizen of india follows and respects. In the context of political turmoil resulting in the torture of human beings and violation of Human Rights and abuse of National resources remiting in Environmental degradation. The study of constitution Human Rights and Environmental Studies is of tremendous and paramount significance. Keeping this importance in mind overwhelmingly the course "Indian Constitution", "Human Rights" and "Environmental Studies" is prescribed for all those who seek admission for all undergraduate courses of Karnataka State Open University.

This course is offered with a sole mission of imparting the students as to how the country is being governed the powers and functions of the three organs of the government the rights and duties of the people, the objectives and glorious ideals which the constitution is intended to promote and the basic structure of the constitution which is the sacred document of the land. Another important objective of this course is to make the students to understand the importance of Human Rights and various steps initiated against the violation of Human Rights. The last but not the least objective of this course is to impart the students about the importance of Environmental Studies including the conservation and preservation of Environment

This paper deals with three aspects the first part deals with political theory part second deals with Human Rights part three deals with Environmental Studies.

The above mentioned paper starts with Indian Constitution the details are on follows Block 1 consisting of six units. Unit 1 deals with Meaning, Importance and Development of the Indian Constitution. Unit 2 deals with reorganisation of states, National integration and Zonal councils unit 3 deals with the preamble and Framing of the Indian Constitution. Unit 4 deals with the salient features and amendment of the constitution. Unit 5 deals with Rights and Duties. Special privileges for SC/ST's backward classes women children religious and linguistic mionrities. Unit 6 deals with Directive Principles of state policy, values and limitations, defferences between fundamental rights and directive principles of state policy.

Block 2 consisting of 6 units (1to12) Unit 7 deals with union parliament Lokasabha and Rajyasabha Units 8 deals with Prime Minister, President and council of Ministers. Unit 9 deals with supreme court and High court, Judicial activism and Public interst litigation. Unit 10 deals with State Government-Governer-Legislature-Chief Minister and Council of Ministers. Unit 11 deals with Indian Rederalism and centre State Relations. Unit 12 deals with Transparency in Administration and Right to Information.

Block 3 deals with Human Rights and it contains 6 units (13 to 18), Unit 13 deals with meaning and importance of Human Rights and Universal declaration of Human Rights Unit 14 deals with Development of Human Rights and Fundamental rights, International law and position of India Unit 15 deals with social and Gender duscrumination, torture and Genocides two Human Rights covennats.Unit16 deals with European chapter of Human Rights and amnesty International Unit 17 deals with people's union for civil liberty (PUCL) and peoples union for Democratic Rights (PUDR). Unit 18 deals with Human Rights commission, Minorities commission Remedies against Violation of Human Rights.

Block 4 deals with Environmental studies. It consists of 6 units (19 to 24) Unit 19 deals with the meaning, scope and importance of environmental studies. Components-Physical or Natural and Cultural or Manmade. Unit 20 deals with the concept of Ecology - Structure and function of Ecosystem. Unit 21 deals with Biotic and Abiotic factors- Environmental inteactions. Unit 22 deals with Biological Resources- Plants animals and micro-organism. Unit 23 deals with social issues-Human-Population and environment. The last Unit 24 deals with Environmental Pollution-Air water-Soil and Sound conservation and Preservation of Environment.

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UNIT-1: MEANING AND IMPORTANCE OF THE CONSTITUTION. THE DEVELOPMENT OF THE INDIAN CONSTITUTION

Structure

1.0 OBJECTIVES

After going through this Unit, you will be able to

- Examine the meaning of the Constitution.
- Explain the importance of the Constitution.
- Discuss the development of the Indian Constitution.

1.1 INTRODUCTION

"To live by the rule of the constitution ought not to be regarded as slavery, but rather salvation". - Aristotle.

The basis of any system of government is its constitution. Generally sovereign states have written or unwritten laws defining the powers of the government and rights and duties of the governed. And it is rather difficult to conceive of a state in which there is no constitution. Even an absolute monarch is supposed to govern the country according to certain principles. These very principles could form the constitution of that despotic state.

Thus a constitution is essential to the proper working of every state. It has been rightly remarked by Prof. Jellineck, that 'a state without a constitution would not be a state but a regime of a monarchy. In a modern representative democracy of the existence constitution is considered an important requirement.

It is imperative to know how the Indian Constitution has been evolved in a paced manner. This will throws a light on the growth and understanding of the Indian Constitution.

1.2 MEANING AND DEFINITIONS OF THE CONSTITUTION

The term 'constitution' is derived from the word 'constitute' which means 'to form' or to, establish or 'to compose'. Therefore the constitution is the act of establishing the basic form or structure of government. In very simple terms, the constitution of a state may be defined as "a body of rules and regulations, written as well as unwritten, which determine the organization and functions of government". In other words, "the collection of principles or rules dealing with the organization and powers of government and the rights and duties of the people is called constitution". To understand the meaning of 'constitution' a few important of the concept may be noted.

According to Aristotle, the constitution is "the arrangement of power in a states especially of the supreme power". Lewis who agrees with this view calls the constitution as the arrangement and distribution of the sovereign powers in the community, or form of government."

Sir James Macintosh defines constitution as "the body of those written or unwritten fundamental laws which regulate the most important rights of the higher magistrates and the most essential privileges of the subjects." Jellineck defines the constitution as "a body of juridical rules which determine the supreme organs of the state, which prescribes their mode of creation, their mutual relation, their sphere of action and finally the fundamental place of each of them in their relation to the state". According to Gilchrist the constitution of state is that body of rules and laws, written or unwritten, which determines the organization of government, the distinction of powers to the various organs of government, and the general principles on which these powers are to be exercised.

Woolsey says that a constitution is the collection of principles according to which the power of the government and the rights of the governed and the relation between the two are adjusted".

James Bryce, defines the constitution as "the aggregate of laws and customs under which the life of the state goes on", or "the complex totality of laws embodying the principles and rules whereby the community is organized, governed and held together". Dicey defines a constitution as "all rules which directly or indirectly affect the distinction or exercise of sovereign power in the state".

According to Gettel, "the fundamental principles that determine the form of a state are called its constitution", J.W. Garner calls the constitution as the body of fundamental law either written or customary, which has to do with the organization of the state".

According to K.C. Wheare, the word 'constitution' is commonly used in two senses. First of all, it is used to describe the whole system of government of a country, the collection of rules both legal and non-legal which establish and regulate or govern the government. These rules are partly legal in the sense that the law courts recognize and enforce them in the governance of the country and they are partly non-legal or extra legal, taking the form of usages, customs, and conventions which courts do not recognize as law, but they are not less effective in regulating the government. In most countries of the world the system of government is composed of this mixture of legal and non-legal rules and it is possible to speak of this Collection of rules as the "Constitution".

In the narrow sense, it is used to describe not the whole collection of rules legal and non-legal, but rather a selection of them which are embodied in one document or in a few closely related documents. For example American, Indian and other written constitutions are used in this sense.

In the wider sense, the term "constitution" is used to denote the whole body of rules and regulations, customs and conventions, and judicial decisions which determine the form and character of governmental system, the rights and duties of government in relation to the citizens and those of citizens in relation to government.

An analysis of the above definitions reveals that a modern constitution describes :

1) The organization and form of state (Whether a Democracy or Dictatorship, Unitary or Federal).
2) Powers and function of different organs of government and their mutual relations (separation or fusion).
3) Rights of the citizens with their judicial protection.
4) Government - people relationship (Fair and Free election).
5) Procedure for the amendment of the constitution.

1.3 IMPORTANCE OF THE CONSTITUTION

A constitution is essential to the proper and orderly working of every state. In the absence of the constitution there will be anarchy, i.e., chaos, confusion and disorder. Jellineck Says that, "a state without a constitution would not be a state, but a regime of anarchy". Hence every state, whether democratic or otherwise, must possess a constitution. In modern representative democracy, the importance of the constitution is immense. Even the totalitarian state requires some semblance of a constitution to avoid disorder and to ensure the efficiency of government. It does not matter whether the constitution is in the form of a document or in the form of customs and conventions. What is required is a set of rules which would ensure legitimacy of the government. In the absence of a constitution, people could be harassed and exploited by dishonest and selfish politicians.

Modern states are governed by constitutional government. A government which functions on the basis of laws laid down by the constitution is known as 'constitutional government'. Under this government the people are not subject to the whims and fancies of the rulers. It will be the government of laws and not of men.

A constitutional government is 'limited government'. It sets definite limits to the authority of the rulers and thus checks arbitrary action on their part. It avoids confusion and introduces definiteness in administration. It checks the government from usurping or interfering with the rights of the people. It implies responsible government based on a system of restraints.

Thus the significance and the need for the constitution cannot be denied. It establishes rule of law and orderly government as opposed to the rule of men and disorderly government, because the governmental powers are clearly defined. It is a frame of reference. As a result, it minimizes political controversies and confusions. It ensures political stability and continuity in political institutions. Rights are secured and greater participation of the people in the political process is also ensured by most modern constitutions. Finally constitution guarantees peaceful change through legal and legitimate methods.

1.4 HISTORICAL DEVELOPMENT OF THE INDIAN CONSTITUTION

The Constitution of the Indian Republic is the product not of a political revolution but of the research and deliberations of a body of eminent representative of the people (who sought to improve upon then existing system of administration). This very fact makes a retrospect of the constitutional development indispensable for a proper understanding of this Constitution.

Government of India Act 1858

The British Crown assumed sovereignty over India in 1858 and Parliament enacted the first statute for the governance of India under the direct rule of the British Government. By this Act, the powers of Crown were to be exercised by the Secretary of State for India assisted by a Council of fifteen members. The Secretary of State, who was responsible to the British Parliament, governed India through the Governor - General, assisted by an Executive Council.

Indian Council Act 1861

The Indian Council Act of 1861 introduced a grain of popular element as it provided that the Governor General's Executive Council should include certain additional non-official' members. The Act transact legislative business as a Legislative Council. But this Council was neither representative nor deliberative in any sense.

Indian Council Act 1892

The Indian Council Act 1892 introduced two improvement namely (a) that the non-official members of the Indian Legislative Council were henceforth to be nominated by the

Bengal Chamber of Commerce and the Provincial Council were to be nominated by certain local bodies such as universities, district boards, municipalities; (b) the Councils were to have the power of discussing the annual statement of revenue and expenditure, i.e. the Budged and of addressing questions to the Executive. But the Act retained the majority of official members.

Morley - Minto Reforms

The first attempt of introducing a representative and popular element was made by Morley-Minto Reforms which were implemented by the Indian Council Act, 1909. The size of Provincial Legislative Councils was enlarged by including elected non-official members so that the - member of official majority had gone up. An element of election was also introduced in the Legislative Council at the Centre but the official majority was maintained. The deliberative functions of the Legislative Councils were also increased by giving them the opportunity of influencing the policy of administration and on any matter of public interest except certain specified subjects, such as the Armed Forces, Foreign Affairs and the Indian States.

The positive vice of the Act of 1909 was that it provided for the first time for separate representation of Muslim Community and thus sowed the seeds of separatism.

Indian Council's Act of 1919

The next landmark in the Constitutional development of India is the Montagu -Chelmsford Report which led to the enactment of Government of India Act, 1919.

The Indian National Congress became more active during the first World War and started its campaign for self-government. In response to this popular demand the British Government made a declaration on August 20, 1917 that the policy of British Government was that of increasing association of Indians in every branch of administration and the gradual development of self governing institutions.

The then Secretary of State for India (Montagu) and the Governor - General (Chelmsford) entrusted the task and gave a legal shape to their recommendations as Governmentof India Act 1919.

The main features of the system introduced by this Act were as follows :

(a) Dyarchy in the provinces

Responsible government in the Provinces was sought to be introduced for the administration of the Province, by resorting to device known as 'Dyarchy' or dual government. The subjects of administration were to be divided into two categories - Central and Provincial.

The Central subjects were those which were exclusively kept under the control of the Central Government. The Provincial subjects were subdivided into 'transferred' and 'reserved' subjects. The transferred subjects were to be administered by the Governor with the aid of Ministers responsible to Legislative Council. The reserved subjects were to be administered by the Governor and his Executive Council without any responsibility to the Legislature.

(b) Relaxation of Central control over the Provinces

Broadly speaking subjects, of all India importance were brought under the category of 'Central' while matters primarily relating to the administration of the provinces were classified as 'Provincial' and thus made a separation of the subjects. This meant a relaxation of previous central control over the provinces not only in administrative but also in legislative and financial matters.

This devolution of power to the Provinces should not be mistaken for a federal distribution of powers. But provinces got power by way of delegation from the Centre.

(c) The Indian Legislature was made more representative

The Indian Legislature was made more representative and for the first time, bi-cameral. It was to consist of an Upper House, named the Council of State, composed of 60 members of whom 34 were elected, about 144 members of whom 104 were elected.

But there were also certain shortcomings of the 1919 Act. Firstly the structure still remained unitary and centralized ' with the governor-general in Council as the keystone of the whole constitutional edifice; and it is through the governor-general in Council that the Secretary of State and ultimately, Parliament discharged their responsibilities for peace, order and good government of India. Secondly the great dissatisfaction was the working of Dyarchy in the provincial sphere. The Governor came to dominate ministerial policy by means of his overriding financial powers and control over the official block in the Legislature. The main defect of the system from the Indian standpoint was the control of the purse.

Government of Indian Act 1935

The failure of the Statutory Commission (Simon Commission) and the Round Table Conference led to the enactment of the Government of India Act 1935. The main features of the governmental system prescribed by the Act of 1935 were as follows :

(a) Federation and Provincial Autonomy

The Act of 1935 prescribed a federation taking the provinces and the Indian states as

units. But through the part relating to the federation never took effect, the part relating to Provincial Autonomy was given effect. The Act divided legislative powers between the provincial and Central Legislatures, and within its defined sphere, the provinces were no longer delegates of the Central Government, but were autonomous units of administration.

(b) Dyarchy at the Centre

The executive authority of the centre was vested in the Governor-General whose functions were divided into two groups :

(i) The administration of defense, external affairs, ecclesiastical affairs and of tribal areas was to be made by Governor-General in his discretion with the help of 'Counselors' appointed by him. They were not responsible to the Legislature or with regard to matters other than the above reserved subjects, the Ministers' who were responsible to Legislature.

(ii) **The Legislature :** The Central Legislature was bi-cameral consisting of the Federal Assembly and the Council of States. The legislative powers of both the Central and Provincial Legislatures were subject to various limitations and neither could be said to have possessed the features of a sovereign Legislature.

(c) Distribution of legislative powers between the Centre and the Provinces

The Federal provision of Government of India Act 1935 were in fact applied as between the Central Government and the Provinces. A three-fold divisions was made in the Act - (a) There was a Federal list over which Federal Legislature had exclusive powers of legislation, (b) There was a provincial list of matters over which the Provincial Legislature had exclusive jurisdiction (c) There was a concurrent list of matters over which both Federal and Provincial Legislatures had competence. The Governor-general was empowered to authorize either the Federal or the Provincial Legislature to enact a law with respect to any matter which was not enumerated in the Legislative lists (i.e. residuary powers).

It should be pointed out that this Act went another step forward in perpetuating the communal divide between the Muslims and the Non-Muslim communities. The Act provided separate representation not only for the Muslim, but also for the Sikhs, the Europeans, Ind'an Christians and thus created a serious hurdle in the way of the building up of national unity.

Indian Independence Act 1947

After the agreement on the Mountbatten Plan the British Parliament lost no time to draft the Indian Independence Act 1947.

The main features of the Act were as follows :

(a) Abolition of the Sovereignty and Responsibility of British Parliament

The Governor-general of India and Provincial Governors remained substantially under the direct control of the Secretary of State until the Indian Independence Act 1947. But the Independence Act 1947 altered this from the 15th August, 1947. India ceased to be a Dependency and the suzerainty of the British Crown over Indian States.

(b) The Crown was no longer the source of authority

So long as India remained a dependency of the British Crown the Government of India was carried on in the name of this Majesty. But under the Act 1947, neither of the two Dominoes of India and Pakistan derived its authority from the British Isles.

(c) Sovereignty of the Dominion Legislature

From the appointed day and until the constituent Assemblies of the two Dominion were able to frame their new Constitutions and new Legislatures were constituted there under — it was Constituent Assembly itself, which was to function also as the Central Legislature of the Dominion to which it belonged. In other words, the Constituent Assembly was to have a dual function, i.e. of 'Constituent' as well as 'Legislative'.

Check Your Progress -1

Note : 1) Use the space given below for your answer.

2) Also check your answer with the clue given at the end of the Unit.

1. Explain the meaning of the term Constitution.

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2. Examine the importance of the Constitution.

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3. Trace the development of the Indian Constitution.

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1.5 LET US SUM UP

In this Unit, an elaborate discussion is given about the meaning of the term Constitution, its importance and the development of the Indian Constitution with the help of this discussion you will be able to know how our Constitution has been developed.

1.6 KEY WORDS

Sovereignty	:	Supreme power of the State
Pre-requisites	:	Essential elements
Totalitarianism	:	Centralized form of government
Dyarchy	:	Double government
Delegation	:	Transfer of power
Residuary power	:	Remaining power
Provinces	:	Under the 1935 Act, the Units of the Indian government were called as provinces

1.7 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check your Progress - 1

1. See section 1.2
2. See section 1.3
3. See section 1.4

1.8 REFERENCE BOOKS

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K.C. Wheare: Modern Constitution, Oxford University Press, New Delhi-1966

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UNIT -2: RE ORGANISATION OF STATES AND NATIONAL INTEGRATION AND ZONAL COUNCILS

Structure

2.0 OBJECTIVES

After going through this Unit you should be will able to

- Explain why there was demand for re-organization of states.
- Analyse the basis of re-organization.
- Examine arguments for and against re-organization.
- Describe the meaning, problems and solutions of national integration.

2.1 INTRODUCTION

Today India is a Union of 29 states and seven Union Territories. The federal polity has been a consequence of a long period of development and has been continuously changing. It was right since the British period, that regions were called 'Provinces'. Before 1773 we have had three 'Presidencies', namely the Presidency of Fort William in Bengal, the Presidency of Fort St. George in Madras and Presidency of Bombay. The Presidency Fort William being largest and hence it was to be divided into two (a) Presidency of Fort William in Lower province in Bengal and (b) Presidency of Agra which was postponed and instead of Agra, North West Provinces under Lt. Governor was set up on 1836.

Beside this there were six Chief Commissioner's provinces, viz., British Baluchistan, Delhi, Armer-Marwara, Coorg, Andaman and Nichobar, Island and Panth Piploda. After India's partition in 1947, both the North Western Frontier Province and Sind became part of Pakistan, while Punjab and Bengal were divided between the two countries. Baluchistan was also given to Pakistan.

Independent India thus comprised nine Governor's Provinces : Chennai, Mumbai, West Bengal, the United Provinces, Bihar, East Punjab, the Central Provinces, Assam and Orissa and five Chief Commissioner's Provinces : Delhi, Ajmer-Merwara, Panth Piploda, Coorg and Andaman-Nicobar Islands.

After partition, India faced the problems of consolidation, the integration of the Princely states and the framing of a Constitution. Once the Princely states acceded to India, the process of integration began. Smaller states were merged with neighboring provinces. Others were consolidated as Centrally administered areas. States of another class, because of their affinity, were consolidated as new federal units. These included Rajasthan, Saurashtra and Travancore-Cochin, Mysore, Hyderabad and in separate class, the State of Jammu and Kashmir retainec their integrity as separate States of the Indian Union.

In 1950, when the new Constitution came into existance, the units of the Indian Union thus found themselves classified into Part A, Part B, Part C and part D States.

State set-up at the Commencement of the Constitution

	Part A		**Part B**		**Part C**		**Part D**
1	Assam	10	Hyderabad	19	Ajmer	29	The Andaman and Nicobar
2	Bihar	11	Jammu and Kashmir	20	Bhopal		
3	Mumbai	12	Madhya Pradesh	21	Bilaspur		
4	Madhya Pradesh	13	Mysore	22	Cooch-Behar		
5	Chennai	14	Patiala and East Punjab States Union	23	Coorg		
6	Orissa	15	Rajasthan	24	Delhi		
7	Punjab	16	Saurashtra	25	Himachal Pradesh		
8	The United Provinces	17	Travancore Cochin	26	Kutch		
9	West Bengal	18	Vindhya Pradesh	27 28	Manipur Tripura		

Nation-building and national integration look like internal parts of the same phenomenon. The term national integration requires its understanding in a comprehensive sense. Here an attempt has been made to discuss the subject of national integration in India in a broad theoretical framework.s

2.2 DEMAND FOR RE-ORGANISATION OF STATES

The demand for a redrawing of the State boundaries in India is long-standing, dating back to the year 1903 when Sir Herbert Risley, Home Secretary in the Central Government, wrote to Bengal proposing the historic partition of that provinces, effected in 1905. The authors

of the report on Indian Constitutional Reforms were well disposed towards provincial re-organization for three principal reasons - first, the provinces as they existed bore an artificial character; second, if these units were made smaller in size and more homogeneous in character; the business of Government was to become simplified and third, the linguistic provinces were to lend themselves to the adoption of regional language for purposes of transaction of Governmental business which was to attract to public affairs persons not acquainted with English and thus to broad base Indian politics. Mahatma Gandhi wanted that the provincial units of the Congress Party should be organized on a linguistic basis. Accordingly, in 1921 the Congress Party gave effect to the linguistic principle. The Nehru Report (1928) approached the question of formation of provinces on the basis of linguistic affinities. According to this Report, partly geographical and partly economic but two main considerations were the popular wishes and the linguistic unit of the area.

The Simon Commission Report, submitted in 1930, gave qualified support to the proposal of linguistic provinces. The Congress Party adopted a resolution in 1927, 1937 and 1938 to re-carve the provinces on the same basis. In its selection manifesto of 1945, it pledge to set up linguistic provinces. When the Constituent Assembly of India was drafting the Constitution, the demands of formation of linguistic states became intensely live on its floor. Therefore, in June 1948 the Assembly announced the setting up of the Linguistic Provinces Commission, under the Chairmanship of S.K. Dar.

The Dar Commission warned that linguistically homogeneous provinces would threaten national unity and that in any case each state would have minorities. The report was received with general disappointment. The Congress Party also did not like the Dar prescription and announced its own committee to consider the question of linguistic provinces. The Linguistic Provinces Committee consisted of three members, namely, Jawaharlal Nehru, Vallabhabnai Patel and Pattabhi Sitaramayya. The JVP Committee, fundamentally concerned with the problem of national unity reaffirmed the position of the Dar Commission. It however, concerned that a strong case might be made for the formation of Andhra from the Telugu speaking region of Madras, and that if Public sentiment was “insistent and overwhelming”, this and other cases might be given further consideration. This was the opening wedge for the bitter struggle over states reorganization which was to dominate Indian politics from 1953 to 1956.

The demand for a separate state of Andhra had deep roots among the Telugu people. Rajagopalachari’s Ministry in Madras after the first General elections had differences with T. Prakasham, popularly known as ‘Andhra Kesari’, accentuated the clash between the Tamils and the Telugu-speaking Andhras. The Andhras revived their demand that the Madras (Chennai)

state, as formed by the British be carved into two separate i.e. Tamil and Telugu-speaking states. This movement got a big fillip when a respected leader, Potti Sriramulu, undertook a fast unto death. Nehru told his cabinet colleagues he would not be intimidated by these tactics. But when the fasting leader died and the tragedy was followed by widespread riots and destruction, Nehru yielded and in 1953 the State of Andhra Pradesh was created.

2.3 THE STATES REORGANISATION COMMISSION

The creation of Andhra state was the signal for a demand for Kannada speaking state comprising old Mysore state and including areas then part of erstwhile Bombay (Mumbai) ghd Hyderabad states. Nehru and his cabinet and the Congress High Command decided to resist all attempt at further division of the states according to language. However, when Nehru was greeted with black flags at Belgaum, he sensed the danger to his position as the idol of the people and announced the formation of a Commission (December 29,1953) to study the question of reorganization of states on a linguistic basis under the Chairmanship of Fazal Ali, a judge of the Supreme Court. The other two members of the Commission were H.N. Kunzru and K.M. Panikkar.

The States Reorganization Commission struck a 'balance' between regional sentiment and national interest. The Unity of India, the Report concluded, should be regarded as the primary consideration in any redrawing of the country's political units. The Commission rejected the theory of 'one language one state', but recognized linguistic homogeneity as an important factor conducive to administrative convenience and efficiency. The Commission recommended that the political divisions of the Union be redrawn generally in accordance with linguistic demands. It recommended that the constituent units of the Indian Union be the following Sixteen states and three Centrally administered areas. 1) Chennai 2) Kerala 3) Mysore 4) Hyderabad 5) Andhra Pradesh 6) Mumbai 7) Vidarbha 8) Madhya Pradesh 9) Rajasthan 10) Punjab 11) Uttar Pradesh 12) Bihar 13) West Bengal 14) Assam 15) Orissa 16) Jammu & Kashmir 17) Delhi 18) Manipur 19) Andaman & Nicobar Islands.

The Commission recommended that the classification of the States in four categories (A, B, C and D) as envisaged in the Constitution should be done away with and all the States be given an equal status. It did not find any ground for the formation of separate states of Punjabi Suba, Haryana and Maru Pradesh. It recommended the continuation of Mumbai as a bilingual state. The demands for separate tribal states, including Jharkhand and Nagaland were also rejected.

The States Reorganization Commission report was strongly criticized by the New York Times, The Hindustan Time C. Rajagopalachari and the Chief Minister of Bengal and Bihar as "linguistic Madness' and suggested 5-6 zonal administrative units.

2.4 THE STATES REORGANISATION ACT, 1956

On January 16, 1956 the Government announced its decisions on the Report, which may be summarized as follows : The Government accepted the Commission's recommendations regarding the formation of the new states of Kerala, Karnataka (which was to be named Mysore) and Madhya Pradesh and regarding the continuance of the states of Chennai, Rajasthan, Uttar Pradesh, Bihar, West Bengal, Assam and Orissa, broadly on the basis proposed by the Commission. In other words : (a) Uttar Pradesh was to continue in its existing form ; (b) Madhya Pradesh, Rajasthan and Orissa were to be as proposed by the Commission; (c) Chenani, Kerala, Karnataka (Mysore), Bihar and West Bengal were to continue as wished by the Commission, subject, of course, to minor boundary adjustment; (d) Assam was to be as desired by the Commission except that Tripura was not to be included in its territory ; (e) Maharashtra was to consist of the Marathi speaking areas of Mumbai, Madhya Pradesh, Hyderabad and Gujarat of Saurashtra, Kutch and the Gujarati speaking areas of Mumbai; (f) the existing constitutional disparity between the different categories of states was to disappear. This meant that Part B states were to be equated with Part A states by deleting Article 371 of the Constitution and abolishing the institution of Rajpramukh and Part C states were to disappear altogether as a separate cluster of states and such of the existing Part C states as could not be merged in adjoining states were to be directly administered by the Central Government; (g) Tripura was to remain as a Centrally administered area ; (h) The Central Government had under consideration the Commission's recommendation about the formation of (i) a Punjab state comprising the territories of the existing states of Punjab, PEPSU and Himachal Pradesh and (j) a residuary Hyderabad state, or alternatively a larger Andhra state).

The States Reorganization Bill was introduced in April 1956. It was finally passed in July 1956 and came into force in November 1956. The Act did away the four categories of states as provided under the original Constitution, and instead classified them into two categories - the States and the Union Territories. Although the States Reorganization Commission had recommended the creation of 16 States and 3 Centrally administered areas, the Act provided for the creation of 14 States and 6 Union Territories as under : States 1) Andhra Pradesh 2) Assam 3) Bihar 4) Mumbai 5) Jammu and Kashmir 6) Kerala 7) Madhya Pradesh 8) Chennai 9) Mysore 10)Orissa 11) Punjab 12) Rajasthan 13) Uttar Pradesh 14) West Bengal.

Union Territories : 1. Andaman and Nicobar Islands 2. Delhi 3. Himachal Pradesh 4. Lacadive Minocoy and Amindivi Islands 5. Manipur 6. Tripura.

Formation of the State of Maharashtra and Gujarat

The SRC opposed the division of Mumbai into Marathi and Gujarati states largely because of the critical question of Mumbai City. Marathi speakers constituted its largest language group, but the city was dominated by Gujarati wealth. In the Marathi speaking districts of Mumbai state widespread rioting broke out and eighty people were killed in police firing. Under pressure the Centre offered, but then withdrew a proposal that the state be divided but that the city of Mumbai be administered as separate state. Mumbai politics polarized linguistically; two broadly based language front organizations, the Samyukta Maharashtra Samiti and Mahagujarat Janata Parishad were^formed. In the 1957 elections, the Congress majority in Bombay was seriously threatened. Agitation continued and in 1960 the Congress gave way to the demand for reorganization. Gujarat and Maharashtra were constituted as separated linguistic states with the city of Bombay included as part of Maharashtra.

The Creation of the State of Nagaland

In 1961 yet another new state was created when Nagaland (Territorial Provisions) Regulations were promulgated by the President; the areas comprised of Naga Hills and Tuensang Area assumed the name of Nagaland and was given the status of the sixteenth state of the Indian Union. The Nagas were finally released from Assamese administration and in. 1963 the state of Nagaland came into being.

Bifurcation of Punjab

The Punjabi speaking people of the State of Punjab, mainly Sikhs, under the leadership of the Akali Dal demanded a separate Punjabi speaking state. The Hindus, on the other hand, under the leadership of the Jan Sangh, Hindu Mahasabha and the Arya Samaj urged the union of Punjab, Himachal Pradesh and Patiala and East Punjab States Union into a 'greater Punjab' containing a Hindu majority. Both sides resorted to agitation, violence, strikes, demonstrations and fasts - sometimes 'fasts unto death'. The Centre did not conceded their demands. Sant Fateh Singh, leader of one of the two factions of the Akali Dal, held out a threat that if by September 25, 1966 the demand for Punjabi speaking Suba was not conceded he would burn himself to death. The situation in Punjab became very tense. Apprehending a danger to the integrity and security of the country, the Centre decided on 1st November, 1966 to divide Punjab on linguistic lines. The Punjabi speaking districts formed the state of Punjab, seven Hindi speaking districts formed the new state of Haryana, and the Hindi speaking hilly areas

of Punjab contiguous of Himachal Pradesh were transferred to Himachal Pradesh. It was decided to make Chandigarh a Union territory. The number of states now sent up to seventeen.

Similarly in January 1971, Himachal Pradesh, a Union Territory, was elevated to the level of a state.

Reorganization of Assam

In April, 1970 a separate autonomous State of Meghalaya was created within Assam. This was an autonomous state within Assam, and was provided with its own Legislature and Council of Ministers. But this did not satisfy the aspirations of the people, and on 30th September, 1970, the Meghalaya Assembly unanimously resolved to request the Union Government to convert the autonomous state into a full fledged state. This demand was eventually conceded in January 1972 and this raise d the number of states to nineteen. The Parliament, in fact passed the North Eastern Areas (Reorganization) Act, 1971 which came into force in January 1972. As visualized under this Act, Meghalaya, Manipura and Tripura emerged as three separate states and Arunchal Pradesh and Mizoram as Union Territories.

Accession of Sikkim as the Twenty-second State

On 7th September, 1974, the Parliament passed an Act extending to Sikkim the status of an 'associate state'. The associate status lasted for less than a year, and on 26th April, 1975 Sikkim formally became the twenty-second state of the Indian Union. Mizoram as the twenty-third State.

Under the British administration, Mizoram was known as Lushai Hills District. In 1954, by an Act of Parliament the name was changed to Mizo Hills District. In 1972, when it was made into a Union Territory, it was named Mizoram.

With independence, Mizoram became a district of Assam. Because of neglect by the authorities the Mizos felt that it was a bad bargain for them to continue as part of India and started agitation's in 1966. It was declared a disturbed area. Armed Forces (Special Powers) Act also was invoked. On June 30, 1986, the historic Mizoram Peace Accord was signed between the Government of India and the Mizo National Front ending the two-decade old insurgency. Consequently, constitution (53rd Amendment) Act, 1986, inserted a new Article 371 -G conferring full statehood on Mizoram.

Arunachal pradesh the twenty-fourth state

Arunachal, originally known as the North-East Frontier Agency (NEFA), was placed under the administration of the Union Government under the name of Arunachal Pradesh on January 20,1972. It became a full-fledged State of the Union in December 1986.

Goa as the Twenty-fifth State

Till August 12, 1987, Goa was part of the Union Territory of Goa, Daman and Diu. Goa became the twenty-fifth state in the Indian Union by an Act of Parliament on August 12, 1987. While Daman and Diu formed a Union Territory, administered by the Governor of Goa who simultaneously holds office as the Lt. Governor of Daman and Diu.

Chhattisgarh as the Twenty-sixth State

On November 1,2000 a new state-to be known as the state of Chhattisgarh came into existence. Chhattisgarh became a reality without anyone really wanting it. Chattisgarh did not even experience a mass movement. The B.J.P. adopted the demand because it thought that after the 1998 Assembly elections it would be in a majority in the Chhattisgarh region ; the Congress played along because it was afraid of losing its hold over the region.

Uttaranchal as the Twenty-seventh State

On November 9, 2000 a new state to be known as Uttaranchal came into existence

Jharkhand as the Twenty-eighth State.

On November 15, 2000 a new state to be known as Jharkhand came into existence.

Separate Statehood Demand in Other parts of India

Demands for separate statehood were made in several other parts of the country. The demand for the creation of Jharkhand out of the Chhota Nagpur region of Southern Bihar and the contiguous tribal districts of Orissa was product of the increasing self-consciousness of the six million members of the Scheduled Tribes in the area. The people of Telangana in Andhrapradesh voices throughout of Telangana should be created. The people of the former princely state of Mysor Kodagu district demanded separation from the Karnataka districts. The hilly region of Kumaon and Tehri-Garhwal in Uttar Pradesh aspired for a state of their own. In West Bengal, the Gorkhaland National Liberation Front (GNLF) has demanded, occasionally by violent means, a separate state of Gorkhaland in Darjeeling district. There was a clamor for a separate state of Chhattisgarh.

The Bodo agitation is led by the Assam Bodo Students Union (ABSU), which is demanding a separate state and has resorted to wide scale violence and a series of crippling bandhs to pursue their demand.

The Buddhists of Ladakh had been carrying on an agitation, which at times turned violent, in support of their demand for grant of Union Territory status since the existing set-up in the State of Jammu and Kashmir had not provided them fair and just-treatment.

On the basis of the recommendations of the Committee on Reorganization of Delhi set-up, the Constitution (Sixty-ninth) Amendment Act, 1991 have been enacted for establishment of a Legislative Assembly and a Council of Ministers for the National Capital Territory of Delhi.

2.5 ARGUMENTS IN FAVOUR AND AGAINST LINGUISTIC STATES

Arguments in favour of Linguistic States :

India is perhaps the only country where the states are divided primarily on a linguistic basis, and in most of the cases the state and linguistic boundaries coincided. Even though such reorganization was often not favored by the leaders in the government, they were eventually forced to divide the country on a linguistic basis for the following reasons.

1. The territories originally annexed by the British had been formed without regard to any rational, scientific or linguistic considerations.
2. The presence of two or more linguistic blocks in the same state makes for inefficiency, friction and political economic penalization of the minority group.
3. The idea of linguistic states had a mass appeal, and hence the opposition parties, especially the Communists, adopted this idea as a tactic to arouse opposition against the ruling Congress Party in order to gain control of its legislative programme.
4. The idea of linguistic states had a mass appeal, and hence the opposition parties, especially the Communists, adopted this idea as a tactic to arouse opposition against the ruling Congress Party in order to gain control of its legislative programme.
5. States reorganization is best regarded as clearing the ground for national integration.

Argument against Linguistic States

Inspite of these strong arguments in favour of forming linguistic states, there was strong opposition to the linguistic re-division of India. Both Nehru and Patel felt that the linguistic re-division should be postponed in favour of other more pressing and important matters. Dr. B.R. Ambedkar had warned against the adoption of the linguistic principle and said: “The creation of linguistic provinces would be fatal to the maintenance of the necessary administrative relations between the Centre and States”.

The arguments against linguistic states are as follows :

1. The reorganization of states on linguistic basis created artificial walls between states and gave rise to numerous inter-state disputes.

2. Linguistic states create a certain danger to national unity since they develop a feeling of regionalism, hinder economic co-operation between the states and disturb the peaceful environment of the nation.

3. The formation of linguistics states has retarded much of planned economic development because local sentiment within the State often resents the utilization of that state's resources for the benefit of other states.

4. The creation of linguistic states has reinforced regionalism and has stirred demands for increased state autonomy.

5. Disputes over the boundaries between linguistic states have also stirred violence, as in the case of the continuing conflict between Maharashtra and Karnataka over the district ofBelgaum.

6. Parochial feelings roused over adjoining areas found a fresh outlet over sharing of the waters of the rivers which flowed through different states e.g. Narmada and Kaveri disputes.

7. Every state wants due recognition of right. Every state clamors for seats of its men in the Union Cabinet.

8. Linguistic majorities in the states assume airs of superiority and often deny to the linguistic minorities their legitimate rights.

Check Your Progress -1

Note:1) Use the space given below for your answer.

2) Also check your answer with the clue given at the end of the Unit.

1. Write a note of demand for reorganization of states in India.

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2. Write an essay on States Reorganization Commission.

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.2.6 NATIONAL INTEGRATION

A study of national integration is one of the significant factors in a developing country like India. However, national integration is not a house which could be built by mortar and bricks. It is not an industrial plan too which could be discussed and implemented by the experts. Integration, on the contrary, is a thought which must go into the hearts of the people. It is the consciousness which must awaken the people at large.

2.6.1 Meaning of National Integration

National integration refers to ties which bind the people of a particular country into one united relationship. It is a basic condition for political development in any state and notimtry in modern times can achieve either internal stability or external success without it. It may involve the process of nation-building which suggests bringing together, culturally and socially discrete groups into a single territorial unit. This helps securing the establishment of national identify. Thus the term 'National Integration' referes specifically to the problem of creating a sense of territorial nationality which overshadows or eliminates subordinate parochial loyalties. The term national integration has been viewed differently by different eminent writers.

(a) J.A. Cutlet describes national integration as "a process of becoming a whole of acquiring consciousness of having a goal which makes it possible to rally round a pole of convergence."

(b) L.P. Mair says that an "integrated society is one in which established institutions, rights and values associated with them are generally accepted".

The sum and substance of these definitions reveals that there must be proper integration of the people in different spheres of life so that all may happily join the national main stream to contribute to the security and prosperity of the country. It implies a sense of belonging, a feeling of togetherness of unity. It means creating a sort of climate in the country in which all citizens, irrespective of their social status or economic position may lead a life of peace and honour. In such a situation they feel like devoted entirely to the common purpose of building a strong and united India.

2.6.2 Problems of National Integrations

The problems of national integration in India are so complex that it has become a critical issue today. India is a land of different faiths and groups which make the problem of national integration in India more complex. It therefore, becomes essential to assess the difficulties standing in the way of national integration.

(1) Communalism which has a historical legacy is a great threat to our national integration. Over the years, the nationalist forces have become some what weak and religious fundamentalism and communal fanaticism have raised their ugly heads. No part of the country is free from communal disturbances. The frequency of these disturbances is a great threat to national integration.

(2) Sectarianism presents another threat to national integration, because it creates furt'ier gulf between the various sects of the people of the same religion. For example, there is a tussle between sennis and shias on the one hand, and Nirankan's and Akhali Sikhs on the other. This, development is very dangerous from the point of view of national integration.

(3) India is land of many languages which can play both integrative and disintegrative roles. In India its role has been more disintegrative rather than integrative. If states are to be formed on the basis of language and race in India, there will be more than 30 new states. Even now there is no consensus about the national language. Though, the constitution has made Hindi the official language of the Union, it has been opposed by the Southern States. These linguistic differences have created social tensions and they are threat to national integration.

(4) Regionalism is also a threat to the national integration. Some of the social segments having a separate cultural identify, want to preserve it and for this purpose they want further reorganization of states. For example, there is a demand for separate state of Gorkhaland in West Bengal. These demands of dividing the country on the basis of cultural identities are a threat to national integration.

(5) The political parties also play an important role in the process of national integration in India. The role of some of the political parties in the process of national integration has been disintegrative. Some of the parties are communal, casteist and secessionist. These parties have weakened the process of national integration by spreading the virus of communalism and castism in the country.

(6) Sons of the soil theory goes against national integration. This tendency is spreading to ?.ll the parts of country. It has practically nullified the concept of single citizenship and has shaken the very foundation of India's National Unity. It has come into existence mainly because of increasing number of educated unemployed and threat to cultural identity of social segments by political domination of others. Hence, the Shivasena in Maharashtra, Gana Sangram Parishad, Kannada Sahitya Parishad and Chalivaligars in

Karnataka are demanding that outsiders should quit. Thus this concept of 'Sons of Soil' theory is the most powerful threat to the national integration.

(7) A study of national integration also reveals that the poor, hungry, naked shelterless and economically downtrodden people cannot understand the value of national unity and integrity. To such people fighting of starvation is more important than dying for the cause of the country. So economic backwardness, regional economic imbalance and want of employment opportunities act as a serious impediment to the growth of national integration.

(8) The role of sentiments and emotions of the people in achieving the goal of national integration is of great importance. As a matter of fact national integration is an idea which can be realized only when the people understand it and make necessary scarifies for its cause. The lack of sentiment of nationality, and love for the motherland come in the way of national integration.

2.6.3 Solutions

The ideas of national integration in our country has been realized to a great extent. Several gigantic problems have been solved. The government of India constituted the National Integration council in 1961 with the broad objective of realizing the ideal of national integration. The NIC has to play a very significant role accomplishing the goal of national integration.

Educational Institutions have to play their own part in promoting emotional integration of the people. This is a big cause in which people belonging to different walks of life have to play their constructive role in promoting the ideal of national integration.

Political parties have to shun their regional character to assume national dimensions. s The increasing political consciousness would also govern and check regionalism. The introduction and development of sophisticated means of transport and communication, the impact of western culture, balanced development through planning would also help in keeping regionalism and linguism under check. The measure suggested to check regionalism include the reform of administrative and economic machinery, the revision of centre-state relations, organization of political parties on federal basis, utilization of educational system.

Check Your Progress - 2

Note:1) Use the space given below for your answer.

2) Also check your answer with the clue given at the end of the Unit.

1. Explain the meaning of national integration.

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2. Account for the problems of national integration.

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2.7 ZONAL COUNCIL

The idea of creation of zonal councils was mooted by the first Prime Minister of India, Pandit Jawahar lal Nehru in 1956 when during the course of debate on the report of the States Re-organisation commission he suggested that the states proposed to be reorganized may be grouped into four or five zones having an Advisory Council "to develop the habit of co-operative working" among these states. This suggestion was made by Pandit Nehru at a time when linguistic hostilities and bitterness as a result of re-organization of the states on linguistic pattern were threatening the very fabric of our nation. As an antidote to this situation, it was suggested that a high level advisory forum should be set up to minimize the impact of these hostilities and to create healthy Inter - State and Centre -State environment with a view to solving inter -state problems and fostering balanced Socio economic development of the respective zones.

2.7.1 Composition of Zonal Councils

In the light of the vision of Pandit Nehru, Five zonal Councils were set up vide Part -III of the states Re-organisation Act, 1956. The present composition of each of these zonal councils is as under,

1. The Northern zonal Council, Comprising the states of Haryana Pradesh, Jammu and Kashmir, Punjab, Rajasthan. National Capital Territory of Delhi and union Territory of Chandigarh.

2. The Central Zonal Council, Comprising the States of Chattisgarh, Uttarakhand, Uttar Pradesh and Madya Pradesh.

3. The Eatern Zonal Council, comprising the States of Bihar, Jharkhand, Orissa, Sikkim and West Bengal.

4. The Western zonal Council, Comprising the States of Goa, Gujarath, Maharashtra and the Union Territories of Diu and Daman and Dadra and Nagar Haveli.

5. The Southern Zonal Council, Comprising the states of Andra Pradesh, Karnataka, Kerala, Tamilnadu and the union Territory of Pondicherry.

The North Eastern States i.e., 1) Assam 2) Arunachal Pradesh 3) Manipur 4) Tripura 5) Mizoram 6) Meghalaya and 7) Nagaland are not included in the Zonal council and their special problems are looked after by the North Eastern Council, set up under the North Eastern Council Act, 1972. The State of Sikkim has also been included in the North Eastern Council vide North Eastern Council (Amendment) Act, 2002 notified on 23rd December 2002. Consequently, action for exclusion of Sikkim as Member of Eastern Zonal Council has been initiated by Ministry of Home Affairs.

Organisational Structure of Zonal Councils

1. Chairman

The Union Home Minister is the Chairman of each of these Councils.

2. Vice Chairman

The Chief Ministers of the States included in each zone act as vice-chairman of the zonal council for that zone by rotation, each holding office for a period of one year at a time.

3. Members

Chief Minister and two other Ministers as nominated by the Governor from each of the Stated and two members from Union Territories included in the zone.

4. Advisers

One person nominated by the Planning Commission for each of the zonal councils, chief secretaries and another officer / development commissioner nominated by each of the stated included in the Zone.

2.7.2 Role of Zonal Council

The zonal Councils provide an excellent forum where irritants between Centre and State and amongst States can be resolved through free and frank discussions and consultations. Being advisory bodies, there is full scope for free and frank exchange of views in their meetings, Though there are a large number of other for a like the National Development Council,

Inter State Council, Governor's / Chief Minister's Conferences and other periodical high level conferences held under the auspices of the Union Government. The zonal councils are different, both in content and character. They are regional for of co-operative endeavor for stated linked with each other economically, politically and culturally. Being compact high level bodies, specially meant for looking after the interests of respective zones, they are capable of focusing attention on specific issues taking into account regional factors, while keeping the national perspective. In view the main objectives of setting up of zonal councils are as under bringing out national integration the growth of state consciousness, regionalism, linguism and particularistic tendencies. Enabling the Centre and the states to co-operate and exchange ideas and experiences. Establishing a climate of co-operation amongst the states for successful and speedy excavation of development projects conducted in the regional language rather than English. Thus, power was now open to other than the small English speaking elite.

Although the number of states has increased from fourteen in 1956 to twenty -eight in 2000, many of them are still quite large sized - larger, indeed, than many sovereign states in the world. The formation of new states cannot be ruled out, but the argument for smaller, more administratively viable states is countered by concern that the smaller state may be more easily dominated by vested interests. The creation of more and more states meant more Governors, more Chief Ministers, more Ministers and more MLA's and these were what the politician in India cared for. The narrow and sectarian instincts of the ignorant masses were at times stirred up by the professional politicians to serve their own narrow ends, sometimes in the name of language and very of tern in the name of their region or state. Each zonal council is an advisory body. Functions of zonal councils are performed as per states. Re -organization Act, 1956 and rules of procedure of all the five zonal councils.

2.8 LET US SUM UP

Reorganization gave the states a political identity congruent with their culture and language. It brought state politics closer to the people, and made it easier for traditional leaders and influential regional groups to capture control or at least exercise much influence over the use of power. Thus, in a sense, reorganization made state politics more democratic, but less western in style. It meant for one thing, that state politics would be increasingly Conducted in the regional language rather than English. Thus, power was now open to other than the small English speaking elite.

Although the number of states has increased from fourteen in 1956 to twenty-eight in 2000, many of them are still quite large sized-larger, indeed than many sovereign states in the

world. The formation of new states cannot be ruled out, but the argument for smaller, more administratively viable states is countered by concern that the smaller state may be more easily dominated by vested interests. The creation of more and more states meant more Governors, more Chief Ministers, more Ministers and more MLA's and these were what the politician in India cared for. The narrow and sectarian instincts of the ignorant masses were at times stured up by the professional politicians to serve their own narrow ends, sometimes in the name of language and very often in the name of their region or state.

A elaborate discussion on the meaning, challenges and solutions is made in this Unit. With the help of this discussion, you have been able to understand the nature, implications and problems of national integration. The study of national integration is of tremendous significance is the context of nation building.

2.9 KEY WORDS

Linguistic	-	Language
Provinces	-	Region
Bi lingual	-	A region where two languages are used
Accord	-	Agreement / Treaty

2.10 ANSWERS TO CHECK YOUR PROGRESS

Check Your Progress -1

1. See section 2.2

2. See section 2.3

Check Your Progress -2

1. See section 2.6.1

2. See section 2.6.2

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UNIT-3: FRAMING OF THE INDIAN CONSTITUTION AND PREAMBLE

Structure

3.0 OBJECTIVES

After going through this Unit you will be able to understand.

- The Organization of the constituent assembly of India.
- The importance of the drafting committee.
- The importance of the constituent assembly of India.
- Role and contributions of Dr. B.R. Ambedkar in framing the constitution of India.
- The Preamble of the Indian constitution and its importance.

3.1 INTRODUCTION

Every country must have a constitution of its own. Constitution by being the basic law of the country gives direction to the country. It directs the three organs of the Government and the whole country. Such constitution cannot be framed by everyone. Framing the constitution needs experts knowledge and commitment towards the development of the country. In this unit, therefore, we are concerned with how the constituent assembly was framed under the leadership of Dr. Rajendra Prasad ; how such constituent assembly formed different committees.

Nearly 22 committees were formed. Among such committees, the drafting committee was an important committee under the able leadership of Dr. B.R.Ambedkar.

Just like every country must have a constitution every constitution must have a preamble. The preamble of the Indian constitution has been appreciated as the best preamble. We should make an endeavor here to know how constituent assembly was framed, how a drafting committee was framed. We should especially look into the role of Dr. B.R. Ambedkar as a Chairman of such a drafting committee and we should necessarily understand various contributions of Dr. B.R. Ambedkar.

3.2 BACKGROUND

Great patriots of India, who selflessly fought for the freedonm of India, demanded for Swarajya as early as 1905. Mahatma Gandhi put forward the indea that the future of India shall be determined by representatives of the people of India themselves. Indian National Congress, therefore, demanded to establish a constituent assembly consisting of representavies of India only.

Pandit Nehru while supporting the formation of such a constituent assembly opined that free India constitution must be framed without any outside interference by a constituent assembly which was to be elected on adult franchise. The decision for establishing constituent assembly, therefore, was considered very strongly till august 1940. It was inevitable on the part of the British Govt. to concede to the demands of Indian National Congress. It declared consequently that "framing of constitution must be the responsibility of Indian themselves".

Crips Mission was sent to India by the British Govt. to set up a constitution making body with the task of framing a new constitution to India. Finally however the constituent assembly was setup on the recommendation of cabinet mission plan.

Every constitution has premble. Such a preamble is nothing but an introduction to the constitution. It speaks about the source, aims, objectives and goals of the constitution. It is, however, to be noticed that Principles enumerated in the preamble are not justicable. To put in nutshell they con't be questioned in the court of law.

3.3 COMPOSITION OF THE CONSTITUENT ASSEMBLY

The demand for a constituent assembly to frame a constitution which is most suitable to India became a part of official policy. They refused to accept mere constitutional reforms put forward by the British Government. They were after framing the constitution drawn up by a constituent assembly elected on the basis of adult franchise. It had its concrete form in the manifesto of congress party. In the year 1938 Pandit Nehru strongly expressed the opinion that the Indian National Congress stands for independent and a democratic state. The constitution of free India must be framed, without outside interference by a constituent assembly elected on the basis of adult franchise. Severe attempts were therefore made to constitute the constituent assembly of India. It is noteworthy that M.N. Roy an advocate of radical democratism put forward the idea of a constituent assembly for India in the year 1934.

Every Indian especially students of political science and public adminidtration should study and understand how such constituent assembly was framed in India.

Such constituent assembly established in 1946 assigned the task of preparing the constitution for free India It consisted of leaders and great partiots like Pandit Nehru, Sardar Vallababaipatel, Moulana Azad, Dr. Rajaendra Prasad, Dr..R. Ambedkar, H.N. Kunzru,

H.V. Kamat, K.M. Munshi, Rajaji and most of such luminaries. It had fifteen ladies also.

Some of them were SuchetaKrapalani, HonsMehata, Smt.V.Jayalakshmi Pandit, Sarojini

Naidu and Rajakumari AmruthaKaur and others.

The constituent assembly had 292 members elected by the legislative assemblies of eleven

British Indian provinces, 93 members nominated by the Indian princely states.

There were 4 members representing the chief commissioner of Delhi, Coorg, Ajmer Merwara and Anadaman and Nicobar Islands.

As a result of partition of India in accordance with the Mount Batten plan of 1947 a separate constituent assembly was setup for Pakistan.

It is to be noted that provisional legislative assemblies were to elect their representatives by the method of proportional representation by means of single transferable vote system where the representatives of princely states was to be determined by consultation.

The first session of constituent assembly of India was held on December 9th 1946 on the basis of request of J.P.Krupalani then the congress president Mr.Sachidanda Sinha assumed the charge of provisional president of the constituent assembly. On December 11, 1946 Dr. Rajendra Prasad was permanently elected as president of the constituent assembly of India. 'The Indipendence Act of 1947 had converted the constituent Assembly constituted in 1946 into full sovererign body free from all limitations. It is quiteinteresting to note further that such a constituent assembly worked as provisional Parliament of India till April 1952. Then the parliament elected on the basis of adult franchise came into existence in India.

Under the statesmanship of Dr.Rajendra Prasad, the work of constituent assembly was done manificently. It took nearly three years with eleven sessions to complete the task. Each and every provisions of the drafting committee which was led by Dr.B.R. Ambedkar were discussed and approved by constitution in November 26, 1949. According to article 394, some of the provisions of the constitution had come in to practice, whereas rest of the articles were adopted on January 26, 1950. Therefore constitution of India came into practice on the above date. We are, therefore, celebrating the republic day on 26th of January every year. Everyone in the country must respect the constitution and abide by it.

Check Your progress - I

Also check your answers with the clue given at the end of the unit.

1. Explain the composition of constituent assembly.

3.4 DRAFTING COMMITTEE OF THE CONSTITUTION OF INDIA

The role of drafting committee needs be glorified ; it played a marvelous role under the able leadership of Dr.B.R. Ambedkar in framing the constitution of India. There were altogether 22 committees including drafting committee.

Some of such important committees were :

Rules of procedure committee

Finance and staff committee

House committee

Order of business committee

Hindi translation committee

Union constitution committee

States committee

Advisory committee

Urdu translation committee

Union powers committee

Ad-hoc committee on national flag etc.

Each one of the above committees played its useful role towards the constitution of India. These committees submitting their reports which were considerd by the constituent assembly on the basis of these decisions the final shape and form were given by drafting committee.

Organisation of the drafting committee.

On August 29, 1947 the constituent assembly set up a drafting committee to prepare a draft constitution. Such a drafting committee was headed by Dr.B.R. Ambedkar. The other menbers of drafting committees were Sri.Alladi Krishna swamy Iyer Gopalswamy Iyangar. T.T. Krishnachari K.M. Munshi, Syed Mohamad Saadulah, Sri.B.L. Mittar, and D.P.Khaitan. It is noteworth that B.N. Rao an eminent constitutional expert worked as constitutional advisor in the drafting committee.

Check your progress - 2

Also check your answers with the clue given at the end of the unit.

1. Discuss the composition of the drafting committee.

3.5 THE ROLE OF DR. BABASAHEB AMBEDKAR BY BEING THE CHAIRMAN OF THE DRAFTING COMMITTEE

Dr. B.R.Babasaheb Ambedkar dedicated his entire knowledge, which he had acquired within the country and abroad in working as chairman of the drafting committee and also in the working of constituent assembly. There was a lack of total involvement among theother members of drafting committee due to health and other personal reasons. Dr. B.R.Ambedkar worked more than 18 hours per day in looking into various aspects of the darfting committee pros and cons of each issue in detail. It is very interesting to note how he was answering the various questions put forward by the members of the constituent assembly, and how they were appreciating him. Ultimately he was not only a legal luminary but also a great humanist. If one reads and understands the bool “Builders of modern India” by W.B. Kabeer, certainly appreciates Dr.B.R. AMbedkar. Very much appreciating the role of Dr. B.R. Ambedkar both in the consituent assembly and the drafting committee, M.V.Pylee, an eminent constitutional expert called Dr.B.R. Ambedkar as father of the Indian constitution. He also appreciates him as an architect of the Indian constitution and modern manu.

Colombia and Usmania universities awarded Dr. B.R. Ambedkar recognizing the valuable role he had played in framing the constitution of India.

NicolesBaverly an eminent expert in his work on verdict on world history dispassionately by expressing the opinion that “If an attempt is made to find out five top most intellectuals in

the world Dr. Babasahab Ambedkar of India, certainly appers there".

Dr. Babasabhab Ambedkar undoubtely, a great humanist and a statesman; BharataRatna was the refore awarded to him posthumously in the year 1990.

Check your progress - 3

Also check your answers with the clue given at the end of the unit.

1. Explain the role of Dr. B.R. Ambedkar in the drafting committee of the Indian Constitution.

3.6 CONTRIBUTIONS OF DR.B.R. AMBEDKAR TOWARDS THE CONSTITUTION AND THE INDIAN SOCIETY

By being a great constitution expert, social reformer and a great humanist Dr. B.R.Ambedkar, contributed very much to the constitution, as well as to the Indian society. He was able to contribute so much, out of his intellectual height, social commitment and patriotic feeling, which was in his blood. It is because his father and grandfather were in military service. Sri. RamjiSakpal father of Ambedkar fought for the Dalits to enter into military service. He had social commitment, because he himself was born in a dalit family, on April 14-1891. Bheemabai was the mother of Ambedkar, he was the 14th child in the family. He was born in Ambevadi a taluk in Ratanagiri district of Maharastra state.

The conditions of dalit then were in bad shape : they were treated as untouchable. They were not allowed to use public wells ; they were denied education. Their condition was very painful and intolerable.

Dr. B.R. Ambedkar then thought that it is not enough if he alone becomes educated and enlightened. Entire dalit communities must be educated and come forward. He had gone to the extent of declearing that the dalits should become the rulers of India. He fought against the caste ridden society tirelessly till the end. But no one should be under a wrong impression that he worked only for dalits untouchable ; he contributed viry much for the development of the country. He became very popular not only in India but also in other countries of world due to high humanistic approaches with this background following constributions of B.R. Ambedkar can be analysed and appreciated. First of all Dr. B.R. Ambedkar worked as the chairman of

the drafting committee of the Indian constitution. He involved wholeheartedly in preparing the various provisions of the constitution. He declare that India is a union of states.

1. States do not enjoy total freedom. Yhey are, to be under the guidance control of the union govt. He advocated unity in diversity. He was of te opinion that strength of India ultimately depends upon its unity. He advocated therefore, for a strong and stable India. He was in favour of establishing a strong central Government. It can be treated as the best contribution of Dr.B.R. Ambedkar.

2. Secondly he worked very much to create such a constitution best suited to India Appreciating the constitution of India Dr. Rajendra Prasad president of the constituent assembly expressed the opinion that the consi=titution has provision in it which are objectionable. Such details are inherent in the situation in the country and in the piople at large.

3. A very much useful contribution is the incorporation of article - 14 in the constitution ; All are equal in the eye of an administration on artificial grounds like caste, sex, religion is prohibited. Equality of opportunity under equal circumstances shall be practiced and fallowed. It also goes with equal protection of law to all the citizens of India. Indian society in a society of unequal's - it therefore needs such provisions of the constitution, to improve itself.

4. Due to the personal experience of being ill treated by some caste Hindus, Dr. B.R. Ambedkar inserted art - 17 to the constitution according to it preaching or practising inhuman the practice of untouchability has been made a cognizable offence. No one should be degraded or defaced based upon his birth. Everyone should be allowed to be on his own. Everyone should be allowed to lead a respectful and peaceful life. It is not the birth but the work of individuals which is important.

5. Dr. B.R. Ambedker made provisions for the protection of individual rights and freedoms. No one can be detained and punished arbitrarily. Punishment shall be to the nature of the offence committed ; no one should be punished twice for the same offence etc. Individual freedom is as important as the freedom of the society. It can therefore, be considered as an important contribution of Dr. B.R. Ambedkar.

6. He advocated against forced labour, by misusing the helpless conditions of individuals in society : He advocayed the prevention of traffic in human beings, under articles 23 & 24 of the Indian constitution. Dr. B.R. Ambedkar strongly opposed the misuse of women and children for immoral and unethical uses or practice. It reflects the moral standard of Ambedkar.

7. Dr. B.R. Ambedkar made the constitution totally secular articles 25 to 28 are proof to it.

Religious freedom is accorded to each & every one in the country. Every religion is treated equally. State does't discriministrative fieled can be occupied by religion. Highest post political and administrative field can be occupied by any worthy citizens of the country. To put it in netshell there is no state religion in India. On the other hand Pakistan is declared as a theocratic state.

8. Provisions made by Dr.B.R.Ambedkar to protect the interest of minorities in India can be said to be another contribution. Cultural and educational rights are given under article 29 and 30 of the constitution for the same purpose. Dr.B.R.Ambedkar was of the strong opinion that both majority and minority should respect each other. They should unitedly work for the development and progress of the nation.

9. He advocated for the establishment of a socialistic pattern of society, where the resources of the Nation shall be shared by all; equal pay for equal work for both men and women.

10. In the constituent assembly discussion, he firmly stood for the establishment of Parlimentary executive in India. He wanted to establish accountability of the government towards the legislature; govt. therefore now can't work according to its whims & fancy: it is held accountable to the parliament of India which is consisted of direct and indirect representatives of the people of India.

11. Right to constitutional remedies under article 32 of the constitution constitutes another important contribution. Here declaration of fundamental rights is of no use: unless there is a provision for protecting them whenever an individual right is violated by any he/she may approach the court directly. Supreme and High Courts are empowered to issue writs like Hebeaus, Corpus Mandamus etc. to protect the rights of the citizens. Dr.B.R.Ambedkar therefore praised this article- 32 as the heart and soul of the constitution.

12. Declaration of national emergencies under article 352 and 360 and declaration of presidential rule in a state under article -356 constitute another contribution of B.R.Ambedkar. Union govt. then assumes power becomes very powerful under such declaration: National emergency can be declared whenever the safety and security of India is threatened due to internal rebellion and external aggression by our enemy countries. Presidential rule in a state, whenever there is the breathdown of constitional machinery in a state.

13. Dr.B.R.Ambedkar advocated the cause of social justice in the form of reservation and other such privileges to the depressed class in society. Reservation for scheduled caste,

scheduled tribes and backward classes etc. are necessary. Many talented and industrious students are availed that benefit, and working efficiently in their respective fields today. This type of opportunity was not there earlier, in our Indian Society.

14. He opened schools and colleges for the education of dalits and other needy people and tirelessly worked for the betterment of labourers: he advised them to be effective and efficient in their field and to achieve individual and collective efficiency.

15. Dr.B.R.Ambedkar advocated that India should be friendly with all other countries of the world. Especially with our immeditateneighbouring countries like Sri lanka, Malyasia Indonasia etc. that indicates the positive thinking and attitude of the great and proud son of India.

Check your progress - 4

Also check your answers with the clue given at the end of the unit.

Discuss the various contributions of Dr.B.R.Ambedkar

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3.7 PREAMBLE OF THE INDIAN CONSTITUTION

Every constitution must begin with a preamble of its own: such a preamble is nothing but an introduction to the constitution. It clearly explains the source of the constitution, objectives and goals of the constitution: it also explains the date on which the constitution came into existence.

The preamble of the Indian constitution has been appreciated as one of the best preamble in the world. However it is most worthy that we can't move a court of law, if some of the objectives of the preamble can't be achieved or implemented.

The preamble is therefore, said to be non Justiciable. It is Just and introduction and not the body of the constitution. It goes with the declaration of objectives with which the constitution of India begins with.

Following is the preamble of the Indian constitution "we the people of India, having solemnly resolved to constitute India into a soverein democratic socialistic secular republic and to secure to all its citizens.

Justice - Social economic and political

Liberty of thought, expression, belief faith and worship

Equality of status and of opportunity and to promote among them all Fraternity

assuring the dignity of the individual and the unity and integrity of the Nation.

In our constituent Assembly this twenty sixth day of November 1949 do

HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

When the constitution was adopted in the year 1950, the two words secular and socialistic were not there in the preamble of the constitution. They were inserted to the preamble through the 42nd amendment made during 1976 to the constitution of India. The Janata Party Government through the 44th amendment decided to retain those two words socialist and secular in the preamble of the constitution.

3.8 SIGNIFICANCE OF THE PREAMBLE OF THE INDIAN CONSTITUTION

Importance or significance of the preamble is due to the emphasis on making India a sovereign state. India became an independent country. And decided to form its own constitution; India therefore, today is sovereign both internally and externally. It shouldn't be surrendered ever.

Internal soverigrity of India refers to the supremacy of the India over all its individuals and their associations. They are to be loyal and obedient to India and respect it whole heartedly.

External soveregify of refers to free foreign policy that it can fallow with other countries of the world. Without surrendering its national interest and also the interests of its citizens.

India is a democratic country. Adult franchise has been practiced right from the beginning. One who completes 18 years of age is allowed to vote, irrespective of his caste, sex, religion, etc. Periodical elections are held in India to elect the representatives both at the

centre and the states. The vast electorates share the political power in the country. But it is to be noticed that representatives of the people exercise power, not the people of India directly.

India is a socialistic secular democratic republic. Socialist system refers to the resources of the nation shall be shared by all. The ownership and management of all the means of production will be in the hands of society. Socialism is therefore, should be the basis of economy of India: the gap between the rich and poor shall be diminished. Many provisions that are found in directive principles of states policy indicate the socialistic objectives of the constitution of India.

Secular : Through an amendment of the constitution the word secular was inserted to the constitution. Preamble itself had assured liberty of factors through belief and worship. Religious freedom is allowed and practiced in India. Everyone in entitled to secure a job, without any discrimination on the grounds of Religion. We don't have any state religion. The Indian state is neither religious nor anti-religious. It encourages every religion in its progress and development no religion is allowed to enjoy, what can't be enjoyed by other religion. They can preach and practice their religion but imposing it on other in not allowed. Worthy citizens of any religion in India can aquire any job and go to the topmost political post also.

Democratic Republic refers to the fact that ultimate power resides in the people (voters) in the country: Representatives should respect the verdicts of the citizens. They have to work for the progress and prosperity of the citizens. Right to recall the elected representatives has been exercised by the citizens of Switzerland. It is yet to be adopted and practiced in India. Whether such a systems is feasible in India is to be examined seriously.

Republic refers to the fact that the head of the state shall be elected either directly or indirectly. Accordingly the Indian president has been elected by an election college: which consists of the representatives of the people. Direct elector of the president is a very difficult, costly and time consuming.

To put in a netshall there can't be a monarch as head of the state under any republican govt. It is not worthy that every democratic state need not be a republican govt. for instance the United Kingdom

Goals of the constitution which are laid in the preamble of the constitution.

Justice, liberty, equality and fraternity are said to be the goals of the Indian constitution. We are therefore bound to understand the meaning of such above concepts and their importance in our constitutional setup.

Accordingly jusitce means hormonious reconcilement of individual conduct, with the general welfare of the society. No one should be deprived his her due. Equality of opportunity under equal circumstances shall be fallowed. Free legal aid to marginalized sections of the society is required to maintain justice in the country. Speedy disposal of cases is of much use. It is because, justice delayed is justice denied. Reservation for scheduled caste tribes and other backward classes are in tune with social justice in India.

Liberty refers to creating those conditions necessary for the all round development of the persondity of citizen's in the country. There shall at not be restictions on the freedom of individuals. It is because social progress of the society is certainly depends upon the individual's progress and prosperity.

Ariticle 19 of the Indian constitution therefore speaks about the freedom of individuals. It states about freedom of speech freedom of expression freedom to practice the profession of his choice with necessary legal qualification. Freedom to move freely and settle down in any part of the country single citizenship is advocated and protected in India. USA on the other hand provides the double citizenship to its citizens.

Equality: it refers to equality of opportunity under equal circumstances for both men and women. It refers to equal protection of law also. Liberty and equality are said to be the two faces of the same coin one carries no meaning in the absence of another. Equality can't be maintained among unequal. What is the use of giving liberty to individuals when there is no equality at all. They are complimentary to each other.

Fraternity : every citizens of India should act together with the spirit of brotherhood. It is necessary to ensure the dignity and decorum of individuals. It is indispensable to maintaining and integrity nation. The declaration of Human rights by UNO emphasizes the same idea of fraternity among all the citizens of the world. It is very much needed in India and elsewhere. Dr.B.R.Ambedkar therefore of the firm opinion that love and love alone can solve our problems. It gives room for peaceful co-existance. It is therefore, made an important principle of Foreign policy of India.

The Preamble of the Indian constitution with the above legal moral and ethical principles naturally appreciated as one of the best preambles in the world. It is not an exaggeration to say that, with this preamble, constitution of India has also been appreciated as the best constitution in the world.

Many of the framers, who were in the constituent assembly, were not only constitutional experts but also "great patriots: they fought and Jailed for the freedom of the country". They were selfless in their approach and commitment.

Check your progress - 5

Note: use the space given below for your answer.

Also check your answers with the clue given at the end of the unit.

1.Narrate the contents and significance of the preamble of the Indian Constitution

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3.9 LET US SUM UP

Under Unit III Attempts are made to know about the constituent assembly drafting committee of the Indian constitution Role and contribution of Dr.B.R.Ambedkar to the constitution as well as to the Indian society. Preamble of the constitution has also been discussed. While attempting to do so, we came to know about how the constituent assembly under the able leadership of Dr.Rajandraprasad was formed. Who were its members, how they were elected, nominated etc. we also came to know how such constituent assembly formed various committees to look into various issues of the constitution. How they perfomed their assignment effectively.

Specifically we made reference to the drafting committee headed by Dr.B.R.Ambedkar and other members of it, role of Dr.B.R.Ambedkar has been specifically discussed.

We also understood various contributions of Dr.B.R.Ambedkar. It is noticed that he was not only a legal luminary but also a great humanist and role model to others, in India and abroad the reason for which he was awarded "Bharat Ratna".

Ultimately a detailed analysis has been made regarding the contents of the preamble of the Indian constitution. Various principle of preamble also analyzed in this chapter.

3.10 KEY WORDS

Endevour - Attempt

Opined - is of the opinion

Task - assignment

Enumerated - incorporated Posthumously - after the death

3.11 ANSWER TO CHECK YOUR PROGRESS

Check Your Progress -1

1. See Section - 3.3

Check Your Progress -2

1. See section - 3. 4

Check Your Progress -3

1. See section 3.5

Check Your Progress -4

1. See section 3.6

Check Your Progress -5

1. See section 3.7

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UNIT - 4: SALIENT FEATURES OF THE INDIAN CONSTITUTION-PROCEDURES OF AMENDING THE CONSTITUTION AND ITS LIMITATIONS

Structure

4.0 OBJECTIVES

After going through this Unit you should be able to :

- Examine the Salient features
- Discuss the Federal features and
- Examine the Unitary Features of Indian Constitution.
- Explain the amendment procedure of the Constitution.

4.1 INTRODUCTION

The Constitution of a country, in simple terms, is a collection of the legal rules providing the frame work for the governance of the country. It reflects the dominant beliefs and interest which are characteristics of the society at the time it was frames and adopted.

You know already that to prepare a Constitution for our India, a Constituent Assembly was constituted. This Assembly met for the first time on December 9, 1946. One of the gigantic tasks before the framers of the Constitution was how to move ahead with the great task of Constitution making. But the task was completed by a group of eminent personalities who were the freedom fighters to achieve political freedom. After achieving the political freedom, the framers of the Constitution were confronted with a problem of achieving two more goals, namely social and economic. This was reflected in the emotional language of Jawaharlal Nehru; "The first task of this Assembly is to free India through a new Constitution, to feed to starving people, and to cloth the naked masses and to give every Indian the fullest opportunity to develop himself according to his capacity."

To fulfill the above needs of the Indians, the framers of the Constitution had drawn widely and wisely from all other Constitutions of the world. Then the Draft of the Constitution was prepared. Further, the Indian Constitution drew much from the government of India Act of 1935. Next, we have to study the features of the Constitution.

While preparing the constitution the framers felt the need for including Article 368 which deals with various procedures of amending the constitution.

4.2 SOURCES OF THE CONSTITUTION

The framers of the Indian Constitution were taken to learn from the experience of other countries as well as their own past experience. Therefore, they freely borrowed from the constitutions of other countries keeping in mind the needs and conditions of India. As a result the Constitution which was ultimately adopted contained features of a number of Constitutions.

The framers of the constitution were greatly influenced by the constitutional system and practices prevailing in England. The parliamentary system of government, the rule of law, the privileges of the members of Parliament etc. were all taken from British political system.

The impact of the American Constitution is mainly visible in the provisions relating to preamble, the Fundamental Rights, and the role of the Judiciary. Directive Principles of state policy were taken from the Constitution of Republic of Ireland. The federal system in the Indian Constitution is largely based upon the Canadian pattern, emergency provision from the Constitution of Germany and Government of India Act, 1935. The provisions relating to the election of the members of Rajya Sabha and amendment of the Indian Constitution were greatly influenced by the Constitution of South Africa. The greatest influence on the new Constitution of India was exerted by the Government of India Act 1935.

4.3 SALIENT FEATURES OR NATURE OF INDIAN CONSTITUTION

4.3.1 Written Constitution

The Constitution of India was drafted and enacted by a sovereign Constitution Assembly of India. This written constitution has the distinction of being the most lengthy and detailed one the world has so far produced. The original constitution contained 395 articles and 8 schedules. But today with subsequent amendments, additions and deletions, it has 444 articles and 12 schedules. (See page - 32. D.D. Basu Introduction to the Constitution of India 18th edition 1997). The extraordinary bulk of the Constitution is due to several reasons. The detailed administrative procedures, incorporation of fundamental rights and directive principles of state policy, elaborately dealt federal relations, special provisions for Jammu and Kashmir have made the Constitution bulky.

4.3.2 Both Rigid and Flexible Document

Indian Constitution is both flexible and rigid. K.C. Wheare said that Indian Constitution strikes a good balance between extreme rigidity and too much flexibility. The founding, fathers of the Constitution were well guided by the principle that a Constitution should be flexible enough, so as to change with the call of the time.

It is only the amendment of the few provisions of the Constitution that requires the ratification by the state legislatures, otherwise the rest of the Constitution may be amended by a special majority of the union parliament. On the other hand, parliament has been given the power to alter or modify many of the provisions of the Constitution by a simple majority as is required for general legislation. The flexibility of our Constitution is illustrated by the fact that during the first fifty-two years of its working it had been amended Eighty three times.

4.3.3 Sovereign Democratic Republic

The Constitution declares that India is a sovereign democratic republic. Indians are free people under the Constitution. Though India is a member of the Common Wealth of Nations, it does not affect her sovereign character. Further, the Constitution establishes representative democracy. The vast electorate of the country shares the political power. But it is not possible to the electorate of the country shares the political power. But it is not possible to the electorate to exercise any political function by their direct vote. They can act only through their representatives.

The term 'republic' has different meaning in political science. However, the framers of the Constitution seem to have been guided by the general meaning of the word 'republic' as given in the new Oxford English Dictionary. According to his "Republic means a state in which the supreme power rests in the people and their elected representatives or officers as opposed to one governed by a king or as similar ruler." Thus we know that we have an elected President instead of a hereditary king as the head of our state.

4.3.4 A Welfare State

The Indian Constitution seeks to establish a welfare state where there should be justice social, economic and political. It gives to the individual citizens various rights and liberties to achieve his or her welfare. Social justice is an essential condition of a welfare state, as it prohibits discrimination. Economic justice is an essential condition of a welfare state, as it prohibits discrimination. Economic justice is a corollary to the social justice. It means non-discrimination between persons on the basis of economic values. Political justice ensures free and fair participation of the people in their political life. Therefore it involves adult franchise which has been accepted, introduced without any qualifications of any king, to become an voter.

4.3.5 Federal System

As noted earlier to bring unity out of diversity, federal system as our political system has been accepted by our constitution makers. Though the word 'federal' is not to be found anywhere in our Constitution, yet the Article-1 says India i.e., Bharath shall be a union of states. In accordance with the federal set up there is division of powers between the centre and the states. Rajya Sabha, which is the upper house, represents the units of the Indian Federation. In case of any disputes between the centre and the states there is independent judiciary with the power to solve all the disputes yet there is a criticism that Indian Constitution has many unitary features which have made the critics to call Indian Constitution has many

unitary features which have made the critics to call Indian Constitution as a quasi-federal constitution. This will be analyzed later.

4.3.6 Parliamentary System of Executive

In the Constituent Assembly majority of the members decided that India should adopt the parliamentary system of government, as we were trained in this system by the Britishers. The second reason to adopt this system was, the people's representatives will be exercising the sovereign power, so that if the executive goes wrong, it can be checked or controlled by the legislature in this system. By adding 24th and 42nd amendments to the Constitution, supremacy or sovereignty has been conferred to the parliament. Parliamentary system of government is also called as cabinet system of government, because cabinet in the real sense it the government. The same parliamentary system is adopted at the state level also.

4.3.7 Fundamental Rights

Part III of our Constitution dealing with the Fundamental Rights constitute the Magna Carta of the essential freedom of the Indian people. These rights establish favorable conditions for the maximum development of the individual's personality. There were seven fundamental rights which were enshrined when the Constitution was inaugurated. Now there are only six 1 fundamental rights - Right to Equality, Right to Freedom, Right against Exploitation, Right to Religion, Cultural and Educational Rights and Right to Constitution Remedies. Right to Property has been removed from this part which was a fundamental right before the 44th amendment was added to the Constitution. But these fundamental rights guaranteed can be suspended during the day's of national emergency.

4.3.8 Directive Principles of State Policy

Part IV of the Constitution deals with these directives. These have been described by Dr. Ambedkar as a 'novel feature', in view of the fact that these constitute a very comprehensive political, social and economic programme for a modern democratic state. If part III lays foundation for political democracy, part IV lays the foundation for social and economic democracy. These principles are assurances to the people as to what they can expected from the state as well as directives to the state to establish and maintain a new social order in which justice, social, economic and political shall inform all the institutions of national life.

These directive principles lay down the substance of a democratic socialistic order as conceived by Mahatma Gandhiji and Pandit Nehru. These are positive instructions to the government to do certain things. More information will be given about the directive principles of State Policy in the Unit 5.

4.3.9 Fundamental Duties

The forty-second Amendment of the Constitution added a new part to the Constitution part-IV-A incorporating ten fundamental duties of the citizens under Article-51-A. The intention to add duties to the constitution is to place before the country a code of conduct which the citizens are expected to follow in their actions and conduct. Duties and rights are two sides of the coin. When and Indian citizen wants to enjoy the rights must not forget the duties to be fulfilled.

4.3.10 Independent and Integrated Judicial System

Though India has accepted the Federal System, Constitution has provided integrated judicial system, which is against federal system. Courts can protect the rights of the citizens without any fear, impartially and independently. The judges of the Supreme and High Courts are appointed by the President of India. They cannot be removed easily. By protecting their salary and other privileges their independence is ensured. In this integrated judicial system Supreme Court is at the apex. Below High Courts are placed, and lower level courts are also there.

4.3.11 Single Citizenship

Usually in a federation there should be double citizenship. One as a citizen of the federation and another citizenship to state he / she belongs. But the dual citizenship is not provided to Indian citizens. The reason was to curb the growth of provincialism and to encourage the growth of nationalism. So citizens belong to the Indian union, not to any state. Accordingly the Constitution confers on all citizens similar rights and they are subject to identical obligations.

4.3.12 Universal Adult Franchise

The introduction of adult franchise without qualification of any kind was the boldest step taken by the Constitution makers, and it was an act of faith they had placed in the common man. Constitution clearly says that election to the Lok Sabha and to Legislative Assembly of every state shall be on the basis of adult suffrage. That is to say every person who is a citizen of India and who is not otherwise disqualified is entitled to be a voter. Adult franchise is the acceptance of the fullest implication of democracy and it is the most striking feature of India's Constitution.

4.3.13 Secular State

India is a secu30-04-2008 lar state according to the Constitution. A multi-religious nation like India has to be secular. Secularism means that the state or government cannot aid one religion as against another. Secular state means

(i) There is no official religion for India and Parliament has no right to impose a particular religion as an official religion.

(ii) It also means that all citizens irrespective of the religious beliefs are to be treated equally, and

(iii) No discrimination will be shown by the state against any person on account of his / her religibh for participation in political affairs, or entry into government service or admission to any educational institutions.

4.3.14 Emergency Provisions

One more unique feature of our constitution of India is the emergency provisions incorporated in the Part XVIII of the Constitution. Articles 352 to 360 deals with the three types of emergency. The President of India whenever he feels that there is a threat to the nation as a whole, or to any part of its territory by external aggression or internal armed rebellion, emergency may be imposed which is called as National Emergency. Second when the situation arises that in any state (unit of the federation) it is not possible to carry on the administration according to the Constitution emergency can be proclaimed, called as constitutional emergency or it is also called President's rule in a state. Third when President feels that there is a threat to the financial stability of the nation financial emergency may be .declared. These are the salient features of our constitution.

Check Your Progress -1

Note:1) Use the space given below for your answer.

2) Also check your answer with the clue given at the end of the Unit.

1. Briefly mention the salient features of the Constitution of India.

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Now, we have to study whether our constitution is federal in the real sense or unitary one.

4.4 FEDERAL FEATURES

Indian federal system like all other federal systems has accepted the salient or important principles of federalism.

They are :

(a) A Written Constitution : A federal system should be regulated by a written constitution. The Constitution must be rigid and supreme. We know already that our constitution is a written one which is a lengthy one. We also know that regarding federal principles our Constitution adopts rigid method. Thus Indian federation is regulated by a written, supreme and a rigid Constitution. So it satisfies the first test of federalism.

(b) Division of Powers : Second important principle of federal system is that the powers must be distributed between the federal and state governments. The Constitution of India provides this. There are three list, namely union list- which explains the powers of the federal government, state list-which explains the powers of the states and concurrent list - which gives powers to both federal and state governments. In case of conflict between the central law and state law, the central law shall prevail over the states. Thus the Constitution has accepted the three fold division of powers. They are guaranteed by the Constitution and Judiciary. Thus Constitution of India has accepted the second salient principle of federal system.

(c) Independent Judiciary : In almost all federations to establish the legal supremacy of the Constitution and to maintain the division of powers between the central and state governments, supreme courts have been established. So, also in India there is Supreme Court. It has the final power to interpret the Constitution. It acts as the guardian and interpreter of the rights and powers of the federating units and the federal government. The third requisite of a federation has been accepted thus by the Indian Constitution.

(d) Second Chamber : Indian Constitution since it is a federal constitution has provided for the constitution of a second chamber. The Parliament of India is composed of two houses. They are the Rajya Sabha and Loka Sabha. According to Article-80 of the Constitution Rajya Sabha is the second chamber. In this chamber states and union territories are represented according to their population. However, the principles of equality and equal representation of states as in other

few federations has been give up. However, Rajya Sabha has been designed to protect the state rights. It as achieved the ends for which it was created. So the fourth federal principle i.e., having second chamber in the form of Rajya Sabha is found in the Indian Constitution.

(e) Right to Secede : The Constitution of India has denied the right to states to secede from the Indian Union. All citizens are expected to uphold the sovereignty and integrity of India. Hence, all movements for secession of any territory of any state of Indian union is considered as an offence committed against the Indian Union. Indian Union is a permanent union of states.

(f) Rigid Constitution : Another essential feature of federation is rigid constitution which can be amended either by joint action of the federal and state legislatures or by an independent authority. The Indian Constitution is largely rigid constitution. Those provisions of the Constitution concerning union-state relations can be amended only by joint action of federal and state governments. These provisions not only require 2/3 majority of the two House of Parliament but also approval of the majority of state legislatures.

(g) Supremacy of the Constitution : The Supremacy of the Constitution, another feature of federalism, is also present in India. The Constitution of India stands at the top of the hierarchy of all laws - both national and state. The central as well as well as state governments have to operate within the limits prescribed by the Constitution. If they pass any law which does not conform to the Constitution, the same can be declared as ultravires by the Supreme Court of India.

Check Your Progress - 2

Note : 1) Use the space given below for your answer.

2) Also check your answer with the clue given at the end of the Unit.

1. Explain the federal features of the Indian Constitution.

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4.5 UNITARY FEATURES

(a) Single Constitution for Union and States

The Constitution of India, unlike other federal constitution, contains a model constitution of the states and the Union Territories. The Central Government has been given the power to suspend the Constitution of states. States therefore, have no right to frame their own constitution and they have no power even to amend the provisions of the state constitution. The Constitution of the states is placed under the central government.

(b) Centre can change name and boundaries of States

Article 3 and 4 of the Constitution of India has given certain special powers to the Parliament. The Parliament may by law form a new state out of the territories of the existing states, or alter the boundary of any state or change the names of states and diminish or increase the area of any states of the Indian Union. Parliament has control over the formation of states in the Indian Union, rather the units of the federation.

(c) Single Citizenship

Unlike other federal constitutions, the Constitution of India has accepted the principle of single citizenship, which is an element or characteristic of unitary government.

(d) Single Judiciary

Though India is a federation the judicial system is an integrated one which is again a feature of unitary government.

(e) A strong centre

In a federation, usually the powers which are not shown when the division of powers is done by the Constitution either to the centre or to the units, must be given to the states. These powers are called residuary powers. But in India these residuary powers are given to iri'e centre. Therefore it is said under union list and concurrent list, centre already enjoys innumerable legislative powers. Added to these residuary, powers are also given which have atfengthened the centre's legislative power. This shows a tendency of centralization, which is a unitary feature.

The Constitution of India, gives powers to the Governors of states to reserve certain state legislations for the consideration of and the assent of the President of India, which again gives more powers to the centre. In times of emergency, the Parliament of India, can unilaterally ' enact any legislation on state subject. All these provisions indicate that the central government has legislative control over the state governments.

(f) Appointment of Governors by the President

The Governors of States and Heads of Union Territories are appointed by the President of India. They continue in their offices during the pleasure of the President of India. They are required to act according to the directions of the President, responsible to President and must send reports about the state to the President of India. They are the agents of the Central Government, which shows unitary tendency in a federation.

(g) Centralized Election Machinery

There is only one Election Commission which conducts elections to the Parliament and the legislatures of all states ; and this is according to the Constitution of India.

(h) Constitution also provides for the creation of certain common All-India services. (Arts 309-312).

These All-India services are subject to the control of the government of India, but they may be assigned to state service also ; which means the personnel cannot be regulated by the state governments.

(i) There is one office of the Comptroller and Auditor-General of India, which is concerned, with the financial administration of government of India and of states.

(j) Emergency Provisions

Articles 355-260 deals with three types of emergencies, such as military or national, constitutional and financial. During any form of emergency easily the general provisions of the . Constitution of India may be suspended, and make Indian system an unitary one.

In fine, it is on account of the above factors the constitutional experts have described our Constitutional experts have described our Constitution as "federal in structure and unitary in spirit." K.C. Wheare, described our constitution as "Quasi-federal constitution". Professor M. Venkatarangaiah described our constitution as a "federal constitution which contains many vital elements of unitary government." It is a fact "that the Constitution of India can be both federal and unitary according to requirements and the circumstances." This opinion seems to be correct. But some are of the opinion that India's Constitution is a federal constitution and not a unitary one.

Above all,

(a) The need to maintain unity in diversity ; (b) to establish a stable democratic political order; and (c) to safeguard the autonomy of the units, the framers of the Constitution of India have accepted the best elements of both the federal and unitary systems. Even today it is true, because the fissiparous tendencies which we are experiencing may try to damage the unity of the country any time. So with forethought the constitution makers might have given a tilt to the federal structure to a little extent.

Check Your Progress -3

Note:1) Use the space given below for your answer.

2) Also check your answer with the clue given at the end of the Unit.

1. Explain the unitary features of the constitution.

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4.6 PROCEDURES OF AMENDING THE CONSTITUTION AND ITS LIMITATIONS

A Constitution is a fundamental document. It is a document which defines the position and power of the three organs of the state, namely, the Executive, the Legislature and the Judiciary. It also defines the powers of the Executive and the Legislature as against the citizens. In fact, the purpose of a Constitution is not merely to create the organs of the state but also to limit their authority, because if no limitation is imposed upon the authority of the organs there will be tyranny and oppression. Naturally, such a fundamental document as a Constitution should not undergo too frequent and easy changes, as that would undermine the confidence of the citizens regarding the nature of Constitution.

But, at the same time, it should be understood that a Constitution is a dynamic document. It should grow with a growing nation and should suit the changing needs and circumstances of a growing and changing aspirations of the people.

Sometimes, under the impact of a new powerful social and economic forces, the pattern of government will require major changes. If the Constitution stands as a stumbling block to such desirable changes, it may under extreme pressure be destroyed. Therefore no Constitution can be a permanent one, it has to change or must be amended according to the needs of the time and according to the aspirations of the people.

The Indian Constitution can be called as a Federal Constitution. Federal Constitutions as a rule are rigid as most of them have extremely difficult and even complicated procedures of amendment. Amending a federal constitution like that of the United States is perhaps the most difficult. Under the Australian Constitution too the amending process is complex. In contrast the Constitution of India presents a much simpler picture for its amendment.

Methods of Amendment

In the Indian Constitution, the procedure for amendment is explained in detail under

Article 368. According to this, an amendment may be initiated only by the introduction of a Bill for the purpose in either House of Parliament. When the Bill is passed in each House by a majority of the total membership of that House present and voting, it shall be presented to the President for his assent. When the President gives his assent, the Constitution stands amended in accordance with the terms of the Bill. Though, the procedure that is to be found in the Constitution, seems to be rigid, an element of flexibility was also imported into a federal constitution, because the framers of the Constitution intended to achieve a dynamic national progress. Therefore Constitution makers prescribed an easier mode for changing those provisions of the Constitution which did not primarily affect the federal system. Thus amendmsnt to the provisions of the Constitution can be done through the following three methods. They are;

4.6.1 By Simple Majority

If a bill is passed by both the Houses of Parliament by a simple majority which means, out of the members present in both the Houses, Vi of the members must approve, then with the assent of the President becomes an amendment to the Constitution. This method is adopted to amend those provisions which deal with the establishment or abolition of Upper Houses in. the States, provisions regarding citizenship, changing the name of the State, altering the boundary of the State etc.

4.6.2 By Special Majority

Some provisions in the Constitution to be amended require a two-thirds majority of Parliament i.e., in both the Houses majority of the members should be present and out of the' majority 2/3rd must approve, then with the assent of the President, it becomes an amendment. For example, part III and Part IV of the Constitution which deal with the Fundamental Rights and Directive Principles of State Policy, can be amended by this method.

4.6.3 By Special Majority with the Actification of the States

Some provisions especially which affect the federal system requires a two thirds (2/3) majority of parliament. After this requirement, it has to be sent to all the states. At least Vi of the State Legislatures must ratify this bill. The States are also given an important voice in the amendment of these provisions. However states have no power to initiate a bill. Them with the assent of the President, Bill becomes an amendment.

The following provisions of the Constitution fall under this category "

(a) Provisions relating to the election of the President (Art 54)

(b) Extent of the executive power of the union (Art 73);

(c) Extent of the executive power of the states (Art 162);

(d) Provisions dealing with the Supreme Court and High Courts ;

(e) Provisions dealing with centre-state relations ;

(f) Provisions dealing with amendment of the Constitution, etc.

It is clear from the above that the amending process prescribed by our Constitution h«s certain distinctive features as compared with the corresponding provisions in the leading Constitutions of the World. The procedure for amendment must be classed as 'rigid', so far as it requires a special majority, and in some cases flexible which requires only simple majority. According to this, we can infer that there It rigidity as well as flexibility in the constitutional amendment. On the whole, taking into consideration the latest judgment of the Supreme Court, that the Parliament is empowered to amend any part or provision of the Constitution in the manner prescribed by it under Article 368, except the basic structure of the constitution.

Check Your Progress -4

Note : 1) Use the space given below for your answer.

2) Also check your answer with the clue given at the end of the Unit.

1. Explain the methods of amendment.

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During the last 51 years, the Indian constitution has been amended 121 times. In this short period, as it has been amended many number of times, was attacked by many of its critics as a sign of weakness in the Constitution. But some have appreciated in favor of amending, arguing that there are compelling circumstances which led to Constitutional amendments. Some amendments have been made in order to overcome some practical difficulties found in the working of the Constitution. Some other amendments were the natural outcome of the eventual evolution of the new political system.

4.7 LET US SUM UP

By studying this unit, you will understand in detail, how our constitution makers have tried to balance between the federal and unitary system of government. This exercise was done keeping in view the then situations. However the problems India faced then and now facing are one and the same. Even then we find almost all federal principles which positively can tell that India is a federation. At the same time it is true that there are many unitary features too. Only in the interest of the nation Constitution makers have taken this step.

An elaborate discussion is made on the various procedures adopted in amending the constitutional provisions. With the help of the above discussion you can understand how amendments can be done to the error coupled with their utilities and facilities.

4.8 KEY WORDS

Rigid : difficult

Flexible : which can be bent easily

Electorate : group of persons who are the voters

4.9 ANSWERS TO CHECK YOUR PROGRESS

Check Your Progress -1

1. See section 4.3

Check Your Progress -2

1. See section 4.4

Check Your Progress -3

1. See section 4.5

Check Your Progress -4

4. See section 4.6

4.10 REFERENCE BOOKS

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M.V. Pylee : India's Constitution, Delhi, Universal law Publishing co.Pvt Ltd-2002

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UNIT - 5: FUNDAMENTAL RIGHTS AND DUTIES-SPECIAL PRIVILEGES FOR SC/ST'S, BACKWARD CLASSES, WOMEN, CHILDREN AND RELIGIONS AND LINGUISTIC MINORITIES

Structure

5.0 OBJECTIVES

After going through this Unit you will be able to;

- Discuss the importance of fundamental rights to the citizens.
- Examine the fundamental rights guaranteed to the citizens of India.
- Discuss the duties that a citizen is expected to fulfill towards the state.
- Explain the special privileges given by the Constitution to SC/ ST's, Women, Children and others.

5.1 INTRODUCTION

H.J. Laski said "rights are those conditions of social life without which no man can seek to himself at his best." Fundamental Rights have both the connotation of positive and negative aspect.

Part III of the Indian Constitution deals with Fundamental Rights which constitutes the Magna Carta of the essential freedoms of the Indians. It contains a very comprehensive list of the rights that have a justifiable character inspite of the fact that the state may impose 'reasonable restrictions' on their use and enjoyment, and also they can be suspended by the President during the period of national emergency. In addition to, this chapter contains an elaborate discussion on the duties and privileges given by the Constitution to the weaker sections of the society.

5.2 HISTORICAL PERSPECTIVE

Inclusion of fundamental rights as a constitutional guarantee is comparatively a recent origin. It was after the French Revolution and the US struggle for freedom that nations of the world seriously thought of giving some basic rights to their people. It was in 1789 that French National Assembly adopted "The Declaration of Rights of Man." The Constitution of USA also incorporated a chapter on Bill of Rights.

The idea of incorporating a list of fundamental rights in a new constitution of India had excited the imagination of almost all political thinkers and constitutionalists in India from the time of independence from the Britishers. The American Bill of Rights the French Declaration of Human Rights, the Declaration of Human Rights by UN in 1948 and the 1935 Irish Constitution, had a tremendous impact on Indian Constitution Makers. The Indian National Congress, the Liberals, Moderates, the Muslims, the Christians and the Sikhs, all considered

it not only desirable but essential. This is because for two reasons, for the protection of the rights of minorities and for infusing confidence in the majority community. The British Government never agreed to include any provision to guarantee fundamental rights when many Acts were passed. In the absence of any provisions in any Act, Indians suffered bitterly in the hands of Britishers. The working of the British Government in India amply demonstrated the necessity of incorporating a list of fundamental rights in the constitution of independent India.

5.3 MEANING OF FUNDAMENTAL RIGHTS

A 'right' is nothing but an opportunity available only in a state. Such opportunities must be available to all, and by making use of these opportunities, each individual tries to develop his personality. But a Fundamental Right may be defined as an opportunity provided by the higher law of the country. Fundamental Right finds its sanction in the constitutional provisions. According, to D.D. Basu, "fundamental right is one which is specified, protected and guaranteed by the written constitution of the state." These are called fundamental because, while ordinary rights may be changed by the legislature in the ordinary process shorter than amending the constitution itself. On the other hand, the fundamental rights being guaranteed by the fundamental law of the land, no organs of the State Executive, Legislature or Judiciary can act in contravention of such rights.

5.4 NATURE OF FUNDAMENTAL RIGHTS IN THE INDIAN CONSTITUTION

The fundamental rights guaranteed under the Indian Constitution have the following characteristics :

1. In the part III of the Constitution of Indian the term 'State' refers to union government, state governments and local governments. The State is called upon not to enact any legislation or issue any order which takes away or abridges or suppresses the fundamental rights guaranteed by the Constitution.
2. The Constitution makes use of terms, citizens and 'persons', at different places, which means that, while some rights are given to the citizens, some others are available to all persons living in this country. For example, equality of opportunity in matters of employment, protection from discrimination on any ground like that of religion, race, caste, sex, residence etc. are available only to citizens ; but equality before law and its equal protection of life and property, etc. are available to all the persons residing in the state.

3. Our fundamental rights are not absolute, state can laid down reasonable restrictions on their use and enjoyment. The parliament may make laws as per the need of the times to limit the exercise of these rights. The state may also deny some of the fundamental rights to a class of people, as police and armed forces. This is in the interest of administrative efficiency or national integrity. These fundamental rights can be amended or even suspended during the time of national emergency.

4. Fundamental Rights are justifiable. That is, when a citizen is infringed of his fundamental right he can move the court of law. Article 32 appoints the Supreme Court as the guardian of these rights. Right to Constitutional Remedies is itself a fundamental right.

Now let us examine the fundamental rights incorporated and guaranteed to the citizens of India by the constitution.

Check Your Progress -1

Note:1) Use the space given below for your answer.

2) Also check your answer with the clue given at the end of the Unit.

1. Explain the nature of fundamental rights.

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5.5 FUNDAMENTAL RIGHTS

The original Constitution which was inaugurated in 1950 guaranteed seven Fundamental Rights. They were ;

(a) Right to equality ;

(b) Right to freedom ;

(c) Right against exploitation ;

(d) Right to freedom of religion ;

(e) Cultural and Educational Rights ;

(f) Right to property ; and

(g) Right to constitutional remedies.

Of these, the right to property has been removed from the fundamental rights chapter by the 44th Amendment Act, 1978. Thus now we have only six fundamental rights. Right to property is now only a legal right. Let us study each of these.

5.5.1 Right to Equality

Articles 14, 15, 16, 17 and 18 of our Constitution deal with the right to equality. According tc this right, every person enjoys equality before the law and equal protection of the law. The State is called upon not to deny these rights to any person in India. These provisions of the Constitution of Indian echo's the provisions of the British common law rule and the 'due process of law' of the American Constitution. It does not mean that all persons will have an absolute equality and identity of positions and status. For example, the President, Governors, Judges and Officers enjoy special privileges and status appertaining to their offices. Ordinary citizens cannot claim these privileges and status. The term 'equality' is used in the sense that among equals the law should be equal and should be equally administered.

Constitution also provides civil and social equality. Discrimination against any citizen on grounds of religion, race, caste, sex or place of birth is prohibited. All citizens have equal access to public places maintained by the state. Equality of opportunity in matters relating to employment or appointment to any office under the state is also guaranteed to all citizens. While distributing these opportunities, the state has been called upon not to practice discrimination against any citizen on grounds of religion, race, caste, sex, descent, place of birth, residence or nay of them. However, the state is permitted to provide for reservation of jobs in favor of backward classes, schedule caste and scheduled tribes and special provision may be made in favor of women and children.

The Constitution of India declares that "untouchability" is abolished and its practice is prohibited. The enforcement of any disability arising out of the practice of untouchability is made a punishable offence. A fine of Rupees 500, or imprisonment up to 6 months or both may be imposed on any person who practices untouchability. Inspite of these due to illiteracy and lack of awareness practice of untouchability is being continued even today. A change of heart and attitudes very essential to root out untouchability.

The Constitution calls upon the state not to confer any title, not being academic on any person. Similarly, the officials of the government of India and of the state are prohibited from accepting any title, or office of any kind that may be conferred by any foreign state. However the Government of Indian has initiated a policy of awarding decoration for meritorious service or contribution to the advancement of learning in science, art, literature. Awards like Bharath

Ratna, Padma Vibhushan, Padma Bhushan, Padma Shri are some of awards, awarded to. persons to recognize their service.

In conclusion, Articles 14, 15, 16, 17 and 18 of the Constitution of India guarantees right to equality.

5.5.2 The Right to Freedom

The Constitution of India guarantees six fundamental freedoms to people. In the original Constitution, there were 7 freedoms, but now only there are 6 freedoms because'class (f) under Article 19, "to acquire, hold and dispose of property" has now been deleted. Article 19 forms the core of the chapter on Fundamental Rights. Article 19, 20, 21 and 22 guarantee right to freedom.

Article 19(1) a to g except (f) guarantees to every citizen.

(a) The right to freedom of speech and expression ;

(b) Freedom to assemble peacefully and without arms ;

(c) Freedom to form associations and unions ;

(d) Freedom to move freely throughout the territory of India ;

(e) Freedom to reside and settle in any part of the territory of India, and

(f) To practice any profession, or to carry on any occupation, trade or business.

But the above freedoms are subject to such reasonable restrictions as may be imposed by law by the state in the interest of public order, mortality or in the interest of general public, the protection of interest of any scheduled tribe. The state may lay down special qualifications for practicing any profession. The, state may also take over, to the exclusion of others, the trade or business.

According to Article 20, a person

(a) Can be convicted of an offence only, if he has violated a law in force at the time when he is alleged to have committed the offence ;

(b) No person can be subjected to a grater penalty than what might have been given to him under the law that was prevalent when he committed the offence;

(c) No person can be prosecuted and punished for the same offence more than once ;

(d) No person accused of an offence can be compelled to be a witness against himself.

According to Article 21, a person should not be deprived of his life or personal liberty except according to procedure established by law. Article 22 says, whenever a person is arrested he must be informed of the grounds of arrest and detention and he may be given chance to defend his cause against authorities with the help of a lawyer of his choice. Whenever a person is arrested and detained in custody he must be produced before the magistrate within 24 hours of such arrest, and a person shall not be detained without the authority of the magistrate. However, the enemy aliens, persons detained under the Preventive Detention Law are not entitled to this protection. A person detained under the Preventive Detention Act, must be given a chance to know the grounds of arrest and the right to represent his case before the Advisory Board, and the detention of a person shall not be prolonged for more than three months. If period of detention is to be extended beyond 3 months, the matter must be referred to the Advisory Board.

This right to freedom found in the chapter III of the Constitution, contains references to British Common Law Rules. On the one hand, it guarantees freedom to the citizens and on the other, it arms authority with power to restrict the enjoyment of freedom. The right to freedom is complementary to the democratic system of government.

Check Your Progress -2

Note : 1) Use the space given below for your answer.

2) Also check your answer with the clue given at the end of the Unit.

1. Examine the importance of Right to Freedom.

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5.5.3 Right against Exploitation

The framers of the Constitution of India were very much influenced by the idea of Karl Marx, Declaration of Human Rights and Soviet Constitution. As consequence the framers of our Constitution have incorporated two Articles, 23 and 24 in the Constitution, which provide for the prohibition of traffic in human beings and similar forms of forced labour. The state, organizations and private individuals are called upon not to employ children who are below the age of 14 years to work in any factory or other forms of hazardous work But state is permitted to call upon all citizens to defend their state and political order by joining compulsory

military or other kind of service. These two articles were included, because the system of Jitadari and Devadasi system were prevailing in certain parts of Rajasthan, Bihar, Mysore and Western parts of India. It is to do away with these bad practices the section dealing with right against exploitation was added. All those who carry on traffic in human beings or immoral tr»rfic in human beings will be subject to a penalty of 500 rupees or imprisonment up to 6 months or both.

5.5.4 The Right to Freedom of Religion

Indian Constitution, true to its tradition of religion tolerance provides freedom of religion to all. Religious freedom is subject to only to the public order, morality, health and other essential conditions. In other words, every person has the right to freedom, conscience, the right to profess, practice and propagate religion freely. The state has been given the power to regulate or restrict any economic, financial, political or other secular activities associated with the religious institutions. Every religious group, sect or denomination has the right to establish and maintain institutions either for charitable purposes or for religious purposes. They are also permitted to manage their affairs in religious matters. They are also entitled to acquire and hold movable or immovable property but such property must be administered in accordance with the law. The state is also called upon not to impose taxes for the purpose of establishing or supporting any religion. There is no state religion in India. The educational institutions are also not permitted to give instruction in religious matters to students, who are below the age of 18 years ; But endowment institutions are entitled to impart instruction in religious matters. The state in other words is a secular state. It does not mean an irreligious or anti-God state. It only means that religion is purely an individual affair and state does not interfere with this freedom. All religious are entitled to equal protection.

5.5.5 Cultural and Educational Rights

Indian Constitution opens a new era to all kinds of minorities by adding this Fundamental Right. Article 29 and 30 guarantee to every citizen of India or any section there of the right to preserve, and protect its language, script and culture. All minorities, religious or linguistic have been given the right to establish and administer educational institutions of their choice. The state and the private educational institution receiving state aid, are called upon no*; to practice discrimination between citizens in matters relating to admission to educational institutions or grounds only of religion, race, caste or language or any one of them. The state in matters relating to distribution of grants-in-aid, is also called upon not to practice discrimination against any educational institution only on grounds of language or religion. The state is also prohibited from imposing any culture on any cultural minorities. But the state has

been given special powers to make provision for the advancement of socially and educationally backward classes of citizens or S.T and S.C's. The right to education in the mother tongue of the child at the primary school stage has been given constitutional recognition. The seventh Amendment to the constitution 1956 authorizes the President to issue such directions to any states, as he considers necessary for securing such facilities. This amendment also provides for the appointment of special officer to report on the working of these safeguards provided for linguistic minorities in India to the President of India. The President is required to place such reports before each house of Parliament of India.

5.5.6 Right to Constitutional Remedies

Abstract declarations of fundamental rights in the Constitution are useless, unless there is the means to make them effective. Constitutional experience in all countries shows that the reality of the existence of such rights is tested only in the courts. The power of the courts to enforce obedience to the fundamental rights again depends not only upon the impartiality and independence of the courts but also upon the effectiveness of the instruments available to it to compel such obedience against the executive and legislative authorities. The Constitution of India provides for both these principles and thus provides for the enforcement of fundamental rights by appropriate writs, orders including such writs as Habeas Corpus, Mandamus, Prohibition, Certiorari and Quo-warranto. Dr. Ambedkar described these provisions of India's Constitution as the heart and soul of the whole Constitution. Every citizen of India has the right to move the Supreme Court an High Courts by appropriate writs or proceedings for the enforcement of the fundamental rights guaranteed by this Constitution.

The rights guaranteed by this part of the Constitution of India shall not be suspended except as provided for by the provisions of Articles 358 and 359 of the constitution. The Parliament of India has been given the power to determine by law, to what extent any of the fundamental rights shall be restricted or abrogated when they are applied to members of the armed forces of our country.

Check Your Progress -3

Note : 1) Use the space given below for your answer.

2) Also check your answer with the clue given at the end of the Unit.

1. What is the importance of Right to Constitutional Remedies ?

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5.6 FUNDAMENTAL DUTIES

In the original constitution of 1950, Duties were not incorporated. As rights were guaranteed, it was implicit that these rights have duties to be performed by the citizens of the country. However, the Congress government thought to specify the duties in the constitution. By the forty-second Amendment Act to the Constitution, 1976, ten (10) fundamental duties were incorporated in Article 51A as part of IVA. Again in 2003, the 11th Duty is added through 86th Constitutional amendment. The intention is quite clear and that is to place before the country a code of conduct which the citizens are expected to follow in their Wr actions and conduct. The fundamental duties are as follows :

It shall be the duty of every citizen of India,

(a) To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem ;

(b) To cherish and follow the noble ideals which inspired our national struggle for freedom;

(c) To uphold and protect the sovereignty, unity and integrity of India ;

(d) To defend the country and render national service when called upon to do so ;

(e) To promote harmony and the spirit of common brotherhood among all the people of India transcending religious, linguistic and regional diversities, to renounce practices derogatory to the dignity of women ;

(f) To value and preserve the rich heritage of our composite culture ;

(g) To protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures ;

(h) To develop the scientific temper, humanism and the spirit of inquiry ; (i) To safeguard public property and to abjure violence ; and

(j) To strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavor and achievement.

(k) To provide compalsry education to all the children from 6 to 14 years. the parents are made responsible to provide education.

This part IV A was added in accordance with the recommendations of the Swaran Singh committee. It is meant to bring our Constitution in line with the Universal Declaration of Human Rights and the Constitution of Japan, China and erstwhile USSR.

Though, Fundamental duties have been incorporated in the Constitution, there is no provision in the Constitution for direct enforcement of any of these duties nor any Sanction to prevent their violation. But it may be expected that in determining the constitutionality of any law, if a court finds that it seeks to give effect to any of these duties, it may consider such law to be reasonable in relation to Article 14 and 19, and thus save such law from unconstitutionality. These duties would also serve as a warming to reckless citizens against anti-social activities such as burning the constitution, destroying public property and the like.

Check Your Progress -4

Note: 1) Use the space given below for your answer.

2) Also check your answer with the clue given at the end of the Unit.

1. Give a list of the fundamental duties.

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5.7 SPECIAL PRIVILEGES FOR SC/STS, BACKWARD CLASSES, WOMEN, CHILDREN AND RELIGIOUS AND LINGUISTIC MINORITIES

Our Constitution has adopted in its objective the ideas of equality and justice both socially and politically. It is in pursuance of the ideal that the Constitution has specifically guaranteed special provisions to Scheduled Castes, Scheduled Tribes, Women, Backward Classes, Children and Religions and Linguistic Minorities. Some of the provisions have been added to uplift the above classes to come up to the same level with the rest of the people i.e to bring them the oppressed and weaker seeking to join the main stream.

Special Privileges to Scheduled Castes and Scheduled Tribes

There is no definition of Scheduled Castes and Scheduled Tribes in the Constitution. But according to Articles 341 and 342, the President of India is empowered to draw up a list in consultation with the Governor of each State, subject to revision by Parliament. The President has made orders, specifying the Scheduled Castes and Scheduled Tribes in the different States in India, which have since been amended by Acts of Parliament.

The Constitution makes various special provisions for the protection of the interest of the Scheduled Castes and Scheduled Tribes.

They are as follows :

(1) Article 15(4) clearly says that there is a general ban against discrimination on the grounds of race, caste and the like. It means that if special provisions are made by the State, to protect the interest of Scheduled Castes and Tribes, other citizens have no right to question the legality of such provisions, on the ground that such provisions are discriminatory against them.

(2) To prevent the alienation of fragmentation of their property, the state may provide special protection except under specific conditions i.e according to Art 19(5) i.e which says to reside and settle in any part of the country.

(3) The claims of the members of the Scheduled Castes and Tribes shall be taken into consideration consistently with the maintenance of the efficiency of the administration, in the making of appointment to services and posts in connection with the affairs of the Union or of a State. This is mentioned in Article 335 of the Constitution.

(4) According to Article 338, the President of India shall appoint a National Commission for the Scheduled Castes and Tribes to investigate all matters relating to the safeguards provided for them under the Constitution. A Report has to be submitted in this regard to the President of India which will be placed before the Parliament for future action.

(5) Article 339(1) says that President may appoint a Commission to report on administration of the Scheduled Area and the welfare of the Scheduled Tribes in the States i.e to look after their welfare.

(6) Article 399(2) clearly says that Union executive can give directions to any State Governments to execute the schemes which are formulated to improve the Welfare of the Scheduled Tribes. To implement the above programmes financial assistance in the form of grants will be given to the States by the Union.

(7) Article 164 lays down that in States where Tribals are in great number for eg. In States like Bihar, Madhya Pradesh and Orissa a separate Ministry will look after their Welfare.

(8) Special provisions are laid down in the Fifth and Sixth Schedule of the Constitution read with Article 244 for the administration of areas inhabited by Scheduled Tribes.

Besides these there are temporary provisions for special representation and reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislatures.

Above all be the 65th Constitutions Amendment Act 1990, a National Commission has been set up for investigating and reporting on the working of those safeguards mentioned above regarding the Scheduled Castes and Tribes.

Special Privileges for Backward Classes

Indian Constitution has made separate provisions for, the upliftment and advancement of all backward classes in general.

Constitution does not define 'backward classes' we have to understand that there are other backward classes apart from Scheduled Castes and Tribes. The Constitution provides for the appointment of a commission to investigate the conditions of backward classes. The first committee was appointed in 1953. The second Backward class commission was appointed and in 1990 it submitted its report. Accordingly in August 1990, government declared reservation of 27% seats in government services on the basis of the report it applies to all recruitments.

There is also a provision to have a separate Ministry in charge of the Welfare of backward classes and in all States Departments have been set up to look after the welfare of backward classes.

Special Privileges for Women and Children

Our Constitution guarantees equality to all citizens (men and women) in all respects yet to prevent exploitation of weaker sections like women and children in the Indian Constitution certain provisions have been added by the Constitution makers to make them explicit, more important and to help the weaker sections to uplift themselves, so that there is equal development in the society in all dimensions.

From many centuries exploitation of Women and Children was going on. Systems like Devadasi; Sati were prevailing to exploit women children below the age of 14 or very young children were exploited using them to work for minimum wages. To stop this or to remove these social evils our Constitution makers have included Right against exploitation in the Fundamental Rights Chapter. Article 23 lays down provisions to prevent exploitation of the weaker sections (women and children) of the society by unscrupulous individuals or even by the state. The above Article says that traffic in human beings and beggar and other similar

form of forced labour are prohibited and use any contravention of the provision shall be an offence punishable in accordance with law.

Special provision for the protection of children is made in Article 24. According to the Article no child below the age of 14 can be employed to carry hazardous employment i.e child labour has been abolished. Above this Constitution also ensures compulsory and free education to all children till the age of 14.

To look after the welfare of women and children, all states have established Women and Child Welfare departments, 33% reservation has been given to women at the local level i.e in-local governments women have 33% reservation to constitute the political bodies. Bill to give reservation at the higher legislative bodies is pending before the Parliament.

Special Privileges for religious and linguistic minorities

Our Constitution clearly says that our state is a 'secular state'. That is a state which observes an attitude of neutrality and impartiality towards all religions. Every citizen can enjoys the right to his or her religion, but this religions freedom cannot be exercised in a manner prejudicial to public order, health and morality. It also says that every religions group or any section of any group has the right to establish and maintain its own institutions fro religions and charitable purposes to manage its own affairs in matters of religion. Articles 29 and 30 guarantees cultural and educational interests of religious and linguistic minorities.

Article 29 ensures to every minority the right to have a distinct language, script or culture of its own and to ensure the same. Further it lays down that no citizen shall be denied admission into any educational institutions maintained by the state or receiving aid out of state funds on grounds only of religion, race, caste, language or any of them.

Further Article 30 guarantees to all minorities based on religion or language to have the right to establish and administer educational institutions of their choice and declares that while giving grants state will not discriminate on the ground that it is managed by a religious or linguistic minority. Thus special provisions have been included in the Constitution itself to protect the rights of the linguistic or religious minorities.

Check Your Progress -5

Note: 1) Use the space given below for your answer.

2) Also check your answer with the clue given at the end of the Unit.

1. Explain the special privileges enjoyed by the Scheduled Castes and Scheduled Tribes.

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5.8 AN EVALUATION OF THE FUNDAMENTAL RIGHTS

The chapter on fundamental Rights in the Constant ion has been the subject of criticism both in India and outside ; since its adoption. They are,

First, criticism is that Constitution does not embody fundamental rights in reality but only an apology for them. Many fundamental rights such as the right to work, education for all ages, rest and leisure and social security, which ought to have found place in the chapter have been ignored.

Second, there are those who think that the spirit of the whole chapter and much of its substance are taken away by the extraordinary provisions such as preventive detention, suspension of the right to constitutional remedies etc. Critics feel that what has been given by one hand hasz been taken away by the other.

Third criticism is that the restriction exceptions and explanations with which fundamental rights are hedged around have the effect of depriving the rights of all reality. One member of the Constituent Assembly suggested that the chapter on Fundamental Rights might be more appropriate to be entitled as chapter on "Limitations on Fundamental Rights".

But these criticisms are answered very well. It is true that right to work, rest or educations are not included under the fundamental rights. The reason we all know, every one of the right in this chapter is a justiciable right. For example, to translate right to education for all groups and ages into reality, the state must provide immediately thousands of schools and colleges throughout the country was it possible, for the constitution maker, under them prevailing conditions to place this right under chapter III. Even today it is not possible. It is right which can be made available to everybody only in the course of time(decades).

Regarding the second criticism, it is believed that restrictions on individual freedom are necessary in the interest of the society. The framers of the constitution were not unaware of the dangers to the existence and safety of the Republic, they were establishing. As the country was passing through extraordinary stress and strain it was found necessary to include provisions

relating to preventive detention. Even today if we see the violence by organized groups to achieve their objective law like preventive detention is a necessity to safeguard the democracy. Moreover, if we study the functioning of the constitution, the preventive detention law is used very cautiously by the go.vernment. Infact, the Preventive Detention Act may be said to have helped India's infant democracy to survive teething troubles.

As for as the question of suspension of constitutional remedies, so for there has been no occasion.for it inspite of the declaration of national emergency on four occasions, i.e., in 1962, 1965,1971 and 1975. It is true that, the operation of several other fundamental rights, were affected by the proclamation of emergency. However, it was essential in the interest of the security of the state.

The third criticism is that fundamental rights are hedged in with numerous exceptions and limitations are also justified. Because a country characterized by homogeneity of language religion and culture needs protection by the constitution. Not only that the constitution of that country was bound to reflect it, and it has been reflected in the Indian Constitution.

By understanding the Fundamental Rights and the criticisms, we have come to know that, they are not absolute. The provisions in this chapter on Fundamental Rights can be altered, deleted and also added. Like this Right to Property has been deleted completely. And Government has taken a stand to include Education as a Fundamental Right. Both are discussed below to help the students to understand why this Right to Property was deleted and why Education may be included as a Fundamental Right.

Right to Property

Though it is not a fundamental right, it has been discussed to know why it was removed from this chapter.

The original Constitution had incorporated in chapter III - Right to Property as one of the Fundamental Right to the citizens. It is not only guaranteed the right of private ownership but also the right to enjoy and dispose of property free from restrictions other than reasonable restrictions. Second, the Constitution guaranteed that no person shall be deprived of his property save by the authority of law. Third, the Constitution said, that if the state wants to acquire the private property of an individual or to take the possession of the property for a temporary period, it could do only on two conditions :

(a) That the acquisition is for a public purpose ;

(b) That when such a law is passed, it must provide for payment of compensation to the owner.

The provision of the Constitution as to the obligation to pay compensation for acquisition or property for public purposes however underwent serious changes as a result of amendments to the constitution. The first, the fourth, the seventeenth, the twenty-fifth and the forty-second Amendment Acts have been added to the Constitution and according to these, though there is an obligation to pay something, that cannot be challenged before the court of law ; on the ground that the legislature had not provided for payment of the full value of their property.

By the 25th amendment of 1971, the word 'compensation' was substituted by the word 'amount.' Together Article 31 c as inserted by the 25th amendment provided that any law which seeks to implement the Directive Principles of State Policies in view of socialistic distribution of wealth shall not be questioned in the court of law.

Thus the Right to Property underwent a series of changes by many amendments. Finally, the Janata Government by passing the 44th (forty-fourth) Amendment Act to the Constitution removed the right to property altogether from the list of fundamental rights in part III. Today it has become a legal right in the eyes of the Constitution. Property has however been given express recognition as a legal right to ensure that no person will he deprived of his or her property except in accordance with law.

Right to Education

On November 28th 2001, the Lok Sabha unanimously passed the Constitution Amendment Bill to become an Act which is the 86th Amendment Act to make education for children in the age group of 6-14 years a Fundamental Right. According to this amendment bill, it is the duty of the parents to send their children to school, but would not penalize them for not doing so. Hitherto, Article 45, of the Directive Principles of State Policy enshrined in the Constitution urged the state to provide free and compulsory education for children until they complete 14 years of age.

Universal free and compulsory education should have been achieved in India by 1960. When the Constitution was ready, it said that the State should endeavour to provide this within 10 years of the commencement of the constitution. However, successive governments have failed to do. Now Education if it becomes a fundamental right, the provision of free and cpmpulsory education will become legally enforceable - as it is under III part of our constitution dealing with Fundamental Rights.

Check Your Progress -6

Note : 1) Use the space given below for your answer.

2) Also check your answer with the clue given at the end of the Unit.

1. Evaluate the Fundamental Rights found in Constitution.

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5.9 LET US SUM UP

In this Unit, we have understood the meaning and nature of fundamental rights. Then we have analyzed the fundamental rights guaranteed by the Indian Constitution with exceptions, limitations imposed by the constitution itself. Also this unit explains the criticisms leveled against this chapter by the critics and a note on fundamental duties enriched in our constitution.

Finally special provisions for certain sections which are.considered as backward and not developed have been provided which.have been explained.

5.10 KEY WORDS

Comprehensive	:	including all or very wide.
Justifiable	:	which comes under the jurisdiction of the court.
Tremendous	:	great
Imperative	:	urgent or obligatory.
Amply	:	abundant.
Abridge	:	shorten
irreligious	:	nonreligious
Habeas corpus	:	a writ issued by courts which directs to produce the person or persons before the court.

Derogatory : stating a low estimation

Profess : to teach

Propagate : to spread

5.11 ANSWERS TO CHECK YOUR PROGRESS

Check Your Progress -1

1. See section 5.4

Check Your Progress -2

1. See section 5.5.2

Check Your Progress -3

1. See section 5.5.6

Check Your Progress -4

1. See section 5.6

Check Your Progress -5

1. See section 5.7.5

Check Your Progress -6

1. See section 5.8

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UNIT -6: DIRECTIVE PRINCIPLES OF STATE POLICY

Structure

6.0 OBJECTIVES

After going through this unit you should be able to

- Examine the nature of the Directive Principles of State Policy
- Define the importance of the Directive Principles of State Policy
- Explain the sanction behind Directive Principles of State Policy
- Explain the place they have occupied in the Constitution and actual administration

6.1 INTRODUCTION

Part IV of the Constitution dealing with the 'Directive Principles of State Policy' provides one of the most novel and striking features of the modern constitutional government. These directive principles aim at attaining social, political and economic justice. They are laid down as guidelines which are fundamental in the governance of the country. The state and its agencies are expected to be guided by these principles in the enactment and implementation of laws. In this sense, they constitute the ideal policy guidelines for every branch of the state machinery in India.

6.2 HISTORICAL BACKGROUND

The framers of the Constitution were influenced by the Constitution of the Irish Republic which embodies a chapter on 'Directive principles of Social policy'. The Irish themselves had however, taken the idea from the Constitution of Republican Spain, which was the first constitution to incorporate such principles as part of a constitution But the idea of such principles can be traced to the Declaration of Independence by the American colonies: The influence of these principles compelled the states to take positive measures for the removal of many anti-social practices which had been considered as normal in those days, apart from over-throwing all forms of political tyranny. Apart from these above influences the charter'of the United Nations as well as the universal Human Rights chapter also influenced the constitution makers to add this IV chapter to the Indian Constitution.

However, it Would be wrong to presume that the various principles embodied in this chapter are more foreign borrowings or adaptations of principles of recent western political and social philosophy . In fact, a number of these principles are entirely Indian, particularly those which formed an integral part of the very foundations of the National Movement were the ideas of Indian National Congress and the ideas of Mahatma Gandhiji. Above these, the

Directive Principles are like the instruments of instructions. The only difference is that directives are instructions to the legislature and the executive. Whoever captures power have to respect and implement the directives.

6.3 NATURE OF THE DIRECTIVE PRINCIPLES OF STATE POLICY

The Directive Principles of State Policies are incorporated in the IV Chapter of the Constitution. These directives are having the following nature. They are:

1. These principles are directives to the various governments and governmental agencies (including even village panchayats) to be followed as fundamental in the governance of the country.
2. The Directive Principles enshrine the fundamentals for the realization of which the state in India stands. They reflect the noble idea which the preamble of the Constitution proclaims, that is, political, economic and social justice liberty, equality, and fraternity. In short they aim at a welfare state.
3. These directives are non-justiciable i.e., when a person or group of persons are affected by the implementation or violation of these directives, cannot move the court-of law, questioning any governmental agency to get relief. No court will take cognizance of the violation of these principles.

6.4 CLASSIFICATION OF DIRECTIVE PRINCIPLES

There are sixteen (16) Articles of the Constitution from 36 to 51 that deal with the Directive Principles. They may be classified under several groups.

6.4.1 Directives aiming at the establishment of welfare state

Article 38 provides that state shall strive to promote the welfare of the people by securing a social order permented by social, economical, and political justice. Article 43 provides that the state shall endeavour to secure just and human conditions of work, a living wage, a decent standard of living and social and cultural opportunities for all workers.

Article 47 provides that the state shall endeavour to raise the level of nutrition and standard of living and to improve public health.

Article 51 provides that the state shall endeavour to promote international peace and unity.

Article 39 provides that the state shall direct its policy towards securing equitable distribution of the material resources of the community and prevention of concentration of wealth and means of production. These are the ideals, which according to the framers of the constitution, the state should strive for:

6.4.2 Directives relating to economic matters

The Articles which can be classified under this heading strive to establish economic democracy and justice by securing certain economic rights to the citizens. Article 44 provides for a uniform civil code for the citizens.

Article 45 urges the need to provide free and compulsory primary education. Article 43 states that the state shall endeavour to develop cottage industries.

Article 48 provides to organize agriculture and animal husbandry on modern lines and to prevent slaughter of useful cattle.

Article 49 provides for the protection and maintenance of places of historic or artistic interest.

Article 50 states that the state shall take steps to separate the judiciary from the executive in the public services of the states. These articles indicate, in what manner the state should exercise their legislative and executive powers.

6.4.3 Other Directives

Article 39 (a) - Right to adequate means of livelihood.

Article 39 (d) - Right of both sexes to equal pay for equal work.

Article 39 (e) (f) - Right against economic exploitation.

Article 41 - Right to work and

Article 42 - Right to public assistance in case of unemployment, old age, sickness and other cases of undeserved wants which provide for certain rights of the citizens, which though not enforceable by the courts, but which the state shall nevertheless aim at securing by regulation of administrative policy.

By 42nd Amendment, certain changes have been inserted in part IV, adding New Directives, to accentuate the socialistio-bias of the constitution.

i) Article 39A has been inserted to enjoin the state to provide ‘free legal aid’ to the poor and to take suitable steps to ensure equal justice to all.

ii) Article 43A has been inserted in order to direct the state to ensure the participation of workers in the management of industry and other undertakings.

iii) Article 48A has been inserted in order to direct the state to protect and improve the environment and to safeguard the forests and wildlife of the country.

6.5 SANCTIONS BEHIND THE DIRECTIVES AND THEIR UTILITY

The Directives are not enforceable by the courts, if even the government of the day fails to carry out these objectives. No court can make the government ensure them. But these principles have been declared to be fundamental in the governance of the country.

The sanctions behind then are in fact political. Dr. Ambedkar observed in the Constituent Assembly, 'if any government ignore them they will certainly have to answer for them before the electorate at the election time'. It would also be a patent weapon in the hands of the opposition to discredit the Government on the ground that any of the executive or legislative acts is opposed to the Directive Principles.

The courts, too have of late started paying attention to the Directives in their interpretation of constitutional law. The courts according to Article 36 are part of the state. Therefore courts have the responsibility in so interpreting the Constitution as to ensure implementation of the Directives, and to harmonize the social objectives underlying the Directives with the individual rights. The Directives Principles sum up the political philosophy of cur nationalist movement. They endeavour to reconcile the liberties of the individual with the claims of common good. They have an educative value for the citizens of India. They present to the government a ready programme to be implemented sooner than later for the achievement of a welfare state.

As Directive Principles form part of the Constitution, it should be the duty of the union to see that every state takes steps for implementing the directives, as far as possible. Hence, it should be competent for the union to issue directives to implement any of the Directive Principles. In case if the State or States fails to implement, Union may apply Article 365 against such recalcitrant state. Otherwise, the Directives in Part IV shall ever remain a dead letter.

6.5.1 Values and limitations of these Directives

Owing to the legal deficiencies of the Directives, the utility of their incorporation in the constitution has been criticized from different quarters. Ivor Jennings, characterized them as 'pious aspirations', and also questioned the utility of these.

Nevercheless, the incorporation of these in the Constitution has been justified by a consensus of opinion, as well as the working of the Constitution since 1950.

The Directives have their own value and significance, as they are fundamental in the governance cf the country. They are the Directives to which the Government has to turn while making policies and programmes. The policy of the government has been shaped according to these principles. This will be understood if we survey the social, labour and economic legislations undertaken after independence. In fact, G. Austin considers these Directives to be 'aimed at furthering the goals of the social revolution to foster this revolution by establishing the conditions necessary for its achievement'.

In short, the Directives emphasize in amplification of the preamble, that the goal of the Indian polity is not Laissez faire, but a welfare state, where the State has a positive duty to ensure to its citizens, social, and economic justice. In fact, 25lh and 42nd amendments to the Constitution have given Directives precedence over fundamental rights.

With all these above significance the directions have their own limitations. They are :

a) not enforceable in the court of law

b) violation or non implementation of these cannot be questioned

c) they are only moral instructions to the union, state and local governments.

6.6 DIFFERENCES BETWEEN FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES

In part III of the constitution the Fundamental Rights and in Part IV Directive Principles are incorporated. They differ in the following respects:

i) Fundamental Rights are enforceable by the courts, where as directives are not enforceable by the courts and do not create any justiciable rights in favour of individuals.

ii) Unlike the fundamental rights, the directive principles are merely in the nature of instructions to the government of the day to do certain things and to achieve certain ends by their actions.

iii) The fundamental rights define a negative action on the part of the state and imposes upon it the obligation not to interfere with the rights guaranteed to the people; the directives give some positive powers to the State to do things in the society as a whole, even if such action comes in the way of individual rights.

iv) Fundamental Rights promises political democracy but directives, economic, and social democracy.

6.7 IMPLEMENTATION OF THE DIRECTIVE PRINCIPLES

It is not very easy to make a survey of the progress made by the government of the union and the states in implementing such a large number of directives over a period of nearly five decades, since the constitution was put into practice. Yet we have to make an attempt to known how far the directives have been realized by the union and states.

a) The greatest progress in carrying out the directives has taken place with regards to the directive enshrined in article 39 (b) This directive states, that state should secure that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good. In an agrarian country like India, the main item of material resources is no doubt agricultural. Therefore, in order to prevent a concentration of land holdings, legislation has been enacted in many of the states, fixing a ceiling, that is to say, a maximum rea of land which may be held by an individual owner. Not only legislation has been enacted together, these reforms have been facilitated by amending the constitution to shield these laws from challenging in the courts.

b) A large number of laws have been enacted to implement the directive in Article 40 to .i) organize village panchayats and endow them with power of self-government. Almost all the states have established the local government units. After the 73rd and 74th Amendment Acts, almost all the states have enacted laws vesting various degrees of powers of self-government in the hands of Panchayats.

c) For the promotion of small scale and cottage industries, which is a state subject, the central government has established several boards to help the state governments, in the matter of financing, marketing etc. These are All India Khadi and Village Industries Board, All India Handicrafts Board, All India Handloom Board, Small Scale Industries Board, Silk Board, Coir Board, etc.

d) Legislation for compulsory primary education has been enacted in most of the states and in three Union Territories.

e) To increase the standard of living especially of the rural population, the government of India had launched community development project in«1952. Later on Integrated Rural Employment Programme (IRDP) in 1978-79, National Rural Employment Programme

(NREP), Rural Land less Employment Guarantee Programme (RLEGP), Drought Prone Areas Programme (DPAP) etc, were launched.

f) Most states have passed laws prohibiting cow slaughter and to promote the welfare of the scheduled castes and scheduled tribes and to promote the economic interest of the weaker and backward sections of the people. Some progress has also been made regarding the Directives added by the 42nd Amendment, such as free legal aid and protection of environment. Several States have introduced prohibition either wholly or in part. But it is not so effective, because paucity of the financial resources of the states is the primary reason for the failure to fully implement this Directive until people imbibe the Gandhian ideals of life, prohibition v/ill be a failure.

g) Regarding the separation of the executive from the Judiciary, criminal procedure code in 1973 has been enacted by the union government, which has placed the function of judicial trial in the hands of the 'Judicial Magistrate' who are members of the judiciary and are under the complete control of the High Court.

However, opinion differs on how far the Directive Principles of state policy have been implemented in actual practice. For obvious reasons all these principles have not been completely translated into action, nor have they been totally ignored.

6.8 CHANGING SCOPE OF THE DIRECTIVE PRINCIPLES OF STATE POLICY

It has been observed that the original intention of the framers of the constitution was tf-use the Directive Principles in part IV as ideals to be followed by Parliament and State Legislatures in enacting laws and were to be used as an aid in interpreting laws relating to Fundamental Rights. The situation has undergone a radical change now. As, of now the Directive Principles contained in Article 39 (b) and (c) are often given priority over Fundamental Rights.

The Supreme Court as well as the Parliament has been progressively asserting the primacy of the Directive Principles over the Fundamental Rights. The situation arising out of this approach opens up new opportunities for the parliament and the State Legislatures to enact laws for realizing the objectives of the Directive Principles of state policy and there by ushering in a new order that is envisaged by the Directive Principles.

Check Your Progress -1

Note : 1) Use the space given below for your answer.

2) Also check vour answer with the clue given at the end of the Unit.

1. Explain the nature of the D.P.S.P.

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2. Examine the sanctions behind these principles.

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3. How far they have been realized.

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6.9 LET US SUM UP

In this unit, the Directive Principles of state policy that found a place in the Part IV of the Indian Constitution have been analyzed. Their nature, importance and their implementation have been dfealt in detail.

6.10 KEY WORDS

Non-justiciable : Not possible to move the court; to get the justice.

Primacy : Importance

6.11 ANSWERS TO CHECK YOUR PROGRESS

Check Your Progress -1

1. See section 6.3
2. See section 6.5
3. See section 6.7

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UNIT-7: UNION PARLIAMENT - LOKA SABHA AND RAJYA SABHA

Structure

7.0 OBJECTIVES

This unit deals with the union parliament After, going through this unit you will be able to

- Explain the composition and organisation of Loka Sabha.
- Discuss the powers and functions of Loka Sabha.
- Explain the composition and organisation of Rajya Sabha.
- Examine the powers and functions of Rajya Sabha.
- Discuss the relation between the Loka Sabha and Rajya Sabha.

7.1 INTRODUCTION

The parliament is the legislative organ of the union government. It occupies a pre-eminent and central position in the Indian democratic political system due to adoption of parliamentary form of government.

Articles 79 to 122 in part V of the constitution deal with the organization, composition, duration, officers, procedures, privileges, powers and so on of the parliament.

7.2 COMPOSITION OF UNION PARLIAMENT

Under the constitution, the parliament of India consists of president, the House of People and the council of states. The House of the people (Lok Sabha) is the lower House (First chamber or popular House). The Rajya Sabha is the upper House (Second chamber or House of Elders). The Lok Sabha represents the people of India as a whole, while Rajya Sabha represents the states and the union territories of the Indian union.

Though the president of India is not a member of either House of parliament and does not sit in the parliament to attend its meetings, he is an integral part of the parliament. This is because a bill passed by both the Houses of parliament cannot become law without the assent of the president. He also performs certain functions relating to the proceedings of the parliament like summoning and protogation of both Houses, dissolve the Lok Sabha, addresses both the Houses and so on.

7.2.1. Composition and organizations of Lok Sabha :

The maximum strength of the Lok Sabha is fixed at 552. Out of this, 530 members are

to be representatives of the states, 20 members are to be representatives of the union territories and 2 members are to be nominated by the president from the Anglo-Indian community.

At present, the Lok Sabha has 545 members. Of these, 530 members represent the states, 13 members represent the union territories, and 2 Anglo-Indian members are nominated by the president.

a) Qualifications of members

To be qualified for election to the Lok Sabha, a person must be (a) a citizen of India, (b) must complete 25 years of age and (c) he must possess such other qualifications as may be prescribed by parliament.

Under the constitution, a person shall be disqualified for being elected as a members of Lok Sabha. (1) if he holds any office of profit under the union or state government (except a minister or any other office exempted for parliament) (2) if he is of unsound mind. (3) if he is an undischarged insolvent. (4) if he is not a citizen of India. (5) if he is so disqualified under any law made by parliament. (6) if he is so disqualified on the ground of defection under the provisions of the 10th schedule, which was added to the constitution by the 52nd Amendment.

b) Mode of Election

The members of the Lok Sabha are directly elected by the people from the territorial constituencies in the states. The election is based on the principle of universal adult franchise. Every Indian citizen who is above 18 years of age is eligible to vote at such election. The voting age was reduced from 21 to 18 years by the 61st constitutional Amendment Act, 1988.

The president can nominate two members from the Anglo- Indian community if the community is not adequately represented in the Lok Sabha.

c) Term

The normal term of Lok Sabha is five years from the date of its first meeting after the general elections. But it may be dissolved at any time even before the completion of five years and this cannot be challenged in a court of law.

Further, the term of Lok Sabha can be extended during the period of national emergency by law of parliament for one year at a time. However, this extension cannot continue beyond a period of six months after the emergency has ceased to operate.

d) Presiding officers of Lok Sabha

The Lok Sabha elects its own presiding officer who is known as the speaker. The speaker is elected by the House from among its members in its first meeting of the first session. The speaker conducts the proceedings of the House, maintains order and decorum and discipline therein, and protects the rights and privileges of its members. He posses the right of casting vote in case of tie. The office of the speaker is one of the highest offices of the land. The house also elects a deputy speaker who presides over the House in the absence of the speaker. He is elected in the same manner in which the speaker is elected by the House. To facilitate the work of the House in the absence of the speaker and Deputy speaker, the speaker nominates, from time to time, six members of the House to constitute a panel of chairmen.

Check your progress - 1

Note : 1) use the space given below for your answer.

2) check your answers with those given at the end of the unit.

1. Explain the composition and organization of Lok Sabha.

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7.2.2. Powers and Functions of Lok Sabha :

The Lok Sabha is India's political centre of gravity. It powers are enormous and they can be divided into following heads:- Legislative, Executive, financial, judicial, constituent electoral etc.

Legislative powers :

The primary function of the Lok Sabha is to make laws for the country along with Rajya Sabha. The Lok Sabha can enact laws on subjects enumerated in the union and concurrent lists. During emergency, the Lok Sabha can also legislate on the subjects enumerated in the state list. Thus, the Lok Sabha can enact new laws, repeal old laws and amend the existing laws.

Executive powers

The Lok Sabha exercises control over the union executive. This is one of the most important functions of the Lok Sabha. The council of Ministers is collectively responsible to Lok Sabha for all its acts of omission and commission. The ministers remain in office so long as they enjoy the confidence of majority in the Lok Sabha. Lok Sabha exercises control over the executive through questions, adjournment motions, calling attention motion, by criticizing the policies adopted by them, and by rejecting the ordinary and Money Bills of government. Lok Sabha can remove the council of Ministers by passing a vote of no-confidence against it.

Financial powers

In regard to money-bills, the Lok Sabha has a monopoly of power. It is the real custodian of national purse. It has exclusive financial powers. It passes the budget and determines how money is to be raised and spent. No tax can be levied and no expenditure can be incurred without the consent and authority of parliament. All money bills can be introduced only in the Lok Sabha. After passed by it such a bill is sent to the Rajya Sabha. A money bill passed by Lok Sabha can be delayed by the Rajya Sabha for a maximum period of 14 days. The recommendations of Rajya Sabha may or may not be accepted by the Lok Sabha. Thus, the Lok Sabha has the final dicision with regard to financial matters.

Judicial powers

The Lok Sabha performs some judicial functions also. The Lok Sabha along with Rajya Sabha has the power of initiating, investigating and deciding the impeachment charges against the president of India. The Lok Sabha along with the Rajya Sabha can pass a resolution for the removal of a judge of supreme court or of a state High Court. It can also take a disciplinary action against any member or any citizen who is found by it guilty of committing a contempt of the House.

Constituent powers

Lok Sabha plays a vital role in the amendment of the Indian constitution in accordance with the prescribed procedure under Act 368. Constitution Amendment Bill can be introduced in either House of parliament and passed by both Houses in identical terms.

Electoral Functions

The Lok Sabha also performs some electoral functions. The elected members of Lok

Sabha take part in the election of president and members of Lok Sabha participate in the election of vice-president of India. The members of Lok Sabha also elect a speaker and Deputy speaker from amongst themselves.

The resolutions and debates of the Lok Sabha on legislative measures and governmental policies provide ample opportunities for the ventilating the grievances. As a matter of fact the Lok Sabha plays a role of great educator. It can be described as a mirror of public opinion.

Check your progress - 2

Note : 1) use the space given below for your answer.

2) check your answers with those given at the end of this unit.

1. Discuss the powers and functions of the Lok Sabha.

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7.2.3. Composition and organizations of Rajya Sabha

The maximum strength of the Rajya Sabha is fixed at 250, out of which, 238 are to be the representatives of the states and union territories (elected indirectly) and 12 are nominated by the president.

At present, the Rajya Sabha has 245 members. Of these, 229 members represent the states, 4 members represent the union territories and 12 members are nominated by the president. The seats are allotted to the states in the Rajya Sabha on the basis of population.

a) Qualifications of members

The constitution lays down the following qualifications for the membership of the Rajya Sabha. (1) He must be a citizen of India. (2) He must complete 30 years age (3) He must possess such other qualifications as parliament may by law prescribed.

The disqualifications prescribed for member of Lok Sabha are also applicable to member of Rajya Sabha.

b) Method of election

The members of the Rajya Sabha are elected by the elected members of state legislative

assemblies. The seats are allotted to the states in the Rajya Sabha on the basis of population. Hence, the number of representatives varies from state to state.

The representatives of each union territory in Rajya Sabha are indirectly elected. Out of the 7 union territories, only two (Delhi and Pondicherry) have representation in Rajya Sabha. The population of other 5 union territories are too small to have any representative in the Rajya Sabha.

The president of India nominates 12 members to the Rajya Sabha from people who have special knowledge or practical experience in art, literature, science and social service.

c) Term :

The Rajya sabha is a continuing chamber, that is it is a permanent body and not subject to dissolution. However, 1/3 of its members retire every second year. These seats are filled by fresh election. The retiring members are eligible for reelection.

The constitution has not fixed the term of office of members of Rajya Sabha and left it to the parliament. Accordingly, the parliament, in the representation of the people Act (1951) provided that the term of office of a members of the Rajya Sabha shall be six years.

d) presiding officers of Rajya Sabha

The presiding officer of the Rajya Sabha is known as the chairman. The vice-president of India is the ex-officio chairman of the Rajya Sabha. Unlike the speaker (who is a member of the House), the chairman is not a member of the House. As a presiding officer, the powers and functions of the chairman in the Rajya Sabha are similar to those of the speaker. However, the speaker has two special powers which are not enjoyed by the chairman. 1) speaker decides whether a bill is a money bill or not and his decision on this matter is final. 2) The speaker presides over a joint sitting of two Houses.

Like speaker, the chairman of Rajya Sabha also cannot vote, but he can cast a vote in the case of an equality of votes. In the absence of the chairman, the deputy chairman of Rajya Sabha presides over the meetings of Rajya Sabha. The deputy chairman is elected by the Rajya Sabha itself from amongst its members. Wherever the office of deputy falls vacant, the Rajya Sabha elects another member to if till the vacancy.

Check your progress - 3

Note : i) use the space given below for your answer.

ii) check your answer with those given at-the end of this unit

1. Discuss the composition and organisation of Rajya Sabha.

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7.2.4 Powers and functions of Rajya Sabha

Legislative powers

The Rajya Sabha enjoys equal powers with the Lok Sabha in the sphere of ordinary law making. In all non-financial matters, including constitutional amendments, the extent of the powers of the Rajya Sabha is the same as that of the Lok Sabha. The Rajya Sabha can amend or reject- a Bill that is passed by the Lok Sabha. In the event of disagreement over non-money bill between the two Houses, a joint sitting of both Houses may be held to resolve deadlock over the controversial measure. In the joint sitting the decision to be taken by a simple majority.

Executive powers

The Rajya Sabha has limited role in the exercise of executive powers. The council of Ministers is collectively responsible for all its acts of commission and commission to the Lok Sabha only. The Rajya Sabha has no right to pass a censure motion or no-confidence motion against the government. However, the Rajya Sabha can only check the ministers by seeking information regarding their work, criticising the policies adopted by them, by asking questions and supplementary questions etc.

Financial Powers :

In the financial sphere the Rajya Sabha plays a minor role. A money bill can be introduced only in the Lok-Sabha. A money bill passed by the Lok Sabha goes to the Rajya Sabha for its consideration. The Rajya Sabha must return the Bill to Lok Sabha within 14 days, if Rajya Sabha fails to pass the bill, the bill, will be considered to have been passed by both the Houses. The recommendations or amendments proposed by Rajya Sabha. may or may not be accepted by Lok Sabha. Thus the Rajya Sabha can only delay the passing of a Money Bill for a maximum period of 14 days. Rajya Sabha has only advisory role and the Lok Sabha has the final say in financial matters.

Check your progress - 4

Note : 1) use the space given below for your answer

2) check your answer with those given at the end of this unit.

1. Examine the powers and functions of the Rajya Sabha.

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7.3 RELATION BETWEEN LOK SABHA AND RAJYA SABHA.

The relation between Lok Sabha and Rajya Sabha can be studied as follows:

A. Both the Houses of the parliament enjoy equal powers in passing ordinary Bills, in the sphere of constitutional amendment process, in the process of impeeching the president of India, and in the removing Supreme court and High Court judges. Both Houses enjoy equal electoral powers. The elected members of Lok Sabha and Rajya Sabha take part in the election of president and vice president of India, and both the House have equal power in approving the emergency declared by the president.

B. Lok Sabha is superior over the Rajya Sabha in the following respects.

1) The Money Bills can be introduced only in the Lok Sabha. The final say in money matters lies with the Lok Sabha.

2) In the executive sphere also Rajya Sabha occupies a place of less importance. The council of ministers is collectively responsible only to the Lok Sabha. The Lok Sabha can dismiss the council of ministers by passing the vote of no-confidence. The members of Rajya Sabha cannot dismiss the government by passing the vote of no-confidence.

C. Special powers of Rajya Sabha in the following respects.

1) under Article 249 of the constitution, the Rajya Sabha can empower parliament to legislate on any subject in the state list.

2) under Act - 312, the Rajya can authorise the parliament to create one or more All-India Services common to both the union and the states.

A comparative study of powers of Lok Sabha and Rajya Sabha reveals that the former is decidedly more powerful than the later. But at the same time, it would be wrong to assume

that the Rajya Sabha is secondary or reactionary chamber. It also enjoys some special powers as well as equal powers with the Lok Sabha in same spheres, which make its position important.

Check your progress - 5

Note : 1) use the space given below for your answer.

2) check your answer with those given at the end of this unit.

1. Examine the relation between Lok Sabha and Rajya Sabha

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7.4 LET US SUM UP

The parliament of India is the legislative organ of union government. It is composed of president, Lok Sabha and Rajya Sabha. Lok Sabha is the Lower House representing the people of India. Rajya Sabha is the second or upper House, representing the status and union territories of the Indian union.

The parliament exercises multifasions functions like law making, controlling the executive, judicial i e impeading the president, removing the judges of supreme and High Court, financial, constituent, i e the amending the constitution etc.

7.5 KEY WORDS

No- confidence Motion -A motion expressing want of confidence in government; it is moved by a members or leader of opposition.

Proroguegation of Parliament -Discontinue meetings of parliament etc. without dissolving it

Dissolution -Termination, ending of a Lok Sabha with a view to have fresh election.

7.6 ANSWERS TO CHECK YOUR PROGRESS.

Check Your Progress -1

1. See section - 7.2.1

Check Your Progress -2

2. See section - 7.2.2.

Check Your Progress -3

1. See section - 7.2.3

Check Your Progress -4

1. See section - 7.2.4

Check Your Progress -5

1. See section - 7. 3

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UNIT-8: PRESIDENT, PRIME MINISTER AND COUNCIL OF MINISTER

Structure

8.0 OBJECTIVES

This unit ddeals with the president and prime minister and also discuss the power and functions of the council of ministres. After, going through this unit you will be able to

- Discuss the election, qualification, term and method of removal of president of India.
- Examine critically the powers and functions of the president of India
- Evaluate the role of Prime Ministers of India
- Explain the composition, powers and functions of council of Ministers.

8.1 INTRODUCTION

Since India is Republic, the constitution provides for a president on India and the executive power of the union government, including the supreme command of the defence forces, is vested in him. The president is the head of the Indian state. He is the first citizen of India.

As the constitution of India provides for a parliamentary system of government modelled on the British pattern the president of India is the nominal executive authority and the prime Minister is the real executive authority. In other words, president is the head of the state while prime Minister is the head of the government. The Prime Minister is the head of the council of Ministers which constitutes the real executive. Thus, the union executive consists of the president, the vice -president, the Prime Minister, and the council of Ministers.

8.2 PRESIDENT OF INDIA

The executive power of the Indian union is vested in the president of India. All executive decisions of the union government are taken in his name. The president is the highest dignitary of the land.

8.2.1 Election, qualifications, Term, Removal etc.

The constitution prescribe indirect election for the president. The president is elected by an electoral college consisting of :

1) the elected members of both the Houses of parliament
2) the elected members of the legislative assemblies of the states; and
3) the elected members of the legislative assemblies of the union Territories of Delhi and pondichery.

The nominated members of both the Houses of parliament and nominated members of state legislative assemblies do not participate in the election of the president.

Qualifications

Any person who: 1) is a citizen of India,

2) has completed the age of 35 years, 3) is qualified for election as a member of Lok Sabha, 4) does not hold office of profit under the government of India or government of any state or under any local authority, can contest election for the office of the president of India. However, president, vice-president, the governor of any state or a cabinet Minister of union or state, is not debarced from contesting the election for the office of the president of India.

Before entering upon his office the president is required to take an oath in the presence of chief Justice or the senior most judge of the supreme court of India.

Term :

The president holds office for a term of 5 years from the date on which he enters upon his office. However, he can resign from his office at any time by addressing the resignation letter to the vice - president. Further, he can also be removed from office before completion of his term by the process of impeachment.

He is also eligible for re-election to that office. He may be elected for any number of terms. In U.S.A. a person cannot be elected to the office of the president more than twice.

Removal

The president can be removed from office by a process of impeachment for violation of the constitution. An impeachment is a quasi-judicial procedure in the parliament adopted to remove the head of the state. The charges of impeachment can be initiated by either House of parliament. These charges should be signed by 1/4 members of House (framed the charges) and a 14 days notice should be given to the president. If the resolution is passed by 2/3 of the total membership of that House, it is sent to the other House which investigates the charges. As a result of such investigation, a resolution is passed by a 2/3 majority of total membership stating that charge has been sustained, then the president stands removed.

If the office falls vacant by resignation, removal, death or otherwise, then the election to fill the vacancy should be held within 6 months from the date of occurrence of such vacancy. The newly elected president remains in office for full term of 5 years.

When the vacancy occurs in the office of the president, the vice-president acts as the

president until a new president is elected. In case the office of vice-president is vacant, the chief justice of India acts as the president of India.

8.2.2 Powers and functions

The powers enjoyed and the functions performed by the president can be studied under the following heads.

Executive powers

All the executive powers of the union union government are carried on in the name of the president. He is the supreme commander of Indian defence forces. He can make rules for more convenient transaction of business of the union government.

1) He appoints the Prime Minister and the other ministers on the advice of the Prime Minister. They hold office during his pleasure.
2) He appointed the Attorney General of India and determines his remuneration. The attorney general holds office during the pleasure of the president.
3) He appoints the Comptroller General of India, the Chief Election Commissioner and other election commissioners, the chairman and members of U.P.S.C; the governors of states, the chairman and members of finance commission and so on.
4) He can seek any information relating to administration, and proposals for legislation from the Prime Minister.
5) He can appoint a commission to investigate into the conditions of STs, SCs and other backward classes.
6) He can appoint inter-state council to promote centre-state cooperation
7) He directly administers union-territories

Legislative powers

The President is an inseparable part of parliament. He possesses some legislative powers, such as summoning and proroguing the two Houses of the parliament, dissolving the Lok Sabha, addressing the joint session of the two Houses, sending messages to either or both Houses, assenting bills passed by the parliament, calling joint session of the two Houses in case of differences of opinion between them regarding any non-Money bill, promulgation of ordinance etc. He has also the power to nominate 12 members to Rajya Sabha and not more than 2 members of the Anglo-Indian community to Lok-Sabha, if he feels that the Anglo-

Indian community is not adequately represented in the Lok Sabha.

Judical powers

Besides the appointment of chief Justice and other judges of Supreme Court and High Courts, the president has the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute conviction or sentence of any person (a) in all court Martial cases; (b) in cases involving the breach of union law; and (c) in all cases where the sentence of death (Act 72)

Financial Powers

The financial powers and functions of the president are : 1) Money bills can be introduced in the parliament only with the prior recommendation of the president.

2) He causes to be laid before the parliament the annual financial statement i e Union Budget.

3) No demand for grant can be made except on his recommendation

4) He can make advances out of the contegency fund to meet any unforeseen expenditure.

5) He constitutes a finance commission after every 5 years.

Military powers :

The president is the supreme commander of the defence forces of India. In that capacity the appoints the chiefs of the Army, Navy and Airforce. He can declare war or conclude peace subject to the approval of parliament.

Emergency powers

In addition to the powers mentioned above, the constitution confers extraordinary powers on the president to deal with the following 3 types of emergencies. 1) National emergency 2) Constitutional emergency 3) Financial emergency.

1) National Emergency (Art - 352)

Under Article 352, the president can declare a national emergency when the security of India or a part of it is threatened by war or external aggression or internal armed rebellion.

While the proclamation of emergency is in operation - 1) the executive authority of the states becomes subordinate to the union (2) the legislative authority of the parliament extends to the making of laws on the state list. (3) the operation of Act 19 relating to right to freedom is suspended, and (4) the president is authorized to suspend the right to move any court for enforcement of Fundamental Rights except those guaranteed under Article 20 and 21.

2) Constitutional Emergency (Art 356 & 365)

Under Art 356 on receiving report from the governor of a state or otherwise, if the president is satisfied that the governmental of that state cannot be carried on accordance with the provisions of the constitution, he may declare a constitutional emergence or president rule in the state.

When the president rule in imposed in a state, the president dismisses the state council of ministers headed by the chief minister. The state governor, on behalf of president carries on the state administration with the help of the chief secretary or the advisors appointed by the president : Further, the president either suspends or dissolves the state legislative assembly. The parliament passes the state legislative bill and the state budget.

The financial emergency

If the president is satisfied that the financial stability or credit of India is threatened, he may proclaim a financial emergency under Act 360. When such emergency is in operation, the president can issue necessary directions to any state, including those for the reduction of salaries and allowances of persons serving in the state and union government including the judges of the supreme court and High Courts.

The proclamation of emergencies detailed above have to be approved by parliament within one month in case of national emergency and two months in case of president rule and financial emergency. The national emergency continues for six months and can be extended to an indefinite period with an approval of parliament for every 6 months. The president rule continues for 6 months. It can be extend for a maximum period of 3 years with the approval of parliament for every 6 months. The financial emergency continues indefinitely till it is revoked.

Check your progress - 1

Note : 1) use the space given below for your answer.

2) check your answer with those given at the end of this unit.

1. Explain the method of election, qualifications, term and removal of president of India.

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2. Discuss the powers and functions of president of India

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8.3 PRIME MINISTER OF INDIA

The Prime Minister occupies a unique position in the political system in general and council of Ministers in particular. He is described as "the key stone of cabinet arch." The Indian P.M. is the creation of the constitution which gives formal recognition to his pre-eminence position.

8.3.1. Appointment, Tenure

According to Act 75 of the constitution, the P.M. is appointed by the president and the other ministers are appointed by the president on the advice of the P.M. The president has to appoint the leader of the majority party in the Lok Sabha as the P.M. But, when no party has a clear majority in the Lok Sabha, then the president may exercise his personal discretion in the selection and appointment of the P.M.

The P.M. may be a member of any of the two Houses of parliament. The term of the P.M. is not fixed and holds office during the pleasure of the president. However, this does not mean that president can dismiss the P.M. at any time. So long as the P.M. enjoys the majority support in the Lok Sabha, he cannot be dismissed by the president. However, if he loses the confidence of the Lok Sabha, he must resign or the president can dismiss him.

8.3.2. Powers and functions

1. The Prime Minister enjoys enormous powers. It is the P.M. who forms the council of Ministers and distributes portfolios among them. It is he who presides over the meetings of the cabinet and determines what business shall be transacted at these meetings. He can reshuffle his cabinet as he pleases. In case there is a difference of opinion between the P.M. and another minister it is the latter who must either yield or resign. It is through the P.M. that the collective responsibility of the council of Ministers is enforced. Other ministers are directly responsible to the P.M.
2. The P.M. is a linchpin of the government. He is actually responsible for the emulation and

execution of the government's policy. He has the right to exercise general supervision on individual ministers. He co ordinates the work of various ministers and resolves differences among them.

3. The P.M. acts as the connecting link between the president and the cabinet, Art 78 of the constitution enjoins upon the P.M. the duty to communicate to the president all decisions of the council of Ministers and to furnish such information relating to the administration of the affairs of the union and proposals for legislation as the president may call for. It is for P.M. alone to report to the president the substance of cabinet discussions.

4. The P.M. is also the main link between the cabinet and parliament. He is the chief spokesman of the government in parliament. He is the leader of the parliament. It is he who makes major policy annonncements. He intervenes in the debates of general importance whenever he finds this necessary to clarify government's position or policy. His dual role position as head of the government and leader of parliament makes him the real leader of the nation.

It is obvious that the P.M. has vast and stupendous powers. As a matter of fact, the entire list of powers formally vested in the president are in reality the powers of the P.M. Thus the P.M. is the pivot of the whole system of government.

The Prime Minister's supremacy, however, depends upon the personality of the individual concerned. It varies with the character and personality of man who holds it.

Check your progress - 2

Note : 1) use the space given below for your answer.

2) check your answer with those given at and this unit.

1. Discuss the functions and role of the Prime Minister of India

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8.4 COUNCIL OF MINISTERS.

The constitution provides for a council of Ministers, with P.M. as its head, to aid and advise the president. The president is required to act according to its advice.

8.4.1 Appointment, Tenure etc.

The president first appoints the P.M. and then on his advice appoints other ministers. This means that president can appoint only those persons as ministers who are recommended by the P.M. usually, the members of parliament, either Lok Sabha or Rajya Sabha, are appointed as ministers. A person who is not a member of either House of parliament can also be appointed as a ministers. But, whitin six months, he must become a member of either House, either by election or by nomination. If he does become a member of parliament, he ceases to be ministers.

The tenure of the council of Ministers is not fixed. Art 75 of the constitution declares that ministers hold office during the pleasure of the president, which really means that the ministers remain in office so long as they enjoy the confidence of the majority in the Lok Sabha or so long as the P.M. does not resign. The resignation of the P.M. means the resignation of the entire council of Ministers. The Lok Sabha can dismiss the council of Minister by passing a vote of confidence against the ministry.

The council of ministers consists of three categories of ministers, namely, cabinet ministers, ministers of state, and deputy ministers. The difference between them lies in their respective ranks, emoluments and political importance. At the top of all these ministers stands the P.M.- the supreme governing authority of the country.

The cabinet ministers head the important ministries of central government like home, defence, finance, external affairs etc. They are the members of the cabinet, attend its meetings and play an important role in deciding policies. Thus their responsibilities extend over the entire gamut of central governments.

The ministers of state can either be given independent charge of ministries or can be attached to cabinet ministers. They are not he members of the cabinet and do not attend the cabinet meetings unless specially invited when something related to their ministries are considered by the cabinet.

Next in rank are the deputy ministers. They are not given independent charge of ministries /departments. They are attached to the cabinet ministers or ministers of state and assist them in their administrative and parliamentary duties. They are not members of the cabinet and do not attend cabinet meetings.

There is one more category of ministers, called parliamentary secretaries. They have no departments under their control. They are attached to the senior ministers and assist them

in the discharge of their parliamentary duties. However, since 1967 no parliamentary secretaries have been appointed.

Check your progress - 3

Note : 1) use the space given below for your answer.

2) check your answers with those given at the end of this unit

1. Explain the composition and tenure of the council of ministers.

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8.4.2. Role and functions of council of ministers.

If the president is the nominal executive the council of ministers is the real executive. The functions of the council of ministers are numerous and varied. It rules the country and is the supreme executive of the nation. It determines the policy of the state and has full control over the administration. It functions can be studied as follows.

1) Policy making and administrative functions.

The cabinet decides and determines the general policy of the government of India, internal and external. It is the supreme policy formulating organ and general controlling body in the state. The council of ministers administers the affairs of the union government. It exercises control over the entire administrations of the country. It is the real executive of the nation. Each of its members is incharge of one or more departments. They are exercise control and administer their respective departments. The cabinet coordinates the working of the various departments of the government and thus secures harmony and cooperation.

2) Legislative Functions

The cabinet is responsible for initiating legislation. It prepares the legislative programs for the union legislature. All government measures. i e. important Bills are introduced by ministers who also pilot them and get them passed by the legislature. A bill not supported by the council of ministers cannot get passed in the parliament because the ministry enjoys the support of the majority.

The president summons, prorogues the sessions of parliament and disolve the Lok Sabha only in accordance with the wishes of the cabinet. Thus, the cabinet plays an important role in the sphere of legislation. The ministers take full and active part in the deliberative, legislative and financial functions of the parliament. The role of the cabinet in legislation is so vital that it would not be wrong to say that today it is the cabinet which legislates with the consent of the parliament.

3) Financial powers

Legally and constitutionally, the parliament is the custodian of national finances and exercises all powers in the financial sphere. However, in practice, the cabinet plays a leading role in this sphere also.

The budget is prepared by the cabinet (finance Minister). It is the cabinet which determines the estimated income and expenditure of the government, it lays down the financial policies of the government. The cabinet gets the budget passed by the parliament. The cabinet runs the financial administration in accordance with the provisions of the budjet passed by the parliament. All proposals for additional taxes emanate from the cabinet. Money bills can be introduced in the Lok Sabha only by the ministers. The budjet is always brought before the cabinet for discussion before its presentation to parliament.

Thus the council of ministers has full control over the internal and external policy and administration of the Indian union. The above account of the powers and functions of the council of ministers reveals the strong and central position that it occupies as the real and powerful executive in the Indian political system.

Check your progress - 4

Note : 1) use the space given below for your answer.

2) check your answer with those given at the end of this unit.

1. Examine the role and functions of the council of ministers.

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8.5 LET US SUM UP

In this unit we have studied the president of India as the nominal executive, method of election, term, impeachment procedure, legislative, executive, financial, judicial, military, emergency powers so on.

We have also discussed the powers and functions of P.M. and council of ministers as the real executive. Different categories of ministers and their status, role of the P.M. in the administration of the union government have also been studied.

8.6 KEY WORDS

Electoral college - A body of electorate constituted for the purpose of particular election

Impeachment - The process of framing charges against the president and judges of supreme court and High courts by legislative body.

Pardon - An act of grace which releases a person from punishment for same offence.

8.7 ANSWERS TO CHECK YOUR PROGRESS

Check Your Progress -1

1. See section - 8.2.1

Check Your Progress -2

1. See section - 8.2.2.

Check Your Progress -3

1. See section - 8.3.2

Check Your Progress -4

1. See section - 8.4.1

Check Your Progress -5

1. See section - 8.4.2

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UNIT -9: SUPREME COURT AND HIGH COURT. JUDICIAL ACTIVISM AND PUBLIC INTEREST LITIGATION

Structure

9.0 OBJECTIVES

This unit deals with the supreme courtand high court and also discuss Judicial activsm and public litigation. after going through this unit you will be able to ;

- Explain the organisation of Supreme Court of India
- Discuss the jurisdiction of powers of the supreme court.
- Explain the composition and organisation of High Court
- Examine the powers of the High Court
- Examine the importance of judicial activism, and
- Discuss the importance of public litigation.

9.1 INTRODUCTION

Along with the legislature and executive, the judiciary is one of the three basic organs of state. Judiciary is one of the pillars of democratic mansion. The judiciary exists to see that the laws are properly administered and the authority is not abused. Moreover, it is only through the judiciary that the powers of different organs of government are kept under control. A strong, independent and well-organized judiciary plays a vital role in a democratic system of government. Under the federal form of government like India judiciary plays an additional role as the guardian of the constitution.

With this introduction, let us proceed to discuss the organisation and powers of the supreme court and High court and the growing importance of judicial activism and public interest litigation in the following sections.

9.2 SUPREME COURT OF INDIA

The Supreme Court is the apex and final court of the Indian judicial system. It has been set up under the constitution to act as the custodian and final interpreter of the constitution and an arbiter of disputes between the states and union governments. It also acts as the protector of the fundamental rights of the citizens guaranteed to them by the constitution.. The supreme court, is thus, the highest tribunal of the land. Now let us discuss the composition, organisation, powers and jurisdiction of the supreme court in the following sections.

9.2.1 Composition and organisation of the Supreme Court.

Under the composition and organisation of the supreme court, the number of judges, their appointment, qualifications, term of office, grounds for their removal, remunerations, oath of affirmation etc., have to be discussed.

At present, the supreme court consists of one chief justice and 30 other judges, total 31 judges including the chief justice. The parliaments has the power to prescribe the number of judges. The power to increase or decrease the number of judges in the supreme court rests with the parliament.

9.2.1.1 Appointment of judges : Every judge of the supreme court is appointed by the president in consultation with such other judges of the supreme court and of the High Courts as the president deems necessary. But while appointing a judge, other than the chief justice, the chief justice of India shall always be consulted. In other words, the consultation of chief justice is obligatory in the case of appointment of other judges. The constitution provides for an appointment of one or more High Court judges or retired judges of the supreme court as ad hoc judges at any time when the quorum of the judges is not complete.

9.2.1.2 Qualifications : For appointment as a judge of the supreme court a person-

1) must be a citizen of India.and

2) should have been a judge of High court for 5 years or

3) should have been an advocate of a High court for at least 10 years or

4) must be a distinguished jurist in the opinion of the president.

From the above, it is clear that the constitution has not prescribed a minimum age for appointment as a judge of the supreme court.

9.2.1.3 Tenure of Judges : The constitution has not fixed the tenure of the judges of the supreme court. Once appointed the judges of the supreme court hold office until they attain the age of 65 years. A judge can resign his office earlier by addressing his resignation to the president. A judge of the supreme court can be removed from his office by the president on the recommendation of the parliament.

9.2.1.4 Remval of Judges : A judge of the supreme court can be removed from his office only on the ground of proved misbehavior or incapacity. He can be removed from his position by an order of the president passed after an address from each House of the parliament, supported by a majority of the total membership of that House and by a majority of not less than 2/3 members present and voting.

9.2.1.5 Remuneration : The salaries, allowances, privileges, leave and pension of the judges of the supreme court are determined from time to time by the parliament. A judge of the supreme court gets a salary of Rs. 90,000 per month. The salary of the chief justice is Rs. 1,00,000. In addition, each judge is also entitled to a free House and certain other allowances and privileges. The salary and allowances cannot be varied to their disadvantage after their appointment except during a financial emergency.

The retired chief justice and judges are entitled to 50% of their last drawn salary as monthly pension.

9.2.1.6 Oath of Affirmation : A person appointed as a judge of the supreme court, before entering upon his office, has to make and subscribe an oath before the president or some person appointed by him for this purpose.

9.2.1.7 Independence of Supreme court : The independence of the supreme court becomes very essential for effective discharge for the duties assigned to it. It should be free from pressures and interference of the executive and the legislature. It should be allowed to do justice without fear or favor.

The constitution has secured the independence of the judges in a number of ways.

1) security of service of the judges is assured. Though appointed by the president, the process of removing the judges from office is difficult and they can be removed only on the grounds of proved misbehaver or incapacity.
2) Salaries of judges are fixed and cannot be varied to their disadvantage during their term except during financial emergency. These salaries are charged on consolidated fund of India which are not voted by parliament.
3) The conduct of judges of supreme court is not to be discussed in parliament, except when a motion for their removal is under consideration.
4) After retirement, a judge of the supreme court is prohibited from pleading before any court
5) The court is free to recruit its staff and determine their service conditions.
6) The court has the right to punish any person for its contempt.
7) The jurisdiction of the court- cannot be curtailed.

Check your progress- 1

Note : 1) use the space given below for your answer.

2) check your answer with those given at the end of this unit.

1. Explain the composition, organisation of supreme court of India.

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9.2.2 Powers and Jurisdiction of supreme court.

Jurisdiction of Supreme Court

original jurisdiction	Appellate Jurisdiction	Advisory Jurisdiction
• Disputes between union and states and among the states	• constitutional cases	
	• civil cases	
	• criminal cases	
• Enforcement of Fundamental Rights		

Original Jurisdiction

The Supreme court of India exercises original, appellate and advisory jurisdictions. It is the final interpreter of the constitution. The original jurisdiction of the supreme court covers all disputes 1) between the centre and one or more states 2) between the centre and any state or states on one side and one or more states on the other. 3) between two or more states. 4) disputes regarding the enforcement of Fundamental Rights.

The Supreme court is empowered to issue writs including Habeas corpus, Mandamus, prohibition, certiorari and quo-warranto for the enforcement of Fundamental Rights of an aggrieved citizen. In this regard, the supreme court has original jurisdiction in the sense that an aggrieved citizen can directly go to the supreme court, not by way of appeal.

Appellate Jurisdiction

The supreme court enjoys wide appellate jurisdiction in constitutional matters, civil matters, criminal matters and in granting special leave to appeal.

In the constitutional matters, an appeal can be made to the supreme court from any judgement of a High court, if the High court certifies that the case involves a substantial question of law as to the interpritation of the constitution.

In civil cases, an appeal lies to the supreme court if the High court certifies that the case involves a substantial question of law of general importance; and the said question needs to be dicided by the supreme court.

In criminal cases, an appeal lies to the supreme court - 1) If the session judge has acquitted the accused, but the High court reversed the decision of the aquittal and sentenced the accused to death. OR 2) If the High court has taken before itself any case from a subordinate court and convicted the accused person and sentenced him to death. OR 3) If the High court certifies that the case is a fit- one for appeal to the supreme court.

Advisory Jurisdiction

The president may obtain the opinion of the supreme court on a question of law or fact which in his opinion is of public importance. If the president refers the same to the supreme court for advisory opinion, the supreme court is duty bound to give its opinion on the matter refer to it. However, the opinion of the supreme court is not binding on the president (Art - 143)

Protector of Fundamental Rights

The supreme court is the guardian and protector of the Fundamental Rights and liberties of the people. The court can declare a law as null and void if it encroaches upon the fundamental rights of the citizens.The court protects the fundamental right by issuing appopriate writ.

Interpreter of the constitution

The supreme court is the final interpreter and custodian of the constitution. It has been empowered to examine the constitutionally of laws passed by the legislature and declare them ultra vives if they contravene any of the provisions for the constitution.

Finally, the supreme court is also entitled to review its judgement in order to remove any mistake or error that might have crept in the judgement.

The supreme court is a court of Record.

check your progress -2

Note : 1) use the space given below for your answer.

2) check your answers with those given at the end of this unit.

1. Discuss the powers and jurisdiction of the supreme court.

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9.3 HIGH COURT

The High court stands at the apex of the state judicial organisation. The constitution provides a High court in each state. The constitution 7th Amendment Act, 1956 authorizes the parliament to establish a common high court for two or more states and union territory.

9.3.1 Composition and organisation of High court

Every high court consists of a chief justice and some other judges. The number of judges is to be determined by the president from time to time. Thus, the constitution does not specify the strength of the High court and leaves it to the discreation of the president. Accordingly, the president determines the strength of a high court from time to time depending upon its workload.

9.3.1.1 Appointment of Judges of High Court : The president appoints the judges and chief justice of a state High court. While appointing the chief justice, the president consults the chief justice of India and the governor of the state. While appointing other judges, the president consults the chief justice of the High court concerned along with the chief justice of India and the governor of the state. However, generally the senior most judge is always promoted as the chief justice.

9.3.1.2 Qualifications : To qualify for appointment as a judge of the High court, a person - a) must be a citizen of India. b) should have been an advocate of a High court for at least 10 years, or c) should have held judicial office in Indian territory for a period of atleast 10 years. The constitution has not prescribed a minimum age for appointment as a judge of a high court. Moreover, unlike in the case of supreme court, the constitution has no provision for appointment of a distinguished jurist as a judge of high court.

9.3.1.3 Tenure and Removal : The judges of the High courts hold office until they attentain the age of 62 years. A judge may resign his office earlier by submitting his resignation to the president. A judge of High court can also be removed from office by the president in the same manner as a judge of supreme court.

9.3.1.4 Remuneration : The salaries, allowances, pension etc. of the judge of a high court are determined from time to time by the parliament. A judge of the high court get a salary of Rs. 80,000 per month. The salary of chief justice of the high court is Rs. 90,000 per month. They are also paid sumptuary allowances and provided with free accommodation and other facilities like medical, car, telephone, etc.

9.3.1.5 Oath Of Affirmation : Every judge before entering upon his office shall make and subscribe before the governor or some person appointed by him an oath in the prescribed form.

9.3.1.6 Independence of the court : As in the case of the judges of the supreme court, the independence of the judges of the High court, is ensured by following provisions like security of tenure of the judges, difficult procedure for there removal, fixed service conditions, expenses charged on consolidated Fund, conduct of judges cannot be discussed, ban on practice after retirement, power to punish for its contempt, freedom to appoint its staff, the jurisdiction cannot be curtailed,, separation from the executive etc.

Check your progress- 3

Note : 1) use the space given below for your answer.

2) check your answer with those given at the end of this unit.

1. Discuss the composition and organisation of state High court.

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9.3.2 Jurisdiction and powers of High court

At present, a High court enjoys the following jurisdiction and powers :

1) original jurisdiction 2) writ jurisdiction 3) Appellate jurisdiction 4) supervisory jurisdiction 5) control over subordinate courts. 6) A court of record 7) power of Judicial Review.

Original Jurisdiction

original jurisdiction of a high court means the power to hear disputes in the first instance, not by way of appeal. It extends to the -

1) matters of admiralty, will, marriage, divorce, company laws and contempt of court.

2) disputes relating to the election of members of parliament and state legislatures.

3) Enforcement of fundamental rights of citizens

4) constitutional cases could be taken up under its jurisdiction. Every high court has the power to interprit the constitution.

Writ Jurisdiction

Art 226 of the constitution empowers a high court to issue writs including habeas corpus, mandamus, prohibition, certiorari, quo-warranto for the enforcement of fundamental rights of the citizen and for any other purpose. The writ jurisdiction of the high court under Art - 226 is not exclusive but concurred with the writ jurisdiction of the supreme court under Art-32

Appellate Jurisdiction

The high courts have appellate jurisdiction in both civil and criminal cases against the decisions of lower courts. In civil cases, the high courts hear the appeals against the decisions of district judges. In criminal cases, appellate jurisdiction of the high court extends to appeals from the dicisions of a sessions judge and additional sessions judge and from the decisions of chief Metropolitan Magistrate.

Supervisory Jurisdiction

A high court has the power of superintendence over all courts and tribunals functioning in its territorial jurisdiction (except military courts). In the exercise of this power, the high court is authorized to call for returns from such courts and to make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts.

Control over subordinate courts

As the head of the judiciary in the state, the high court has got on administrative control over the subordinate judiciary in the state. The control over the judges of the subordinate courts is exercised by the High courts in the following matters. (a) the high court is to be consulted by the governor in the matters of appointing posting and promoting district judges. (b) the high court is consulted by the governor in appointing persons to the judicial service of

the state, (other than the district judges) (c) the control over subordinate courts and granting leave to persons belonging to the judicial services is vested in the High Court.

A court of record

Every high court is a court record. Its judgements proceedings and acts of the high court are recorded as testimony. They are recognized as legal precedents and legal references. It has the power to punish for contempt of court.

Power of judicial Review

Every high court has the power to examine the constitutionality of legislative enactments and executive orders of both central and the state government on examination if there are found to be violative of constitution (ultra vices) they can be declared as unconstitutional and invalid (null and void) by the High Court, consequently, they cannot be enforced by the government.

check your progress - 4

Note : 1) use the space given below for your answer.

2) check your answer with those given at the end of this unit.

1. Examine the jurisdiction and powers of High court.

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9.4 JUDICIAL ACTIVISM

The last decade of the 20th century in India saw an increasing role of judiciary in the pursuit of its constitutional obligations. The lack of concern by legislature and executive for some pressing problems of the people and disappearance of the responsible and responsive governance by the executive have compelled the judiciary to enforce the rights of the people through novel and innovative strategies to meat the needs of the time. This novel strategly is the judicial activism.

Meaning of judicial Activism

Judicial activism, in fact, is not distinctly separate concept from usual; judicial activities.

The expression 'activism' means 'being active', 'doing things with decision.

Simply defined, judicial activism is an assertion of judicial power in cases wherein judiciary comes to face to face with legislative arbitrariness or executive abuses. Judicial activism fills the vacuum that non-activism of other institutions creates. The current phase of judicial activism draws its justifications from the reluctance of the legislature and executive to take hard and unpleasant dicisions.

In recent years, Indian judiciary has been becoming more and more active. The supreme court has been coming out with judicial decisions and directives aimed at the protection of public interest and human rights by giving directions to the bureaucracy and police. It has been using its power to deliver judgements, decisions and opinions for fighting executive apathy towards public needs and interests. It has been giving directions to public officials for checking environmental pollution, illegal constructions, encroachment on public property as well as for making government and bureaucracy more transparent and responsive to public needs and demands for efficiency and action.

It has been trying to activate government administration and public against corruption and other social evils. The public interest litigation system has been picking up and Lok Adalats is also taking a proper shape. The High courts have been intervening to prevent mis use of government power in making recruitment/ appointments, promotions. The courts have been trying to check malpractices on the part of public officials.

In May, 1995 the supreme court called upon the government of India to work for securing of a uniform civil code for all people as stipulated in the directive principles of state policy under Article 44. This was indeed an act of judicial activism. During 1996-2006 supreme court practiced activism in getting expenditure act in CBI cases against public servants alleged to have been involved in several scams and acts of indiscretion.

In other words, judicial activism means a pro-active approach of the judiciary towards prevailing socio-economic, political, administrative conditions in the country. It is aimed at securing a due implementation of laws, policies and programs by the executive. It constitutes a bold attempt on the part of the judiciary to act as effective guardian of law by acting to check executive and legislative apathy.

Causes of Judicial Activism

Ideally, parliament and executive are the custodian of honest public life. They should remove

the mask of corruption and initiate action against those who steal, cheat and deceive. But when the custodians themselves compromise with corruption or politicise it judiciary has to step in. This is 'what has happened.

The following trends are the causes of emergence of judicial activism, viz 1) expansion of rights of hearing in administrative process. 2) excessive delegation without limitation.3) Expansion of judicial control over discriationary powers. 4) expansion of judicial review over administration 5) promotion of open government 6) exercise of jurisdiction which is non-exist etc.

The phenomenon of judicial Activism has resulted because of inaction or over action of legislature and executive. Where the executive authorities have shirked their duty and turned blind eye to wanton acts of political corruption and loot by politicians, the judiciary has to act to enforce the rule of law. The judiciary has a duty to compel the executive to discharge its responsibility.

Course of Judicial Activism

The first major case of judicial activism through social action litigation was the Bihar under trials case. In 1980 it came in the form of a writ petition under Article 21 by some professors of law revealing the barbaric conditions of detention in the Agra protective Home. In this supreme court order for quick disposal of case, otherwise it amounts the violation of Fundamental Right of undertrials under Act 21.

In another case, three journalists filed a petition for the prohibition of the prostitution trade in which women were bought and sold as cattle.

The Supreme Court began to cognisance of custody deaths, bride burning and rape in police station. High court judges began to visit prisons to check the living conditions of prisoners.

In 1994, it made a kind of history when the apex court asked the chief of the Army staff to pay Rs six lakhs to the widow and two children of an army officer who died due to "gross negligence and callousness" by the authorities concerned some 16 years before.

Supreme court is giving directions to the CBI and summoning the head of the CBI to report on the hawala case reveals the breakdown of other machineries of government. The court interference with the CBI working become inevitable because they protected the strong

and moneyed through a variety of tactics of delay and technical evasion while the less fortunate rotted in jails for petty offences without trial date in sight.

In a country hit by rampant corruption and constant erosion of democratic norms, the supreme court orders and judgements during 1996, 1999, 2000, 2003 came like a breath of fresh

air. The court in Jain Hawala, chandraswamy, and environmental degradation, CBI probe against

Naidu, capitation fee Karnataka 2003 cases exercised jurisdiction with courrage and creativity.

By sensitising the CBI and other central Iinvestigating Agencies to the need to perform their constitutional obligations, the apex court exposed magnitude of corruption in high places, particularly in the housing scandals, fodder seam, Lakhubhai pathak cheating, st kitts forgery, stamp paper scam cases.

Critical Estimate

Judicial activism has led to the prosecution of number of politicians and other public servants on various changes under Indian penal code, the prevention of corruption Act and TADA. Some were even sent to fail, and this happened for the first time in the post independence era. Some of the consequences of judicial activism are;

1) Corruption exposed in high places
2) Penal action initiated against top politicians and public servants.
3) Strict enforcement of environmental laws leading to closure or relocation of a large number of industries.

Some of the critics argued that judiciary encroaches upon the jurisdiction of the executive, the legislature and other independent and autonomous institutions in its activist role. However, this criticism unfounded, as in most cases, the judiciary was compelled to act because inactivity on the part of these bodies.

Secondly, it is said that judiciary enters an area where it lacks expertise and competence to regulate an affair. This is again a merely theoretical criticism. The judiciary has intervened when it finds itself compelled to act for reasons of law. The judiciary has intervened in cases where things here gone too wrong and authorities deliberately cover up that wrongs in the name of confidentiality, security, public interest etc.

Thirdly, it is criticized that by indulging in activism at the expense of their normal adjudicatory work, leads to further piling up of cases in the courts. This is not true. Not all courts are seized with such work. Even those engaged in activist roles do not spend all their time on this kind of work.

Finally, it is also argued that the judiciary may lose credibility if its directions given in such cases do not carried out. However, it is empowered punish noncompliance by invoking its contempt of court powers.

The critics point out that by making in roads into the executive and legislative domain without restraint the judicial activism has upset the constitutional system of checks and balances. B.P. Maurya, the general secretary of AICC accused supreme court of trying to become country's "third legislature". H.R. Khanna, former judge of supreme court, also criticised the supreme court for trespassing into spheres constitutionally assigned to the legislative and executive organs of the state. But former justice of supreme court O. Chinnappa Reddy refutes the allegations made by the critics.

In a country where the executive and the legislature had failed to discharge their constitutional duties, the Supreme court had no other choice but to step in and direct them to fulfill their obligations. Criticizing the role of the executive, the former Supreme court judge Ratnavel pandian asked if the executive abdicated its responsiblities, which forum could the public approach to seek solutions (barring the judiciary)

Conclusion :

While pursuing judicial activism, the judiciary must act more vigorously for eliminating judicial delay. It must make judicial procedures simple and less expensive. A plan for deciding pending cases must be formulated and implemented without any further delay. Fast Tract courts have been indeed helping this process. However, the need is to make the functioning of all courts efficient and active. This must be included in the agenda of judicial activism being pursued by the judiciary.

More ever while pursuing judicial activism, the judiciary should refrain from over stepping, its jurisdiction. It should in no way come in conflict with the legislature and executive.

Check your progress- 5

Note : 1) use the space given below for your answer

2) check your answer with those given at the end of this unit

1. critically examine the importance of Judicial Activism.

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9.5. PUBLIC INTEREST LITIGATION

Public Interest Litigation (PIL) acquired a new dimension under the stewardship of former CJ P.N. Bhagawath.

Public Interest Litigation is one which involves interest of public at large, ie where the public in general are interested in the vindication of some right or the enforcement of some public duty. It is the group interest which sought to be redressed through PIL. PILs have locus standi. PIL ensures speedy and in expensive justice. PIL ensures speedy and inexpensive justice for poor and ignorant section of society.

PIL is a new type of litigation in Indian context initiated by the supreme court of India to enable the poor and vulnerable sections of society to approach High Court and Supreme court to enforce their Fundamental Rights, PIL intended to make the judicial system accessible to the socially and economically lower strata of the society. Socially conscious individuals and action groups seek to bring justice to people whose rights are violated, and who on their own could not approach the courts. The supreme court through its various decisions has evolved rules regarding PIL. Now any member of the public can initiate a proceedings on behalf of the aggrieved person (especially if the person is too poor or unable to move the court on his own) in either the High court or the supreme court for the enforcement of constitutional rights. Under the new arrangement, any citizen can file a writ petition even through a simple letter written on a post card which can be treated as a writ petition.

Where a government department or public authority is found to be transgressing the law or committing acts of oppression, injustice, exploitation or where it is guilty of such acts as pollution of water and environment for which there is no provision in ordinary civil or criminal law, anyone who is offended or injured can bring an action known as Public Interest Action or Social Interest Action. Through PIL the supreme court and High court have taken initiative in playing positive role in esponsing the cause of the poor, undertrial, women, bonded labor, SC/ST and downtrodden etc. In many such cases the court has entertained petition

without court fees and technical requirements of presenting writs. An person, social worker, or voluntary organization can bring public injustice before the court.

Through PIL, the scope of Fundamental Rights has been vastly expanded by the judiciary. It has also forced the executive and legislature to discharge their constitutional obligations to the people, leading to accountability and transparency in administration.

Check your progress-6

Note: 1) Use the space given below for your answer

2) check your answer with those given at the end of this unit.

1 What is PIL, how it expanded the scope of fundamental Rights ?

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9.6 LET US SUM UP

In this units we have discussed the composition, organisation and powers of Indian supreme court and state High courts, we have also discussed how the supreme court and High courts, by their activist role, activated the government, administration and public against corruption and other social evils. Judicial activism fills the vacuum that non-activism of other institutions have created. A new concept ie PIL which has been initiated by supreme court to enable the poor to approach the High court and supreme court to enforce the Fundamental Rights has also been fully discussed in this unit.

9.7 KEY WORDS

Accountability – Answerability

Bureaucracy – The administrative machinery of state

Executive – The branch of govt concerned with the excention of policy

Public interest- The general or collective interest of the community.

9.8 ANSWERS TO CHECK YOUR PROGRESS

Check Your Progress -1

1. See section – 9.2. 1

Check Your Progress -2

1. See section – 9.2.2.

Check Your Progress -3

1. See section - 9.3..1

Check Your Progress -4

1. See section – 9.3.2.

Check Your Progress -5

1. See section – 9.4

Check Your Progress -6

1. See section – 9.5

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UNIT-10: STATE GOVERNMENT – LEGISLATURE, GOVERNOR, CHIEF MINISTER AND COUNCIL OF MINISTERS

Structure

10.0 OBJECTIVES

This unit deals with the legislatare, Goveronr, chief minister and council of ministers. After going through this unit you will be able to ;

- Explain the composition, organisation and powers and functions of state legislature.
- Discuss the role of governor in state administration.
- Explain how the chief Minister is appointed, his term and his powers and functions.
- Discuss the composition, term, categories of state council of Ministers as well as the functions of the council of Ministers.

10.1 INTRODUCTION

India is federal state consisting of a union government and many state governments and union territories. The constitution contains provisions for the governance of union as well as states. The constitution of India provides the same pattern of government, that is , parliamentary system, both at the centre and the states. As at the centre, state government has three structural organs, namely legislature of state, the state executive comprising governor, and the council of Ministers headed by the chief Minister and the state high court at the apex of the state judiciary. In the previous unit we have discussed the composition, jurisdiction of state high court. Therefore, in this unit we shall discuss only the state legislature and the state executive, i e governor, the chief Minister and council of Ministers.

10.2 STATE LEGISLATURE – COMPOSITION AND ORGANIZATION.

The state legislature occupies a pre-eminent and central position in the political system of a state. Articles 168 to 212 in part-VI of the constitution deal with the organization, composition, duration, officers, procedures, privileges powers of the state legislature.

There is no uniformity in the organization of state legislatures. Most of the states have an unicameral system, while others have bi-cameral system. At present (2009), only six states have two Houses (bicameral) . These are Andrapradesh, uttar Pradesh, Bihar, Maharashtra, Karnataka and Jammu and Kashmir.

The 22 states have unicameral system, Here, the state legislature consists of the governor and the legislative assembly. In the states having bicameral system, the state legislature

consists of the governor, the legislative council and the legislative assembly. The legislative council (vidhan parishad) is the upper house(second chamber or house elders), while the legislative assembly (vidhana sabha) is the lower house (first chamber or popular chamber)

The constitution provides for the abolition or creation of legislative councils in states. Accordingly, under Article 169, the parliament can abolisha legislative council, (where it already exists) or create it (where it does not exists), if the legislative assembly of the concerned state passes a resolution to that effect. Such a resolution must be passed by a majority of the total membership of that Assembly and 2/3 majority of members present and voting.

10.2.1 Legislative Assembly

The legislative assembly consists of not morethan 500 and not less than 60 members, directly elected by the people on the basis of universal adult franchise. A voter should be a citizen of India, should have attained 18 years of age and his name should be in the voter list.

For the purpose of election, the state is divided in to as many territorial constituencies as there are seats in the Assembly. The constitution provides for reservation of seats for SC/ ST in the Legislative Assembly of each state in proportion to their population.

The governor can nominate one member from the Anglo-Indian community, if the community is not adequately represented in the Assembly.

A candidate seeking election to the Legislative assembly of a state (1) must be a citizen of India; 2) must not less than 25 years of age and 3) must possess such other qualifications as may be prescribed by law made by parliaments. A person can be disqualified from the membership of Legislative assembly if he holds an office of profit under the Govt of India or of a state or is of unsound mind or is an insolvent.

The tenure of Legislative Assembly is 5 years, but the governors can dissolve it earlier. In case of an emergency its life may be extended by Law of Parliament one year at a time, but in any case not beyond six months after the emergency ends.

The Assembly elects its own presiding officer, called speaker, who conducts its business. During the absence of speaker, from any sitting of the Assembly, the Deputy Speaker, who is also elected by the house, acts as speaker.

One-tenth of the total number of members forms the quorum of any meeting of the House.

10.2.2 Legislative Council.

The Legislative Council is the Upper House and an indirectly elected body. The maximum strength of the council is at 1/3 of the total strength of the Assembly and the minimum strength is fixed at 40. It means that the size of the council depends on the size of the assembly of the concerned state.

Of the total number of members of the legislative council : 1) 1/3 are elected by the members of local bodies in the state like municipalities, district boards etc. 2) 1/12 are elected by graduates of three years standing and residing within the state. 3) 1/12 are elected by the teachers of three years standing in the state, not lower in standard than secondary school. 4) 1/3 are elected by the members of the legislative assembly of the state from among persons who are not of members of the assembly, and, 5) the reminder (i e 1/6) are nominated by the governor from amongst persons who have special knowledge or practical experience of literature, science, art, cooperative movement and social service.

Thus 5/6 of total number of members of the legislative council are indirectly elected and 1/6 are nominated by the governer. The members are elected in accordance with the system of proportational representation by means of a single transferable vote.

In order to become a member of the legislative council, a person should be a a) Citizen of India, b) must not less than 30 years of age, c) must possess such other qualifications as may be prescribed by the parliament. However, he should not be of unsound mind, an insolvent and should not hold any office of profit under any government.

Like Rajysabha, the legislative council is a permanent body not subject to dissolution. But 1/3 of its members retire every second year so, a member continuous as such for six years. The vacant seats are filled by fresh election and nomination by the governor.

The legislative council elects its own chairman and Deputy Chairman from amongst its own members to conduct its business.

10.2.3 Powers and Functions of state Legislature.

The Legislatures of the states in the Indian Union are not sovereign law making bodies. They do not enjoy unlimited powers. The legislator of a state performs the following functions.

1) Legislative Powers :

The legislature of each state is empowered to make laws on all the subjects of the state list and the concurrent list. In case a law made by state legislature on a concerned

subject comes into conflict with a union law, on the same subject, the union law prevails over the state law.

2) Financial Powers :

The state legislature has the power to levy taxes in respect of all subjects of state list. It is the custodian of the finances of the state. No revenue can be collected or tax can be levied or collected by the stage government without the consent of state legislature. The budget and all the other financial policies and programs of the state government become operational only after getting an approval from the state legislature. A money bill can be introduced only in the legislative assembly and after passage it goes to legislative council. The council can only delay its passage for only 14 days. In financial matters the decision of the Assembly is final.

3) Control over Executive :

Control over the state council of ministers is exercised by the state legislative assembly and little role has been assigned to the state legislative council. The council of Ministers is collectively responsible to the legislative assembly. The legislative assembly is empower to pass a vote of no-confidence motion against a ministry. If such a motion is passed the ministry has to resign. Both housed exercise control over the executive through asking questions, supplementary question, moving call - attention motion and adjournment motions and also by appointing various committees etc. All these activities keep the executive alert.

4) Electoral functions :

The elected members of the legislative assembly participate in the election of the President of India. They also elect the representatives of Rajysabha. The two houses also elect their own presiding officers to conduct the business.

5) Constituent function :

The state legislatures have no power to propose any amendment to the constitution which is the sole right of the parliament. But there are many provisions in the constitution which require for their amendment the concurrence of the state legislature. Thus the state legislature also take part in the amendment of the constitution.

House of state legislature

Powers and functions common to both houses	Powers exclusive to legislative Assembly
1) To exercise control over the executive	1) To pass a vote of No-confidence motion
2) To initiate Non-Money bills	2) To initiate Money bills.
3) Ordinance to be laid before both houses	3) To participate in the election of president
4) Bills amending the constitution to be passed by both houses	4) To pass resolution for the abolition or create-on of legislative council in state

Check your progress-1

Note: 1) Use the space given below for your answer

2) Check your answers with those given at the end of this unit

1. Explain the Composition and organisation of state legislature.

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2. Discuss the powers and functions of state legislature.

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10.3 GOVERNOR

The Governor is head of the state executive. The executive power of the state is vested in the governor and all the executive actions have to be taken in the name of the governor. Normally each state has its own governor, but under the constitution 7th Amendment Act,1956, the same person can be appointed as governor of one or more states.

10.3.1 Appointment, qualifications, Term and Emoluments.

The President of India appoints the governor of a state for a term of 5 years. He holds his office during the pleasure of the president. The term of 5 years is subject to the pleasure of the president. Further he can resign at any time by addressing a resignation letter to the president. The governor has no security of tenure and no fixed term of office. He may be removed by the president at any time. The president cannot only remove the governor from his office but also transfer him from one state to another.

The constitution lays down only two qualifications for the appointment of a person as a governor. These are : 1) He should be a citizen of India. 2) He should have completed the age of 35 years

Additionally, two conventions have also developed in this regard. First, he should be an outsider i e he should not belong to the state where he is appointed. Secondly, while appointing the governor, the president is required to consult the chief minister of the state concerned

Governor should not be a member of either house of parliament or a house of state legislature. He should not hold any office of profit.

Governor gets a monthly salary of Rs 1.10 lakh and he is entitled without payment of rent to use his official residence (Raj Bhavan). Before entering upon his office a governor takes an Oath before the chief justice of the High court.

10.3.2 Powers and functions of Governor.

Governor possesses executive, legislative, financial and judicial powers more or less analagous to the president of India. However, he has no diplomatic, military or emergency powers like the president.

The powers and functions of the governor can be studied under the following heads :

Executive powers

All executive powers of the state are vested in the governor. In the discharge of his responsibilities as the head of the state, the governor appoints chief minister and other ministers. The ministers hold their office during the pleasure of the governor. The governor makes rules for more convenient transaction of the business of the state government, and for allocation of such business among the ministers.

He appoints the advocate general of a state and determines his remuneration, the advocate general holds his office during the pleasure of the governor.

He appoints the chairman and members of the state public service commission.

He appoints the state election commissioner and determines his conditions of service and tenure of office.

He can seek information relating to the administration of affairs of the state and proposals for legislation from the chief minister.

He can recommend the imposition of constitutional emergency in the state to the president. During the period of president rule in a state, the governor enjoys extensive executive powers as an agent of the president.

He acts as the chancellor of universities in the state. He also appoints the vice-chacellors of universities in the state.

Legislative powers

As the governor is an inseparable part of state legislature, he possesses the following legislative powers.

1) He summons, prorogues the state legislature and dissolves the state legislative assembly.
2) He addresses the sessions of state Legislative Assembly or joint session of the two houses.
3) He sendes messages to either house or both houses regarding the bills pending in the legislature or otherwise.
4) He gives assent to or withholds his assent to the bill passed by the state legislature or return the bill (not money bill) for reconsideration of the state legislature. He can reserve the bill for the consideration of the president.
5) He nominates 1/6 of the members of the state legislature council from amongst the persons having special knowledge or practical experience in literature, science, art cooperative movement and social service. He nomminutes one member to the state legislative assembly from the Anglo-Indian community.
6) He promulgates ordinances when the state legislature is not in session. Such ordinances have the same force and effect as the Act of the legislature.

Financial Powerser

Every financial year the governor causes the annual budget to be placed before the state legislature. Money bills can be introduced in the state legislature only with his prior recommendation. No demand for a grant can be made except on his recommendation. He can make advances out of the contingency Fund of the state to meet any unforeseen expenditure. He constitutes a finance commission after every five years to review the financial position of the panchayats and the municipalities.

Judicial Powers

Governor can grant pardons, reprives , respites and remissions of punishment or suspend, remit and commute the sentences in certain cases over which state ligature has the power to make laws.

Governor is consulted by the president while appointing the judges of the concerned state high court.

He makes appointments , postings and promotions of judges in consultation with state high court.

A review of the powers of the governor gives an impression that he has got wide powers and not a constritutional head. However, the governor acts as a constitutional head of the state by carrying out this work in accordance with the advice of the council of Ministers. But extraordinary situation may arise to exercise his powers according to his discretion.

Check your progress-2

Note : 1) use the space given below for your answer.

2) check your answer with those given at the end of this unit.

1. How is the governor appointed ? Examine the powers and functions of the governor in the constitution of India.

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10.4 CHIEF MINISTER

In the scheme of parliamentary system of government provided by the constitutions, the governor is the nominal excutive authority (de jure executive) and the Chief Minister is the real executive authority (de facts executive). In the other words, the governor is the head of the state while Chief Minister is the head of the government. Thus, the position of the Chief Minister at the state level is analogous to the position of Prime Minister at the centre.

10.4.1 Appointment, Qualifications, Term

The constitution does not contain any specific procedure for the selection and appointment of the Chief Minister. Art 164 only says that the chief minister shall be appointed by the governor. However, in accordance with the conciction of the parliamentary system of government, the governor has to appoint the leader of the majority party in the state legislative Assembly as the Chief Minister. But in a hung house the governor may exercise his personal discretion in the selection and appointment of the Chief Minister. In such a situation, the governor usually appoints the leader of the largest party or coalition in the assembly as the Chief Minister.

The constitution says nothing about the qualification of the Chief Minister. Under the constitution all that is needed is that such a person is required to be a member of either house of the state legislature. A person who is not a member of the state legislature can be appointed as Chief Minister for six months, within which time, he should be selected to state legislature, failing which he ceases to be the Chief Minister.

The term of the Chief Minsrer is not fixed and he holds office during the pleasure of the governor. Actually, the Chief Minister stays in office so long as he enjoys the confidence of the legislative assembly. The salary and allowances of the Chief Minister are determined by the state Legislature.

10.4.2 Powers and Functions

The Chief Minister is the real executive head of the state. His main powers and functions are ;

1) Formation of Council of Minister:

The Chief Minister has the power of forming the government / ministry of his choice. All ministers are appointed by the governor on the advice of the Chief Minister.The Chief Minister is quite free in the choice of his Ministers, particularly in the case of single party

having clear majority in the assembly. He can appoint any member or even a non- member as Minister and allocate him any portfolio.

2) Distribution of Portfolios

The Chief Minister distributes portfolios among the Ministers. He decides who will be a cabinet Minister , or a Minister of state or a Deputy Minister. The Chief Minister also has the power to re-shuffle the portfolios of the Ministers if he so desires. He has the right to change the members of his team in the interest of the smooth sailing of the state administration. He can ask any minister to resign if he fails to heed his advice or carryout his desire. The Chief Minister can get any minister dismissed by the governor. The Chief Minister is the real maker of the council Ministers.

3) Chairman of the Council of Ministers.

The Chief Minister is the chairman of the cabinet, and as such he presides over its meetings. He prepares /determines the agenda of cabinet meetings.As chairman of the cabinet meetings he plays a key role in the deliberations held and decisions taken. Every decision of the state cabinet bears the imprint of his ideas and views.

4) Chief link between the governors and the council of Ministers

The Chief Minister is the main link between the governor and the Council of Ministers. It is his duty to communicate to the governor all the decisions, of the Council of Minsters, relating to the administration of the state and proposals for legislation. He also required to furnish such information about the administration and the legislative proposals as the governor may call for. He is the Chief advisor to the governor.

5) Coordinate the working of various Ministers

The Chief Ministers has the prime responsibility of Coordinating the work of various departments of the government. He resolves the conflicts or deadlocks between any two or more departments.

6) Appointment making powers

All the major appointments and promotions are made by the governor on the advice of the Chief Minister. The Chief Minister as such enjoys a vast power of patronage.

In addition to the above powers, the Chief Minister also performs the following functions : (a) He can recommend to the dissolution of the legislative assembly to the governor at

any time. (b)He is the Chairman of the state planning Board.(c) He is the Chief spokesman of the state government.

Thus, he plays a very significant and highly crucial role in the state administration. However, the discretionary powers enjoyed by the governor reduces to some extent the power, authority, influence and role of the Chief Minister in the state administration.

Check your Progress-3

Note : 1) use the space given below for your answer.

2) check your answer with those given at the end of this unit.

1) Discuss the powers and functions of the state Chief Minister.

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10.5 COUNCIL OF MINISTERS IN A STATE

As at the centre, there is also a council of Ministers in the state to aid and advise the governors in the exercise of his functions. As the real executive the state council of Ministers exercises vast real executive powers. The governor is the nominal executive. The state administration is run by the council of ministers in his name

10.5.1 Appointment, Tenure and Categories

The Chief Minister is appointed by the governor. The other Ministers are appointed by the governor on the advice of the Chief Minister. This means that the governor can appoint only those persons as ministers who are recommended by the Chief Ministers.

Generally only members of the legislature are appointed as Ministers. A person who is not

a member of the legislature can also be appointed as Minister but such minister must get himself elected or nominated to either house within a period of six months.

The Ministers hold office during the pleasure of the governor. The council of Ministers is collectively responsible to the state legislative assembly. Actually, the council of Ministers stays in office as long as it enjoys the confidence of the legislative assembly.

The total number of Ministers including the Chief Minister shall not exceed 15 % of the total strength of the legislative assembly of that state according to the 91st Amendment Act of 2003.

As at the centre, in the state also there are three categories of Ministers, viz., 1) cabinet Ministers, 2) Ministers of state ; and 3) Deputy Ministers . The cabinet Ministers hold major portfolios and attend meetings of the cabinet. They determine the policy and programs of the government. Ministers of state are not members of cabinet. The may or may not be given an independent charge of the Ministry.

10.5.2 Powers and Functions of the Council of Ministers

The powers and functions of the state council of Ministers are similar to those of the union cabinet. They may be summed up as follows :

1) The council of Ministers is the Chief policy formulating body of the state government .It is responsible for formulating and deciding the policies of the state.

2) Every Minister holds charge of one or more portfolios. As such, the Ministers are responsible for the proper and efficient functioning of their respective department, and giving effect to the decisions taken collectively by the council of Ministers.

3) The council of Ministers in the state is collectively responsible to the Assembly for policy decisions and individual for efficient running of their departments. The Ministers answer questions on the floor of the house and defend the policies of the government against the criticisms of the opposition. They answer interpellations, supplementary questions and reply

to debates, motions of adjournment, call attention motions etc.

4) The council of Ministers decide the legislative programme of the House and practically initiate all important bills. It is the council of Ministers who actually control and guide the deliberations of the legislature by dint of the majority they enjoy in the legislature

5) The council of Ministers has full control over the financial policy of the state. It determines the taxation structure of the state.

It exercises control over higher appoinments like constitutional authorities and senior secretarial administrators.

Thus the council of Ministers constitutes the real and supreme executive authority of state government. It is also Chief Coordinator of state administrations.

Check your progress -4

Note : 1) Use the space given below your answer.

2) check your answer with those given at the end of this unit.

1. Describe the composition and functions of the state council of Ministers.

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10.6 LET US SUM UP

The constitution established parliamentary government both in the centre and state.The state government has three organs viz the legislature, consisting of the governor and either one or two Houses, the executive, which comprises the governor and the council of Minister with the Chief Minister at its head. The High Court is the apex judiciary in the state.

In this unit we have discussed the composition, organisation and powers and functions of the state legislature ; the functions and role of governor in the state administration as well as the composition and appointment of Council of Ministers and the Chief Minister and their role in the state administration.

10.7 KEYWORDS

Hung House - a house of a legislature where in no party has won a working majority

Dissolution - Termination, ending of a legislature in order to have fresh election.

Bill - a draft of a law proposed to law - making body.

Adjournment Motion - A motion for discussing a specific and important matter that should have urgent consideration.

10.8 ANSWERS TO CHECK YOUR PROGRESS

Check Your Progress -1

1. See sections - 10.2 ; 10.2.1 and 10.2.2.

Check Your Progress -2

1. See section - 10.2.3.

Check Your Progress -3

1. See sections - 10.3 ; 10.3.1 and 10.3.2

Check Your Progress -4

1. See section - 10.4.2

Check Your Progress -5

1. See section - 10.5.1 and 10.5.2.

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UNIT-11:INDIAN FEDERALISM AND CENTRE - STATE RELATIONS

Structure

11.0 OBJECTIVES

This unit deals with the Indian federalism and center-State relations.After going therough this unit you will be able to ;

- Explain the nature of Indian Federalism
- Describe the federal features of Indian Constitution
- Disscuss the unitarry features of Indian constitution
- Examine the centre state relations in the sphere of legislative, administrative and financial.

11.1 INTRODUCTION

Political scientists have classified governments into unitary and federal on the basis of the nature of relations between the union government and states governments. A unitary government is one in which all the powers are vested in the union or central government and the regional or local governments derive their authority from the central government. On the otherhand, a federal government is one in which powers are devided between the central government and state governments by the constitution itself and both operate in their respective jurisdictions independently.

Though the centre and the state are supreme in their respective fields, the maximum harmony and coordination between them is essential for the effective operation of the federal system. Hence, the constitution contains elaborate provisions to regulatel the legislative, administrative and financial relations between the centre and the states.

With this introduction, let us proceed to discuss the nature of Indian federalism, whether is it purely federal or not and also to discuss the various dimensions of the relations between the cenre and the states.

11.2 INDIAN FEDERALISM

The constitution of India provides for a federal system of government though the term "federation" has nowhere been used in the constitution. The Indian federation is unique among the federal governments of the world. It is characterized by the high degree of centralization. The constitution of India can be both federal as well as unitary according to the requirements of time and circumstances. "The constitution of India is federal in form but unitary in spirit". In order to examine this statement let us examine first the federal features and unitary features of the constitution of India.

11.2.1. Federal features of the Indian Constitution

The following are the federal features of the Indian constitution :

1. Dual polity :

One of the features of federation is the existence of dual government. Hence the constitution of India establishes a dual polity consisting of union government at the national level and the states at the regional level.

2. Division of powers.

Another features of federation is statutory division of powers between the union government and state government. Accordingly, the constitution divided the powers between the centre and the states in terms of the union list, state list and concurrent list in the 7th schedule of the constitution. The union government deals with the matters of national importance like defence, foreign affairs, currency etc, which are 100 in the union list. The state governments, on the other hand, look after the matters of regional importance like public order, agriculture, health, local government etc, which are 61 in the state list.. Both the union and states can make laws on the subjects of concurrent list like marriage, divorce etc. which are 52.

3. Written constitution

The third feature of federation is written constituion. The powers and functions of both the central and state government should be defined by a written constitution, otherwise there will be confusion between the two governments regarding their respective jurisdiction. Hence, the constitution of India is a written document containing more than 400 articles and 12 schedules which defined the structure, organisation, and powers of central as well as state governments.

4. Supremacy of the constitution

The constitution of the federal government must be supreme in the sense that both central and state governments must operate within the jurisdiction prescribed by the constitution. The laws enacted by the centre and the states must conform to the provisions of the constitution. Otherwise, they can be declared invalid by the Supreme Court or High Courts through their power of judicial review.

5. Rigid constitution

Another feature of a federal government is that its constitution must be rigid. The Art 368 of the Indian constitution lays down special procedure of amendment of the constitution. It provides for the difficult method of amendment in respect of federal provisions. Such provisions can be amended only by the joint action of the central and state governments. Those provisions require for their amendment a special majority of the parliament and also an approval of half of the state legislatures.

6. Independent Judiciary

The existence of independent judiciary is one more feature of federal of government. Accordingly, the constitution of India provides for independent judicial system with the Supreme Court as its head (Art- 124). Supreme court is essential for federation in order to settle the disputes which may arise between the union and the states or among the states themselves. It is the final interpreter of the constitution. The constitution contains various measures like security of tenure to judges, fixed service conditions etc., to make the judiciary independent of the government.

7. Bicameral Legislature :

A bicameral legislature is, again considered as essential feature of a federal constitution. The Indian constitution also provides for a bicameral legislature at the union level, consisting of Lok Sabha (lower house) and Rajya Sabha (upper or second chamber), while Lok Sabha represents the people of India as a whole, the Rajya Sabha represents the states of Indian federation. Thus Rajya Sabha maintains the federal equilibrium by Protecting the interests of states against undue interference of the centre. All these features show the federal character of the Indian constitution.

11.2.2 Unitary features of the Indian constitution

Besides the above federal features, the Indian constitution contains the following unitary or non-federal features.

1. Strong centre :

The constitution has made the centre very strong by vesting more powers in it. The division of powers is in favour of the centre. The union list contains more subjects than the state list. The residentiary powers have also been left with the centre. The centre has overriding authority over the concurrent list.

2. Single constitution

Usually, under a federal system, the states have their own constitutions separate from that of the union. The Indian constitution, on the other hand, embodies not only the constitution of the union but also those of the states.

3. Power of parliament to reorganize the states, change their boundaries and names

Under Article 3 of the constitution, the parliament can change the territories, borders and names of states any time by simple majority. Thus, the right of the centre to change the boundaries of the states is against the federal set up.

4. Flexibility of the constitution

The constitution is more flexible than rigid as the bulk of the constitution can be amended by the unilateral action of the parliament. Further the power to initiate an amendment to the constitution lies only with the centre.

5. Appointment of governors

The governor, who is the head of the state, is appointed by the president. He holds office during the pleasure of the president. He also acts as an agent of the centre. Through him, the centre excercises control over the states, which against federal principle.

6. Emergency provisions

Emergency provisions of the Indian constitution (Arts 352, 356, 360) also reflect the unitarian spirit of the constitution. The constitution stipulates three types of emergencies, viz, national, constitutional and financial. During an emergency, the central government becomes all powerful and the states come under total control of the centre. It converts the federal structure into a unitary one.

7. Single Integrated Judiciary

The constitution of India provides for a single integrated judiciary common for the union and the states. Indian judicial system is a single hierarchical system with the supreme court at the apex, high courts below it. This single system of courts enforces both the central laws as well as state laws. The states in India, unlike in U.S.A. do not enjoy the right to have their own judicial systems.

8. Single citizenship

Inspite of the dual polity, the constitution of India adopted the system of single citizenship

There is only Indian citizenship and no separate state citizenship. The other federations like U.S.A. Switzerland and Australia have dual citizenship, i.e. national citizenship and state citizenship.

9. No equality of state representation in Rajya Sabha

The Indian constitution also deviates from the traditional principle of providing equal representation to the states in the upper house of federal legislature. The Indian constitution gives representation to the various states in the Rajya Sabha on the basis of their population. This is a clear departure from the federal principle.

10. Power of the union parliament over state list.

Parliament is also authorized by the constitution to make laws on any subject of the state list, if Rajya Sabha passes a resolution to that effect in the national interest. This means the legislative competence of the parliament can be extended without amending the constitution. Notably this can be done even when there is no emergency.

11. All India Services

The provision for common All India Services like IAS; IPS and IFS for the centre and the states, is again a unitarian feature of the Indian constitution. The members of the these services are recruited and trained by the centre but allocated to states and union territories. Thus these services violate the principle of federalism.

12. Centralized Election Machinery

The Election commission, a body appointed by the president, conducts the elections not only to the central legislature but also to the state legislature.

13. Common Conptroller and Auditor General

The CAG of India audits the accounts of not only the central government but also those of the states. But his appointment and removal is done by the president without consulting the states. Hence this office restrict the financial autonomy of the states.

14. President's veto over state Bills

When the governor reserves certain types of bills passed by the state legislature for the consideration of the president, then the president can with hold his assent to such bills. The president enjoys absolute veto over the state bills.

In addition to the above unitary features, the financial dependency of the states on the

centre, centralised planning commission, appointment of inquiry commissions against any state chief minister or minister also constitute non federal or unitary features of Indian federation.

11.2.3 Conclusion.

From the above it is clear that the constitution of India has deviated from the traditional federal systems like U.S.; Switzerland and Australia and incorporated a large number of unitary or non-federal features, the balance of power in favour of the centre. The Indian federation is tilting unique among the federal structures of the world. It is characterized by a high degree of centralization. The Indian constitution can be both unitary as well as federal according to the requirements of time and circumstances. The constitution of India is federal in form but unitary in spirit.

Check your progress - 1

Note : 1) use the space given below for your answer.

2) Check your progress with given at the end of this unit. Those

1. "The constitution of India is federal in structure, but unitary in spirit -" Discuss,

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11.3 CENTRE - STATE RELATIONS

The constitution of India, being federal in structure, divides all powers (legislative, executive and financial) between the centre and the states. Though the centre and states are supreme in their respective fields, the maximum harmony and coordination between them is essential for effective operation of federal system. Hence, the constitution contains elaborate provisions to regulate the relations between the centre and the states. The centre state relations can be studied under the three heads.

1) Legislative relations 2) Administrative relations and 3) Financial Relations.

11.3.1 Legislative Relations

The constitution divides the legislative authority between the union and the states in terms of three lists, viz union list, state list and the concurred list, in the 7th schedule of the constitution. The parliament has exclusive powers to make laws with respect to subjects enumerated in the union list. This list has at present 100 subjects, like define, banking, foreign affairs, currency, post and telegraph, Railways etc.

The state legislature has power to make laws with regard to those matters enumerated in the state list. This has at present 61 subjects, like public order, police, public health, agriculture, local government, fisheries etc.

Both union parliament and state legislature can make laws with respect to any matters enumerated in the concurrent list. This list has at present 52 subjects, like criminal law, and procedures, civil procedure, marriage and divorce population control, family planning, electricity, labour welfare, ---ngs, news papers etc., The 42nd constitutional Amendment Act, 1976 transferred 5 subjects to concurrent list to the state list, that is (1) education (2) forests (3) weights and measures, (4) protection of wild animals and birds and (5) administration of justice, constitution and organisation of all courts except supreme court and High Courts.

From the above scheme, it is clear that the matters of national importance are included in the union list. The matters of regional and local importance are specified in the state list. The matters which require uniformity of legislation is desirable are enumerated in the counteract list.

The residuary powers have been assigned to the union parliament.

Though under ordinary circumstances the central government does not possess power to legislate on the subject of state list, but under special conditions the union parliament can make laws even on the state subjects. In the following cases the union parliament can legislate on the state subjects.

1) When the Rajya Sabha authorises the parliament, by passing resolution with 2/3 majority, to make laws on the matter of in the state list in the national interest, then parliament can legislate on that matter (Art 249)

2) The parliament acquires the power to legislate on a matter in the state list while the national emergency in operation. (Art 250)

3) When the legislatures of two or more states pass resolution requesting the parliament to enact laws on a matter in the state list, then the parliament can make laws for regulating that matter. A law so enacted applies only to those states which have passed the resolutions. (Art 252)

4) The parliament can make laws on any matter in the state list for implementing the international treaties, agreements or conventions (Art - 253). This provision enables the central government to fulfil its international obligations and commitments.

5) When the presidents rule is imposed in a state, the parliament becomes empowered to make laws with respect to any matter in the state list in relation to that state.

From the above, it is clear that the constitution has assigned a position of superiority to the centre in the legislative sphere.

Check your progress - 2

Note : 1) use the space given below for your answer.

2) check your answer with those given at the end of this unit.

1. Critically examine the legislative relations between the centre and the states.

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11.3.2. Administrative Relations

The executive power has been divided between the centre and the states on the lines of the distribution of legislative powers. Thus, the executive power of the centre extends to the matters on which the parliament can make laws. Likewise, the executive power of a state extends to the matters on which the state legislature can make laws.

The constitution has placed upon the states the obligation to exercise their executive power in such a way as to ensure compliance with the union laws. It also enshrines that the executive power of the state should be so execrised as not to impede the exercise of the executive power of the union.

In addition to the above, the centre is empowered to give directions to the states in the matters of construction and maintenance of the means of communications declared to be national or military importance. It can also issue directions regarding the measures to be taken for the protection of the railways within the state. It may be noted that the state government cannot ignore the directions of the union government, otherwise the union government, can impose the president rule under Art 365.

The president may, with the consent of the State governmental, entrust to that government any of the executive functions of the centre, conversely, the governor of a state may, with the consent of the central government, entrust to that government any of the executive functions of the state.

To secure cooperation and coordination between the centre and the states, the parliament can provide for adjudication of any disputes or complaint with regard to the use, distribution of water of any inter-state river.

The president can establish under Ast 263, an inter state council to investigate and discuss subject and common interest between the centre and states.

It is the constitutional duty of the union to protect every state against external aggression and internal disturbance (Art-335), and to ensure that the government of every state is carried on in accordance with the provisions of the constitution.

The governor of a state is appointed by the president. He holds office during the pleasure of the president. He acts as an agent of the centre in the state. He submits periodical reports to the centre about the administrative affairs of the state. When the president rule is imposed in a state, the president can assume himself the functions of the state government.

The above points clearly reveal that the constitution assigns a superior role to the union in the sphere of administrative relations between the union and the states. The states have to work under the direction of the centre.

check your progress -3

Note : 1) use the space given below for your answers.

2) check your answer with those given at the end of this unit.

1. Discuss the administrative relations between the union and the states.

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11.3.3 Financial Relations

Articles 268 to 293 of the constitution deal with centre state financial relations. The constitution divides the taxing powers between the centre and the states in the following way.

Taxes exclusively assigned to the union

The parliament has exclusive power to hevy taxes on the subjects like customs and export duties, income tax, excise duties on tobacco, Jute, cotton etc., corporation tax, taxes on capital value of assets of individuals and companies Estate duty and succession duty and income from the earning departments like railways and postal and telegraph, taxes on any item covered in the union list.

Taxes and Duties livied and used by the states

Income from land revenue, income tax on agricultural lands; taxes on goods and passengers carried by road or inland water, taxes on vehicles used on roads, animals, boats, taxes on consumption or sale of electricity, tolls, taxes on lands and building; taxes on profession etc, have been assigned to the states.

1. There are certain taxes levied by the centre but collected and appropriated by the states For **ex:** stamp duties and duties of excise on medical and toilet preparations.
2. Service tax levied by the centre but collected and appropriated by the centre and the states
3. Taxes levied and collected by the centre but assigned to the states, For **ex:** taxes on sale or purchase of goods in the course of inter-state trade or commerce; taxes on the consignment of goods.
4. Taxes levied and collected by the centre but distributed between the centre and the states. Such taxes are tax on income, other than agricultural income, excise duties on items other than medical and toilet preparation.

Besides sharing of taxes between the centre and the states, the constitution provides for grants-in-aid to the states from the central resources. Art 280, provides for a finance commission as a quasi-judicial body. It is required to make recommendations to the president on the matters like principles which govern the grants-in-aid to the states by the centre out of consolidated Fund of India and the distribution of the net proceeds of taxes to be shared between the centre and states.

Check your progress - 4

Note : 1) use the space given below for your answer.

2) check your answer with those given at the end of this unit.

1. Discuss the financial relations between the centre and the states.

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11.4 LET US SUM UP

In this unit we have discussed the Indian federalism. By our discussion it is clear that the constitution of India is federal in structure that unitary in spirit. Indian union of states is characterized by unitarian federalism.

We have also discussed the various dimensions of relations between the centre and the states. In respect of legislative, administrative and financial relations the constitution reflects a distinct spirit of unitarianism. The working of the federal system during past reflects an increasing tendency towards centralism. The union government has at times behaved as a big brother over states. The states have been demanding more autonomy particularly in respect of financial matters.

11.5 KEY WORDS

Federal State : A state wherein powers and responsibilities of government are divided between union and the states.

Unitary state : It is a state in which all the powers are in the hands of one single central government.

Veto : The formal power to block a division or action through refusal of consent.

Dual polity : Existence of two levels of government

11.6 ANSWERS TO CHECK YOUR PROGRESS

1. See / sections - 11.2.1 and 11.2.2

2. See / sections - 11.3.1

3. See section - 11.3.2

4. See section - 11.3.3

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UNIT -12: TRANSPARANCY IN ADMINISTRATION - RIGHT TO INFORMATION

Structure

12.0 OBJECTIVES

This unit deals with the right to informationact 2005. After going through this unit you will be able to ;

- Explain the meaning of transparency is administration
- Explain the significance of Right to Information
- Examine the efforts made in India towards to right to information
- Bring out the main features of Right to Information Act 2005; and
- Discuss the tasks ahead in the impalements of Right to Information Act.

12.1 INTRODUCTION

Ours is an age of deepening and expansion of democracy. The role of people in the governance process is now receiving universal attention as an active participant in the day-to-day governance especially at the local and decentralized level. It is in this train of thinking that accountability as well as transparency and information have been identified in the 1992 word Bank document on 'Governance and Development.'

The citizen's right to information is increasingly being recognized as an important instrument to promote openness, transparency and accountability in public administration. The citizens, the consumers of public services, the beneficiaries of development programmes, the civil society organizations, the business and commercial houses- all must get the information they require from the public authorities relating to their administration or decisions. This is only possible, if the administration is accountable and transparent enough and provide them with information on their aims, policies and programs. This unit focuses on the pertinence of right to information and how things can be improved in this regard.

12.2 MEANING OF TRANSPARENCY IN ADMINISTRATION

The oxford English Dictionary defines 'transparent as 'frank', open, candid, ingenuous. Transparency is thus the autonomy of secrecy, which is the traditional hallmark of public administration. While secrecy is essential in certain sectors of sovereignty, the general policy should be to place public administration in a glass house and let its functioning be known to the larger society. In the context of government functioning "openness" means giving everyone the right to have access to information about the various decisions taken by government and

the reasoning behind them. Right to information, citizen's character, etc, are means of ensuring transparency in administration. More and more information about the activities of public must be made public, Governmental information must be disseminated to the public on payment of prescribed fee.

Various factors like changing socio-economic conditions, increased awareness of the public about their rights, the need to have fully accountable and responsive administration and growing public opinion against secrecy as enhancing the chances of abuse of authority by government functionaries have led to the demand for a greater transparency in governmental functioning. However, complete openes is neither feasible nor desirable. Accordingly a balanced approach to openes in governmental functioning has to be devised.

12.3 SIGNIFICANCE OF RIGHT TO INFORMATION

1. There is considerable evidence to suggest that a government, which operates in greater secrecy, is more prone to corruption as compared to a government, which operates in greater opennes. This is why, the right to information is considered as a significant step in empowering the people to combat corruption.

2. Secondly, the right to information helps to strengthen the foundations of democracy. A democratic government needs to be based on the trust of the governed. It should therefore, function in public view as much as possible so that the citizens know about its aims, policies and programmes and help the government to accomplish them. Maximum secrecy in governmental functioning, on the contrary, would tend to promote corrmption, oppression, nepotism and misuse or abuse of authority and thereby, alienate the government from the governed. Information is vital for making the government responsive to public needs. Openness or transparency in administration is regarded as an essential ingredient of democracy and right to information as a fundamental democratic right.

3. Thirdly democracy, to be effective and meaningful, should have responsive administration which is a bilateral process. On the one side, administrations required to be citizen-centric, i.e. it should be responsive to the citizen's legitimate needs, aspirations and grievances. On the other side, the citizens are required to be cooperative, and yet vigilant. It is the eternal vigilance of the enlightened citizens is the best guarantee of democratic government. There is no denying fact that the right to know is an effective means of the citizen's enlightenment. It is this right which gives them access to government departments

and documents and thereby enables them to acquire knowledge of what is happening in the government.

4. Fourthly, the right to information tends to remove unnecessary secrecy regarding the decision making process in the government and thereby helps to improve the quality of decision making in public and administration. It enables the citizens to know about the government decisions and the basis on which they are made

5. The right to information is an effective means to strengthen grass roots democracy and ensure people's participation in local governance and development activities. It also bring local governments under public scrutiny and thereby help them to avoid "costly mistakes".

check your progress -1

Note : 1) use the space given below for your answer

2) check your answer with these given at the end of this unit.

1. Explain the meaning of transparency in administration and discuss the significance of the right to information.

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12.4 RIGHT TO INFORMATION IN INDIA

In India, the first political commitment to the citizen's Right to Information came up on the eve of the Lok Sabha elections in 1977 as a corollary to public resentment against, suppression of information, press censorship and abuse of authority during the internal emergency of 1975-77. In

its election manifesto of 1977, the Janatha party promised "an open government".

Inspite of such a strong commitment there was no progress towards transparency and openness in one governmental functioning. The Right to Infirmation movement initiated by Rajasthan has been quite successful.

In 1997, the Government of India had set up a working group on Right to Information and promotion of open and Transparent government. It was entrusted with the responsibility

of examining the feasibility of introducing a Right to Inforamation Act. The working group accepted the following broad principles for the formulation of legislation.

1) Disclosure of information should be the rule and secrecy the exception.

2) Exceptions should be clearly defined.

3) There should be an independent mechanism for adjudication of disputes between the citizens and public Authority.

Later on the conference of chief Ministers held on 24 May 1997 also recognised the need for the introduction of legislation on Right to Information. The chief ministers recognised that secrecy and lack of opennes in government business is largely responsible for corruption in official dealings.

Subsequently, the NDA government declared: "our first commitment to the people is to give a stable, honest, transparent and efficient government capable of accomplishing all round development. For this the governmental shall introduce time bound program of needed administrative reforms". In pursuance of this commitment, NDA government introduced the "Freedom of Information" Bill, in 2000 in the parliament. Subsequently, the freedom of Information Act (2002) was passed providing for accountable government and ensuring for every citizen the freedom to secure information from the central and state public authorities. However, the Act could not be enforced due to lack of notification and non framing of Rules by the bureaucracy.

Next political. Regime that emerged was the united programme Alliance under the congress leadership (UPA). The UPA government ultimately enacted the new law-the Right to Information Act. The Freedom of Information Act, 2002 was replaced and the new Act came into force on 12 October, 2005.

State- Level Laws

The RTI laws were enacted by the state governments - Tamil Nadu (1997); Goa (1997), Rajasthan (2000); Karnataka (2000); Maharashtra (2002) Madhay Pradesh (2003); J & K (2004)

12.5 RIGHT TO INFORMATION ACT- 2005; MAIN FEATURES

The Right to Information Act -2005 seeks to provide every citizen the freedom to secure access to information under control of public authorities. The following are some of the salient features of the Act.

1. All citizens shall have the right to information. (Subject to the provisions of the Act).
2. Every public authority shall provide information and maintain all records consistent with the operational requirement only catalogued, indexed and published.
3. The Act provides for the appointment of public Information officer (PIO) in all administrative units / offices as may be necessary to provide information to persons requesting it. Assistant PIOS are also to be appointed at each sub-division or sub-district level. These provisions are designed to being access closer to the people by ensuring that applicants can submit requests in their local area.
4. The Act lays down the time limits as 30 days for normal applications and 40 days where third party submission is to be called for. These time limits are reduced to a mere 48 hours

   where the information sought "concerns the life and liberty of a person".
5. The application fee is to be reasonable and no fee shall be charged for persons who are below the poverty line as determined by the government.
6. The Act provides for the establishment of new Information commission at the court and in all the states comprising chief information commissioner and 10 information commissioners. The commission can make any order required to bring about compliance with the law, including release of documents and publication of specified information. The central chief Information commissioner will be appointed by the committee consisting of the Prime Minister, leader of opposition and a union minister nominated by the Prime Minister.
7. Every PIO can be penalized Rs. 250 per day up to a maximum of Rs. 25,000 for not accepting application, delaying information release without reasonable cause and providing incomplete, incorrect and misleading information.
8. Information may be requested in writing, including by e-mail, and the request must be submitted to the PIO, where no response is received, this will be deemed to be refusal. The Act exempts providing of certain categories of imformation such as cabinet papers, information covering a wide range of central intelligence and security agencies etc.
9. The Act over rides the official secret Act, 1923. The Right to Information Act 2005 is a major improvement over all previous efforts.

Check your progress - 2

Note : 1) use the space given below for your answer.

2) check your progress with those given at the end of this unit.

1. Bring out the salient features of Right to Information Act- 2005

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12.6 IMPLEMENTING RIGHT TO INFORMATION - TASK AHEAD

Experience reveals that mere enactment of freedom of Information legislation would not be enough to provide open and transparent public administration. The first and foremost task, would be to suitably review and revise official secrets Act, 1923 and Indian Evidence Act, 1872 so as to replace negative provisions therein with suitable provisions, encouraging dissemination of information.

Secondly, suitable amendments in the conduct rules for government servants have to be made to enable them to disseminate to the people as much information as possible, central civil services (conduct) rules, for instance, forbid a government servant to commincate any person any official document or any information during the course of his official duties. A violation of this rule will subject to the civil servant to disciplinary action. Hence, apart from modification of the conduct rules concerning and official secrets Act, specific guidelines concerning dissemination of official information to the public have to be laid down

Thirdly, the most challenging task for operationalism the Right to freedom of information would be to bring about major changes in our administrative system so as to evolve and facilitate an altogether new entire of openness in place of the existing and age- old enltures of secrecy.

Lastly, implementation of the Right to Information would require on efficient information management system with the help of sophisticated information technology.

check your progress- 3

Note : 1) use the space given below for you answer.

2) check your answer with those given at the end of this unit.

1. Discuss the tasks ahead in the implementation of Right to Information Act 2005.

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12.7 LET US SUM UP

The mere conferment of the Right to Information without changing the prevalent style of governance would make the entire exercise futile. In the context of our present scenario characterized by the lack of political will and reluctant attitude of bureaucracy to recognize people's Right to Information, the role of civil society organisations would be crucial and significant in ushering in a new era of open, transparent and accountable governance. This is more so for a country like India, which has the unique distinction of being world's largest functional democracy. The more civil society organizations come forward to enlighten and mobiles the people at grass roots, the more would be the realization of the immense potential of the Right to information.

12.8 KEY WORDS

Accountable - having to give an explanation

Responsive - answering responding

Transparent - unmistakable; clear.

12.9 ANSWER TO CHECK YOUR PROGRESS

Check Your Progress -1

1. See sections - 12.2 and 12.3

Check Your Progress -2

1. See sections - 12.5

Check Your Progress -3

1. See sections - 12.6

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UNIT-13 : HUMAN RIGHTS-MEANING AND IMPORTANCE. UNIVERSAL DECLARATION OF HUMAN RIGHTS

Structure

13.0 OBJECTIVES

The Objective of this study is to give adequate exposure to the students regarding the meaning and importance of universal declaration of Human Rights. After studying this unit it will enable the student to appreciate the significance of this declaration in the light of changing global scenario and the 60th anniversary of the United Nations (on 14th September 2005)

13.1 INTRODUCTION

Millions of people around the world look to the United Nations to resolve problems that affect their daily lives. They expect the United Nations to work towards the improvement of their standard of living and enhance their enjoyment of fundamental rights and freedoms. The challenge of achieving universal respect for all human rights remains as difficult as ever.

The United Nations human rights mechanisms contribute to the United Nations early warning system. Since its creation in 1945, the United Nations has worked diligently and systematically to promote and protect human rights. It has enabled the international community to organize its response to human rights violations. Since 1979, special mechanisms have been created by the United Nations to examine specific country situations or themes from a human rights perspective. The United Nations Commission on Human Rights has mandated experts to study particular human rights issues. These experts now constitute what are known as the United Nations human rights mechanisms or mandates, or the system of special procedures. Although the mandate holders have different titles, such as special reporter, special representative or independent experts, each is considered as an expert on mission within the meaning of the 1946 Convention on Privileges and Immunities of the United Nations. This is why they are all referred to here as experts.

Yet the importance of human right seems to reclaim its position interns achieving the desired goal. The growing awareness of the need to protect and promote Human Rights is reflected in the introduction of the subject in to the curriculum at various stages of learning is yet another millstone to speak of it importance. It is in this direction that the process of covering world conference on Human Rights began officially by 1989. This infact adequately speaks of the importance of Human Rights in this era of a globalize world.

13.2 MEANING AND IMPORTANCE OF HUMAN RIGHTS

The presence of Human Rights is global and the context of human rights encompasses in the least and the most deprived.

Debate over this and several related issues have been heard within the UN system since the Organization's earliest efforts to define, promote and protect human rights.

Both development and human rights have as their main concerns survival, justice and human well being. In a sense, development can be viewed as the process by which all human rights are to be realised and human rights as the goal of development and a set of standards to be met through development.

Development was once defined almost solely in terms of economic growth. But development strategies oriented merely towards economic considerations have often failed to achieve social justice. In the process, human rights may have been infringed or denied.

Today development is understood to include participation in decision making, equal opportunity, equal access to resources and adherence to international human rights standards. It is also acKnowledge that no one model of development is universally applicable to all cultures and peoples. As a result of all these, people concerned with to the development and Human Rights are today seeking greater concern for Human Rights. As a result. Just about everybody is paying lip service to human rights these days. At the United Nations Conference on Human Rights in Vienna, Western nations are pushing for a more general acceptance of their human rights standards as in the rest of the world. A special international court as well as a High Commissioner for human rights are supposed to guard against violations of fundamental human rights. Minimum human rights standards are also made conditions for development cooperation by Northern donor countries. No visit by a high ranking official from a Western democratic state in a developing country will pass without the human rights situation being discussed and mentioned in the final press conference as an important point on the agenda.

In spite of this, it is hard to say whether the human rights situation in the world has actually improved. While in some countries, freedom, democracy and the rule of law have certainly gained ground, there are other countries where the situation is worse than ever. The most basic of all human rights is the right to life and security, but this right seems to be increasingly in danger. Statistics show that the number of wars in the world has been rising steadily since the end of World War II. At the moment almost 50 wars of different types are being waged around the world, most of them in Asia and Africa. Millions of people are affected by these wars and are either killed and wounded or drift around as refugees. Many are expelled fj-pm their homes as part of ethnic cleansing a common phenomenon not only in former

Yugoslavia but also in many other civil war type conflicts.

All these are serious human rights violations. But how can they be redressed can the international community be held responsible and asked to intervene in all these cases to help the victims of wars, operation and persecution to assert their human rights can the United Nations possibly be expected to be mounting peace making and peace keeping operations in 50 war type conflicts around the globe. Who is supposed to provide the troops, the logistics, and the money for such a gigantic undertaking.

Therefore when we speak of human rights and its importance we should also speak of human duties and responsibilities.

As we have the right to live in peace and personal freedom and security. We also have the duty to compromise and to bring our own house in order. Thus any discussion about the importance of Human Rights should cover with inter national and domestic situations and Rights and duty discourse This is about the importance Human Rights. The meaning of Human Rights however begins with defining it.

The definition of human rights, in the eyes of the Third World, not only includes political but also social and economic rights. They rightly argue that a person cannot enjoy and use his civil liberties unless he can meet his basic needs of food, shelter, and health care. Hence the demand to the rich industrial North not only to preach democracy and the rule of law, but also to assist the South in eradicating widespread poverty.

It we want to act on the improvement of human rights, we, must therefore, first shoulder our human duties the duty to keep the peace at home and to work for compromise between the various groups in society, the duty to balance out the economic interests and remove the staggering discrepancies in incomes and standards of living, the duty, also, to remove unfair barriers to international trade so that all nations have a chance to compete on equal terms. It is no use clamoring for human rights if we are not prepared to accept our human duties.

It is in this direction that they have brought the universal Declaration of Human Rights to the focus let us now read through this.

13.3 UNIVERSAL DECLARATION OF HUMAN RIGHTS

The United Nations human rights experts play a vital role in working towards the universal achievement of freedom from fear and want. They are not paid. Their reward is the satisfaction of working towards the realization of human rights, as the highest aspiration of the common people as the Universal Declaration of Human Rights proclaimed.

The system remains seriously under-resourced and has yet to achieve its full potential, however. Efforts are continuing to be made to strengthen the system to enable it to achieve the goal of universal respect for all human rights. With the cooperation of various actors, in particular Governments, United Nations bodies, and the non governmental sector, its effectiveness could be considerably enhanced.

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people.

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom.

Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms.

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge.

Now, therefore,

The General Assembly

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and educatio" to promote respect for these rights and freedoms and by progressive measures, national ai«. international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article-1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article-2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social orgin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non self government or under any other limitation of sovereignty

Article -3

Everyone has the right to life, liberty and security of person.

Article - 4

No one shall be held in slavery or servitude, slavery and the slave trade shall be prohibited in all their forms.

Article - 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article - 6

Everyone has the right to recognition everywhere as a person before the law.

Article-7

"All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article-8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article-9

No one shall be subjected to arbitrary arrest, detention or exile.

Article-10

"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.

Article-11

1. Everyone charged with a penal ofence has the right to be presumed innocent until proved guilty according to law in a public trail at which he has had all the guarantees necessary for his defence.

2. Non one shall be held guilty of any penal offence on account of any act or omissio which did not constitute a penal offence, under national or internatinal law, at the time when it was committed. Nor shall a heavier penality be imposed than the one that was applicable at the time the penal offence was committed.

Article-12

1 No one shall be subjected to arbitary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attack.

Article-13

1. Everyone has the right to freedom of movement and residence within the borders of each State.

2. Everyone has the right to leave any country, including his own, and to return to his country.

Article-14

3 Everyone has the right to seek and to enjoy in other countries asylum from persecution.

4 This right may not be invoked in the case of prosecutions genuinely arising from non political crimes or from acts contrary to the purposes and principles of the United Nations.

Article-15

1 Everyone has the right to a nationality.

2 No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article-16

1. Men and women of full age, without any limitation due to race, nationality or religion, . have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article-17

1 Everyone has the right to own property alone as well as in association with other.

2 No one shall be arbitrarily deprived of his property.

Article-18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom either alone or in community with other and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article-19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any mead and regardless of frontiers.

Article-20

1 Everyone has the right to freedom of peaceful assembly and association.

2 No one may be compelled to belong to an association.

Article-21

1 Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

2 Everyone has the right to equal access to public services in his country.

3 The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article-22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort aW international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Areticle-23

1. Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of a social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

Article-24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article-25

1. Everyone has the right to a standard of living adequate for the health and well being of himself and of his family, including food, clothing, housing and medical care and necessary social service, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article-26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the

strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among the nations, racial or religious groups and shall further the activities of the United Nations for the maintenance of peace.

3 Parents have a prior right to choose the kind of education that shall be given to their children.

Article-27

1 Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

2 Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article-28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article-29

1 Everyone has duties to the community in which alone the free and full development of his personality is possible.

2 In the exercise of his'rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

3 These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article-30

Nothing in this Declaration be interpreted as implying for any State, group of person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

The deep concern of the international community for the promotion and protection of human rights is clearly expressed in the charter of the United Nations, in which the peoples of the United Nations record their determination to reaffirm faith in fundamental human rights of men and women and of nations large and small, and for this purpose to practices tolerance

and live together in peace with one another as good neighbors and to employ international machinery for the promotion of the economic and social advancement of all peoples. Thus the importance of Human Rights in the declaration an the responsibility of one and all.

Check Your Progress - 1

Note : 1) Use the space given below for your answer.

2) Also check your answer with the clue given at the end of the Unit.

1. Write a note on meaning and importance of Human Rights?

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2. Discuss the various provisions under Human Rights.

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13.4 LET US SUM UP

One of the purposes of the United Nations, under Article 1, is "to develop friendly relation among nations based on respect for the principle of equal rights and self determination of peoples Another is to achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging tespect for human rights and for fundamental freedoms for all without destination as to race, sex, language, or religion.

The Charter authorises a number of organs to deal with questions of human rights.

Article 13, Article 62, Article 60.

Thus, Each of the six principal organs of the United Nations the General Assembly, the Economic and social council, the security council, the Trusteeship Council, the International Court of Justice and the Secretariat Plays an active role in the unceasing efforts of the United

Nations to promote and protect the realization of human rights and fundamental freedoms throughout the world.

13.5 KEYWORDS

Conscience - moral sense

Advent - appearance

aspiration - ambition

recourse - resort to

reaffirmed - upheld

fundamental - basic

13.6 ANSWER TO CHECK YOUR PROGRESS

Check Your Progress -1

1. See section 13.2

Check Your Progress -2

2. See section 13.3

13.7 REFERENCE BOOKS

Chakkravarthy .M : The Right to be Human, New Delhi, Lancer International, 1987.

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UNIT-14: DEVELOPMENT OF HUMAN RIGHTS AND FUNDAMENTAL RIGHTS, INTERNATIONAL LAW AND ITS POSITION IN INDIA

Structure

14.0 OBJECTIVES

The main objectives of this Unit are to

1. Assess the development of Human Right
2. Discribe whether it is enshrined in the constitution
3. Assess the relationship between Human Rights & International Law

14.1 INTRODUCTION

Human Rights are generally defined as the rights which every human being is entitled to enjoy and to have protected. All societies and cultures have in the past developed some conception of rights and principles that should be respected and some of these rights and principles have been considered universal in nature. The struggle for the recognition of human rights and the struggle against political, economic, social and cultural oppression, against injustice and inequalities, have been an integral part of the history of all human societies. The conception of the rights which every human being is entitled to enjoy by virtue of being a member of the human species has evolved through history in the course of these struggles. This is the central axis on which Human Rights function today.

14.2 DEVELOPMENT OF HUMAN RIGHTS

The origins of the contemporary conception of human rights can be traced to the period of the Renaissance and later of the Enlightenment of which humanism may be said to be the heart and soul. The system of views called humanism extolled man, stressed his essential with and dignity, expressed deep faith in his limitless creative potential, and proclaimed freedom of the individual and inalienable rights of the individual. The revolutionary movements that began to emerge from about the last quarter of the eighteenth century to oust despotic and authoritarian political regimes made rights of man which they considered inalienable and sacrd as the fundamental basis of their struggle as well as of the new order that they sought to build. The two most important declarations which inspired revolutionary movements the world over were the American Declaration of Independence and the French Declaration of the Rights of man and Citizen. The latter also had a marked universal character. The main concern of these movements was the ending of despotic rule establishment of democratic polities (though women continued to be excluded from it for long) and the protection of the liberties of the individual. A new element to the evolving concept of human rights was added by the socialist movement

which emerged in the nineteenth century with its stress on the abolition of class rule and the establishment of social and economic equality.

The contemporary conception of human rights and its universal nature and universal recognition, while based on the rich heritage of the past, should be seen in the specific historical context of the twentieth century. The history of the almost entire first half of the twentieth century is characterized by the prevalence of colonial rule in large parts of the world, the rise of authoritarian governments in many countries and the establishment of fascist barbarous and aggressive regimes in some countries on the one hand and the rise of national liberation movements in the colonies and of movements of democracy and social progress in various countries on the other. The twentieth century also saw the two most devastating wars in human history the twenty years of peace between the two being mainly a period of preparation f rot he second world War. Because of this, the period from 1914, when the First World War broke out, to 1945 when the Second World War ended has been described as the Age of Catastrophe. It was during the closing years of this Age of Catastrophe, during the war against iascism, that the conceptualization and articulation of human rights in their present meaning took place. The most significant feature of the new conceptualization was its universality. It was reflected in various declarations of the war aims proclaimed by countries allied against fascism and malitarism. It was expressed in the charter of the United Nations which began with the following words: WE THE PEOPLES OF THE UNITED NATIONS DETERMINED to save succeeding generations from the scourge of war which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom. The universal Declaration of Human Rights 1948 which was proclaimed in a little over three years after the UN Charter, an elaborate list of human rights intended as a common standard of achievement for all peoples and all nations is the contemporary statement of human rights which are intended to be universally applicable.

The Universal Declaration has been followed by other declarations which present in an elaborate from the human rights principles in respect of specific issues and aspects. There have also been many covenants/conventions which are also elaborate statements of specific rights relating to specific aspects. These covenants conventions may be considered in a sense

more important because the countries that are signatories to them have explicitly agreed to follow them.

It may be useful to refer to certain aspects of the evolution of the contemporary concept of human rights. It is common to refer to the evolving concept in terms of three generations of human rights. The first generation rights are those of the individual or the liberty oriented rights. These were meant to impose negative obligations on governments to desist from interfering with the exercise of individual liberties. These rights were among the major concerns of all liberal and democratic movements since the nineteenth century.

The second generation rights are those which can be said to be security oriented and provide for social economic and cultural security. These rights social economic and cultural are more positive in nature in that they make it the duty of the State to ensure that these rights are realized. The Universal Declaration of Human rights reflects the consensus on the principles which form the basis of the first and second generation rights.

The third generation of human rights are of relatively recent origin. They have evolved in response to various new concerns over which international consensus has emerged in recent years. These include environmental, cultural and and developmental rights. They are concerned with rights of groups and peoples rather than of individuals and include such rights as the right to self determination and the right to development. The developing countries have played a leading role in bringing about international consensus on these rights. The Declaration on the Right to Development adopted by the UN General Assembly in 1986 is the most important example of these rights.

Since the adoption of the universal declaration, there have been many controversies regarding the question of which rights are more important and which less. The representatives of some States had been asserting that civil and political rights are more important than economic, social and cultural rights. They also had serious reservations about acknowledging the right to development which, if effectively implemented would affect the existing pattern of economic and political power in the world. Other countries stressed the importance of economic, social and cultural rights and the right to development. These controversies, in principle, can be said to have been resolved when all human rights were recognized to be indivisible. The Vienna Declaration, issued after a conference in which representatives of 171 countries and hundreds of non governmental organizations participated, unambiguously affirmed that "All human rights are universal, indivisible, interdependent and interrelated". It has also been affirmed that democracy is the sole guarantor of individuals rights civil, political economic,

social and cultural and collective rights within States and within the community of States.

As stated earlier, the Universal Declaration has influenced the constitutions and the legal systems of various countries. Many countries are signatories to the covenants/ conventions on human rights which means that they have undertaken to implement them. The declarations, though statements of intent or principle, are equally applicable. Therefore, it is the responsibility of the governments to protect and promote all these rights. However, it is necessary to remember the distinction between human rights as articulated in international declarations and covenants/conventions and rights that are laid down in the law of the country and can be enforced, if necessary, through the intervention of the courts.

The record of the past half a century since the adoption of the UN Charter in the implementation of human rights and even in regard to preservation of peace has been dismal some have call it catastrophic. The necessity of building an understanding and concern for making human rights a reality has never been greater. It may be considered, without any exaggeration, an imperative of existence.

Education in human rights has been stressed in all human rights documents and has been viewed as an essential contribution to the development of a global human rights culture. This compilation has been designed with a view to making major human rights documents accessible to the large body of personnel involved din various sectors of education policy fhTfnulation, curriculum development, classroom and out of class teaching learning activities to enrich the human rights education programmes wherever and in whatever form they exist, and as the basis for promoting awareness of current issues and controversies relating to human rights.

Declaration of the Rights of Man and Citizen

In 1789 occurred the French Revolution. The storming of the fortress of Bastille, a state prison, by the people of Paris on 14 July that year symbolized the end of autocracy and of the old regime in France. The National Assembly of France which had started meeting in June 1989 adopted the Declaration of the Rights of Man and Citizen on 26 August 1789 as a preamble to the new constitution that it was framing for Frances. This Declaration was truly international in its appeal and inspired revolutionary and democratic movements in almost every country of Europe and in Central and South America and, later, in Asia and Africa. Reproduced below is the text this Declaration.

The representatives of the French people, constituted as a National Assembly, considering that ignorance, disregard or contempt of the rights of man are the sole cause of public

misfortunes and governmental corruption, have resolved to set forth a solemn declaration of the natural, inalienable and sacred rights of man. in order that this declaration, by being constantly present to all members of the social body, may keep them at all times aware of their rights and duties, that the acts of both the legislative and executive powers, by being liable at every moment to comparison with the aim of all political institutions., may be the more fully respected, and that demands of the citizens by being founded henceforward on simple and incontestable principles, may always redound to the maintenance of the constitution and the general welfare.

The Assembly consequently recognizes and declares, in the presence and under the auspices of the Supreme being, the following rights of man and the citizen.

I. Men are born and remain free and equal in rights. Social distinctions may be based only on common utility.

II. The aim of all political association is to preserve the natural and inprescriptible rights of man. These rights are liberty, property, security and resistance to oppression.

III. The principle of al sovereignty rests essentially in the nation. No body and no individuals may exercise authority which does not emanate from the nation expressly.

IV. Liberty consists in the ability to do whatever does not harm another, hence the exercise of the natural rights of each man has no limits except those which assure to other members of society the enjoyment of the same rights. These limits can only be determined by law.

V. Law may rightfully prohibit only those actions which are injurious to society. No hindrance should be put in the way of anything not prohibited by law, nor may any man be forced to do what the law does not require.

VI. Law is the expression of the general will. All citizens have the right to take part, in person or by their representatives, in its formation . it must be the same for all whether it protects or penalizes. All citizens being equal in its eyes are equallp admissible to all public dignities, offices and employment's, according to their capacity, and with no other distinction than that of their virtues and talents.

VII. No man be indicated, arrested or detained except in cases determined by law and according to the forms which it has prescribed. Those who instigate, expedite, execute or cause to be executed arbitrary orders should be punished, but any citizen summoned or seized by virtue of the law should obey instantly, and renders himself guilty by resistance.

VIII. Only strictly necessary punishments may be established by law, and no one may be punished except by virtue of a law established and promulgated before the time of the offence, and legally put into force.

IX. Every man being presumed innocent until judged guilty, if it is deemed indispensable to keep him under arrest, all rigor not necessary to secure his person should be severely repressed by law.

X. No one may be disturbed for his opinions, even in religion, provided that their manifestation does not trouble public order as established by law.

XI. Free communication of thought and opinion is one of the most precious of the rights of man. Every citizen may therefore speak, write and print freely, on his own responsibility for abuse of this liberty in cases determined by law.

XII. Preservation of the rights of man and the citizen requires the existence of public force. These forces are therefore instituted for the advantage of all, not for the private benefit of those of whom they are entrusted.

XIII. For maintenance of public forces and for expense's of administration common taxation is necessary. It should be apportioned equally among all citizens according to their capacity to pay.

XIV. All citizens have the rights, by themselves or through their representatives, to have demonstrated to them the necessity of public taxes, to consent to them freely to follow the use made of the proceeds and to determine the shares to be paid, the means of assessment and collection and the duration.

XV. Society has the right to hold accountable every public agent of administration.

XVI. Any society in which guarantee of rights is not assured or the separation of powers not determined has no constitution.

XVII Property being an invincible and sacred right, no one may be deprived of it except for an obvious requirement of public necessity, certified by law, and then on condition of a just compensation in advance.

14.3 FUNDAMENTAL RIGHTS

In order to end the exploitation of the masses, political freedom must include real economic freedom of the starving millions. The congress, therefore, declares that any constitution which

may be agreed to on its behalf should provide, or enable the Swaraj Government to provide, for the following:

1. Fundamental rights of the people, including
   i) Freedom of association and combination;
   ii) Freedom of speech and of the press;
   iii) Freedom of conscience and the free profession and practice of religion, subject to public order and morality;
   iv) Protection of the culture, language, and scripts of the minorities.
   v) Equal rights and obligation of all citizens, without any bar on account of sex.
   vi) No disability to attach to any citizen by reason of his or her religion caste or creed or sex in regard to public employment, office or power or honor, and in the exercise of any trade or calling.
   vii) Equal to all citizens in regard to public roads, wells, schools and other places of public resort.
   viii) Right to keep and bear arms in accordance with regulations and reservations made in that behalf.
   ix) No person shall be deprived of his liberty nor shall his dwelling or property be entered, sequestered or confiscated, save in accordance with law.
2. religious neutrality on the part of the state.
3. Adult suffrage.
4 Free primary education.
5. A living wage for industrial workers, limited hours of labour, healthy conditions of work, protection against the economic consequence of old age, sickness and unemployment.
6. Labour to be freed from serfdom or conditions bordering on serfdom.
7. Protection of woman workers, and specially adequate provisions for leave during maternity period.
8. Prohibition against employment of children of school going age in factories.
9. Right of labour to form unions to protect their interests with suitable machinery for settlement of disputes by arbitration.

10. Substantial reduction in agricultural rent or revenue paid by the peasantry and in case of uneconomic holdings, exemption from rent for such period as may be necessary, relief being given to small zaminadars wherever necessary by reason of such reduction.
11. Imposition of a progressive income tax on agricultural incomes above a fixed minimum.
12 A graduated inheritance tax.
13. Military expenditure to be reduced by at least one half of the present scale.
14. Expenditure and salaries in civil departments to be largely reduced. No servant of the state, other than specially employed experts and the like, to be paid above a certain fixed figure which should not ordinarily exceed Rs. 500 per month.
15. Protection of indigenous cloth by exclusion of foreign cloth and foreign yarn from the country
16. Total prohibition of intoxicating drinks and drugs.
17. No duty on salt manufactured in India.
18. Control over exchange and currency policy so as to help Indian industries and bring rerlief to the masses.
19. Control by the state of key industries and ownership of mineral resources.
20. Control of usury direct or indirect.

14.4 INTERNATIONAL LAW AND ITS POSITION IN INDIA

In the world community of nations sovereign states conduct their relations on a body of norms, treaties and other standards of conduct that together from the foundation of modern international law. International law has been applied frequently to relatively routine relations between states. To understand the nature of international law an insight into the dynamic nature of law becomes essential. Any law, national or international is a set of rules, combination of expectations and practices that help to govern human behaviour. According to Rourke(1993) certain features determine the dynamic nature of law. Firstly, all legal systems are dynamic, continually evolving systems. Second, no legal system is perfect. Even in law abiding societies, rules are broken and the guilty sometimes escape punishment. Third, law both reflects and directs a society. In other words, law often mirror the norms of a society. We legalize what we do in practice. People began wearing clothes long before there were laws against public nudity. Law, however, can also lead a society to change its behaviour by enacting philosophical

principles into required standards of conduct. In the United States, Laws and court decisions requiring the racial desegregation of schools and other public facilities preceded and facilitated the easing, although not the end, of racial bigotry. Fourth, law depends on a mixture of voluntary compliance and coercing to maintain order. Sometimes we may obey the law because we are afraid that if we do not we will be caught and punished. More often, people are law abiding because they agree with the law or recognize that laws are necessary to regulate society.

Thus, law is a process of evolution and growth. It evolves and advances from primitive nature to more sophisticated level in a political system.

Meaning of International Law

International law in its modern form is the result of the great political transformation that marked the transition from Middle Ages to the modern period of history. The development of a territorial state led to formation of the supreme authority, within the territory of the state. When this transformations was consummated in the 16th century the political world consisted of a number of states that within their respective territories were legally speaking, completely independent of each other (Moregenthau, 1973).

For an atmosphere of peace and order, in relation, among such sovereign entities it was inevitable that certain rules of law should govern these relations, and if anarchy and violence are not the order of the day, legal rules must determine the mutual rights and obligations in such situations and these core of rules came to be known as international law. Oppenheim (1905) an authority spoke of it as the name for a treaty of customary and conventional rules which are considered legally binding by civilized state in their intercourse with each other. if Fennwich 1920) defines it as the body of rules accepted by the general community of nations as defining their rights and the means of procedure by which those rights may be protected or violations of them redressed.

Jessup (1948) wrote that International law is generally defined as law applicable to relations between states Ellery C. Stowell (1931) explained that International law embodies certain rules relating to human relations throughout the world, which are generally observed by mankind and enforced primarily through the agency of the government of the independent communities into which humanity is degraded.

Y. Korovin (1962) a communist thinker defines contemporary international law as the international code of peaceful existence.

How International Law is made:

In a domestic political system the law is made through a constitution, a legislative body, as well as judicial decisions which establish guidelines and precedents for later decisions by courts. At times customary or common law also forms part of the sources of law along with settlement of disputes sometimes on the basis of equity.

Modern international law differs from the domestic law in its sources.

Article 38 of the Statute of the International Court of Justice identifies the sources of international law as follows:

a) International conventions (treaties), whether general or particular, establishing rules expressly recognized states.

b) International custom, as evidence of a general practice accepted as law.

c) The general principles of law recognized by civilized nations.

d) Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publications of the various nations, as subsidiary means for the determines of the rules of law (palmer and Perkins, 1976).

The treaties and decisions regulate relatins between states arising from variety of communications, exchange of goods and services and international organisations where nations cooperate for mutuality of interests. The general principle of law are those that are common to municipal legal systems of various nations. The judicial decisions were rendered by Permanent Court of Arbitration, Permanent Court of International Justice, the International Court of Justice, and military tribunal such as Neuremberg and Tokyo trials. Juristic opinions of Grotius, Openheim, Briery have also contributed in the evolution of international law. Some students of international law add a fifth course the pronouncements of international representative assemblies like the U.N. General Assembly.

These diverse sources imply that international law making is decentralized. There is no single institutional or intellectual source of law, besides, it remains uncodifed today which creates problems in its interpretations. Due to the unclear nature of the law, states try to interpret it in a manner so as to suit their national interest. Yet decentralization does not mean non existence of the law. Despite some inconsistencies the law exists.

Effectiveness of International Law

One of the charges leveled against the credibility of international law is that it exists only

in theory and not in practice. In the first place the violation of law does not mean absence of law. International law is effective in many areas (Chiu. 1987) Failure to flowed it does not disprove its existence, e.g. every domestic political system has a code of law for discipline and orderly society yet crimes, thefts, robberies and other such cases are always reported. Does that mean there is no law.

International law is most effective in functional international relations. Which ideal with routine, procedural, communications and trade mattters termed as low politics interactions. But international law is least effective in high politics interaction which involve political and security relations among sovereign states. Where vital national interests are involved government try to interpret international law in a manner so as to justify their actions rather than alter their actions to conform to the law.

In the ultimate analysis even in areas of high politics it is gradually becoming effective. The law does influence political decisions. It was Iraq's violation of international norms that triggered such an adverse reaction in the world and was demonstrated in the total solidarity in the U.N. against Iraq. Virtually all countries condemned Iraq's invasion of Kuwait and disagreed with its declaration that Kuwait was a province of Iraq. Almost all states honored the UN sanctions and a number of them sent military contingents too. In the end law had to be enforced. Iraq had detained hundreds of foreign hostages in violation of international law. This set off an intense reaction by the world community against Iraq and it eventually announced that all hostages wee free to leave. However, the effectiveness of international law like all legal systems, will be most effective when people demand that everyone, citizens and leaders alike, abide by its principles (Falk, 1989)

Limitations of International Law

Popular hopes and political declarations of goals have created certain illusions about peace through world law. Generally considered, legal and constitutional law applied in the domestic society are also applicable to international relationship and a world state is envisaged. It has been assumed that international law emerged from primitive society to creation of a state to the final establishment of an international order. This concept is considered invalid in the present context. While domestic law is imposed by the group that holds monopoly of organized force, international law owes its existence and operation to two factors; decentralized character of identical and complementary interests of individual states and the distribution of power among them. Where there is neither, there is no international law. International law is based on necessity and mutual consent.

International law is voluntary. Only those nations who obey are party to the agreement or treaty. Some nations conclude agreements among themselves and include it in the sphere of international law. Governments generally refrain from accepting the restraining influence that international law might have upon their foreign relations, use it to promote their national interests and yet evade any legal obligation that might have upon their foreign relations, use it to promote their national interests and yet evade any legal obligation that might be detrimental to their interests. Thus, international law becomes a tool in their hands for furthering national interests. The basic reason for this is the decentralized nature of international law which accounts for lack of precision and continues to sap its strength.

India is an open country with a vigorous press and a strong judiciary which has delivered some highly creative judgment to protect fundamental rights. Yet even these and other Indian institutions with substantive powers to safeguard the rights of India's citizens have failed to provide effective protection to the hundreds, if not thousands, of Indian citizens who have died after torture and ill treatment. The victims have been ordinary men and women, even children, some of them picked up on the flimsiest of criminal charges, and have come from nearly every state during the past decade. At least 459 of them have, since 1985, been deprived, in custody, of the most basic human right of all the right to life.

One welcomes the Indian Government's reiteration in June 1992 that India firmly believes in human rights. However, time and again government official have refused to acknowledge that the problem of torture exists.

No administration has shown the political will to bring about change we believe the government must act urgently to create an effective institutional framework to prevent Human Rights and related abuses. Officials charged with carrying this out it is felt must be given full assistance at every level of government.

Check Your Progress - 1

Note : 1) Use the space given below for your answer.

2) Also check your answer with the clue given at the end of the Unit.

1. Trace the development of Human Rights ?

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2. Write a short essay on International law.

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14.5 LET US SUM UP

Thus, the millions of people world around who are in search of Justice of Some kind will find Human Rights Fundamental Rights as redeeming while International law seeks to legalize and universalize them for the betterment of mankind.

14.6 KEY WORDS

despotic	-	tyrannical
Inception	-	beginning
redeeming	-	saving
abuse	-	mistreatment
prevent	-	avert

14.7 ANSWER TO CHECK YOUR PROGRESS

Check Your Progress -1

1. See section 14.2

Check Your Progress -2

2. See section 14.4

14.8 REFERENCE BOOKS

Chakkravarthy .M	:	The Right to be Human, New Delhi, Lancer International, 1987.
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UNIT-15 : SOCIAL AND GENDER DISCRIMINATION, TORTURE AND GENOCIDE'S, TWO HUMAN RIGHTS COVENANTS

Structure

15.0 OBJECTIVES

The main objectives of this Unit are to

1. Discuss the discrimination between and among people in the Society
2. To point out the gender discrimination torture and genocide in the society
3. To examine the social and gender discrimination as a major problem of Human Rights.

15.1 INTRODUCTION

1.5 million Armenians. 3 million Ukrainians. 6 million Jews. 250,000 Gypsies. 6 million Slqvaks. 25 million Russians. 25 million Chinese. 1 million Ibos. 1.5 million Bengalis. 200,000 Guatemalans. 1.7 million Cambodians. 500,000 Indonesians. 200,000 East Timorese. 250,000 Burundians. 500,000 Ugandans. 2 million Sudanese. 800,000 Rwandans. 2 million North Koreans. 10,000 Kosovars. Genocides and other mass murders killed more people in the twentieth century than all the wars combined.

Social and gender discrimination torture, and Genocide are the world's worst intentional human rights problem. But it is different from other problems and requires different solutions. Because genocide is almost always carred out by a country's own military and police forces, the usual national forces of law and order cannot stop it. International intervention is usually required. But because the world lacks an international rapid response force, and because the United Nations has so far been either paralyzed or unwilling to act, genocide has gone unchecked. Similarly the Torture by state agencies and gender discrimination. The only way to fight it is the way through collective and through the International Campaign.

Campaign is an international, de centralized, global effort of many organizations. In addition to its work for institutional reform of the United Nations, it is a coalition that brings pressure on governments that can act as early warnings. The campaign has its own NGO early warning system to provide truly confidential communication links that allow relief and health workers, whistle blowers, and ordinary citizens to create an alternative intelligence network that will warn any political system.

The International Campaign to End Genocide covers genocide as it is defined in the Genocide Convention: the intentional destruction, in whole or in part, of a national, ethnical, racial or religious group, as such, it also covers political mass murder, ethnic cleansing, and

other genocide like crimes against humanity. It will not get bogged down in legal debates during mass killing. Building the political will for action is the major task. Let us understand how these can be fought.

15.2 SOCIAL AND GENDER DISCRIMINATION IN BRIEF

Social and Gender discrimination have been a major problem of Human Rights. Its defenders have faced all the acts described so far in this regard. However, their particular situation and role require special awareness and sensitivity both to the ways in which they might be affected differently by such pressures and to some additional challenges. It is essential to ensure that women are safe guarded from such human rights isolations as well are protected and supported in their work.

The following paragraphs provide a few examples of ways in which human rights of women based on gender discrimination can be protected from different pressures.

As discussed here, the State is the primary perpertarator of violations against human rights specially of Women. However, they have often found that their rights are violated by members of their own communities, who may resent and oppose their activities, which some community leaders may see as challenging their perceptions of the traditional role of women. In such cases, State authorities have often failed to provide adequate protection for women in their work.

In many parts of the world, the traditional role of women is perceived as integral to a society's culture. This can make it especially hard for women to defend themselves. To question and oppose aspects of their tradition and culture when they violate it, it is their burden today.

Similarly, many women are perceived by their communities as an extension of the community itself. If a woman attempts to defend her self as a victim of a rape because of her human rights violations, she may be perceived by her extended family as having brought shame on both the family and the wider community. As a human rights defender she must carry the burden not only of the trauma of the rape, but also of the notion within her community ttyat, through her work to defend human rights she has brought shame on those around her. Even where no rape or other attack has occurred, women who choose to be human rights defenders must often confront the anger of families and communities that consider them to be jeopardizing both honor and culture. The pressure to stop them from defending their rights or the human rights can be very strong and could be perceived as anti social.

Women having day to day responsibility for the care of young children or elderly parents

often find it very hard to concentrate on their own preferences in life. This remains a concern for women even though, across the world, men are increasingly sharing responsibility for the care of dependants. However, women have also used this role to strengthen their work in other areas despite suffering gender discrimination, for example where mothers of disappeared persons have formed human rights organizations, The fact that they are mothers of victims of human rights violations has provided a very strong rallying point and advocacy tool for these defenders. But, yet, they are seen with suspicious eye by their own men in the society and condemn their role negatively.

The complexities that influence a particular human rights issue can some times impose unique pressures on women. In many cultures, the requirement for women to defer to men in public can be an obstacle to their publicly questioning action by men in violation of human rights. Similarly, certain interpretations of religious texts are often used to determine laws or practices having a major influence on human rights. Women thus silently suffer in their own act of defending themselves. While those who wish to challenge such laws or practices and their negative impact on human rights are often barred, because they are women. In all these cases women are not accepted as an authority qualified to interpret such religious scriptures. These women therefore find themselves excluded from addressing, on equal terms with men the primary arguments being used against them. Again, they may also face hostility from the community in which they must continue to live.

The challenges faced by women in tens of these gender discriminated human rights violations sometimes require a broader analysis and understanding than those confronting men. Hence its importance here.

15.3 TORTURE AS A COVENANT

Torture seeks to annihilate the victim's personality and denies the inherent dignity of the human being. The United Nations has condemned torture from the outset as one of the most'violent act perpetrated by human beings on their fellow creatures.

Torture is a crime under international law. According to all relevant instruments, it is absolutely prohibited and cannot be justified under any circumstances. This prohibition forms part of customary international law, which means that it is binding on every member of the international community, regardless of whether a State has ratified international treaties in which torture is expressly prohibited. The systematic or widespread practice of torture constitutes a crime against humanity.

In 1948, the international community condemned torture and other cruel, inhuman or degrading treatment in the Universal Declaration of Human Rights adopted by the United Nations General Assembly. In 1975, responding to vigorous activity by non governmental organizations (NGOs), the General Assembly adopted the Declaration on the Protection of All persons from Being Subjected to Torture and Other Cruel, Inhuman Or Degrading Treatment or Punishment.

During the 1980s and 1990s progress was made both in the development of legal standards and instruments and in enforcement of the prohibition of torture. The United Nations Voluntary Fund for Victims of Torture was established by the General Assembly in 1981 to fund organizations providing assistance to victims of torture and their families. The Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment was adopted by the General Assembly in 1984 and came into force in 1987. Its implementation by States parties is monitored by a body of independent experts, the Committee against Torture. The irst Special Report on torture, an independent expert mandated to report on the situation of torture in the world, was appointed by the Commission on Human Rights in 1985. During the same period, the General Assembly adopted resolutions in which it highlighted the role of health personnel in protecting prisoners and detainees against torture and established general principles for the treatment of detained persons. In December 1997, the General Assembly proclaimed (26 June) United Nations International Day in Support of Victims of Torture.

The United Nations has repeatedly acknowledged the important role played by NGOs in the fight against torture. In addition to lobbying for the establishment of United Nations instruments and monitoring mechanisms, they have made a valuable contribution to their enforcement. Individual experts, including the Special Rapporteur on torture and the Special Rapporteur on violence against women, and treaty monitoring bodies such as the Committee against torture rely heavily on information brought to their attention by NGOs and individuals.

Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1975).

The Declaration was adopted by General Assembly resolution 3452 (XXX) of 9 December 1975. Article 1 defines torture as:

Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. If does not include

pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners.

Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment.

Article 3 of the Declaration stipulates that no exceptional circumstances such as a state or a threat of war, internal political instability or any other public emergency may be invoked as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

Principles of Medical Ethics relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1982).

The principles of Medical Ethics were adopted by General Assembly resolution 37/194 of 18 December 1982. In the preamble, the General Assembly expresses alarm "That not infrequently members of the medical profession or other health personnel are engaged in activities which are difficult to reconcile with medical ethics" States, professional associations and other bodies are urged to take measures against any attempt to subject health personnel or members of their families to threats or reprisals for refusing to condone the use of torture or other inhuman or degrading treatment or punishment. On the other hand, health personal, particularly physicians, should be held accountable for contravention's of medical ethics. Thus, torture as a covenant has been able to act as a deterrent.

15.4 GENOCIDE AS A COVENANT

This covenant bans acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group. It declares genocide a crime under international law whether committed during war or peacetime, and binds all signators of the convention to take measures to prevent and punish any acts of genocide committed within their jurisdiction. The act bans killing of members of any racial ethnic, national or religious group because of their membership in that group, causing serious bodily or mental harm to members of the group, inflicting on members of the group, conditions of life intended to destroy them, imposing measures intended to prevent births within the group, and taking group members children away from them and giving them to members of another group.

It declares genocide itself, conspiracy or incitement to commit genocide, attempts to commit Genocide all to be illegal. Individuals are to be held responsible for these acts whether

they were acting in their official capacities or as private individuals. Signators to the convention are bound to enact appropriate legislation to make the acts named in Article 3 illegal under their national law and provide appropriate penalties for violators.

People suspected of acts of genocide may be tried by a national tribunal in the territory where .the acts were committed or by a properly constituted international tribunal whose jurisdiction is recognized by the state or states involved. For purposes of extradition, an allegation of genocide is not to be considered a political crime, and states are bound to extradite suspects in accordance with national laws and treaties.

The crime of genocide is defined in international law in the convention on the prevention and punishment of genocide.

"**Article II** In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.

a) Killing members of the group;

b) Causing serious bodily or mental harm to members of the group;

c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction on whole or in part;

d) Imposing measures intended to prevent births within the group;

e) Forcibly transferring children of the group to another group.

Article III : The following acts shall be punishable :

a) Genocide;

b Conspiracy to commit genocide;

c) Direct and public incitement to commit genocide;

d) Attempt to commit genocide;

e) Complicity in genocide

The Genocide convention was adopted by the United Nations General Assembly on 9 December 1948. the convention entered into force on 12 January 1951. more than 130 nations have ratified the Genocide Convention and over 70 nations have made provisions for the punishment of genocide in domestic criminal law. The text of Article II of the Genocide

Convention was included as a crime in Article 6 of the 1998 Rome Statute of the International Criminal court.

Punishable Acts

The following are genocidal acts, when committed as part of a policy to destroy a group's existence:

1. Killing members of the group includes direct killing and actions causing death.
2. Causing serious bodily or mental harm includes inflicting trauma on members of the groups through widespread torture, rape, sexual violence, forced or coerced use of drugs, and mutilation.
3. Deliberately inflecting conditions of life calculated to destroy a group includes the deliberate deprivation of resources needed for the groups physical survival, such as clean water, food, clothing, shelter or medical services. Deprivation of the means to sustain life can be imposed through confiscation of harvests, blockade of foodstuffs, detention in camps, forcible relocation or expulsions into deserts.
4. Forcible transfer of children may be imposed by direct force or by through fear of violence, duress, detention, psychological oppression or other methods of coercion. The convention on the Rights of the child defines children as persons under the age of 14 years.
5. Genocidal acts need not kill or cause the death of members of a group. Causing serious bodily or mental harm, prevention of births and transfer of children are acts of genocide when committed as part of a policy to destroy a group's existence.
6. It is a crime to plan or incite genocide, even before killing starts, and to aid or abet genocide. Criminal acts include conspiracy, direct and public incitement, attempts to commit genocide, and complicity tin genocide.
7. The crime of genocide has two elements: intent and action. "Intentional" means purposeful. Intent can be proven directly from statements or orders. But more often, it must be inferred from a systematic pattern of coordinated acts.
8. Intent is different from motive. Whatever may be the motive for the crime (land expropriation, national security, territorial integrity, etc.,) if the perpetrators commit acts intended to destroy a group, even part of a group, it is genocide.
9. The phrase in whole or in part is important. Perpetrators need not intend to destroy the

entire group. Destruction of only part of a group (such as its educated members, or members living in one region) is also genocide. Most authorities require intent to destroy a substantial number of group members mass murder But an individual criminal may be guilty of genocide even if he kills only one person, so long as he know he was participating in a larger plan to destroy the group.

10. The law protects four Groups- national, ethnical, racial or religious groups.
11. A national group means a set of individuals whose identity is defined by a common country of nationality or national origin.
12. A racial group .means a set of individuals whose identity is defined by physical characteristics.
13. A religious group is a set of individuals whose identity is defined by common religious creeds, beliefs, doctrines, practices, or rituals.

In conclusion it can be said, that crimes are faceless and they are in cruel forms. Some use victims weakness, some use the perverted bravery, but, what ever be its face, a crime is a crime and nothing should help a perpetrator to escape from paying for the crime committed by him or her. This lesson in way expresses clearly the fire walls built around crimes of deterrent variety to bring then under the long arm of law.

Check Your Progress -1

Note : 1) Use the space given below for your answer.

2) Also check your answer with the clue given at the end of the Unit.

1. Write a note on torture.

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2. Write an essay on Genocide.

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15.5 LET US SUM UP

While summing, it may be noted that the efforts of Human beings to escape from the crimes committed by their own race is the biggest effort a society has to concentrate today. In order to achieve it for the betterment of Humanity the covenants have come in to existence giving the world a stronger arm to deal with. Hence this study of various covenants help us in better understanding of the social realities.

15.6 KEY WORDS

integral	-	part of
perceived	-	to follow
burden	-	load
preferences	-	liking
excluded	-	barred

15.7 ANSWER TO CHECK YOUR PROGRESS

Check Your Progress -1

1. See section 15.3

Check Your Progress -2

1. See section 15.4

15.8 REFERENCE BOOKS

Chakkravarthy .M	:	The Right to be Human, New Delhi, Lancer International, 1987.
Chiranjeevi .S	:	Human Rights Social Justice and Political Challenges, New Delhi, Kanishka Publishers, 1999
Davidson	:	Basic Documents on Human Rights, Oxford, Clarendon, 1981.
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UNIT-16 : EUROPEAN CHAPTER TO HUMAN RIGHTS- AMNESTY INTERNATIONAL

Structure

16.0 OBJECTIVES

This is designed to throw light on the agencies monitoring human right situation in the world. This lesson introduces to the reader the international agency that acts as a global police man in matters connected to Human Rights. There may be different opinions about its presence in the international scenario about the Amnesty international, that it interferes in the internal affairs of a county etc., but the fact remains that it is a necessary institutions to link up local Human Rights situations to larger global scenario and hence this chapter.

16.1 INTRODUCTION

The fact is that human rights are as much a global as a natitmal concern. Countries across the world recognized this when they became a party to the International covenant on civil and political rights. In doing so, they undertook legal obligations to the international community to observe and protect human rights. Not only did they make a unilateral declaration against Torture saying that they would comply with the UN Declaration against Torture, they even initiated the resolutions of the UN General Assembly that introduced these Declarations.

16.2 AMNESTY INTERNATIONAL

Amnesty International itself is an expression of the idea that human rights are of international concern. It is an independent organization funded by voluntary contributions from its members in over 150 countries in all regions. It does not accept funds from governments. It does not take any position regarding aid donors making the provision of aid conditional on human rights performance. Its task is strictly limited to the human rights field. It works for the release of prisoners of conscience who have not used or advocated violence, for fair trails for all political prisoners; and against torture, the death penalty, extra judicial executions and disappearance. It relies upon and appeal to, the moral power of informed public opinion. In working to protect human rights, Amnesty International primarily addresses government, because it is governments that are responsible under international law for safeguarding such rights. However, It also condemns and opposes torture, deliberate and arbitrary killings and hostage taking by armed political opposition groups? and it has repeatedly done so public regarding groups committing such abuses in Punjab, Jammu and Kashimir and Assam. Most recently, in June 1992. it issued a statement in which it again condemned the recent deliberate and arbitrary killings by armed groups in Punjab, calling on these and other armed groups around the world to stop such killings of civilians, including hostages, and to live up to basic humanitarian standards.

In carrying out its mandate, it is politically impartial. It has monitored the protection of human I rights in India and elsewhere since the late 1960s and have reported human rights violations under each administration regardless of political persuasion. In its report it not only addresses it self to government authorities at the central level, but equally to all state governments, a number of whom are led by political parties opposed to the ruling party at the center.

On a global basis, it is also committed to impartiality in its work and the application of a universal standard to all governments. Its latest annual report covers over 140 countries, despite several press reports across nations alleged that it is a part of an anti to a countries propaganda campaign. In Britain and the USA it fought against the aid Pakistan. In fact, for many years it has urged the UK Government to independently investigate a range of human rights issues, including shoot to kill allegations in Northern Ireland, and last year it submitted information about the UK to the UN committee against Torture. It has repeatedly criticized the USA for its extensive use of the death penalty which it believes to be arbitrary and racially biased and which includes the execution of juvenile offenders. Another recent Indian press article said that it had nothing to say about human rights violations in Pakistan and china. In fact last year it had published a report on torture and deaths in custody in Pakistan and worked to stop violations against religious minorities there. Human rights violations in China Cover virtually the full range of concerns in its mandate and it regularly reported on prisoners of conscience, torture and the high rate of executions there. It is currently campaigning to end torture and arbitrary detention in Tibet. It hopes that Indian will join then in applying the pressure of public opinion on all these governments.

In raising the question of human rights protection in India one is motivated by the desire to help end the violations and promote those human values and standards which are universally recognized as applying to all people at all times. It is now widely recognized that all human rights are indivisible and interdependent. It is sometimes argued that development, the rights to food, housing and other economic rights are more important than freedom of expression, the rights not to be arbitrarily detained or even the right not to tortured. It rejects She-view that it is difficult to accept so far as civil and political rights on the one hand, and economic, social and cultural rights on the other, as of equal importance.

To safeguard the independence and impartiality of its work, Amnesty International members in any one national section must work only on cases and campaigns in countries other than their own. The European section of Amnesty International has therefore had no

involvement whatever in this report. This report was complied by the Research Department of its International Secretariat. Although the Governments, in their reaction to the publication of the original version of the report said the report was based on mere hearsay and that it consisted of conjectures and general allegation details of over 400 individual cases of deaths in custody that were given in the second half of this report. The amnesty have carefully cross checked the information in this report drawing on information provided by various Government officials, on official inquiries and on reports in the Newspapers of these countries. It has relied as far as possible on court records, sworn statements and other first hand information from witnesses themselves.

During the last three years members of Amnesty International have written to government officials, in the various countries to ask specified questions about the people listed in this report as having died in custody after torture or ill treatment. They have asked whether investigations have been carried out and whether anyone has been brought to justice for the crimes apparently committed. They have received no substantive replies. Nor has Amnesty International been allowed to carry out research, to investigate these or other human rights concerns or discuss them in any substance with any Government for more than a decade: the last time they were allowed to do so was sometime in 1978.

The Ministries in their statements, made out that Amnesty International had given it no more than one week to respond to the text of this report, whereas, the they had asked for six weeks. In fact those who delivered the text of the report to the leaders of countries disagree with this.

Today thee are more than 250,000 members, subscribers and supporters in 151 countries or territories, with national sections in 40. there are 2,560 adoption groups, of from three to sometimes more than 50 members. Each group is allocated responsibility for two or three prisoners of conscience or possible prisoners of conscience. The cases are balanced politically and geographically to reflect impartiality. If a case is still under investigation, because there is not enough evidence to determine whether the prisoner is a prisoner of conscience, the group seeks further information and urges the government to supply details of the charges against the prisoner. With a prisoner of conscience, the group puts its energy into writing letters, circulating petitions, publicizing the case and calling on the authorities for the prisoner's immediate and unconditional release. The group may also raise money to send relief assistance, such as money, medicine or clothing, to the prisoner and the prisoner's family.

A unique aspect of Amnesty International's casework placing the emphasis on the need

for international protection of human rights is the fact that each group works on behalf of prisoners held in countries other than its own.

Group members also take part in national and international campaigns that attract wide publicity some join the special network set up to respond with a minimum of delay in case where torture or executions are feared. Some are organized into groups of members of the same profession, for example layers or medical doctors. Doctors intervene on behalf of prisoners in need of medical treatment, or threatened with torture; on Amnesty International missions they examine alleged torture victims; and medical groups assist the rehabilitation of torture victims. Organizations like churches and trade unions and individuals like artists, parliamentarians and government officials are approached at national and local level to exercise influence on behalf of prisoners within their own spheres of activity.

Group members, as well as the individual members and affiliates, participate in decision making meetings at the national level which vary with the differing organizational structures in each country. Delegates from national sections then go forward to an annual International Council, attended by some 200 participants. The council is the supreme governing body of the movement; for example, the Statue of Amnesty International can be changed only by 'a two thirds vote of all the delegates. The council determines the international budget and decides on main policy questions.

The council also elects members to the International Executive Committee, a nine members body responsible for carrying out the decisions of the council and supervising the International Secretariat. The committee approves all missions sent to a country to meet government officials, investigate allegations of human rights abuses and interview former prisoners. All Amnesty International Publications are issued under the committee's authority.

This structure ensures that the vital decisions of the movement are controlled by the membership and its elected representatives. The role of the International Secretariat is to collect information on the human rights questions of concern to Amnesty International, evaluate it and make recommendations for policy and action. The secretariat, with a staff of 150 people of some 30 nationalities, has to compile details about prisoners, answer the numerous queries about them, and keep the members groups and sections up to date on cases, campaigns and new projects.

The funds to sustain these activities are raised by Amnesty International members themselves. At its council meeting in September 1980 Amnesty International reaffirmed its policy of relying for finances on the efforts of members and donations from the public Amnesty

International does not accept government money for its international budget. It will accept such funds only for its program of humanitarian relief assistance, provided that these are distributed under the sole control of Amnesty International. This financial independence is essential to keep the movement free from interference by governments, funding agencies or pressure groups and to keep it true to its original spirit.

Despite the range of activities undertaken by Amnesty International members, much of the work was frustrating and difficult. For Amnesty International members the challenge remains two fold; to combat political, religious and racial intolerance internationally, and to overcome the indifference to human rights issues that they confront all to often in their own communities.

The promotion and protection of human rights is an international responsibility, which has been recognized by the United Nations (UN) and other international organizations, and is the very foundation of Amnesty International's work. Amnesty International gives great importance to working through and strengthening international mechanisms for the protection qf human rights, and has encouraged and supported the establishment and implementation of international standards. It has consistently worked with the UN, whose charter pledges member state tc work for universal respect for and observance of human rights and fundamental freedoms for all without distinction as to race, sec language or religion.

Amnesty International has consultative status (category II) with the Economic and Social Council (ECOSOC) of the UN which allows it to participate in the work of ECOSOC and its specialist sub bodies on human rights matters within its expertise. The commission on Human Rights is a functional commission of ECOSOC composed of 43 member states elected by the council. It is the principal body dealing with human rights within the UN. The commission is serviced by the sub commission on prevention of Discrimination and Protection of Minorities composed of 26 individuals elected by the commission who serve in a personal capacity.

The committee on Crime Prevention and Control, a body of 25individuals elected by ECOSOC is responsible for the preparatory work for the UN Congress on the Prevention of Crime and the Treatment of Offenders, which takes place every five years. These congresses have adopted major international human rights standards, for example the first in 1955 drew up the UN Standard Minimum Rules for the Treatment of Prisoners; the fifth in 1975 the UN declaration against torture the Declaration on the Protection of All Persons from Torture and other cruel, Inhuman or Degrading Treatment or Punishment.

Check Your Progress -1

Note : 1) Use the space given below for your answer.

2) Also check your answer with the clue given at the end of the Unit.

1. Write an essay on Amnesty International Law.

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16.3 LET US SUM UP

Amnesty International looks to develop and promote new international standards to protect prisoners about whom Amnesty International is concerned; to establish effective mechanisms to monitor compliance with existing standards; and to enforce these standards when necessary.

By and large the existing international standards cover the human rights questions of concern to Amnesty International: political imprisonment, fair trail, torture. Only on the death penalty are the universal standards less than precise. However the system has been slow to enforce those standards, be it at the national level or through international mechanisms. Amnesty International has consistently pressed all governments to adhere to the international covenants on human rights and the Optional Protocol to the International Covenant on Civil and Political Rights. The Human rights Committee Rights, composed of 18 individual experts elected by the states that have ratified the covenant, monitors compliance with the covenant. It Protocol to the covenant, considers complaints concerning individuals whose rights under the covenant are reportedly violated. Amnesty International welcomed the creation of a special mechanism to deal with the particular problem of disappearances the Working Group on Enforced or Involuntary Disappearances established by the Commission of Human rights in 1980.

Over the last few years Amnesty International has frequently provided information about human rights violations to UN bodies. Every year it presents evidence on a number of countries to the UN Secretary General under the procedure established by ECOSOC whereby the Commission on Human rights investigates reports referred to it by its sub commission that appear to reveal a consistent pattern of gross and reliably attested violations of human rights With the establishment of the commission's Working Group on Enforced or Involuntary

Disappearances, Amnesty International has submitted information on a number of countries where disappearances have taken place. It also works under special procedures for dealing with human rights violations in particular countries or regions it regularly provides information to the commission's Ad Hoc Group of Experts on southern Africa and to the Special Rapporteur on the Situation of Human Rights in Chile. Amnesty International has also testified before such bodies as the Fourth Committee of the General Assembly on human rights violations in East Timor and Namibia and the Special Committee on Apartheid on violations in southern Africa.

16.4 KEYWORDS

Penalty	-	punishment
Breadwinner	-	wage earner
Arbitrary	-	not committed to any rule
Intermediaries	-	mediators

16.5 ANSWER TO CHECK YOUR PROGRESS

Check Your Progress -1

1. See section 16.2

16.6 REFERENCE BOOKS

Amnesty International	:	Barbados Section, PO Box 65B, Brittons Hill, Bridgetown.
Amnesty International	:	Freederiksborggade l,1360 Co-penhagen
Amnesty International	:	New Zealand Section, PO Box 11648, Manners Street, Wellington 1.

UNIT-17 : PEOPLE'S UNION FOR CIVIL LIBERTY (PUCL) PEOPLE'S UNION FOR DEMOCRATIC RIGHTS (PUDR)

Structure

17.0 OBJECTIVES

This Unit deals with people unity for civil liberty. If you go through this Unit you can able to

1. To understand the role of voluntary organisation.
2. To assess how this organisation have been expanding and have established branches in all most all the states
3. To explain universal declaration of Human Rights

17.1 INTRODUCTION AND EARLY GROWTH

Civil liberties, civil rights, or human rights are terms which are often used inter changeably. For the common person it does not matter as to how it is used. Correctly speaking the difference between civil liberties and civil rights on the one hand and human rights on the other is that the former two are generally liberties that are guaranteed to a citizen by law in a country. For example, the Constitution or the laws and legal traditions of a country may guarantee every individual the liberty of thought, speech, action, enjoyments of life and property, etc. Similarly, equal right to protection of law to exemption from servitude. These liberties are limited by the enjoyment of same liberties by other individuals.

Human rights, on the other hand, are the inalienable rights of a person by virtue of being a human. All or some o f these may or may not be written in the Constitution and laws of a country. These rights are considered to be universal and have been concretized by the United Nations in various categories. Such as political, economic, social, or cultural rights.

Early Growth:

In early 1936 Jawaharlal Nehru wrote to a large number of political leaders and intellectuals about his idea of the need of a non political and broad based civil liberties organization for purposes of collecting and disseminating information and educating the mases. This culminated in the funding of the Indian Civil Liberties Union on August 24, 1936. This was followed by the formation of Unions at Bombay, Madras, Calcutta, and in Punjab as its units. Rabindranath Tagore was the first Honorary President of the ICLU and Sarojini Naidu the President. K B Menon Kerala was appointed as the General Secretary Rammanohar Lohia, M Venkatarangaiah, S Pratap Reddy also made important contributions to pupularise the concepts of civil liberties by writing booklets, articles, and pamphlets. Thus the early growth of PUCL of PUCL/PUDR had an excellent and intelligent roots.

17.2 PUCL AND PUDR TODAY

Ever since 1980, these organization have been expanding its membership and have established branches in all most all the states of India. Some of them have more successfully pursued public interest litigation in the courts. Their are of interest varies according to the interests and capacities of the elected office bearers and active members. If PUCL* is a major actor in the national level, PUDR* also is a major in actor in the pockets of certain stats but both are infact friendly and co operative to each other.

Mobilising public opinion in favour of a better climate for protection of civil liberties and Democratic right in the country are their major concerns.

The United Nations Organization has adopted a document known as the Universal Declaration of Human Rights. Every member country of the United Nations is a signatory to this declaration, which makes it mandatory for every member country to protect the human rights of its citizens. This document was adopted on December 10,1948 and, therefore, this date is observed as the Human Rights Day all over the world. Besides this declaration, there are other covenants concerning human rights which have been adopted by the United Nations from time to time and member countries have been invited to sign and accept, irrespective of the fact that a country may make laws to that effect, or in the absence of such laws, may implement them through policies and programmes.

Some of the important documents, apart from the Declaration of Human Rights, are the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the Optional protocol to the International Covenant on Civil and Political Rights; the Convention Against Torture and other cruel, Inhuman or Degrading Treatment or punishment. These international documents define and continually expand the horizon of human rights. In India the Supreme Count has ruled that the High Courts can implement the provisions of these documents provided there are no laws specifically against them.

Conducting investigations into incidents of violations of human rights, brought to notice by the victims, the press, a member, or any concerned individual Publishing the findings of these investigations in the Bulletins and releasing them to the press, or making them public by other mean such as public meetings, mass media Filing petitions, on the basis of their investigations, or even otherwise are some of their major activities which lie infact in the arena of civil society. An area where governments do not perform, but where society plays a proactive role

These cases are prepared and argued by lawyers who are members of either PUCL or PUDR in the local courts, High Courts or the Supreme Court. The beauty of this is that they meet all the expenses incurred on these cases, from their own pocket in the larger interest of the society.

The PUCL maintains fraternal relations with many national and international organizations concerned with Human Rights and exchanges literature with them. Some of the important international organizations are the Amnesty International, the World Organization against Torure, the Human Rights Watch, the Netherlands Institute of Human Rights, the UN Centre for Human Rights, the Lawasia, the Article 19, the Asian Human Rights Commission similarly the National groups with which the PUCL maintains very close co operative relations are CFD, APCLC, PUDR, APDR, CPDR, similarly There are many democratic rights and civil liberties organizations in India, who work closely with PUDR Apart from PUDR, there is the Andhra Pradesh Civil Liberties Committee (APCLC). the Association for Protection of Democratic Rights, (APDR). West Bengal, the Peoples Union for Civil Liberties, (PUCL) and many others. It is important to note that this is the strength of there organizations.

Since the establishment of the National Human Rights Commission, iaIndia the PUCL/ PUDR have made a lot of efforts in utilizing this forum for redressal of grievances against violation of rights of the people. But the PUCL is dissatisfied by its scope and the methods as laid down in the Protection of Human Rights Act, 1993, and also with the working of the National Human Rights Commission. It is continuously pressurizing the government as well as the Commission to remedy the situation. Besides the NHRC, the PUCL and PUDR are working with the National Commission for Women, the National Commission for Minorities, and the National Commission for Safai Karmacharis to enlarge the democratic and civil rights to those who have been subjected to oppression due to socio cultural ethics of countries like

India. Thus, PUCL/PUDR are today the major players in the civil liberties and Democratic movement in the country.

17.3 ORGANIZATIONAL STRUCTURE

The PUCL has a three tier structure. A national Convention is held every two years in the beginning to elect the office bearers and the National Council, including the national Executive Committee.

The PUCL also establishes the State branches. The Structure of the State branch follows the pattern at the national level. The State branch and its office bearers organise and co

ordinate the working of the organization in the State concerned. They are responsible for establishing local branches in the district and cities and towns. Here too the structure follows the same pattern.

The PUDR on the other hand Over the last 20-30 years, has been working along with the civi] rights movement in India and has emerged as an autonomous voice in defence of civil liberties and democratic rights of our people. The Peoples Union for Democratic Rights, Delhi. It is thus, this has earned a name for itself in the sphere of civil rights. It came into existence in 1976-77 as the Delhi unit of a larger national forum, and became PUDR on 1 February, 1981.

In the last two and a half decades of its existence the organisation has taken up hundreds of instances of violations of democratic rights, covering most parts of the country and involving the rights of many sections of society. PUDR conducts investigations, issues statements, distributes leaflets, organizes public meetings, demonstrations and dharnas, and fights legal cases to highlight the violation of peoples rights, and to help towards their redressal.

The bases of the PUCL and PUDR are the local level branches. The office bearers and the members of a local branch are the most crucial functionaries, as only they are in a position to intervene directly. It is here that the actual suppression or the denial of the liberties and Democratic rights are infringed^upon. of the people. It is the activities at the local level that give shape and an identity to these organizations. The initiative and the alertness shown by the members of these organizations at the district or city level is the most important element in the movement for civil liberties and democratic rights Wherever necessary, a local branch can enlist the help and support of the state branch, and if necessary, also of the national branches of these organizations. The state and the national organizations can only act on the basis of the information supplied to them by their, respective local groups.

17.4 ISSUES AND CONCERNS

PUCL and PUDR are the watch dogs of democracy. Whenever some important situation develops affecting the liberties and right of some individuals, or a group, or the common people, the concerned branch of the PUCL/PUDR have to ascertain the facts before taking any action or committing itself to an action. Then take Care not to become involved in activities of the political parties or groups. Therefore the issues and concerns of these organizations are clearly a political.

If some incident takes place which is of wider significance, then action will be organised

on a wider level, state both at and/or at national level. Co ordination of activities with the State and or national office is of utmost significance for these organisations in such cases involvement of higher level branches take place only and if necessary and at times on request basis.

The PUCL has its branches in almost all the States. Where as PUDR is not as extensive in its network as of PUCL. All the State/local branches of both these organizations are required to print letter heads with the address of the it national offices apart from their own addresses.

In an under developed and poor country most often it is the poor and the disadvantaged and vulnerable sections of society, including women, children minorities, prisoners, and various other, under privileged sections whose rights and liberties are at stake. In India, one has to take special care of the oppression of the social evils of the system as also the communal divide. On the other hand, neither organizations can afford to neglect the wider issues like freedom of the press and other media, the independence of the judiciary, etc. which are basically institutions that protect and preserve Democratic essences and civil liberties intact. It is, therefore, difficult, and also unnecessary, to differentiate between issues of civil liberties and human rights/Therefore, these organizations often find themselves engaged in activities that may not be strictly related to civil liberties/or Democratic right alone.

Though it is not possible to list issues that these organizations concern itself with and the actions that can be taken, list below indicates some important activities that these organizations are concerned with;

1.	The Police	Police firings Torture Deaths in custody Encounters Repression of democratic Movements Collusion with vested interests Role in comunal conflicts Missuse of Cr. P.C., I.P.C., etc.
2.	Jail and custody conditions	Compliance of guidelines issued by the NHRC/Supreme Court from time to time.
3.	Political prisoners	Arrest made under laws violating human rights Pending cases, without trial
4.	Rural poor	Repression of struggles for minimum legal rights

	Non application of Tenancy Acts
	Alienation of lands
	Exploitation by landlords, traders etc.
	Oppression of scheduled castes and tribes
5. Industrial workers	Repression of strikes
	Problems on shop floor
	Pollution at work place, etc
	Displacement caused by semimechanisation. (PUCL as a rule does not get involved in inter trade union rivalry unless the police intervenes)
6. Tribals	Impact of development policies
	Industrialization
	Land alienation
	Displacement
	Rehabilitation
	Exploitation of natural resources
	Suppression of other rights
7. Dalits	Practices of untouchability
	Denial of access to social customs and traditions, or places of worship, etc.
8. Women	Rights affecting both economic and social conditions
	Dowry deaths, rape, molestation
	Supreme Court guidelines on sexual exploitation of women at workplace
9. Press	Attacks on Journalists
	Intimidation of editors
	Attempts at censorship

10. Judiciary	Problems of lower courts (delays, favouritism, etc)
11. Universities	Intimidation of dissenting intellectuals
	Discrimination against Karmacharis
	Persecution of politically conscious students and teachers
	Non enforcement of rights of the Scheduled Castes and Tribes students Ragging.
12. Environment	Rights over natural resources
	Pollution air, water, noise, etc.
	Deforestation
	Displacement caused by dams, industries, mining, etc
13. Culture	Attacks on individuals and cultural groups
	Intimidation of minorities and tribals keen on maintaining their cultural autonomy
14. Communal conflicts	Role of administration, police, State, and central
	governments Role of individuals, groups and political parties in abetting the communal elements and rioters.

However, while involving in these issues the following strategies are normally chosen by these organizations;

1. Public meetings
2. Demonstrations
3. Investigations
4. Press statements
5. Cases filed in Courts
6. Assisting local mass organizations towards mobilizing the poor
7. Holding conventions of activists working among the poor and the underprivileged with a view to developing new perspectives and understanding of civil liberties issues.

As a matter of policy the PUCL/PUDR does not accept money from any funding agency, Indian or foreign. All the expenses are met by the members, the office bearers, and the activists

from their pocket. For the expenses on the activities by the national office money is raised from sympathizers and members by way of donations.

PUDR also takes up issues of general importance that affect the rights of people through general campaigns, publications and legal interventions. These include: gender equality; rights of forest-dwellers and forest policy; working class rights; agrarian conflict; caste oppression; deaths, rapes and torture in police custody; and undemocratic legislation, in particular the various incarnations of the 'terrorist act' (earlier TADA, now POTA) etc.

PUDR is actively engaged in legal defense of civil liberties and democratic rights. It has taken up hundreds of cases in the last two decades, including many of constitutional importance, such as the Asiad labour petition which opened the doors to public interest litigation in India.

PUDR is an entirely voluntary organization. Members are not paid for their time, and funds are generated entirely from sale of its literature and from small donations. PUDR does not accept foreign funds, or funds from any institutional funding agencies, foreign or national.

Thus, conclusion it can be summarized that, PUCL/PUDR as agencies of civil and democratic rights firmly believe in;

a) upholding and promote by peaceful means civil liberties and the democratic way of life throughout India;

b) in securing the recognition to the principle of dignity of the individual;

c) undertaking a constant review of penal laws and the criminal procedure with a view to bringing them in harmony with humane and liberal principles;

d) working for the withdrawal repeal of all repressive laws including preventive detention;

e) encouraging freedom of thought and defend the right of public dissent;

f) ensuring the freedom of the press and independence of mass media like radio and television;

g) securing the rule of law and independence of the judiciary;

h) o making legal aid available to the poor;

i) making legal assistance available for the drence of civil liberties;

j) working for the reform of the judicial system so as to remove inordinate delays, reduce heavy expenses, and eliminate inequities;

k) To bring about prison reform;

l) To oppose police excesses and use of third degree method

m) To oppose police discrimination) on the ground of religion, race, caste, sex, or place of birth;

n) To combat social evils) which encroach on civil liberties, such as untouchability, castesim, and communalism;

o) To defend in particular the civil liberties of the weaker sections of society and of women and children;

p) To do all acts and things that may be necessary, helpful, or incidental to the above aims and objects.

Check Your Progress - 1

Note : 1) Use the space given below for your answer.

2) Also check your answer with the clue given at the end of the Unit.

1. Examine the Unit Status of PUCL/PUDR.

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2. Evaluate the concerns of PUCL/PUDR.

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17.5 LET US SUM UP

In one world PUCL/PUDR are the two eyes democratic governance. In any democratic s I up eternal vigilance is the price that we pay for protecting our civil liberties. If PUCL/ PUCR are leading this vigilant Society, they also are responsible to the societies. In the context

o£ Global changes. And capitalist formations roll of PUCL/PUDR needs no elaboration. These two organizations are thus concerned about thfe welfare of the individual one hand and the society the other hand. It is because of this, that he study of PUCL/PUDR are important to day. The study of these organizations in our opinion must therefore enlighten you to be citizens with consciousness about rights and duties.

17.6 KEY WORDS

striving	:	endeavor
discrimination	:	distinction
Harmonious	:	good relationship
Egalitarian	:	classless and casteless society
Culminate	:	reach

17.7 ANSWER TO CHECK YOUR PROGRESS

Check Your Progress -1

1. See section 17.2

Check Your Progress -2

1. See section 17.4

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UNIT- 18 : HUMAN RIGHTS COMMISSION AND MINORITIES COMMISSION REMEDIES AGAINST VIOLATION OF HUMAN RIGHTS

Structure

18.0 OBJECTIVES

The main objectives of this Unit are to

1. Examine th role of commissions
2. Dicuss whether the commission covers Minority Rights or Majority
3. Explain the role of Economic and Social Council and the charter of United Nations

18.1 INTRODUCTION

The Commission on Human Rights and minority commission (hereafter "The Commissions") are subsidiaries of the Economic and Social Council. The Charter of the United Nations specifies that the Council "shall set up Commissions in the economic and social field and for the promotion of human rights". In its first meeting in 1946, the Economic and Social Council established two functional commissions, one on human rights and the other on the status of women. It was decided that these commissions would be composed of State representatives. The Commission on Human Rights is now composed of 53 States elected by the Economic and Social Council.

Immediately following its creation, the Commission established a subsidiary body that is now known as the Sub Commission on the Promotion and protection of Human Rights (hereafter "the Sub Commission"). The Sub Commission, which is composed of 26 experts who are elected by the States members of the Commission, has inter alia a mandate to under take studies authorized by the Commission and to make recommendations.

The Commission meets annually for six weeks in Geneva in March April. The sub Commission meets for three weeks in August, also in Geneva. The office of the High Commissioner for Human Rights acts as secretariat to the Commission and the Sub Commission.

Similarly the report of the High Commissioner 28 February 2—3 compiles and analyses information concerning the rights of persons belonging to minorities through the lens of conflict prevention. The report notes that the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities the Declaration is the only UN instrument addressing exclusively the rights of persons belonging to minorities.

The report states that the linkage between minority protection and the prevention of conflict has been recognized and highlighted in the basic UN documents reports of the

Secretary General, the Millennium Declaration, reports of the High Commissioner.

The High Commissioner stated that the OHCHR will continue to collect information and analysis of problems related to minorities with a view to providing input to the UN's work on conflict prevention. Thus, the minority commissions are working for the betterment of human society, avoiding conflicts of all types.

18.2 HUMAN RIGHTS COMMISSION : AN OVER VIEW

The National Human Rights Commission was constituted in October 1993 under the Human Rights ordinance of 28 September 1993, which was soon after enacted as the protection of Human Rights Act, 1993 (hereinafter referred to as the Act). It is a fully autonomous body; its autonomy derived out of the method of appointment of the members, their fixity of tenure, and statutory guarantees thereto, the status they have been accorded, the manner in which the. staff responsible to the Commission would be appointed and would conduct themselves; as also the autonomy it enjoys in terms of its financial powers.

Composition of the Commission

The Act envisages that the Commission shall consist of :

a. A Chairperson who has been a Chief Justice of the Supreme Court;

b. One member who is or has been, a Judge of the Supreme Court;

c. One member who is, or has bee, the Chief Justice of a High court;

d. Two members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.

The Chairperson of the National Commission for Minorities, the National Commission for the Scheduled Castes and Scheduled Tribes and the National Commission for Women shall be deemed to be members of the Commission for the discharge of certain functions.

The shall be a Secretary General of the rank of the Secretary to the Government of India who shall function as the Chief Executive Officer of the Commission.

The Headquarters of the Commission shall be at Delhi and there is an enabling provision in the Act to establish offices at other places in. India with the previous approval of the Central Government.

The method of appointment envisaged in the Act is unique inasmuch as it is made by the

President on the recommendations of a high powered Committee consisting of the following :

a. The Prime Minister- Chairperson

b. Speaker of the House of the People Member

c. Minister in-charge of the MHA in the Government of India- Member

d. Leader of the Opposition in the House of the People- Member

e. Leader of the Opposition in the Council of States- Member

f. Deputy Chairman of the Council of States- Members

However, no sitting Judge of the Supreme Court or a sitting Chief Justice of a High Court shall be appointed without consultation with the Chief Justice of India.

The Chairperson or any other Member of the Commission can only be removed from his office by an order of the President on the ground of proved misbehavior or incapacity after the Supreme Court has, on an inquiry held in this behalf recommended such removal.

The term of office of the Chairperson and members will be five years from the date of assumption of office or until the age of 70 years, whichever is earlier. On ceasing to hold office, the Chairperson and Members shall be ineligible for further appointment under the Government of India or under the government of any State.

The Act provides that besides the Secretary General, the Central Government shall make available to the commission such police and investigative staff and an officer not below the rank of Director General of police and such other officers and staff as may be necessary for the efficient performance of the functions of the Commission. The commission may appoint other administrative, technical and scientific staff considered necessary in conformity with the Rules made by the Central government in this behalf.

In terms of Section 2 of the Act, "Human Rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the constitution or embodied in the International Covenants and enforceable by courts in India. "International Covenants" means the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on 16 December 1966.

The following functions devolve on the Commission under the Act:

a. inquire, on its own initiative or on a petition presented to it by a victim or any persons on his behalf, into complaints of

i. violation of human rights or abutment thereof; or

ii. negligence in the prevention of such violation, by a public servant.

b. intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;

c. visit, under intimation to the State Government, any jail or any other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon;

d. review the safeguards provided by or under the constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation; ,

e. review the factor, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures;

f. study treaties and other international instruments on human rights and make recommendations for their effective implementation;

g. undertake and promote research in the field of human rights;

h. spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means;

i. encourage the efforts of non governmental organizations and institutions working in the field on human rights; and

j. such other functions as it may consider necessary for the promotion of human rights.

The complaints are expected to be self contained. They may be in Hindi, English or in any language included in the Eighth Schedule of the constitution. No fee is charged on complaints. The commission may ask for further information and affidavits to be filed in I support of allegations whenever considered necessary. The commission may, in its discretion, accept telegraphic complaints and complaints conveyed through FAX.

Ordinarily, complaints of the following nature are not entertained by the Commission :

a. in regard to event s which happened more than one year before the making of the complaints;

b. with regard to matters which are sub-judice;

c. which are vague anonymous or pseudonymous;

d. which are frivolous nature;

e. those which are outside the purview of the Commission; and

f. which pertain to service matters.

The commission is vested with the wide ranging powrs relating to inquiries and investigation under the Act. While inquiring into complaints under the Act, the Commission could exercise all the powers of a civil court trying a suit under the code of civil procedure, 1908, and in particular in respect of the following namely:

a. summoning and enforcing the attendance of witnesses and examining them on oath;

b. discovery and production of any document;

c. receiving evidence on affidavits;

d. requisitioning any public record or copy thereof from any court or office;

e. issuing commissions for the examination of witnesses or documents; and

f. any other matter which may be prescribed.

The commission has its own investigating staff for investigation into complaints of human rights violations. Under the Act, it is also open to the Commission to utilize the services of any officer or investigation agency of the Central Government or nay State Government. In addition, the Commission envisages the association in appropriate cases of outsiders as Investigators or Observers.

The commission, while inquiring into complaints of violations of human rights, may cal for information or report from the central Government or nay State Government or any other authority or organization subordinate thereto within such time as may be specified by it. If the information or report is not received within the time stipulated by the commission, it may proceed to inquire into the complaint on its ow; on the other hand, if, on receipt of information or report, the commission is satisfied either that no further inquiry is required or that the required action has been initiated or taken by the concerned Government or authority, it may not proceed with the complaint and inform the complainant accordingly.

The Commission may take any of the following steps upon the completion of an inquiry:

1. where the inquiry discloses the commission of violation of human rights or negligence in

the prevention of violation of human rights by a public servant, it may recommend to the concerned government or authority the initiation of proceedings for prosecution or such other action as the commission may deem fit against the concerned person or persons:

2. approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary; and

3. recommend to the concerned government or authority for the grant of such immediate interim relief to the victim or the members of his family as the commission may consider necessary;

4. subject to the provisions (5) below, provide a copy of the inquiry report to the petitioner or his representative;

5. the commission shall send a cop of its inquiry report together with its recommendations to the concerned. Government or authority and the concerned government or authority shall, within a period of one month, or such further time as the commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon, to the Commission;

6. the commission shall publish its inquiry report together with the comments of the concerned government or authority, if any, and the action taken or proposed to be taken by the concerned government or authority on the recommendations of the commission.

The term 'armed forces' for purposes of the Act means the naval, military and air forces and includes any other armed forces of the union. The Act envisages the procedure with respect to armed forces which is at variance with the procedure set out for complaints of violation s of human rights by any other public servant.

1. The commission shall notwithstanding other provisions of the Act, adopt the following procedure while dealing with complaints of violations of human rights by members of the armed forces.

   a. it may, either on its own motino or on receipt of a petition, seek a r3eport from the Central Government.

   b. After the receipt of the report, it may either not proceed with the complaint or, as the case may be, make its recommendations to that government.

2. The Central Government shall inform the commission of the action taken on the recommendations within three months or such further time as the commission may allow.

3. The commission shall publish its report together with its recommendations made to the central government and the action taken by that government on such recommendations.

4. The commission shall provide a copy of the aforesaid report to the petitioner or his representative.

Responsibility of the Central Government/State Government/Authority to which report/ recommendations have been sent

The central government/state government/authority has to indicate its comments/action iaken on the report/ recommendations of the commission within a period of one month in respect of general complaints and within three months in respect of complaints relating to armed forces.

Annual and Special Reports of the Commission

The commission is required to submit an Annual Report to the Central Government as well as the State Governments concerned. Besides, the Commission may at any time submit special reports on matter which, in its opinion, is of such urgency or importance that it should not be deferred till submission of the Annual Report.

It is enjoined on the Central Government as well as the concerned State government tc lay before each House of parliament or the State Legislatures respectively the Annual and Special Reports of the commission along with a memorandum of action taken or proposed to be taken on the recommendations of the Commission and the reasons for non acceptance of the recommendations, if any.

State Human Rights Commissions

There is an enabling provision in the Act for State Human Rights Commission to be constituted by the respective State Governments. The State Commission shall consist of:

a. a Chairperson who has been a Chief Justice of a High Court.

b. One member who is, or has been, a judge of a High Court;

c. One Member who is, or has been, a District Judge in that State;

d. Two members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.

There shall be secretary who shall be the Chief Executive officer of the State Commission and shall exercise such powers and discharge such functions of the State Commission as it

may delegate to him

The headquarters of the State Commission shall be at such place as the State Government may, by notification, specify.

Constitution of the State Commission

The Chairperson and other members of the Commission shall be appointed by the Government after obtaining the recommendations of a Committee consisting of

a. the Chief Minister-Chairperson

b. Speaker of the Legislative Assembly- Member

c. Minister in-charge of the Department of Home in that State- members

d. Leader of the Opposition in the Legislative Assembly- Members

Where there is a Legislative Council in a State, the Chairman of that Council and the Leader of the Opposition in that Council shall also be members of the Committee. No sitting judge of a High Court or a sitting District Judge shall be appointed except after consultation with the Chief Justice of the High Court of the concerned State.

The Chairperson or any other Members of a State Commission can only be removed from his office by an order of the President in accordance with the procedure envisaged for the National Commission.

The term of office of the Chairperson or Member will be five years from the date of assumption of office or at the age of 70 years, whichever is earlier. A member is however eligible for reappointment for another term of five years subject to the age limit of 70 years. On ceasing to hold office, the Chairperson or a member are ineligible for appointment under the Government of the State or under the Government of India.

Officers and Staff of the State Commission

The concerned State Government shall make available to the State Commission an officer not below the rank of a Secretary to the State Government who shall be the secretary of the State Commission and such police and investigative staff under an officer not below the rank of an Inspector General of Police and such other officers and staff as may be necessary for the efficient performance jof the functions of the State Commission. The State Commission may appoint such other administrative, technical and scientific staff as it may consider necessary.

Functions of the State Commission

A State Commission may inquire into violations of human rights only in respect of matters relating to any of the entries enumerated in List II (State List) and List III Concurrent List) in the Seventh Schedule of the Constitution. However, if any such matter is already being inquired into by the National Commission or any other Statutory commission, the State Commission shall not inquire into the said matter. Subject to this, the powers, the procedure of investigation, inquiry and steps to be taken thereafter are comparable to those of the National Commission.

The State commission shall submit Annual Report to the respective State Governments and may, at any time, submit special reports on any matter which in their opinion is of urgency or importance. It is enjoined on the State Governments to cause to lay on the Table of the respective State Legislature the Annual and Special Reports of the State Human Rights Commission.

Human Rights Courts

The Act envisages that for the purpose of providing speedy trial of offences arising out of violations of human rights, State Governments may with the concurrence of the Chief Justice of the concerned High Court specify for each District Court of Sessions to be a Human Rights Court to try such offences. For every Human Rights Court, the State Government shall specify a public prosecutor or appoint an advocate of alteast seven years standing as a Special public Prosecutor for the purpose of conducting cases in that Court.

Finance, Accounts and Audit

The Central Government and the concerned State Government shall, after due appropriation made in this behalf, apy to the National Commission and the concerned State Commission respectively by way of grants necessary funds for being utilized for purposes of the Act. The accounts of the Commission will have to be maintained in an appropriate form devised in consultation with the Comptroller and auditor General of India and are subject to audit by the latter or any person appointed by him. The accounts of the Commission as certified by the Comptroller and Auditor General or his appointee together with the Audit Report shall be laid before each House of Parliament by the Central Government in the case of National Commission and before the appropriate State Legislature by the concerned State Government in respect of the State Commission.

Miscellaneous

The National Commission as well as the State Commission shall not inquire into any

matter which is pending before a State Commission or National Commission as the case may be or nay other statuary commission.

If the Government considers it necessary, it may, notwithstanding anything contained in any other law, constitute one or more special investigation teems consisting of the requisite police officers for purposes of investigation and prosecution of offences arising out of violations of human rights.

The Central Government as well as the State Government concerned may make rules to carry out the provisions of the Act. The Rules so made are required to be laid before each House of Parliament for a total period of 30 days as regards the National Human Rights Commission and appropriate State Legislature in respect of the State Commissions.

18.3 MINORITY COMMISSION ; AN OVER VIEW

Minorities Commission Among other things noted were the following: the fact that the different claims of persons belonging to minorities required a response specific to each situation; the fact that the appropriateness of measures depends on whether minorities are dispersed and/or concentrated within particular areas of a given country; the dangers of exclusion arising from ethnically based governments; the importance of providing for the inclusion of all communities and groups in situations where territorial decentralization of governance is pursued. the suggestion that greater focus should be placed on supportingregional strategies for minority cooperation; the suggestion that there is a need for further reflection on autonomist and integrative approaches to minority protection in multicultural societies.

The report states that the role of the UN and the international community is to support national efforts for conflict prevention and to assist in building national capacity. In this context, the Secretary-General intends: (a) to continue dispatching UN interdisciplinary fact-finding and confidence-building missions to volatile regions; (b) to start submitting periodic regional and subregional reports to the Security Council on disputes that may potentially threaten international peace and security; (c) to develop regional prevention strategies with regional partners and with UN agencies; (d) to establish an informal network of eminent persons for tV conflict prevention; and (e) to provide the capacity and resources for preventive action in the I Secretariat. The Secretary-General called for the UN to move from a culture of reaction to aculture of prevention and stated that the primary focus of preventive action should be to address deep-rooted socio-economic, cultural, environmental, institutional, political and other structural causes that often underlie the immediate symptoms of conflicts.

The report refers to various kinds of initiatives aimed at improving the understanding of

situations facing minorities in diverse settings and at devising effective means to address them including: the launch in September 2001 of the UN Guide for Minorities (a manual on the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities) at the World Conference against racism the convening of regional and expert seminars on various themes - e.g. multiculturalism in Africa, Afro descendants in Latin America; funding to ensure the participation of representatives of minorities in the work of the Working Group on Minorities.

The report notes that the 2002 meeting of the Working Group was to focus on the participation of minorities in public life, including through the pursuit of integration or autonomy measures, as well as on addressing group inequalities and the mainstreaming of minority concerns in the development process.

The addenda to the Secretary-General's main report, (4 March 2002) and (8 March 2002) contain the text of replies to an October 2001 note verbale that was sent to governments and intergovernmental and non-governmental organizations, requesting information related to the better protection of the rights of persons belonging to minorities.

The information provided by the governments of Austria, Bulgaria, Hungary, Lebanon, Madagascar, Russia, Switzerland and Turkey refers to the following matters, inter alia: the constitutional protection of equality before the law; the constitutional protection of cultural and linguistic diversity; special measures on education; consultation with ethnic groups before laws are adopted; civil and administrative provisions against publicly expressed prejudices and discriminatory acts against persons on the ground of race, colour, national or ethnic origin or religious belief; provisions requiring the non-discriminatory treatment of persons by the police and security forces; human rights education aimed at preventing prejudice and discrimination, and similar training for professionals; the equal integration of Roma into society; the lack of a universal instrument of a binding character defining the rights of persons belonging to minorities and the need to address this issue; dismissal from employment as a result of discrimination and the mistreatment of children belonging to an ethnic minority; criminal and civil cases involving, for example, incitement against a community, debarring of Roma children from the use of a school gymnasium and conducting separate commencement exeiciffe"i'or' them, using the excuse of "public hygiene"; administrative cases related to the election of national minority self-governments; provisions in the European Framework Convention for the Protection of National Minorities; the difficulty of arriving at a definition of "minority" that would receive universal support and the obstacle this could present to the drafting of a legally binding international instrument. The report notes that the responses of governments did not reveal a consensus on whether or not a mechanism should be established to draft a convention on the rights of persons belonging to minorities.

Information was also received from the Office of the High Commissioner for National Minorities of the Organization for Security and Cooperation in Europe, referring to, for example, good governance, the possible need for special measures to protect and to allow the further development of distinct cultural identities, promotion of integration, effective implementation of existing norms and standards.

The report also notes information that was provided by UNESCO and the UNHCR.

In the discussion on mainstreaming minority rights in development assistance and cooperation as a means of preventing conflict, participants considered the following points, among others: the economic exclusion of minorities and indigenous people and the resulting manifestations of racism and related intolerance, the need to address the use of land and its resources if development policies are to be sustainable in the longer term, participation by minorities and indigenous communities at all stages of the development process noting that traditional decision making structures might be most appropriate to maximize the participation of communities, the need to ensure equal access to the participation process for women, persons with disabilities, older persons, children and youth, and persons with HIV/AIDS, the need to acknowledge the existence of discrimination and exclusion, to collect better data to understand the causes and nature of such exclusion , and to implement specially targeted programmes for minorities and indigenous peoples as well the need to integrate the rights of these communities into the general programmes for achieving the international Development Goals.

UN Working Group on Minorities

Ensure the wider disseminating of its activities and reports and the widest dissemination of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (the Declaration), as well as the UN Guide for minorities, including by making them accessible in the languages of minority communities.

Establish a system for the regular exchange of information on minority issues with regional mechanisms and national institutions, including through the organization of meetings and seminars, particularly on conflict prevention and resolution.

Support training programmes for minority communities and groups on utilizing global regional arid national human rights mechanisms for the better protection of the rights of minorities.

Support the participation of minorities in the drafting of reports authorized by the Working Group.

Examine in greater depth the nature extent and dynamics of discrimination against minorities, in cooperation with minority representatives governments and others.

18.4 REMEDIES AGAINST VIOLATION OF HUMAN RIGHTS

Over the years, the working of these Commission have changed substantially. Very early on these Commissions focused on elaborating various human rights standards including minorities. It drafted the Universal Declaration of Human Rights and the two Covenants, on civil and political rights, and on economic, social and cultural rights and later minority rights. Coon, the main challenge before the Commission came to be how to respond to the human rights violations varied kind including minority rights violations. In 1947, the Economic and Social Council passed a resolution stating that the Commission had "no power to take any action in regard to any complaints concerning human rights". So long as those in charge within the country have not fallen in line with these international covenants However, later on the Commission was faced with a number of individual petitions from South Africa and came under considerable pressure to deal with them. This forced it to grapple with the elaboration of procedures to deal with issues connected to Human Rights and minority violations. A taboo was broken.soon when the Commission established an ad hoc working group of experts to investigate the situation of human rights and minority violations. The demand to act on the situation in southern Africa led to recognition of the need for public debate on specific countries.

The Commission then was able to deal with various other situations, such as coup against a government

By setting up Working groups to inquire into the situation of violations of monitories and human rights in This working group was replaced by a special rapporteur and two experts to study such cares later. By 1980, the Commission established the working group on Disappearances to deal with the question of enforced disappearances and other violations of Human Rights throughout the world. Since then, there has, been less reluctance to establish expert mechanisms to deal with human minorities and rights challenges in various parts of the world. Such mechanisms were progressively applied in a more innovative manner and adapted to an increasing range of violations.

The Commission solicits the help of human rights experts to assist it in the task of examining specific situations including minority rights as can be seen in earlier pass. Over the years, the work of these experts has provided a much needed analysis on how human rights principles are applied in reality. It has formed the basis for an informed and substantive debate at the intergovernmental level. It has given a voice to the often silenced victims a,nd offered a basis for dialogue with Governments on the concrete measures to be taken to enhance

protection. Works of the experts is debated during the annual session of the Commission on Human Rights. About one third of the experts also reports to the United Nations General Assembly in New York. Some experts have informally briefed the United Nations Security Council. Thus Remedies to Human Rights violations of any kind to day are built in to the institutional structures established. The preceding paragraphs therefore clearly speaks of these remedies too.

The United Nations human rights experts play a vital role in working towards the universal achievement of freedom from fear and want. They are not paid. Their reward is the satisfaction of working towards the realization of human rights, as the highest aspiration of the common people as the Universal Declaration of Human Rights proclaimed.

The system remains seriously under-resource and has yet to achieve its full potential, however Efforts are continuing to be made to strengthen the system to enable it to achieve the goal of universal respect for all human rights. With the cooperation of various actors, in particular Governments, United Nations bodies, and the non governmental sector, its effectiveness could.be considerably enhanced.

Check Your Progress -1

Note : 1) Use the space given below for your answer.

2) Also check your answer with the clue given at the end of the Unit.

1. Discuss the structure of human rights commission.

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2. Examine the importance of Minoroties Commission.

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18.5 LET US SUM UP

While summing up it is pertinent to realize the Human Rights and Minorities commission can do little to remedy their violations other wise, necessary mechanisms and institutions are set in place. The following could be considered in this direction

Consider establishing or strengthening regional conflict prevention and resolution mechanisms, and cooperate with the Working Group on Minorities in this regard.

Assist national governments in the implementation of recommendations emanating from regional and international human rights mechanisms.

Support greater cooperation between the Working Group on Minorities and regional mechanisms and institutions.

18.6 KEYWORDS

Contributory	-	provide for
Subsidiary	-	supplementary
Authorized	-	to give power

18.7 ANSWERS TO CHECK YOUR PROGRESS

Check Your Progress -1

1. See section 18.2

Check Your Progress -1

1. See section 18.3

18.8 REFERENCE BOOKS

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UNIT-19 : ENVIRONMENTAL STUDIES- DEFINITION, SCOPE, IMPORTANCE AND COMPONENTS, NATURAL AND MANMADE

Structure

19.0 OBJECTIVES

After reading this unit you will be able to

- Define the meaning, Scope and Importance of Environment
- Describe the components of Environment

19.1 INTRODUCTION

Environment is derived from the French word *Environner,* which means to encircle or surround. All the biological or living and non-biological or non-living entities surrounding us are included in environment. According to Environment (Protection) Act 1986, environment includes all the physical and biological surroundings of an organism along with their interactions. Hence, Environment can be defined as "the sum total of water, air, land and the interrelationship that exist among them and with the human beings, other living organisms and materials". Environmental Studies deals with every issue that affects an organism. Its components include biology, geology, chemistry, physics, engineering, sociology, health, anthropology, economics, statistics, computers and philosophy.

19.1 DEFINITION

Environment is a composite term for the condition in which organisms live and thus consists of air, water, food, sunlight which are basic needs of all living being and plants life to carry on their life function. It is also defined as the sum of all social, economical, biological, physical or chemical factors which constitute the surroundings of man, who is both creator and moulder of his environment.

Environmental Studies deals with the study of every issues that affect organism or it is a multidisciplinary study that brings an appreciation of our natural world and human impacts on its integrity.

19.1 SCOPE AND IMPORTANCE

Environmental studies as a subject has a wide scope. It encompasses a large number of areas and aspects which may be summarized as follows:

- Natural Resources – their conservation and management
- Ecology and Biodiversity
- Environmental pollution and Management
- Social issues in relation to development and environment
- Human population and environment

These are the basic aspects of environmental studies which have direct relevance to every section of the society. Environmental studies can also be specialized concentrating on more technical aspects like environmental science, environmental engineering, environmental technology or environmental management.

Our dependence on nature is so great that we cannot continue to live without protecting the earth's environmental resources. Thus most tradition refer to our environment as "Mother Nature" and most traditional societies have learned that representing the nature is vital for their livelihoods. This has led to many cultural practices that helped traditional societies protect and preserve their natural resources.

The industrial development and intensive agriculture that provides the goods for our increasing consumer oriented society uses up large quantity of natural resources such as water,

minerals, petroleum products, wood etc Non renewable resources such as minerals and oil are major products which will be exhausted in the future if we continue to extract these without a thought for subsequent generations.. Renewable resources, such as timber and water are those which can be used extensively but can be regenerated by natural processes such as re-growth or precipitation (rainfall). But these too will be depleted if we continue to use them faster than nature can replace them. Such multiple effects on environment resulting from routine human activities must be appreciated by each one of us, if it is to provide us with the resources we need in the long-term.

19.4 COMPONENTS OF ENVIRONMENT

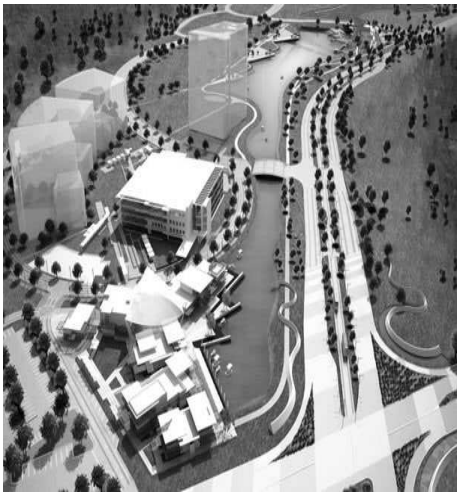
There are two components in Environment: Natural and Manmade

Natural components are also called as physical components whereas manmade components are called cultural or artificial components.

19.4.1 Physical components

Physical components or natural components include all naturally occurring components like light, water, temperature, air, rainfall, chemical substances and also biotic components such as plants, animals and microorganism. These components have interactions with each other and they maintain ecological balance in the environment. There are several examples where efforts to improve environmental quality have failed because the problem has not been approached in a holistic manner. To understand these complexities, it is necessary to understand what makes an environment and how the different components are interconnected.

19.1.1 Cultural or Manmade components



Cultural or manmade components means artificially incorporated or introduced to environment such as Cities, Industries, Constructions, Mining areas, Roads and Railways etc., which are the result of civilization and improvement of Science and Technology. During the last 100 years, a better health care delivery system and an improved nutritional status has led to rapid population growth, especially in developing countries. This phenomenal rise in human numbers has, in the recent past, placed great demand on the earth's natural resources.

Manmade environment means it is the surrounding area where living and nonliving thing exist and made by the man. Environment provides food, medicine, raw materials for man. Man is also a part of environment. Knowledge of environment helps him to understand and discover new sources of food, energy etc., Overexploitation of the environment by the man created many environmental problems and disasters. Environmental study helps him to understand and to solve these problems.

Development in science and technology has given rise to industrialization and urbanization as a consequence of population explosion. This developmental activity is responsible for the destruction and degradation of earth's environment. The industrial revolution, tremendous growth in human population has put great pressure on the exploitation of natural recourses which inturn has resulted in deforestation, land degradation and overall environmental pollution. If appropriate steps are not taken to overcome this destruction, then there may be a serious stress on earth's life supporting system, which disturbs the harmony of the ecosystem. Hence, it has become imminent to think of sustainable development i.e., to strike a balance between the economic development and environment.

Check your Progress

1. Define Environment

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2. What is the meaning of Environmental studies?

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3. Which are the Environmental Components?

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19.1 LET US SUM UP

Environment is a composite term for the condition in which organisms live and thus consists of air, water, food, sunlight which are basic needs of all living being and plants life to carry on their life function. It is also defined as the sum of all social, economical, biological, physical or chemical factors which constitute the surroundings of man, who is both creator and moulder of his environment.

Environment consists of physical or natural and cultural or manmade components. Natural components include all naturally occurring components like light, water, temperature, air, rainfall, chemical substances and also biotic components such as plants, animals and microorganism. Manmade components means artificially incorporated or introduced to environment such as Cities, Industries, Constructions, Mining areas, Roads and Railways etc., which are the result of civilization and improvement of Science and Technology.

19.2 KEYWORDS

Multidisciplinary:	Studying many subjects (many disciplines)
Renewable resources:	Renewable resources are those that are replenished through Biogeochemical and physical cycles

Non renewable resources:	A non-renewable resource is a natural resource which cannot be produced, grown, generated, or used on a scale which can sustain its consumption rate.
· **Deforestation:**	Destruction of forest

19.3 ANSWER TO CHECK YOUR PROGRESS

Check Your Progress -1

1. See section : 19.2

Check Your Progress -2

1. See section : 19.2 & 19.3

Check Your Progress -3

1. See section : 19.4

19.4 REFERENCE BOOKS

1. Erach Bharucha : 2004, Text book for Environmental Studies, UGC New Delhi and Bharati vidya peeth, Institute of Envirnmental Education and Research

2. Odum E.P. : 1971, Fundamental of Ecology, W.B. Saunders co. USA, 574 PGS.

3. Kiran B Chhokar, Mamata Pandya and Meena Raghunathan: 2004, Understanding. Environment. Stage Publication Pvt Ltd.

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UNIT - 20: ECOLOGY-CONCEPT, STRUCTURE AND FUNCTIONS OF ECOSYSTEM

Structure

20.0 OBJECTIVES

After reading this unit you will be able to

- Define and explain the concept of Ecology
- Describe the structure of Ecosystem
- Sketch out the functions of Ecosystem

20.1 INTRODUCTION

The term Ecology was coined in 1866 by the German biologist Ernst Haeckel from the Greek *oikos* meaning "household" and *logos* meaning "science:" the "study of the household of nature." It was initially meant for animal only and was defined as investigations of the total relations of the animal to its organic and inorganic environment. The definition was later enlarged – the study of reciprocal relationship between living organism and their environment. It is a study of the interconnections and interdependence of plants, animals and their environment. The essence of ecology lies in the study of togetherness of everything –plants, animals, microorganisms, and their environment- because in nature everything is connected. A large number of such connections exist in nature, and hence the essence of ecology in a holistic approach to the subject.

20.2 DEFINITION

Ecology is the branch of science that studies the distribution and abundance of living organisms, and the interactions between organisms and their environment. The environment of an organism includes both its physical habitat, which can be described as the sum of local abiotic factors like climate and geology, as well as the other organisms which share its habitat. It may also defined as it is the subdiscipline of biology that concentrates on the relationships between organisms and their environments; it is also called environmental biology. Ecology is concerned with patterns of distribution (where organisms occur) and with patterns of abundance (how many organisms occur) in space and time.

20.3 CONCEPT OF ECOSYSTEM

An ecosystem is a region with specific and recognizable landscape form such as forest, grassland, desert, wetland of costal area. The nature of ecosystem is based on its geographical features such as hills, mountains, plains, river, lakes, costal areas or island. It is also controlled

by climatic conditions such as the amount of sunlight, the temperature and the rainfall in the region. The geographical, climatic and soil characteristic form its non-living (abiotic) component. These features create conditions that support a community of plants and animals that evolution has produced to live in these specific conditions. The living part of the ecosystem is referred as biotic component.

An ecosystem consists of the biological community that occurs in some locale, and the physical and chemical factors that make up its non-living or abiotic environment. There are many examples of ecosystems — a pond, a forest, an estuary, grassland. The study of ecosystems mainly consists of the study of certain processes that link the living, or biotic, components to the non-living, or abiotic, components. *Energy transformations* and *biogeochemical cycling* are the main processes that comprise the field of ecosystem ecology. As we learned earlier, ecology generally is defined as the interactions of organisms with one another and with the environment in which they occur. We can study ecology at the level of the individual, the population, the community, and the ecosystem.

In recent years, the impact of humans has caused a number of dramatic changes to a variety of ecosystems found on the Earth. Humans use and modify natural ecosystems through agriculture, forestry, recreation, urbanization, and industry. The most obvious impact of humans on ecosystems is the loss of biodiversity. The number of extinctions caused by human domination of ecosystems has been steadily increasing since the start of the Industrial Revolution. The frequency of species extinctions is correlated to the size of human population on the Earth which is directly related to resource consumption, land-use change, and environmental degradation. Other human impacts to ecosystems include species invasions to new habitats, changes to the abundance and dominance of species in communities, modification of biogeochemical cycles, modification of hydrologic cycling, pollution, and climatic change.

20.4 STRUCTURE OF ECOSYSTEM

The structure of an ecosystem is basically a description of the species of organism that are present including information on their life histories, population and distribution in space.

Components that make up the structural aspects of an ecosystem includes

1. Inorganic components like Carbon, Nitrogen, Carbon di-Oxide, Water etc.,
2. Organic compounds-Protein, Carbohydrate, Lipids

ABIOTIC COMPONENTS

3. Producers: Plants

4. Consumers: Large Animals **BIOTIC COMPONENTS**

5. Decomposers: Fungi, Bacteria and Mites

An ecosystem has major two components

20.5 FUNCTIONS OF ECOSYSTEM

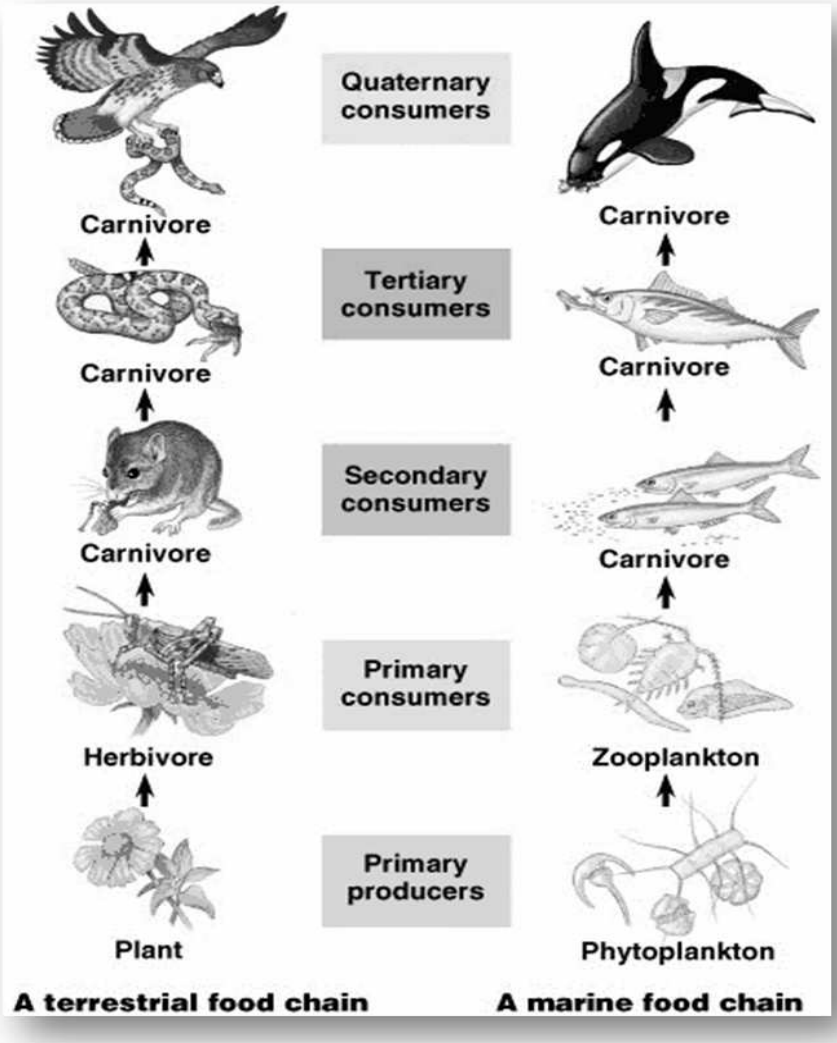
Every ecosystem performs under natural conditions in a systematic way. It receives energy from the sun and passes it on through various biotic components. Besides energy, various nutrients and water are also required for life processes which are exchanged by biotic components within ecosystem. Ecosystem has several integrated functions that affect human life. These are the water cycle, carbon cycle, oxygen cycle, nitrogen cycle and energy cycle. All the functions of ecosystem are in some way related to the growth and regeneration of plants and animal species. These linked processes can be depicted as various cycles. These processes depend on energy, from sunlight. During photosynthesis carbon dioxide is taken up by plants and oxygen is released. Animals depend on this oxygen for their respiration. The water cycle depends on the rainfall, which is necessary for plants and animals to live. The energy cycles nutrients into the soil on which plant life grows. This is how the every aspect in an ecosystem are interlinked and interconnected. The major functions of ecosystem are as follows:

1. Food Chain, food webs and ecological pyramids
2. Energy flow
3. Biogeochemical cycle
4. Primary and secondary production

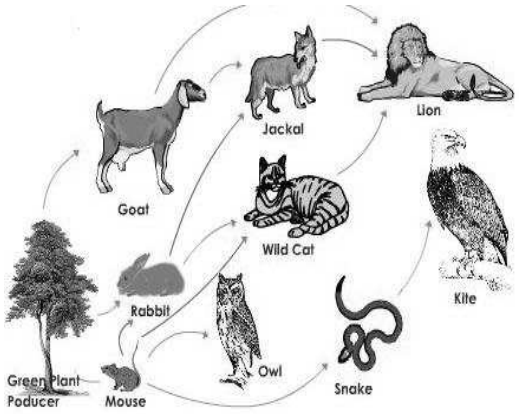
20.5.1 Food Chain, food webs and trophic level

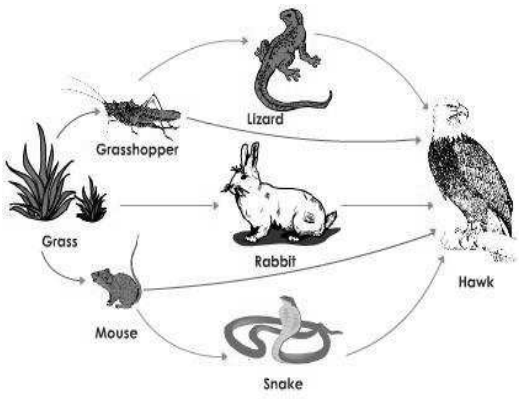
Food Chain: In an ecosystem, the sequential chain of eating and being eaten is called food chain. It is this process which determines how energy moves from one organism to another within the system. There are three types of food chain.

1. ***Grazing food chain:*** The grazing food chain starts form green plants and goes from herbivores to primary carnivores and then to secondary carnivores and so on.
2. ***Parasitic food chain:*** It goes from large organisms to smaller ones without killing.
3. ***Detritus food chain:*** The dead organism remains including metabolic wastes are termed detritus. The energy lost in an ecosystem as whole rather it serves as source of energy fro a group of organisms called detritivores that are separate from grazing food chain. The food chain so formed is called detritus food chain.



Food Web: In nature, food chain relationships are not isolated. They are very complex, as one organism may form the food source of many organisms. Thus, instead of a simple linear food chain, there is a web like structure formed by these interlinked food chains. Such interconnected matrix of food chains is called 'food web'. Food web can be defined as, "a network of food chains which are interconnected at various trophic levels, so as to form a number of feeding connections amongst different organisms of a biotic community". Food webs are indispensable in ecosystems as they allow an organism to obtain its food from more than one type of organism of the lower trophic level.

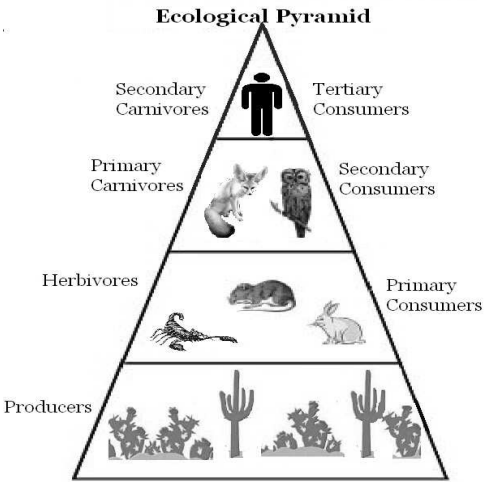




Food web of a Forest

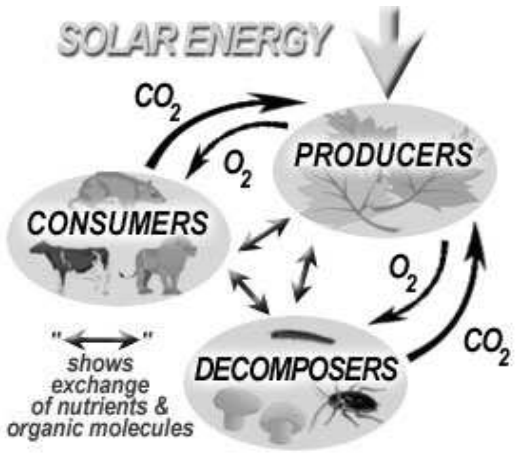
Food web of Grassland

Ecological pyramids: Ecological pyramids are graphical representations of the trophic structure of ecosystems. Ecological pyramids are organized with the productivity of plants on the bottom, that of herbivores above the plants, and carnivores above the herbivores. If the **ecosystem** sustains top carnivores, they are represented at the apex of the ecological **pyramid** of productivity.



20.5.2 Energy flow

Diagram representing the flow of energy through each trophic level in a food chain or food web. With each energy transfer, only a small part (typically 10%) of the usable energy entering one trophic level is transferred to the organisms at the next trophic level.



20.5.3 Biogeochemical cycle

Biogeochemical cycle is a circuit or pathway by which a chemical element or molecule moves through both biotic and abiotic compartments of an ecosystem.

The most well-known and important biogeochemical cycles, for example, includes

- Nitrogen cycle
- Oxygen cycle
- Carbon cycle
- Phosphorus cycle
- Sulfur cycle
- Water cycle
- Hydrogen cycle

20.5.4 Primary and Secondary production

The amount of organic matter or biomass produced by an individual organism, population, community or ecosystem during a given period of time is called productivity.

Primary production refers to all or any part of the energy fixed by plants possessing

chlorophyll. The total amount of solar energy converted (fixed) into chemical energy by green plants (by the process of photosynthesis) is called 'Gross Primary Production' (GPP).

Secondary production refers to the net quantity of energy transferred and stored in the somatic and reproductive tissues of heterotrophs over a period of time.

CHECK YOUR PROGRESS

1. Define Ecosystem

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2. Which are the abiotic and biotic components?

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3. What are the functions of ecosystem?

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2.1 LET US SUM UP

Ecology is the branch of science which deals with study of the distribution and abundance of living organisms, and the interactions between organisms and their environment. The ecosystem consists of the biological community that occurs in some locale, and the physical and chemical factors that make up its non-living or abiotic environment. It consists of abiotic and biotic components. Ecosystem functions under natural conditions in a systematic way. Food Chain, Food webs and Ecological pyramids, Energy flow, Biogeochemical cycle, Primary and secondary productions are the important functions of ecosystem.

20.2 KEYWORDS

Ecology : Study of the distribution and abundance of living organisms, and the interactions between organisms and their environment.

Ecosystem : Ecosystem is a region with specific and recognizable landscape form such as forest, grassland, desert, wetland of costal area.

Food Chain : Sequential chain of eating and being eaten is called food chain.

Food web : Interconnected matrix of food chains is called food web.

20.3 ANSWER TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress -1

1. See section : 20.2

Check Your Progress -2

1. See section : 20.4

Check Your Progress -3

1. See section : 20.5

20.4 REFERENCE BOOKS

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UNIT - 21: BIOTIC AND ABIOTIC FACTORS - ENVIRONMENTAL INTERACTIONS

Structure

21.0 OBJECTIVES

After reading this unit you will be able to:

- Explain the abiotic and biotic components of the environment
- Describe the interactions between abiotic and biotic components

21.1 INTRODUCTION

An ecosystem is a complete community of living organisms (biotic) and the non-living(abiotic) materials of their surroundings. Thus, its components include plants, animals, and microorganisms; soil, rocks, and minerals; as well as surrounding water sources and the local atmosphere.

21.2 A BIOTIC COMPONENTS

Abiotic or nonliving components includes three different types of components

(i) Climatic conditions and physical factors of given region such as air, water, soil, temperature, light, moisture etc.,

(ii) Inorganic substances such as water, carbon(c), nitrogen(N), sulphur (S),phosphorous (P) and so on all of which are involved in cycling of material in the ecosystem.

(iii) Organic substances such as protein and carbohydrates, traped within the living system.

21.3 BIOTIC COMPONENT

An ecosystem consists of two biotic components

(a) Autotrophic component: They are self nourishing components in which fixation of light energy, use of simple inorganic substances and the manufacture of complex materials predominates.

(b) Heterotrophic component: These are the other nourishing components and consume the product of autotrophs. They also feed on the dead bodies of the organism. The interaction of autotrophic and heterotrophic components is a universal feature of all ecosystems where they are located on land, in fresh water or in the ocean.

From structural point of view three biotic components have been recognized

21.3.1 Producer

- Producer organisms are producing their own food from the chlorophyll and prepare food through photosynthesis.
- In terrestrial ecosystem plants are the producers. In aquatic ecosystem various kinds of algae act as producers.
- Producer uses the solar energy for photosynthesis reaction.
- Producers are the primary components in the biotic components.
- Example: all plants and trees.

21.3.2 Consumer

Consumer in biotic components contains herbivores, carnivores and omnivores. The consumer uses the plants for their first level consumer. The following types are the heterotrophic organism which acts as the consumers. There are three types of consumers in the ecosystem. They are

1) Herbivores
2) Carnivores
3) Omnivorous

Herbivores

- It is one of the types of the consumers.
- Herbivores are the plant eating animals.
- They utilize the green plants and obtain their food.
- They are called as the primary consumer.
- Example: deer, cow.

Carnivores

- Carnivores depend upon herbivore and other carnivores to obtain their food and it is one of the types of consumers.
- Carnivores which consume herbivores are the second order consumers.
- Carnivores which consume such carnivores animals constitute third and higher order consumers. Ex: Snake, Tiger, Lion etc.,

Omnivorous

- Omnivorous organisms utilize their food for both the plants and also the animals.

Ex: Birds, Fishes and some species of monkey, man etc.,

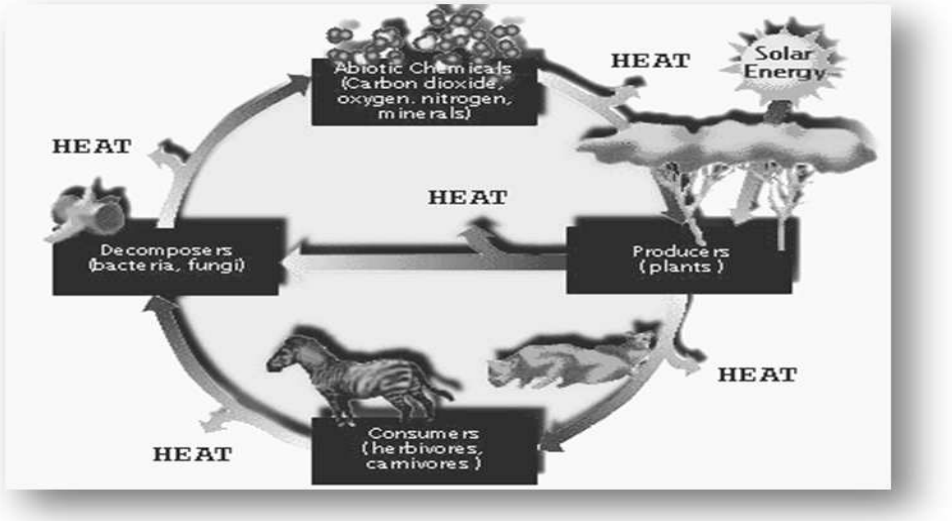
21.3.3. De-composers

- De-composers fulfill their nutritional requirements by decomposing dead bodies of plants and animals.
- They convert the complex organic matters into simple organic constituents and then transform these into inorganic constituents.
- The decomposer produces the required organic components for the plants.
- Decomposer produces the inorganic nutrient pool for plants. Ex: Bacteria, Fungi, Viruses

21.1 ENVIRONMENTAL INTERACTIONS

Abiotic and biotic factors of the environment have many interactions and interrelations. We can understand the interaction between biotic and abiotic components by the following process: energy flow and bio-geochemical cycles.

Solar energy is the main source of energy which is utilized by the plants during photosynthesis. Solar energy is utilized by the plants and is converted in to chemical energy i.e. food energy. This energy is flowed along different trophic levels of ecosystem. This is called energy flow in an ecosystem.



Many types of nutrients such as water, inorganic minerals and gases are circulated in the environment. Livings things get these nutrients from the nonliving atmosphere and returns it back. This cyclic flow of nutrients between abiotic and biotic factors of the environment is called as bio-geochemical cycle (bio means living organism and geo means rock, soil, water, air etc.,).

There are three types of biogeochemical cycles: Hydrological or water cycle, Gaseous cycle and Sedimentary cycle.

Hydrological or water cycle: The cyclic movement of water between living organisms and atmosphere is known as water cycle. Plants absorbs water from soil, animals also get water from the water released in to the atmosphere in the form of water vapour. Evaporation also takes place from ocean and fresh water bodies. This water vapour condenses to form the cloud. Clouds come to the earth in the form of rainfall and water is again added to water bodies and soil of the atmosphere.

Gaseous cycle: There are 3 important gaseous cycles : Oxygen cycle, Carbon cycle and Nitrogen cycle. All these cycle involves the movement of these gases from atmosphere to the living systems and again to the abiotic environment. For ex: Oxygen found in the atmosphere are absorbed by the plants during respiration and released during photosynthesis. In the same way carbon and nitrogen are circulated between atmosphere and living organisms.

Sedimentary Cycle: The sedimentary cycle involves the creation of rocks, their disintegration and decomposition into sediments and the movement of sediment in the atmosphere and the deposition of sediments to form rocks. There are two important sedimentary cycles: Phosphorous cycle and Sulphur cycle. Many types of nutrients are cycled between living and nonliving part of the environment. This interaction maintains the stability of the environment.

CHECK YOUR PROGRESS

1. Define abiotic and biotic components

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2. Define producers, consumers and decomposers with examples?

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3. What is biogeochemical cycle and mention the types with examples?

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21.2 LET US SUM UP

Ecosystem consists of abiotic and biotic factors. Abiotic and biotic factors interact with each other. This interaction maintains the balance in the ecosystem. Biotic factors include plants, animals and microorganisms which are also named as producers, consumers and decomposers respectively. Abiotic factors include light, temperature, humidity, rainfall, soil and chemical substances. Biological factors get their energy from photosynthesis. It requires many abiotic factors such as water, oxygen and solar energy. There is a continuous exchange of nutrients between the atmosphere and living organisms. It is called Biogeochemical cycle.

21.3 KEYWORDS

Abiotic components **:** Nonliving components of ecosystem called abiotic components

Biotic Components **:** Living components or living organisms are called as biotic components.

Biogeochemical Cycle **:** Cyclic flow of nutrients between abiotic and biotic factors of the environment is called as bio-geochemical cycle

21.4 ANSWER TO CHECK YOUR PROGRESS

Check Your Progress -1

1. See section : 21.2 & 21.3

Check Your Progress -2

1. See section : 21.3.1 to 21.3.3

Check Your Progress -3

1. See section : 21.4

21.5 REFERENCE BOOKS

1. Erach Bharucha: 2004, Textbook for Environmental Studies, UGC New Delhi and Bharati vidya peeth, Institute of Envirnmental Education and Research

2. Odum E.P. : 1971, Fundamental of Ecology, W.B. Saunders co. USA, 574 PGS.

3. Kiran B Chhokar, Mamata Pandya and Meena Raghunathan: 2004, Understanding. Environment. Stage Publication Pvt Ltd.

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UNIT - 22: NATURAL AND BIOLOGICAL RESOURCES – PLANTS, ANIMALS AND MICROORGANISMS

Sructure

22.0 OBJECTIVES

After reading this unit you will be able to

- Describe biological resources
- Explain the uses of biological resources to humans

22.1 INTRODUCTION

Life on this planet earth depends upon a variety of goods and services provided by the nature which are known as natural resources. Thus water, air, soil, minerals, coal, forests, crops and wildlife are all examples of natural resources.

The natural resources are of two kinds:

Renewable resources which are in exhaustive and can be regenerated within given span of time e.g. Forests, wildlife, wind energy, biomass energy, tidal energy, hydropower etc. Solar energy is also renewable form of energy.

Non-renewable resources which cannot be regenerated e.g. Fossil fuels like coal, petroleum, minerals etc., Even our renewable resources can become non-renewable if we exploit them to such extent that their rate of consumption exceeds their rate of regeneration. It is very important to protect and conserve our natural resources and use them in a judicious manner, so that we do not exhaust them. It doesn't mean that we should stop using most of the natural resources. Rather, we should use the resources in such a way that, we always save enough of them for our future generations.

Major natural resources are:

1. Forest resources
2. Water resources
3. Mineral resources
4. Food resources
5. Energy resources
6. Land resources

22.2 BIOLOGICAL RESOURCES

Our earth consists of many types of resources. Naturally occurring substances which are useful to man are called as resources. Living organisms are also considered as resources. The biological resource comprises all living organisms such as plants, animals and microorganisms. There is a great diversity of living organisms on earth and they have some interrelations and interactions with the abiotic factors of the environment. The biological resources can be categorized in to three types. They are plants, animals and microorganisms.

22.2.1 Plants

Plants are the important type of biological resources and are considered as the producers of ecosystem. Plants are grouped in to many types. They are broadly classified in to flowering and non flowering plants.

Flowering plants include gymnosperms and angiosperms. All the plants are autotrophic. Non flowering plants are the plants which do not bear flowers and seeds e.g. algae, fungi, bryophyta and lichens. Algae include primitive unicellular or multicellular plants with simple body structure. Fungi include simple, microscopic or multicellular plants. But the members of this group are heterotrophs. They may lead parasitic or saprophytic mode of life. E.g. Mushroom. Bryophyta includes plants which are complex and multicellular. They are considered as the “amphibians of plant kingdom”. E.g. Mosses.

Lichens are the plants which have an association of algae and fungi

Pteridophyta includes vascular plants e.g. Ferns. Gymnosperms are those plants which produce seeds without covering E.g. Pinus. Angiosperms form majority of common plants. They produce flowers and seeds and the seeds are covered by covering. E.g. Coconut, Groundnut.

There are numerous examples of plants that are used by humans in everyday life. One of the most obvious uses of plants is for food.

- There are more than twenty thousand (20,000) known spices of edible plants in the world. These plants are grown all over the world in different regions and climates.
- Another very important use of plants is for medicinal purposes. Still other plants have been found to aid humans in different ways.
- Another use plants provide to humans is for aromatic fragrances.

- Plants also provide us with fibers for making cloth, rope, paper, etc.
- There are many dyes and lubricants that come from plants as well. Concerning these plants with human uses, herbs play a major role, and have for many centuries.
- Plants provide shelter for many organisms
- Plants prevent soil erosion
- They help in increasing ground water level
- They enhance the beauty of our earth by its diversity

22.2.2 Animals

Animals are a major group of multicellular, eukaryotic organisms of the kingdom Animalia or Metazoa. Their body plan becomes fixed as they develop, although some undergo a process of metamorphosis later on in their life. Most animals are motile, meaning they can move spontaneously and independently. All animals are also heterotrophs, meaning they must depend up on other organisms for sustenance.

Animal Kingdom can be split up into main groups, vertebrates (with a backbone) and invertebrates (without a backbone). When you think of an animal, you usually think of something like a cat, a dog, a mouse, or a tiger. Around 800,000 species have been identified in the Animal Kingdom — most of them in the Arthropod phylum. The science of classifying organisms is called taxonomy. In order to study living things, scientists classify each organism according to its:

- Kingdom
- Phylum
- Class
- Order
- Family
- Genus
- Species

The largest and most commonly studied phyla of animals are:

1. *Protozoa*: It includes unicellular organisms E. g. Ameoba
2. *Porifera*: It include multicellular organisms like sponges

3. *Cnidaria*: It includes animals without celome and are multicellular E.g. jellyfish, hydras, sea anemones, Portuguese man-of-wars, and corals
4. *Platyhelminthes*: It includes worms such as flat warm and tape warm E.g. flatworms, including planaria, flukes, and tapeworms
5. *Nematoda*: It include with spiral body shape E.g. roundworms, including rotifers and nematodes
6. *Mollusca*: It consist of animals which have soft body protected by mantle shell E.g. mollusks, including bivalves, snails and slugs, and octopuses and squids)
7. *Annelida* : It comprises segmented worms, including earthworms, leeches, and marine worms
8. *Echinodermata* : It includes animals with bones and spines E.g. sea stars, sea cucumbers, sand dollars, and sea urchins
9. *Arthropods*: Animals with jointed appendages including arachnids, crustaceans, millipedes, centipedes, and insects
10. *Chordata*: It represents the highest phylum of animal kingdom which includes animals with nerve chords - this group includes the vertebrates E. g. Fishes, amphibians reptiles birds and mammals.

Animals are also considered as biological resources some of the uses are listed below:

- Man uses the meat of many animal for food purposes
- Skin and hair of some animals are used in the manufacture of bags, slippers and ornamental goods.
- Animal products such as milk and egg are utilized by man
- For research purpose
- Like plants, animals also enhance the beauty of our earth by its diversity
- Play significant role in dispersal of seeds and plants
- It maintains the ecological balance in the environment

22.2.3 Microorganisms

Microorganisms are very tiny single-celled organisms, viruses, fungi, and bacteria, and are found everywhere in the world. They are found in all living things, plants and animal. Microorganisms are very diverse; they include bacteria, fungi, and protists; microscopic plants (green algae); and animals such as plankton and the planarian.

Microorganisms live in all parts of the biosphere where there is liquid water, including soil, hot springs, on the ocean floor, high in the atmosphere and deep inside rocks within the Earth's crust. Microorganisms are critical to nutrient recycling in ecosystems as they act as decomposers. As some microorganisms can fix nitrogen, they are a vital part of the nitrogen cycle, and recent studies indicate that airborne microbes may play a role in precipitation and weather.

Microorganisms can grouped in to following types:

Bacteria- These are single celled organisms which are essential to all life and live either independently or as a parasite. Bacteria have three basic shapes which include bacillus, coccus and spiral. Bacteria multiply through cell division and in most cases can be killed by antibiotics.

Fungi- Fungi is a general term which is used to describe a group of eukaryotic protists which are characterized by the absence of chlorophyll and by the presence of a rigid cell wall. Fungi can exist as single celled yeasts or as larger multicellular moulds and are classified according to the type of sexual spore they form. Most fungi are decomposers and are commonly found to cause disease in immune suppressed individuals. Fungi can spread either through direct contact, or it can be airborne.

Algae- Algae can be multi or unicellular, however it is only the unicellular species which can cause disease. All algae reproduce asexually and are abundant in fresh, salt water, soil and attached to some plants. Algae are photosynthetic and have an important role in the balance of nature. In terms of disease, algae are food borne or water borne.

Protozoans- These are unicellular eukaryotes which live independently or as parasites and can move by the use of pseudopods, cilia and flagella. Protozoa are mostly found in soil or water and many can make up the normal flora of larger animals. Protozoa reproduce asexually and have many shapes.

Viruses – Viruses are the simplest of microbiological entities and are comprised only of a nucleic acid core (DNA or RNA), wrapped in a protein coat. Viruses are extremely small and the use of an electron microscope is needed to view them. Viruses are acellular and need a

host cell to enter in order to reproduce by means of taking over the cells reproductive material.

Microorganisms are both beneficial and harmful to man. Beneficial activities include curding of milk, softening of bread and bakery products, production of beer and wine and antibiotics.Some microorganisms are pathogenic and cause diseases in man. Microorganisma have a role in food spoilage.

Check your Progress

1. Define Biological Resources

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2. Differentiate plant and animal resources with examples?

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3. What are the useful functions of biological resources?

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22.3 LET US SUM UP

Living organisms are considered as the biological resources. Biological resources are of three types: Plants, animals and microorganisms. Plants are considered as very important type of biological resource. They provide food, medicine, oxygen, raw materials for industries. They prevent soil erosion and improve ground water level. Animals were also a type of biological resource. They provide meat, milk, egg, leather etc., they are very helpful in biological research.

22.4 KEYWORDS

Biological resources : Naturally occurring living substances which are useful to man are called as biological resources

Microorganism : any organism too small to be viewed by the unaided eye, E.g. bacteria, protozoa, and some fungi and algae.

22.5 ANSWER TO CHECK YOUR PROGRESS

Check Your Progress -1

1.See section : 22.2

Check Your Progress -2

2. See section : 22.2.1 to 22.2.2

Check Your Progress -3

1.See section : 22.4

22.6 REFERENCE BOOKS

1. Erach Bharucha : 2004, Textbook for Environmental Studies, UGC New Delhi and Bharati vidya peeth, Institute of Envirnmental Education and Research

2. Odum E.P. : 1971, Fundamental of Ecology, W.B. Saunders co. USA, 574 PGS.

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UNIT - 23 : SOCIAL ISSUES- HUMAN POPULATION AND ENVIRONMENT

Structure

23.0 OBJECTIVES

After exercising this unit you will be able to

- Examine the social issues related to the environment
- Describe the social issues related with environment
- Explain the effects of population explosion on environment

23.1 INTRODUCTION

Until two decades ago the world looked at economic status alone as a measure of human development. Thus countries that were economically well developed and where people were relatively richer were called advanced nations while the rest where poverty was widespread and were economically backward were called developing countries. Thus the way development progressed, the rich countries got richer while the poor nations got poorer. However, even the developed world has begun to realise that their lives were being seriously affected by the environmental consequences of development based on economic growth alone. This form of development did not add to the quality of life as the environmental conditions had begun to deteriorate.

The newer concept of development has come to be known as *"Sustainable Development"*. The nations of the world came to clearly understand these issues at the Rio Conference in 1992. Several documents were created for the United Nations Conference on Environment and Development (UNCED), which brought out the fact that environment and development were closely connected and that there was a need to 'care for the Earth'. **Sustainable development is defined as development that meets the needs of the present without compromising the ability of future generations to meet their own needs.** To ensure sustainable development, any activity that is expected to bring about economic growth must also consider its environmental impacts so that it is more consistent with long term growth and development. Hence there is an urgent need to interlink the social aspects with development and environment. In this unit we shall discuss various social issues in relation to environment.

23.2 SOCIAL ISSUES

Man is misusing and mismanaging the natural resources. He consumes larger amount of materials and energy from the environment. His greeds and ambitions are leading to the depletion of natural environment. This has creates some issues which are related to environment.

Some of the social issues related to environment are urban problems related to energy, sustainable development, water conservation, resettlement and rehabilitation of people, global environmental change, nuclear accidents consumerism and waste products.

To mention few examples to the above mentioned social issues are :

(a) ***Urban problems related to the energy***: Residential and commercial lighting, Transportation,Modern life-style, huge waste generation etc.,

(b) ***Sustainable Development***: 3-R approach (Reduce, Reuse, Recycle), Enviroenmntal Education and Awareness, Resource utilization as per carrying capacity etc,.

(c) ***Water Conservation***: Water Harvesting, Rain water Harvesting, Watershed Management etc.,

(d) ***Resettlement & Rehabilitation:*** Rehabilitation issues, Rehabilitation policy, role of Government, environmental Ethics etc.,

(e) ***Global environmental change:*** Climate change, Ozone depletion, Acid Rain, Deforestation etc.,

(f) ***Nuclear accidents:*** Nuclear testing, Nuclear explosions (Hiroshima-Nagasaki),Chernobyl Disaster etc.,

The above mentioned social issues are causing damages to the environment. In the same way increase in the global population is becoming a threat to the natural balance of ecosystem.

23.2.1 Human Population and Environment

Our global human population is 6 billion at present, which will cross the 7 billion mark by 2015.The needs of this huge number of human beings cannot be supported by the Earth's natural resources, without degrading the quality of human life. In the near future, fossil fuel from oil fields will run dry. It will be impossible to meet the demands for food from existing agro systems. Pastures will be overgrazed by domestic animals and industrial growth will create ever-greater problems due to pollution of soil, water and air. Seas will not have enough fish. Larger ozone holes will develop due to the discharge of industrial chemicals into the atmosphere, which will affect human health. Global warming due to industrial gases will lead to a rise in sea levels and flood all low-lying areas, submerging coastal agriculture as well as towns and cities. Water 'famines' due to the depletion of fresh water, will create unrest and eventually make countries go to war. The control over regional biological diversity, which is vital for producing new medicinal and industrial products, will lead to grave economic conflicts

between biotechnologically advanced nations. Degradations of ecosystems will lead to extinction of thousands of species, destabilizing natural ecosystems of great value. These are only some of the environmental problems related to an increasing human population and more intensive use of resources that we are likely to face in future. These effects can be averted by creating a mass environmental awareness movement that will bring about a change in people's way of life.

Present projections show that if our population growth is controlled, it will still grow to 7.27 billion by 2015. However, if no action is taken it will become a staggering 7.92 billion.

Human population growth increased from:

- 1 to 2 billion, in 123 years.
- 2 to 3 billion, in 33 years.
- 3 to 4 billion, in 14 years.
- to 5 billion, in 13 years.
- to 6 billion, in 11 years.

It is not the census figures alone that need to be stressed, but an appreciation of the impact on natural resources of the rapid escalation in the rate of increase of human population in the recent past. The extent of this depletion is further increased by affluent societies that consume per capita more energy and resources, that less fortunate people.

23.2.2 Population explosion – Family welfare programme

In response to our phenomenal population growth, India seriously took up an effective Family Planning Program which was renamed the Family Welfare Program. Slogans such as 'Navu Ebbru; Namge ibbru' indicated that each family should not have more than two children. It however has taken several decades to become effective. At the global level by the year 2000, 600 million, or 57% of women in the reproductive age group, were using some method of contraception. However the use of contraceptive measures is higher in developed countries – 68%, and lower in developing countries - 55%. Female sterilization is the most popular method of contraception used in developing countries at present. This is followed by the use of oral contraceptive pills and, intrauterine devices for women, and the use of condoms for men. India and China have been using permanent sterilization more effectively than many other countries in the developing world.

CASE STUDY

Urban Environments

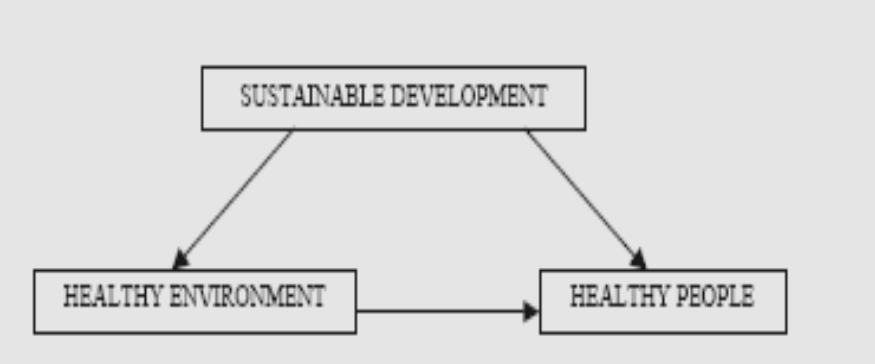
Nearly half the world's population now lives in urban areas. The high population density in these areas leads to serious environmental issues.

Today, more than 290 million people live in towns and cities in India. There were 23 metros in India in 1991, which grew to 40 by 2001.

23.2.3 Environment and Human health

Environment related issues that affect our health have been one of the most important triggers that have led to creating an increasing awareness of the need for better environmental management. Changes in our environment induced by human activities in nearly every sphere of life have had an influence on the pattern of our health. The assumption that human progress is through economic growth is not necessarily true. We expect urbanization and industrialization to bring in prosperity, but on the down side, it leads to diseases related to overcrowding and an inadequate quality of drinking water, resulting in an increase in waterborne diseases such as infective diarrhoea and air borne bacterial diseases such as tuberculosis. High-density city traffic leads to an increase in respiratory diseases like asthma. Agricultural pesticides that enhanced food supplies during the green revolution have affected both the farm worker and all of us who consume the produce. Modern medicine promised to solve many health problems, especially associated with infectious diseases through antibiotics, but bacteria found ways to develop resistant strains, frequently even changing their behaviour in the process, making it necessary to keep on creating newer antibiotics. Many drugs have been found to have serious side effects. At times the cure is as damaging as the disease process itself.

Thus environmental health and human health are closely interlinked. An improvement in health is central to sound environmental management. However this is rarely given sufficient importance in planning development strategies.



CHECK YOUR PROGRESS

1. Define Sustainable Development and describe the Social issues related to environment.

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2. Illustrate the relationship between human population and environment.

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3. What is the importance of Family welfare program me?

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23.3 LET US SUM UP

Man is most powerful and intelligent animal of the earth. Modernization and improvement in science and technology has given more power to man. As a result he is

interfering in the natural environment. He is trying to control and change the natural environment. This has creating many problems in the environment such as pollution, environmental depletion and various diseases in man.

Increasing population growth is one such problem which has creating many environmental disasters. Rise in the food production and public health programmes are the main causes for population explosion. Population growth has many adverse effects on environment.

23.4 KEYWORDS

Nuclear Accidents : Accidental leakage of atomic radiation from research station or atomic power plants.

Contraceptives : Birth control devices or pills

Sustainable development : development that meets the needs of the present without compromising the ability of future generations to meet their own needs.

23.5 ANSWER TO CHECK YOUR PROGRESS

Check Your Progress -1

1. See section : 23.1 & 23.2

Check Your Progress -2

1. See section : 23.2.1

Check Your Progress -3

1. See section : 23.2.2

23.6 REFERENCE BOOKS

1. Erach Bharucha: 2004, Textbook for Environmental Studies, UGC New Delhi and Bharati vidya peeth, Institute of Envirnmental Education and Research

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UNIT - 24 : ENVIRONMENTAL POLLUTION

Structure

24.0 OBJECTIVES

After reading this unit you will be able to

- Discuss the Pollution and its types
- Explain the sources, causes, effects and preventive measures of pollution
- List out the methods of Conservation and preservation of environment

24.1 INTRODUCTION

Pollution is the effect of undesirable changes in our surroundings that have harmful effects on plants, animals and human beings. This occurs when only short-term economic gains are made at the cost of the long-term ecological benefits for humanity. No natural phenomenon has led to greater ecological changes than have been made by mankind. During the last few decades we have contaminated our air, water and land on which life itself depends with a variety of waste products.

24.2 ENVIRONMENTAL POLLUTION-DEFINITION AND MEANING

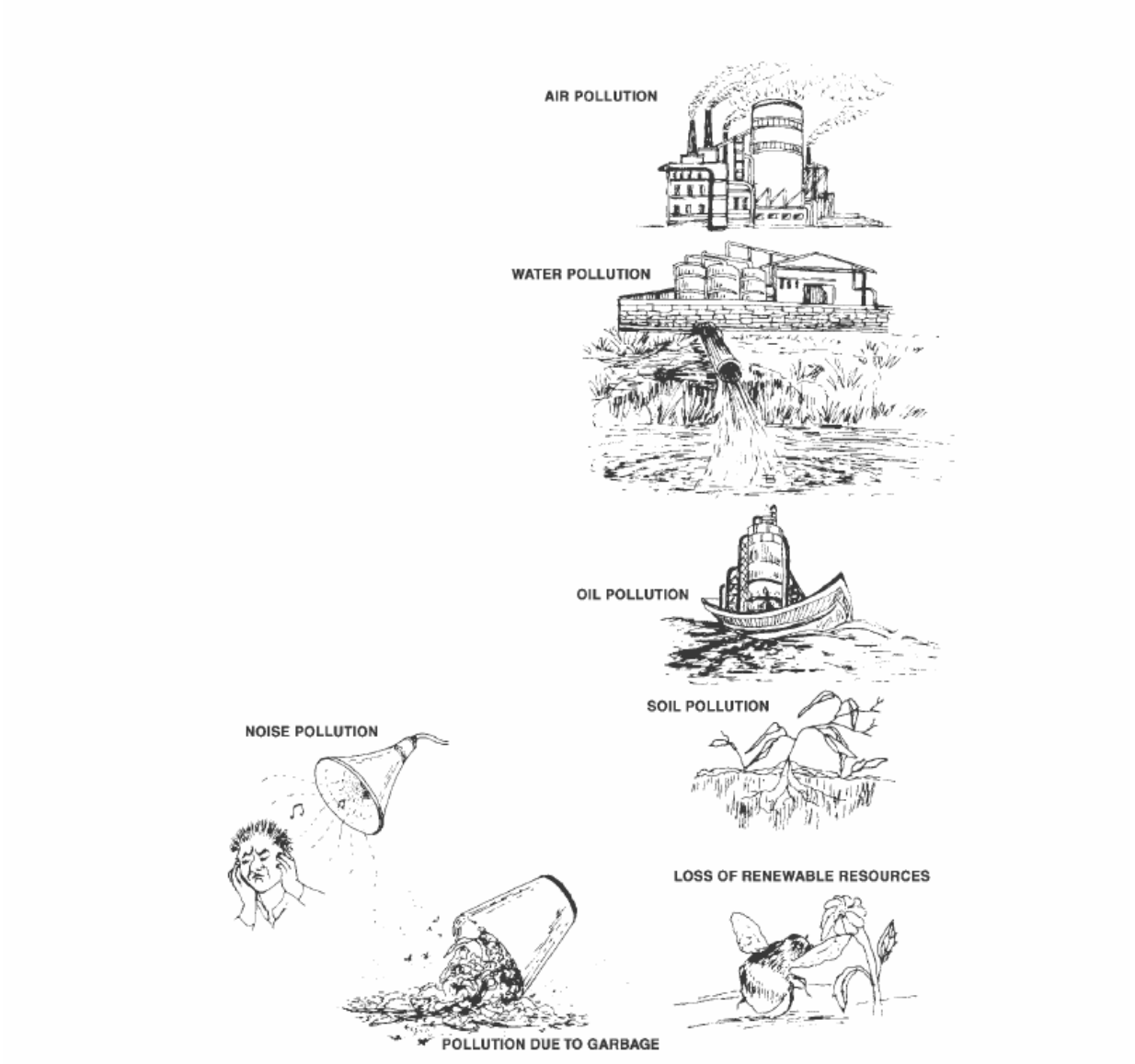
Pollution is defined as the introduction of contaminants into an environment that causes instability, disorder, harm or discomfort to the ecosystem i.e. physical systems or living organisms. Pollution can take the form of chemical substances, or energy, such as noise, heat, or light. Pollutants, the elements of pollution, can be foreign substances or energies or naturally occurring.

What is a Pollutant?

A pollutant is a waste material that pollutes air, water or soil. Three factors determine the severity of a pollutant: its chemical nature, the concentration and the persistence.

24.3 TYPES OF POLLUTION

The major forms of pollution are listed below along with the particular pollutants relevant to each of them:

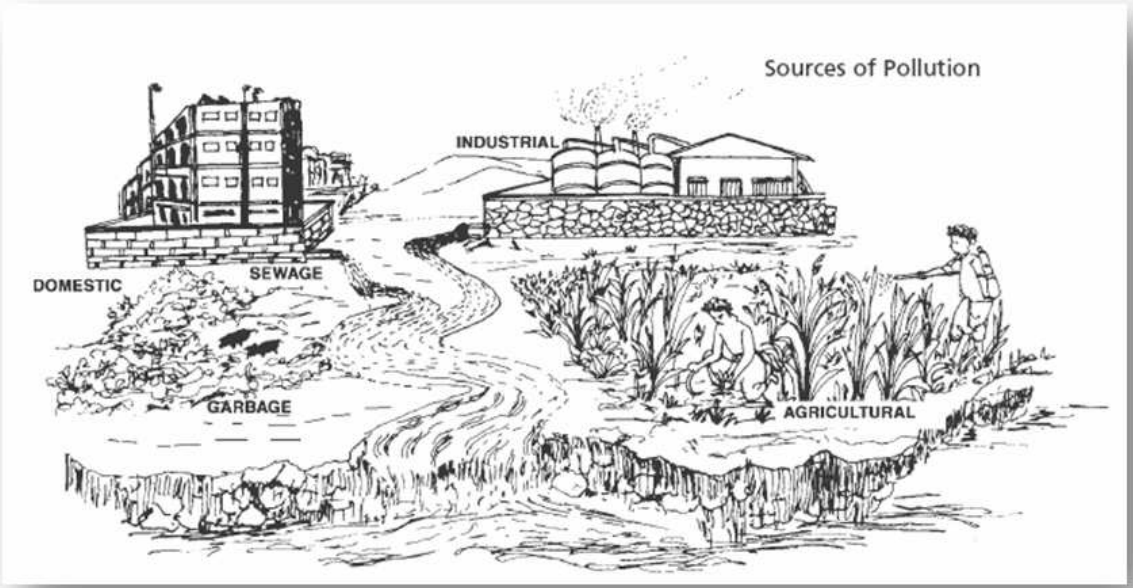


24.3.1 Water Pollution

Water pollution can be defined as alteration in physical, chemical or biological characteristics of water making it unsuitable for designated use in natural state. By the release of waste products and contaminants into surface runoff into river drainage systems, leaching into groundwater, liquid spills, waste water discharges, eutrophication and littering.

Sources of Pollution:

Point sources of pollution: When a source of pollution can be readily identified because it has a definite source and place where it enters the water it is said to come from a **point source.** Eg. Municipal and Industrial Discharge Pipes. When a source of pollution cannot be readily identified, such as agricultural runoff, acid rain, etc, they are said to be **non-point sources** of pollution. The other sources can be identified are as followes:



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- Untreated pollutants are drained into the nearest water body, such as stream, lake, etc.,

- Another major source of water pollution comprises of organic farm wastes.
- Pathogens, sediments and chemical pollutants are other sources of water pollution.

Harmful Effects of Water Pollution

- A number of waterborne diseases are produced by the pathogens present in polluted water.
- Pollution affects the chemistry of water.
- Polluted municipal water supplies are found to pose a threat to the health of people.
- The concentration of bacteria and viruses in polluted water causes increase in solids suspended in the water body.
- Carcinogenic pollutants found in polluted water might cause cancer.
- Alteration in the chromosomal makeup of the future generation is foreseen, as a result of water pollution.
- The flora and fauna of rivers, sea and oceans is adversely affected by water pollution.

Control measures for preventing water pollution

While the foremost necessity is prevention, setting up effluent treatment plants and treating waste through these can reduce the pollution load in the recipient water. The treated effluent can be reused for either gardening or cooling purposes wherever possible. The oxygen is pushed through the porous stem of the reeds into the hollow roots where it enters the root zone and creates conditions suitable for the growth of numerous bacteria and fungi. These micro-organisms oxidize impurities in the wastewaters, so that the water which finally comes out is clean.

24.3.2 Air Pollution

Air pollution comes from both natural and manmade sources. Though globally manmade pollutants from combustion, construction, mining, agriculture and warfare are increasingly significant in the air pollution equation. Motor vehicle emissions are one of the leading causes of air pollution. Principal stationary pollution sources include chemical plants, coal-fired power plants, oil refineries, petrochemical plants, nuclear waste disposal activity, incinerators, large livestock farms (dairy cows, pigs, poultry,etc.), PVC factories, metals production factories, plastics factories, and other heavy industry. Agricultural air pollution comes from contemporary practices which include clear felling and burning of natural vegetation as well as spraying of pesticies and herbicides.

- An air pollutant is known as a substance in the air that can cause harm to humans and the environment. Pollutants can be in the form of solid particles, liquid droplets, or gases. In addition, they may be natural or man-made.
- Pollutants can be classified as primary or secondary. Usually, primary pollutants are directly emitted from a process, such as ash from a volcanic eruption, the carbon monoxide gas from a motor vehicle exhaust or sulfur dioxide released from factories. Secondary pollutants are not emitted directly. Rather, they form in the air when primary pollutants react or interact. An important example of a secondary pollutant is ground level ozone — one of the many secondary pollutants that make up photochemical smog. Some pollutants may be both primary and secondary: that is, they are both emitted directly and formed from other primary pollutants.

Sources of air pollution refer to the various locations, activities or factors which are responsible for the releasing of pollutants in the atmosphere. These sources can be classified into two major categories which are:

Anthropogenic sources (human activity) mostly related to burning different kinds of fuel

- "Stationary Sources" include smoke stacks of power plants, manufacturing facilities (factories) and waste incinerators, as well as furnaces and other types of fuel-burning heating devices
- "Mobile Sources" include motor vehicles, marine vessels, aircraft and the effect of sound etc.
- Chemicals, dust and controlled burn practices in agriculture and forestry management. Controlled or prescribed burning is a technique sometimes used in forest management.
- Fumes from paint, hair spray, varnish, aerosol sprays and other solvents
- Waste deposition in landfills, which generate methane. Methane is not toxic; however, it is highly flammable and may form explosive mixtures with air.
- Military, such as nuclear weapons, toxic gases, germ warfare and rocketry

Natural sources

- Dust from natural sources, usually large areas of land with little or no vegetation
- Methane, emitted by the digestion of food by animals, for example cattle.
- Smoke and carbon monoxide from wildfires

- Vegetation, in some regions, emits environmentally significant amounts of Volatile Organic Carbons (VOCs) on warmer days.
- Volcanic activity, which produce sulfur, chlorine, and ash particulates

Effects of Air Pollution

Air pollution is responsible for major health effects. Every year, the health of countless people is ruined or endangered by air pollution. Many different chemicals in the air affect the human body in negative ways. Studies have estimated that the number of people killed annually in the US alone could be over 50,000. Older people are highly vulnerable to diseases induced by air pollution. Those with heart or lung disorders are under additional risk. Children and infants are also at serious risk.

Many diseases could be caused by air pollution without their becoming apparent for a long time. Diseases such as bronchitis, lung cancer, and heart disease may all eventually appear in people exposed to air pollution.

Air pollutants such as ozone, nitrogen oxides, and sulfur dioxide also have harmful effects on natural ecosystems. They can kill plants and trees by destroying their leaves, and can kill animals, especially fish in highly polluted rivers.

24.3.3 Soil Pollution

Soil pollution is defined as the build-up in soils of persistent toxic compounds, chemicals, salts, radioactive materials, or disease causing agents, which have adverse effects on plant growth and animal health.

Types of Soil Pollution

- Agricultural Soil Pollution
  - i) pollution of surface soil
  - ii) pollution of underground soil
- Soil pollution by industrial effluents and solid wastes
  - i) pollution of surface soil
  - ii) disturbances in soil profile
- Pollution due to urban activities
  - i) pollution of surface soil
  - ii) pollution of underground soil

Causes of Soil Pollution

Soil pollution is caused by the presence of man-made chemicals or other alteration in the natural soil environment.

A soil pollutant is any factor which deteriorates the quality, texture and mineral content of the soil or which disturbs the biological balance of the organisms in the soil. Pollution in soil has adverse effect on plant growth.

Pollution in soil is associated with

- Indiscriminate use of fertilizers
- Indiscriminate use of pesticides, insecticides and herbicides
- Dumping of large quantities of solid waste
- Deforestation and soil erosion

Effects of Soil Pollution

Agricultural

- Reduced soil fertility
- Reduced nitrogen fixation
- Increased erodibility
- Larger loss of soil and nutrients
- Deposition of silt in tanks and reservoirs
- Reduced crop yield
- Imbalance in soil fauna and flora

Industrial

- Dangerous chemicals entering underground water
- Ecological imbalance
- Release of pollutant gases
- Release of radioactive rays causing health problems
- Increased salinity
- Reduced vegetation

Urban

- Clogging of drains
- Inundation of areas
- Public health problems
- Pollution of drinking water sources
- Foul smell and release of gases
- Waste management problems

Control of soil pollution

The following steps have been suggested to control soil pollution. To help prevent soil erosion, we can limit construction in sensitive area. In general we would need less fertilizer and fewer pesticides if we could all adopt the three R's: Reduce, Reuse, and Recycle. This would give us less solid waste.

Reducing chemical fertilizer and pesticide use

Applying bio-fertilizers and manures can reduce chemical fertilizer and pesticide use.

Reusing of materials

Materials such as glass containers, plastic bags, paper, cloth etc. can be reused at domestic levels rather than being disposed, reducing solid waste pollution.

Recycling and recovery of materials

This is a reasonable solution for reducing soil pollution. Materials such as paper, some kinds of plastics and glass can and are being recycled. This decreases the volume of refuse and helps in the conservation of natural resources.

Reforesting

Control of land loss and soil erosion can be attempted through restoring forest and grass cover to check wastelands, soil erosion and floods.

Solid waste treatment

Proper methods should be adopted for management of solid waste disposal. Industrial wastes can be treated physically, chemically and biologically until they are less hazardous.

24.3.4 Noise Pollution

What is noise?

In simple terms, noise is unwanted sound. Sound is a form of energy which is emitted by a vibrating body and on reaching the ear causes the sensation of hearing through nerves. Sounds produced by all vibrating bodies are not audible. The frequency limits of audibility are from 20 HZ to 20,000 HZ. Hence, noise pollution is a type of energy pollution in which distracting, irritating, or damaging sounds are freely audible.

Decibel levels of common sounds

dB	Environmental Condition
0	Threshold of hearing
10	Rustle of leaves
20	Broadcasting studio
30	Bedroom at night
40	Library
50	Quiet office
60	Conversational speech (at 1m)
70	Average radio
74	Light traffic noise
90	Subway train
100	Symphony orchestra
110	Rock band
120	Aircraft takeoff
146	Threshold of pain

Permitted noise levels

Ambient Noise Levels dB

Zone	*Day-time*	*Night-time*
Silent Zone	50	40
Residential Zone	55	45
Commercial Zone	65	55
Industrial Zone	70	70

A standard safe time limit has been set for exposure to various noise levels. Beyond this 'safe' time continuing exposure over a period of a year will lead to hearing loss.

The techniques employed for noise control can be broadly classified as

- Control at source
- Control in the transmission path
- Using protective equipment.

Causes of sound Pollution: - Domestic gadgets such as mixers, pressure cockers, washing machine, fans, vacuum cleaners, Telephones used for personal entertainment make noise. Loud speakers and crackers, road rollers, concrete mixers, dynamite blasters used during mining activities and construction activities. Industries and automobiles are the main sources of sound pollution. Trains and Aircrafts make higher noise.

Effects of Sound Pollution: -Loud noises produced by crackers and explosives cause damages to window glasses. Sound pollution has number of adverse effects on the human health. Some important health problems caused by sound pollution can be listed as follows:

Impairment of hearing and deafness. High blood pressure, cardio vascular problems, gastro intestinal problems, peptic ulcers, dilatation of eye pupil and impairment of high vision. Psychological problems such as anxiety, stress, depression, nervous breakdown, irritability, short temper, emotional disturbance and sleeplessness.

Control of Sound Pollution: - Sound Pollution can be controlled at the source of sound or at receiving end or by legislative measures. At the source of sound, it can be controlled as follows :

Silencers can be used to control sound produced by automobiles. Noise producing industries can be placed away from the residential areas. Green cover around away from the residential is also useful in preventing sound pollution. Noisy machines can be installed in sound proof chambers. Machines should be oiled and serviced regularly. Strict legislative measures such as minimum use of loud speakers and amplifiers and banning of pressure horns in automobiles are very useful in controlling sound pollution.

24.4 CONSERVATION AND PRESERVATION OF ENVIRONMENT

Pollution, deforestation, exploitation of natural resources is resulting in depletion of our natural environmental. At this time of environmental crisis, we should conserve our natural environment. Conservation of natural environment involves conservation of abiotic and biotic factors. Conservation means protection of our environment and preservation means preserving the environment for the coming generations also.

Conservation and preservation of environment can be grouped into two types: Conservation of our natural resources and preservation of wild life.

Conservation of our natural resources:

- Forest resources can be conserved by reforestation and afforestation. Reforestation means growing forests in deforested areas and afforestation means growing forests in a new or barren area.
- Recycling of metal substances and use of alternative substances can conserve mineral resources.
- Rain water harvesting, watershed management can conserve water. And control of water pollution.
- Organic farming and avoiding soil pollution conserve soil resources. Soil erosion and soil degradations should be avoided.
- Energy resource conservation involves use of alternative energy sources.

Preservation of wild life: wild life preservation has two methods: In-situ preservation, Ex-situ preservation. In-situ preservation of wild life means preservation of wild life in their natural habitats. E.g.: National parks, wild life sanctuaries.

Ex-situ preservation of wild life refers to the preservation of wild life in places other than their natural habitats. E.g.: Zoos and Botanical gardens.

Conservation and preservation of our environment is a most important work. Every individual of this earth should practice it.

CHECK YOUR PROGRESS

1. Define Pollution and its types and sources in brief

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2. Illustrate the various effects of Air, water, soil and noise pollution

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3. Elaborate the importance of Conservation and preservation of environment?

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24.5 LET US SUM UP

Pollution is the effect of undesirable changes in our surroundings that have harmful effects on plants, animals and human beings. Pollution is defined as the introduction of contaminants into an environment that causes instability, disorder, harm or discomfort to the ecosystem i.e. physical systems or living organisms. The major types of pollution are water, air, soil and noise pollution.

Conservation of natural environment involves conservation of abiotic and biotic factors. Conservation means protection of our environment and preservation means preserving the environment and the natural resources for the coming generations.

24.6 KEYWORDS

Pollution	:	Introduction or an addition of contaminants into an environment that causes instability, disorder, harm or discomfort to the ecosystem.
In-situ preservation	:	Preservation of wild life means preservation of wild life in their natural habitats like in National parks and wild life sanctuaries.
Ex-situ preservation :		**P**reservation of wild life in places other than their natural habitats like Zoos and Botanical gardens.

24.7 ANSWER TO 'CHECK YOUR PROGRESS' EXERCISES

Check Your Progress -1

1. See section : 24.2

Check Your Progress -2

1. See section : 24.3.1 to 24.3.4

Check Your Progress -3

1. See section : 24.4

24.8 REFERENCE BOOKS

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