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COURSE MAEE-002: BASICS OF LEGAL AWARENESS

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- Unit 2 Substantive Law and Procedural Law
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-

BLOCK 2 EMPOWERING LAWS

Introduction to the Block

Block 2 presents different laws that empower the people, the citizens of the India. It highlights the fundamental law of the land, i.e. the Constitution of India, which is the basic source of people's empowerment, with special emphasis on basic framework and features. It touches upon other laws related to right to education, work and information. It also covers special protection available for women against domestic violence. This Block consists of five units described below.

Unit 5 titled "*The Constitution of India*" highlights the significance of the Constitution of India as a living and organic thing, which, of all instruments, has the greatest clauses to be constructed broadly and liberally for the welfare of the people. It presents the broad list of contents, particularly different Parts of the Constitution. It focuses on the fundamental rights and duties as well as the directive principles of state policy including their significance in the socio-economic, political and other contexts of India. It describes some historical and fundamental aspects of the Constitution and explains how it is not to be construed as a mere law but as the machinery by which laws are made, implemented and reviewed as well.

Unit 6 is about "*Right to Information – Right to Information Act, 2005*". It highlights the need and significance of information access to individuals in promoting transparency in governance for people's development and public welfare. It focuses on accountability of public offices and the officers toward the society and in administration and governance of the country. It explains the concept of right to information, and presents the evolution of right to information as well as important aspects of the Right to Information Act, 2005.

Unit 7 presents important provisions of "*Protection of Women From Domestic Violence Act, 2005*". It defines domestic violence and highlights different dimensions of domestic violence including the ways and means of protecting woman against such violence with special emphasis on the powers and duties of the government, of the officers and others, and the procedure involved in ensuring such protection. It also touches upon the merits and demerits of the Act in terms of its enforcement.

Unit 8 is on "*Right to Education – Right of Children to Free and Compulsory Education Act, 2009*". It focuses on the concept of right to education, its evolution into a fundamental right leading to the Right of Children to Free and Compulsory Education Act, 2009. It presents the duties and responsibilities of the constitutional authorities, local authorities, schools, teachers and parents in respect of ensuring children's right to education in India.

Unit 9 titled "*Right to Work – National Rural Employment Guarantee Act, 2005*" presents the concept of work including the international and Indian constitutional perspectives of Right to Work. It covers the salient features of the National Rural Employment Guarantee Act, 2005 with emphasis on the right to work or guaranteed employment, conditions for guaranteed employment, monitoring authorities, establishment of National and State Employment Guarantee Councils, and National Employment Guarantee Fund and its Audit, and penalties for non-compliance of the provisions of the Act.

UNIT 5 THE CONSTITUTION OF INDIA

Structure

- 5.0 Introduction
- 5.1 Objectives
- 5.2 Brief Historical Background of the Making of the Indian Constitution
 - 5.2.1 Salient Features of the Government of India Act, 1935
 - 5.2.2 Salient Features of the Indian Independence Act, 1947
 - 5.2.3 The Constituent Assembly
- 5.3 The Constitution of India: Basic Framework and Features
 - 5.3.1 Basic Framework
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 - 5.3.2.1 Fundamental Rights
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 - 5.3.2.3 Fundamental Duties
 - 5.3.2.4 Institutional Mechanism for Protection and Promotion of the Constitutional Rights, Principles and Duties.
- 5.4 Let Us Sum Up
- 5.5 Answers to 'Check Your Progress' Questions
- 5.6 References

5.0 INTRODUCTION

You have studied the essentials of Indian legal system in Block 1 of this course. It must have given you an understanding, among others, that every country needs to have a constitution, which is fundamental law of the country. It is, in fact, inevitable for governance of a country. Constitution has been defined as the basic law of a State which outlines the framework and procedure of Government. You may be surprised to know that the Constitution of India is the largest written constitution in the world.

Our constitution has not come into existence overnight. The origin of the Indian constitutional history can be traced to 1600. By the Crown's Charter of 1600, the East India Company was established in England which was given exclusive trading rights in Asia, Africa and America. The Indian Legal and Constitutional history later passed through many developments — passing of many Charters, Acts and Commissions such as: Royal Charters of 1615 and 1623; Charters of 1726 and 1753; Regulating Act, 1773; Charter of 1774; The Act of Settlement, 1781; Pitt's India Act, 1784; Charter Act of 1813 and 1833; The Government of India Act, 1858; The Indian Council Act, 1861, 1892 and 1909 (Minto-Morley Reforms); Government of India Act, 1919 (Montagu-Chelmsford Reforms); Government of India Act, 1935; The Cripps Mission, 1942; C. Rajagopalachari's Formula, 1944; Cabinet Mission, 1946; Attlee's Statement, 1947; Lord Mount Batten Plan, 1947; and The Indian Independence Act, 1947 (Kailash Rai, 2005, pp.1-28). However, important constitutional developments took place between 1935 and 1950 only. The Government of India Act, 1935 proposed the establishment of Dyarchy at centre and it abolished the dyarchy in provinces. The Plan of Lord Mount Batten was accepted by the Congress and Muslim League,

and to give effect to the plan, the Britain Parliament enacted the Indian Independence Act, 1947.

The Indian Independence Bill was introduced in the House of Commons on 4th July, 1947 and passed by the House of Commons on 15th July 1947. It was passed by the House of Lords on 16th July 1947 and obtained the Royal assent on 18th July 1947. Accordingly our country, then, was divided into India and Pakistan by the British while giving independence to India on 15th August 1947. While the Constituent Assembly was already busy involved in the process of making the Constitution of India before independence, it (the Constitution of India) finally came into force on 26th January 1950, the day we celebrate, every year, as the Republic Day of India.

In Unit-5, we will present you a brief overview of the Constitution of India. For us, our Constitution is the supreme law. The Indian Constitution is an organic and dynamic socio-political and legal written document. It is not to be construed as a mere law but as the machinery by which laws are made as well. It is a living and organic thing, which, of all instruments, has the greatest clauses to be constructed broadly and liberally. It is the primary protector of the fundamental rights guaranteed under Part III and provided guidelines and directions to the governance for people's welfare under Part IV. As mentioned above, ours is the largest written constitution in the world. Therefore, for want of space and time, in this Unit, we will focus on important aspects of the basic background documents considered while making of our constitution and on some important features of the Constitution of India that are significant from the common people's view point, not from the point of view of making you an expert in the constitutional law as such.

5.1 OBJECTIVES

After you go through this Unit, we expect you to be able to:

- Describe the brief historical background of the making of the Constitution of India;
- Draw the sketch of the basic framework and features of our Constitution;
- Explain the relationship and the differences between the Fundamental Rights and the Directive Principles of State Policy;
- Appreciate the significance the fundamental rights and duties of the citizens in a democratic country like India; and
- Analyse the role of the constitutional authorities and the institutional mechanisms of the State in protecting and promoting the rights and interests of the citizens within the overall scheme of constitutional provisions.

5.2 BRIEF HISTORICAL BACKGROUND OF THE MAKING OF THE INDIAN CONSTITUTION

Before we actually touch upon the basic features of the Indian Constitution, it is very relevant for us to discuss some salient features of the Indian Independence Act, 1947 and of the Government of India Act 1935. Relevant, because these have formed part of the basic documents that were consulted by the experts

involved in making the constitution of India to which we are all the subjects now. Fact is that, the Indian Independence Act, 1947 had formed inevitable basic document that was to be looked into even by Pakistan while making their constitution, as it was this Act that made India and Pakistan to come into existence as two sovereign States.

5.2.1 Salient Features of the Government of India Act, 1935

The Government of India Act, 1935 is the landmark Act that had given major fillip to the movement towards the further Acts leading to independence of India.

The British Government published in March, 1933 a White Paper containing reforms proposals. The White Paper was submitted to a Joint Select Committee of the British Parliament. This Committee submitted its report recommending some changes in the proposals contained in the White Paper. Based on this report the Government of India Bill, 1935 was introduced in Parliament in December 1934. The Bill got the Royal assent on August 4, 1935 and came to be known as the Government of India Act, 1935. The Act aimed at establishing the federal system of Government of India for the first time. The Act runs into 451 clauses and 15 Schedules, the most complicated document ever enacted by the British Parliament. The Act deals with: a) All India Federation; b) Provincial Autonomy; c) Dyarchy at the Centre; and d) Federal Court (Narender Kumar, 1997, p.6).

Important aspects of this Act, in brief, are as follows.

- i) **All India Federation:** It was to consist of all the British India provinces, and the Chief Commissioner, Provinces and such of Indian Princely States as would agree to accede to join the Federation under the Act; accession was compulsory for British India Provinces but optional for Indian States. Indian States acceding to the Federation were required to execute Instruments of Accession thereby delegating the powers to the Federal Government to the extent of surrendering their authority. The Act provided full autonomy to the federating units in their internal affairs.

The All India Federation was to come into existence when Indian States with at least 1/2 of the aggregate of population of the States and 1/2 of the seats allotted to them in the Federal Legislature acceded to the Federation, after signing the Instruments of Accession. The Federal Government headed by Governor General was to consist of Federal Executive and Federal Legislature consisting of two Houses, namely, Council of the State (Upper House) and Federal Assembly (Lower House).

- ii) **Federal Executive:** The Federal Executive comprised of: a) Governor General, b) Councilors, and c) Council of Ministers representing the majority party in the Federal Legislature. Under the Scheme, 'Dyarchy' was introduced at the Centre. It divided the central subjects into two categories — Reserved and Transferred. Defense, External Affairs, Tribal Areas and Ecclesiastical Affairs were treated as reserved subjects, while the rest were transferred to the control of Ministers. In dealing with Reserved Department the Governor General acted in his discretion. He controlled the Transferred Departments with the help of Ministers relating to his special responsibilities.

The running of the Transferred Departments was the responsibility of the Council of Ministers representing the majority party in the Federal

Legislature. They were to aid and assist the Governor General. They were not to exceed 10 in number and were made responsible to the Central Legislature. Every Minister was to be a member of one or the other House. If any Minister was not a member of either House, he was to get membership within six months or resign at the expiry of the said period. The Instrument of instruction advised the Governor General to encourage and foster the spirit of joint responsibility. He was to act as the President of the Council and in case of difference of opinion he had a casting vote. In the formation of Ministry the Governor General was required to pay due regard to the interests of minorities and Indian Princely States. The Minister's salaries were to be fixed by the Act and such salaries were to be treated as non-votable item in the Budget. 'The Governor General even in cases where he acted in his individual judgment was not required to consult Ministers although he was not bound by the advice tendered to him. The Governor General was appointed for a period of 5 years and enjoyed wide powers while running the central administration.

- iii) **The Federal Legislature:** The Federal Legislature was to consist of two Houses comprising of Council of State and Legislative Assembly, consisting of 260 and 375 members respectively. The Act gave franchise to nearly 10% of the total population. The Council of State was permanent body, 1/3 members retired every year, whereas Legislative Assembly had a maximum duration of 5 years. The Council of State consisted 150 representatives of British India and maximum 104 representatives of Indian States. The number of state representatives depended upon the member-States acceding to the Federation. The British Indian members were to be elected directly with the exception of 6 members who were to be nominated by the Governor General. The representatives of the Indian States were to be nominated by the rulers. The seats were reserved for the members of various communities.

The Federal Legislative Assembly was to represent the people of both *British Indian Provinces* as well as *Indian Princely States*. Out of 375 members 250 were to represent British Indian provinces and maximum 125 members were to represent Indian States. The representatives from British Indian Provinces were to be elected by the electorate and to represent various interest seats allotted to different Princely States by the Act according to their size and population. The representatives from Indian States were to be nominated by the rulers. The Legislature enjoyed very limited powers with regard to financial matters. The Act of 1935 authorised it to make laws on all the subjects included in the Federal and Concurrent Lists. It was also authorised to make Laws on the subjects included in the Provincial List if there existed emergency in the Province, whereby the security of India was threatened and also when two or more Provinces mutually consented to do so. In respect of Indian States, it could legislate only on those matters which were included in the Instrument of Accession. No bill could be enforced as an Act till it was passed by both the Houses and obtained the assent of the Governor-General-in-Council.

- iv) **The Division of Subjects:** The Act divided the subjects into *three categories* for administrative convenience, namely, a) Federal List, b) Provincial List and c) Concurrent List. In the Federal List there were 59 subjects, whereas the Provincial List contained 54 subjects and the Concurrent List 36 subjects.

On the subjects included in the Concurrent List both the Federal and Provincial Legislatures could pass Legislation subject to the condition that if there arose conflict in the two enactments, then the Federal enactment was to prevail.

- v) **The Introduction of Provincial Autonomy:** The most significant feature of the Act was the establishment of “autonomous” government in the Province. The dyarchy in the Provinces was replaced by provincial autonomy. By provincial autonomy meant, “an executive and legislature having exclusive authority within Provinces in a precisely defined sphere, and in that exclusive provincial sphere broadly free from Control by the Central Government and the Federal Legislature”.
- vi) **The Protection and Safeguards to Minority Interest:** The Act made ample provisions for safeguarding the interests of the minority communities by empowering the Governor General and Governors with special power to override the ministers and legislatures, in case it was deemed necessary in the interest of minority communities.
- vii) **India Council Abolished:** The India Council of the Secretary of State for India never found favor with the Indian leaders who invariably criticized its functioning. The Act abolished the Council and provided for the appointment of a team of advisers by the Secretary of State for India whose number was not to exceed six and not to be less than 3 in any case.
- viii) **Communal Electorates:** The Act not only retained communal electorate but further extended its provisions in the constitution of various legislative bodies provided by the Act. The Muslims were given 1/3rd (33 per cent) seats in the Federal Legislature although their population was less than 1/3rd of the total population of India.
- ix) **Rigid Constitution:** The Act neither gave power to Federal Legislature nor to Provincial Legislatures to amend the provisions of the Act. Only the British Parliament had authority to amend the provisions of the Act.
- x) **Establishment of Federal Courts:** The Act had established Federal system of Government, it was but natural that the jurisdictional disputes were bound to arise between Centre and State in such a set-up. A Federal Court was, therefore, established under the provision of the Act to counteract such an eventuality. According to the Act, the Court was to consist of 3 judges consisting of a Chief Justice and two associate judges. The qualifications prescribed for appointment were either 5 years standing as a judge of the High Court or, ten years standing as a lawyer in an Indian High Court or a High Court in Britain. The judges were to be appointed by the Crown and were to hold office until they attained the age of sixty-five, otherwise they were provided complete security of service.

The jurisdiction of the Court was three-fold: a) Original, b) Appellate and c) Advisory. Regarding *original jurisdiction*, it had exclusive jurisdiction to hear all disputes between Units of the Federation or between the Provinces and the Federated States involving any question of law or fact on which the existence or extent of a legal right depended. About *appellate jurisdiction*, its appellate

jurisdiction included every case which was decided by a High Court in India, if the High Court certified that the case involved a substantial question of law regarding interpretation of the Act or Order in Council. Regarding *advisory jurisdiction*, in its advisory jurisdiction it could give its opinion on any point of law or fact referred to it for advice by the Governor-General-in-Council. The provisions also existed in the Act for filing appeal to the Judicial Committee of the Privy Council in England under special circumstances (Puri, 1989, pp.224-227).

5.2.2 Salient Features of the Indian Independence Act, 1947

Following are some of the salient features of the Indian Independence Act, 1947.

- i) Clause I of the Act provided for the creation of two independent Dominions, namely, India and Pakistan from 15th August 1947;
- ii) Clause II of the Act defined the territories of the two Dominions adjustable after the award of Boundary Commission. The territories of Indian Dominion were to consist of all Indian Provinces except those that comprised Pakistan. The territories of Pakistan were to include the areas covered by the Provinces of East Bengal, West Bengal, West Punjab, Sind, Baluchistan and the N.W. F.P.;
- iii) Both the Dominions were to have Governor Generals appointed by His Majesty to represent him for the purposes of the Governments of the Dominions. The Act also provided for one common General if both the Dominions so agreed;
- iv) The Indian States were free to accede to either of the two new Dominions;
- v) The Legislature of each dominion was empowered to frame the laws for the governance of the Dominion. No law made by that Dominion will be treated as null and void on the ground that it conflicted with any laws of England or any provision of any existing or future Act of Parliament of the United Kingdom (U. K.) nor an order in council shall extend to the New Dominions;
- vi) From 15th day of August, 1947, the Government of the U. K shall have no responsibility in respect of the government of any of the territories which immediately before that date were included in the British India;
- vii) The suzerainty of His Majesty over the Indian States shall lapse and with it all treaties and agreements in force at the date of passing of this Act between His Majesty and the rulers of the Indian States;
- viii) The Constituent Assembly of each Dominion shall exercise all powers exercised by the Legislature of the Dominion;
- ix) The office of the Secretary of State for India and his advisors was abolished and affairs relating to the Dominion of India and Pakistan were to be conducted in future by the Secretary of the Commonwealth Relations Department; and
- x) Those persons who had been appointed by the Secretary of State or Secretary of State-in-Council to Civil Service and the Crown of India before August 15, 1947 would continue in this service after independence and to enjoy

the same privileges and rights in respect of leave, remuneration, pension and conditions of service as enjoyed by them before independence (Puri, 1989, p.247).

Thus, with passing of the Independence Act, 1947 India attained independence on August 15, 1947 and at the same time the era of British Imperialism in India came to an end. Although the Indian Constitution derives its legal authority from the Indian Independence Act, 1947, this Act had conferred power on the Constituent Assembly to frame a Constitution for India.

5.2.3 The Constituent Assembly

The Constituent Assembly was constituted under the Cabinet Mission Plan, 1946 of the British Government with a view to get the Constitution of India drafted by it. However, it cannot be denied that the Indian Independence Act, 1947 was the result of a protracted struggle for political freedom and the Constituent Assembly was the right authority and a mechanism to draft the Constitution for India. It consisted of several national leaders like Dr. Rajendra Prasad, Pandit Jawaharlal Nehru, Moulana Abdul Kalam Azad, Dr. B. R. Ambedkar and others as members with Dr. Rajendra Prasad as its Chairman. The first sitting of the Constituent Assembly took place on 9th December, 1946. However, the Constituent Assembly was not much active before the Indian Independence Act, 1947 and it became more active and did considerable work only after passing of the Act.

Once a federal constitution was to be decided upon there was no lack of models to draw upon. These models fell broadly into two categories; the Constitution of the United States on the one hand, and the Constitution Acts enacted by the British Parliament establishing federal constitutions for Canada, Australia and India, all of which had drawn mostly on the American experience.

The Constituent Assembly constituted various committees to deal with different aspects of the constitution. The Reports of these committees were considered by the Constituent Assembly on 29th August, 1947. It appointed a Drafting Committee under the Chairmanship of Dr. B. R. Ambedkar, whose efforts had finally culminated in adoption of the so drafted Constitution of India by the Constituent Assembly on 26th November, 1949 and came into force on 26th January 1950.

5.3 THE CONSTITUTION OF INDIA: BASIC FRAMEWORK AND FEATURES

The Constitution has been defined as the basic law of a State which outlines the framework and procedure of the Government — defines its powers and functions, provides how constitutional changes may be made and, in a democracy, legally guarantees the citizens certain protection against arbitrary actions of the government. Constitution is a collection of principles according to which the powers of the government, the rights and responsibilities of the government and the relation between the two are adjusted and balanced.

Under international law, a State is defined as “an independent political entity, occupying a defined territory, the members of which are united together for the purpose of resisting external force and preservation of internal order”. This Statement stresses on ‘Police functions’ of a State, i.e. preservation of law and

order and defense of the country. But, the Modern State does not rest and content with being merely a 'Police' or 'Law and Order' State. It is much more than that. It needs to become a social welfare state (Jain, 2010, p.1).

Indian Constitution has many important features. It is the longest known Constitution providing for single citizenship, fundamental rights, directive principles of state policy, fundamental duties, federal constitution with minimum rigidity, legislation to supplement the constitution, in built mechanism to mitigate rigidity, conversion of federal to unitary system during emergency, unity in basic matters, three-tier government, judicial review, independent judiciary, parliamentary form of Government, universal franchise, etc. (Brij Kishore Sharma, 2002, pp.22-32, and Ambedkar Speech in Constituent Assembly, pp.35-38).

It is with this goal of making India truly a democratic and welfare State, among others, the Constitution of India came into force with the following Framework.

5.3.1 Basic Framework

The Constitution of India has the following Parts that constitute its entire framework.

- Part-I : The Union and its Territory (Articles 1-4)
- Part-II : Citizenship (Articles 5-11)
- Part-III : Fundamental Rights (Articles 12-35)
- Part-IV : Directive Principles of State Policy (Articles 36-51)
- Part-IV-A : Fundamental Duties (Article 51A)
- Part-V : The Union (*Five Chapters* with Articles 52-151)
- Part-VI : The States (*Six Chapters* with Articles 152-237)
- Part-VII : The States in Part-B of the First Schedule (Article 238 — Now stands repealed)
- Part-VIII : The Union Territories (Articles 239-242: Article 242 stands repealed)
- Part-IX : The Panchayats (Articles 243-243-O)
- Part-IX-A : The Municipalities (Articles 243-P—243-ZG)
- Part-X : The Scheduled and Tribal Areas (Articles — 244-244-A)
- Part-XI : Relations Between the Union and the States (Articles 245-263)
- Part-XII : Finance, Property, Contracts and Suits (Articles 264-300-A)
- Part-XIII : Trade, Commerce and Intercourse within the Territory of India (Articles 301-307)
- Part-XIV : Services under the Union and the States (*Two Chapters* with Articles 308-323)
- Part-XIV-A : Tribunals (Articles 323-A—323-B)
- Part-XV : Elections (Articles 324-329-A: 329-A stand repealed)
- Part-XVI : Special Provisions Relating to Certain Classes (Articles 330-342)
- Part-XVII : Official Language (*Four Chapters* with Articles 343-351)

- Part-XVIII : Emergency Provisions (Articles 352-360)
- Part-XIX : Miscellaneous (Articles 361-367)
- Part-XX : Amendment of the Constitution (Article 368)
- Part-XXI : Temporary, Transitional and Special Provisions (Articles 369-392)
- Part-XXII : Short Title, Commencement, Authoritative Text in Hindi and Repeals (Articles 393-395)

In addition, the Constitution has *twelve Schedules* as a part and parcel of the above Parts and Articles. This Constitution can be amended only by due process as laid down within the Constitution itself, subject to inherent limitations and without changing its basic structure and features.

Reflection

Did you ever get an opportunity to read the Constitution of India? If not, have you heard of some of the above Parts in it? Don't you think that the above framework is prompting you to have a look at the Constitution? Being a citizen of India, don't you think it is not late for you to know at least some details, if not all about it? Don't you think that you should have a copy of the Constitution of India in your home for your reading and reference as well as of your family members? -- Just reflect upon these questions and do what you feel is right.

5.3.2 Some Salient Features

Since the constitutional framework, as you have seen above, is very big and has many features falling under different parts, we will focus our discussion in this sub-section on very few, but very important features — the fundamental rights, directive principles of state policy, fundamental duties and the institutional mechanism provided for protecting and promoting these rights, principles and duties.

5.3.2.1 Fundamental Rights

Our Constitution followed the United States precedent and enacted fundamental rights in the Constitution itself. By enacting the Fundamental Rights in Part III of our Constitution (Articles 12 to 35), the founding fathers showed that they had the will and were ready to adopt the means, to confer legally enforceable Fundamental Rights (Seervai 1991, p.349). Part III of the Constitution of India secures to the people of India certain basic, natural and inalienable rights. These rights have been declared essential rights in order that "human liberty may be preserved, human personality is developed and an effective social and democratic life is promoted". The aim behind having a declaration of fundamental rights is to make inviolable certain elementary rights appertaining to the individual, such as the right to life, liberty to free speech, freedom of worship, etc., under all conditions and to keep them unaffected by the shifting majorities in the legislatures. It is to preserve certain basic human rights against interference by the State (Narender Kumar, 1997, p.50).

Need for Fundamental Rights: Fundamental Rights are deemed essential to protect the rights and liberties of the people against the encroachment of powers

of the Government, Legislative as well as executive and for the preservation of public and private rights, notwithstanding the representative character of political instrument.

Speaking about the importance of fundamental rights in the historic judgment of *Maneka Gandhi v Union of India* (1978, p.597), Bhagwati J. observed: “these fundamental rights represent the basic values cherished by the people of this country (India) since the Vedic times and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent. They weave a ‘pattern of guarantee’ on the basic structure of human rights, and impose negative obligations on the State not to encroach on individual liberty in its various dimensions”.

These rights are regarded as fundamental because they are most essential for the attainment by the individual of his full intellectual, moral and spiritual status. The negation of these rights will keep the moral and spiritual life stunted and his potentialities undeveloped. The declaration of fundamental rights in the Constitution serve as a reminder to the Government in power of certain liberties assured to the people by the Constitution which are to be respected by it. The danger of encroachment on citizen’s liberties is particularly great in parliamentary system in which those who form the Government are leaders of the majority party in the Legislature and can get laws made according to their wishes. The advocates of inclusion of these rights in the Indian Constitution emphasize that their incorporation in the Constitution vests them with a sanctity which the legislators dare not to violate so easily.

The object behind the inclusion of the Fundamental Rights in Indian Constitution is to establish ‘a Government of law and not of a man’, a governmental system where the tyranny of majority does not oppress the minority. In short, the object is to establish Rule of Law and it would not be wrong to say that the Indian Constitution in this respect goes much ahead than any other Constitutions of the world. The object is not merely to provide security and equality of citizenship of the people living on this land and thereby helping the process of nation building, but also and not less important to provide certain standards of conduct, citizenship, justice and fair play (Pandey, 2007, pp.51-52).

Fundamental Rights are those rights and freedoms of the people of India, which enjoin constitutional recognition and guarantee. The Supreme Court of India and State High Courts have the power to enforce Fundamental Rights. The Supreme Court is the guardian, protector of fundamental rights. People enjoy only the rights given in the Constitution. The Constitution of India does not give any recognition to natural or un-granted rights. The Constitution makes the rights equally binding upon all authorities — the Union, the States, the Parliament and all other State authorities.

Enforcement of Rights: The Constitution not only grants but also guarantees rights. It provides legal and constitutional protection to the fundamental rights. The citizens have been given the right to seek the protection of the Supreme Court and High Courts for getting their rights enforced. The fundamental rights contained in the constitution can be amended by the Parliament. The Parliament has, in practice, exercised this power on several occasions. The constitution provides for suspension of fundamental rights during an emergency. However,

such a suspension automatically ends when the emergency ceases or when the President withdraws it. Right to Property is no more a Fundamental Right. Initially, the Constitution granted to the citizens the fundamental right to property. However, because of the hindrances posed by this right in the way of implementation of some socio-economic reforms, right to property was deleted from the list of Fundamental Rights. It was made a legal right under Article 300-A. This was done by the 44th Amendment of The Constitution. Now, right to property is a legal right and not a fundamental right of the people.

Right to Education: By 86th Amendment Act, Article 21A has been inserted. It gives to the children between the ages of 6 to 14 years, the Rights of Education.

Rights to Equality — Equality before Law (Art. 14): All citizens enjoy equality before law. All enjoy equal protection of law. Equality before law, however, does not mean absolute equality, or equality among the unequals. It means, equality among the equals and not equality among the unequals. In other words, it is equality among the similarly placed people. It does not prohibit the classification of persons into different groups.

The following cases will provide you more clarity about this concept of equality before law. In the case of *Miss C. B. Muthamma v Union of India* (1979, p.1868), the petitioner was denied promotion to Grade-I of the Indian Foreign Service on the ground that the candidate was a married woman. Such discrimination was held to be violative of Article 14 and 15. In *Air India v Nargesh Meerza* (1981, p.1829) the Air India and Indian Airlines Regulations were challenged as violative of Article 14. According to Regulation 46, an Air Hostess was to retire from service upon attaining the age of 35 years or on marriage if it took place within four years of her joining service or on first pregnancy, whichever occurred earlier. Regulation 47 empowered the Managing Director, at his option, to extend the age of retirement by one year at a time beyond the age of retirement, upto the age of 45 years, if an Air Hostess was found medically fit. The Supreme Court struck down the discriminatory Regulations 46 and 47 as unconstitutional, void and violative of Article 14. In *M/s Sharma Transport v Government of A. P.* (2002, p.322), the cancellation of benefit of concessional rate of tax available to the tourist buses was held to be valid and not violative of Article 14.

Prohibition of Discrimination (Art. 15): It prohibits discrimination on grounds of religion, race, caste, sex or place of birth. No person can, on any of these grounds, be denied access to shops, hotels, public restaurants and places of public entertainment or the use of wells, tanks, bathing Ghats, and places of public resort. According to Article 15(1), the State is prohibited to discriminate between citizens on the grounds of religion, race, caste, sex, and place of birth or any of them. Any discrimination on these grounds can be declared as invalid, e.g. U. P. Court of Wards Act, 1912, which deprived a female to hold and enjoy her property on the ground of her 'sex', was held violative of Article 15(1) (*Rajeshwari v State of U. P.*, 1954, p.608). Similarly, a law provided for election to municipalities on the basis of separate electorates for members of different 'religious communities' was held to be violative of Article 15(1) (*Nainsukh Das v State of U. P.*, 1953, p.384).

According to Article 15(2), no citizen shall be subjected to any discrimination with regard to access to public places like shops, public restaurants, hotels and places of public entertainment, or the use of wells, tanks, baths, roads, and place

of public resort, maintained wholly or partly out of State funds or dedicated to the use of the general public. The object of Article 15(2) is to eradicate the evil of the Hindu caste system, e.g. untouchability. In *Liberty Cinema v Corporation of Calcutta* (1959) the Court held that the 'place of public resort' would mean the place to which members of public are allowed access and where they habitually resort to.

Special Protection for Women and Children (Article 15(3)): This is also known as 'protective discrimination'. According to Article 15(3) State is empowered to make special provisions for women and children because they require special treatment on account of their very nature, physical structure and performance of maternal functions. The object of Article 15(3) is to strengthen and improve the status of women and children. In *Dattatraya v State* (1953, p.1953) it was held that the reservation of seats for women in a college does not violate Article 15(1). In *Yusuf Abdul Aziz v State of Bombay* (1954, p.321), *Sowmithri Vishnu v Union of India* (1985, p.1985) and *Revathi v Union of India* (1988, p.835) Section 497 of Indian Penal Code, 1860 which punishes only man for adultery and exempts the woman from punishment even though she may be equally guilty as an abettor was held to be valid since the classification was not based on the ground of sex alone but to keep the bond of marriage and family in tact.

Special Provision for Advancement of Backward Classes (Article 15(4)): According to Article 15(4), the State is empowered to make special provisions for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Casts and the Scheduled Tribes. The object of Article 15(4) is to strengthen and improve the status of backward classes. In *Indra Sawhney v Union of India* (1993, p.477), which is commonly known as *Mandal Commission Case*, the Court held that caste could be an important or even sole factor in determining the social backwardness and that poverty alone could not be such a criterion. In *M. R. Balaji v State of Mysore* (1963, p.649), *Devadasan v Union of India* (1964, p.179) and *Indra Sawhney v Union of India* (1993, p.477), the Court held that reservation for weaker section should not be more than 50%.

Equality of Opportunity (Art. 16): This right provides equality of opportunity for all citizens in matters relating to employment or appointment to any office of the state. However, qualifications can be fixed for various jobs. Look at the following details of this Article.

- Article 16(1) : Guarantees equality of opportunity for all citizens in matters of public employment or appointment to any office under the State.
- Article 16(2) : Says that no citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for or discriminated against in respect of any employment or office under State.

However, there are some *exceptions*, which include the following.

- Article 16(3) : Empowers the Parliament to impose residential qualification for Government services.
- Article 16(4) : Enables the State to make provision for the reservation of posts in Government jobs in favour of any backward class of citizens.

- Art. 16(4-A) : (77th Amendment 1995): Empowers the State to make any provision for reservation in matters of promotions for SC and ST.
- Art. 16(4-B) : (81st Amendment 2000): Seeks to end the 50% limit for SC and ST and OBC in backlog vacancies which could not be filled-up due to the non-availability of eligible candidates of these categories in the previous year or years.
- Article 16(5) : Provides for the incumbent of any office a religious qualification for appointment, e.g. Hindu religious denomination can be held only by a Hindu or Muslim institution can be held only by a Muslim.
- Article 17 : Abolishes untouchability and forbids its practise in any form. Untouchability is a product of Hindu Caste System under which particular section among Hindus had been looked down. According to Gandhi, untouchability is a great sin. Preaching or practising untouchability either directly or indirectly is an offence punishable by law. The Protection of Civil Rights Act, 1955 prescribes punishments for the practice of untouchability. Any discrimination on the ground of untouchability is an offence, e.g. social boycott resulting from caste. Justifying untouchability on historical, philosophical or religious grounds or tradition of the caste system is also an offence. The Act imposes a duty on public servant to investigate such offences. If a public servant, wilfully neglects the investigation of any offence punishable under this Act, he shall be deemed to have abetted an offence punishable under this Act. The punishment ranges from six months to seven years and also fine.

The Parliament of India enacted the SC and ST (Prevention of Atrocities) Act, 1989 to prevent the commission of offences or atrocities against the members of the Scheduled Castes and the Scheduled Tribes. It provides for establishment of the Special Courts to deal with these offences.

- **Religious disabilities:** Preventing any person from entering any place of public worship or from worshipping or offering prayers
- **Social disabilities:** Denial of access to any shop, public restaurants, hotels or places of public entertainment, hospitals, refusal to sell goods or render services to any person.

In *State of Karnataka v Appa Balu Ingale* (1993, p.1126) the respondents restrained the complainant party by show of force from taking water from a bore well on the ground that they were untouchables. High Court acquitted the respondents but the Supreme Court convicted them under Section 4 and 7 of the Protection of Civil Rights Act, 1955. While delivering the judgement, the Supreme Court pointed out that untouchability was an indirect form of slavery and only extension of caste system. It further stated that caste system and untouchability have stood together and would fall together. In *People's Union for Democratic Rights v Union of India* (1982, p.1473), the case popularly known as *Asiad Project*

Workers Case, the Supreme Court held that the right against untouchability is a fundamental right available against private individuals and it is the Constitutional duty of the State to take necessary steps to see that these fundamental rights are not violated. Merely because the aggrieved person could himself protect or enforce his invaded fundamental rights, did not absolve the State from its Constitutional obligation.

Abolition of Titles (Art. 18): The Constitution prohibits the state from conferring any title on citizens. However, honors for military or academic distinctions can be given. This right does not prevent the grant of military decorations such as Parma Vir Chakra, Mahavir Chakra, Vir Chakra and Ashok Chakra.

Fundamental Freedoms (Article 19): The Constitution of India conferred certain positive rights under Article 19 in order to promote the ideal of liberty enshrined in the preamble. They are fundamental rights in the nature of freedoms. They are popularly known as '*six freedoms*' and available to only citizens. They are as given below:

- 1) Article 19(1)(a) : freedom of speech and expression;
- 2) Article 19(1)(b) : freedom of assembly;
- 3) Article 19(1)(c) : freedom to form associations;
- 4) Article 19(1)(d) : freedom of movement;
- 5) Article 19(1)(e) : freedom to reside and to settle;
- * Article 19(1)(f)* : *freedom to acquire, hold and dispose of property*
(*omitted by 44th Amendment 1978, w.e.f. 20.06.1979);
- 6) Article 19(1)(g) : freedom of profession, occupation, trade or business.

Restrictions or limitations: The fundamental freedoms guaranteed under Article 19(1) are not absolute. The Constitution conferred power on the State to impose by law reasonable restrictions as may be necessary in the larger interest of community. These restrictions are provided under Article 19(2) to (6). The rights under Article 19 can be suspended during an emergency. In *A. K. Gopalan v State of Madras* (1950, p.27), Patanjali Sastri, J. observed that: '*man as a rational being desires to do many things, but in a civil society his desires have to be controlled, regulated and reconciled with the exercise of similar desires by other individuals*'.

Protection in Respect of Conviction for Offences (Article 20): A person who is charged with a crime is called '*accused*'. Accused is alleged to have committed a crime. Article 20 provides protection to the accused persons. Such protection is available for both citizens of India and non-citizens under Article 20 of the Constitution of India, which provides three rights to the accused person, namely,

- 1) Article 20(1) — Right against *ex-post facto* laws,
 - 2) Article 20(2) — Right against double jeopardy, and
 - 3) Article 20(3) — Right against self-incrimination.
- **Ex-post facto Laws (Article 20(1)):** 'No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than

that which might have been inflicted under the law in force at the time of the commission of the offence’.

- **Double Jeopardy (Article 20(2)):** ‘No person shall be prosecuted and punished for the same offence more than once’. Article 20(2) prohibits second trial or double punishment or punishment for the same offence for more than once. Double jeopardy is based on the Common Law principle ‘*nemo debet vis vexari*’ that means ‘a man must not be put twice in peril for the same offence’.
- **Self-incrimination (Article 20(3)):** ‘No person accused of any offence shall be compelled to be a witness against himself’.

Right to life and personal liberty (Article 21): ‘No person shall be deprived of his life or personal liberty except according to the procedure established by law’. According to Article 21, every person has a right to life and personal liberty. Article 21 is available to both citizens and non-citizens. It applies only to natural persons. This right can be claimed only when the right to life or personal liberty is deprived by the State and not by a private individual. However, the State can interfere with the life and liberty of persons only through a valid law.

Article 21 provides two rights, namely, i) Right to life; and ii) Right to personal liberty.

In *People’s Union for Democratic Rights v Union of India* (1982, p.1473), popularly known as *Asiad Project Workers Case*, several construction projects of 9th Asiad were handed over to various contractors who paid very low wages to the labourers. The Supreme Court held that the non-payment of minimum wages to the workers was held to be denial of right to live with basic human dignity under Article 21. In *Olga Tellis v Bombay Municipal Corporation* (1986, p.180), popularly known as *Pavement Dweller’s Case* or *Slum Dwellers Case*, the Bombay Municipality ordered the pavement dwellers to remove their huts from pavement and public places without giving sufficient time and notice. *Olga Tellis*, a social worker filed *Public Interest Litigation* and contended that the order to vacate without showing alternatives would be violative of Article 21, which was upheld by the Court. In *Bandhua Mukti Morcha v Union of India* (1984, p.802), *Bandhua Mukti Morcha*, an organisation working for the cause of release of bonded labourers wrote a letter to Supreme Court that according to their survey, there were a large number of labours working in the stone quarries under ‘inhuman and intolerable conditions’ and many of them were bonded labours and prayed for the release of bonded labourers. The Supreme Court treated that letter as writ-petition and appointed a Commission to visit the quarries and make an inquiry and report to the Court about the conditions of the labourers. The Court, after receiving the report, found the allegations true. The Court held that right to life includes right to live with human dignity free from exploitation. In *A. K. Gopalan v State of Madras* (1953, p.27), the petitioner, A. K. Gopalan, a communist leader was detained under the Preventive Detention Act, 1950. The validity of the Act was challenged on the ground that it violated his right to move freely throughout the territory of India and his detention was not in accordance with a ‘*procedure established by law*’. The Supreme Court held that the expression ‘*procedure established by law*’ must mean the ‘*procedure prescribed by the law of the State*’. Therefore, the term ‘personal liberty’ means

and includes *freedom from arrest and detention from false imprisonment or wrongful confinement*. In *Vishaka v State of Rajasthan* (1997, p.3011) and *Apparel Export Promotion Council v A. K. Chopra* (1999, p.625), the Supreme Court took very serious note of the incidents of sexual harassment of women at work place. In these two cases, the Court held that sexual harassment is violative of right to life under Article 21.

- **Article 21 and Emergency:** According to the 44th Constitutional Amendment, the enforcement of the right to life and personal liberty under Article 21 cannot be suspended even during emergency.

Protection against Arrest and Detention (Art. 22): The Constitution also provides protection against arbitrary arrest and detention. Any person arrested by the police enjoys certain protections. He has a right to be informed about the grounds of his arrest. He has the right to consult his lawyer. He is to be produced before the nearest magistrate within a period of 24 hours of his arrest.

In *Hussainara Khatoon v Home Secretary, Bihar* (1979, p.1377), the Supreme Court held that it is the Constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty or indigence or incommunicado situation, to have free legal service provided to him by the State and the State is under Constitutional duty to provide a lawyer to such person at State's expenses.

Bonded Labour Prohibition (Article 23): Exploitation is a challenge to human freedom and civilisation. Article 23 deals with prohibition of traffic in human beings and forced labour, i.e. slavery. *Traffic in human beings* means selling and buying men and women like goods and include immoral traffic in women and children for immoral or other purposes. Those acts, which result in traffic in human beings, are punishable under the Immoral Traffic (Prevention) Act, 1956. Article 23 includes slavery and bonded labour. This Article protects individual not only against the State but also against the private citizens. The protection under it is available to both citizens and non-citizens. It is the duty of the State to take necessary steps to abolish the evils of traffic in human beings, *begar* and other similar forms of forced labour in the country. '*Begar*' means a compelling a person to work without payment or remuneration.

According to Article 23, no person shall be forced to provide labour or service against his will even under contract of service. In *Peoples Union for Democratic Rights v Union of India* (1982, p.1943) and *Sanjit Roy v State of Rajasthan* (1983, p.328) the Court said that when a person agrees to provide labour or service to another for payment, which is less than minimum wage amounts to forced labour under this Article. However, compulsory service for public purposes does not come in it because they are neither *begar* nor traffic in human beings.

Child Labour Prohibition (Article 24): Article 24 prohibits employment of children below 14 years of age in factories and hazardous employment, e.g. a railway or a port. Such prohibition made in the interest of public health and children's life. The prohibition under this Article is absolute without any exceptions. The Child Labour (Prohibition and Regulation) Act is enacted in accordance with Article 24. In *M. C. Mehta v State of Tamil Nadu* (1997, p.699) one Mr. M. C. Mehta, a public spirited lawyer, filed a Public Interest Litigation and explained the plight of the children engaged in Sivakasi Cracker Factories.

The Supreme Court held that children below the age of 14 years couldn't be employed in any hazardous industry, mines or other works in accordance with Article 24.

Freedom of Conscience and Free Profession, Practice and Propagation of Religion (Article 25): Article 25 states that:

- 1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion.
- 2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law: a) Regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice; b) Providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I : The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II : In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

Freedom to Manage Religious Affairs (Article 26): Subject to public order, morality and health, every religious denomination or any section thereof shall have the right:

- a) To establish and maintain institutions for religious and charitable purposes;
- b) To manage its own affairs in matters of religion;
- c) To own and acquire movable and immovable property; and
- d) To administer such property in accordance with law.

Freedom as to Payment of Taxes for Promotion of any Particular Religion (Article 27): No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

Freedom as to Attendance at Religious Instruction or Religious Worship in Certain Educational Institutions (Article 28): Article states that:

- 1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.
- 2) Nothing in clause 1) shall apply to an educational institution, which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.
- 3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

Protection of Interests of Minorities (Article 29): It is as follows.

- 1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.
- 2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

Right of Minorities to Establish and Administer Educational Institutions (Article 30):

- 1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.
- 1A) In making any law providing for the compulsory acquisition of any property of any educational institution established and administered by a minority, referred to in clause 1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.
- 2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

In *State of Madras v Champakam Dorairajan* (1951, p.226), the Government of Madras, by an Order, fixed the ratio for the admission into the State Medical and Engineering College on community basis. The petitioners challenged the Order as they were denied admission only because they were Brahmins. The Supreme Court held that the Order was violative of Article 29(2). In *re Kerala Education Bill, 1957*, (1958, p.956), minorities may administer an institution for religious education even without conserving a language, script or culture. This right is not absolute but subject to the regulatory power of the State under Article 29(2). In *T. M. A. Pai Foundation v State of Karnataka* (2003, p.355) the Supreme Court held that the admission policy of unaided linguistic and religious minority educational institutions cannot be regulated either by State Government and universities. However, they can specify rules and regulations relating to academic qualifications for maintaining academic standards. In *P. A. Inamdar & Ors. v State of Maharashtra & Ors.* the Supreme Court delivered a unanimous judgment by 7 judges on 12 August 2005 declaring that the State can't impose its reservation policy on minority and non-minority unaided private colleges, including professional colleges.

Article 32: This Article, which itself has been included in the Fundamental Rights, is referred to as the “**Constitutional Remedy**” for enforcement of Fundamental Rights. Hence, the remedy cannot be denied to any person. Dr. B. R. Ambedkar described Article 32 as the most important one, without which the Constitution would be reduced to nullity. It is also referred to as the heart and soul of the Constitution. By virtue of this Article 32 the Supreme Court has been made the protector and guarantor of these Rights. An application made under Article 32 of the Constitution before the Supreme Court, cannot be refused on technical grounds. In addition to the prescribed five types of writs, the Supreme Court may pass any other appropriate order. Moreover, only the questions pertaining to

the Fundamental Rights can be determined in proceedings against Article 32. Under this Article, the Supreme Court may issue a Writ against any person of the State or government within the territory of India. Where the infringement of a Fundamental Right has been established, the Supreme Court cannot refuse relief on the ground that the aggrieved person may have remedy before some other court or under the ordinary law.

A writ or Public Interest Litigation can be filed before the Supreme Court under Article 32 of the Constitution or before the High Court of a State under Article 226 of the Constitution. Even if an aggrieved person has not asked for a particular Writ, the Supreme Court, after considering the facts and circumstances, may grant the appropriate Writ and may even modify it to suit the exigencies of the case. Normally, only the aggrieved person is allowed to move the Court. But, it has been held by the Supreme Court that in social or public interest matters, any one may move the Court.

Writ Jurisdictions: There are mainly five types of writs: i) Writ of Habeas Corpus, ii) Writ of Mandamus, iii) Writ of Quo-Warranto, iv) Writ of Prohibition, and v) Writ of Certiorari. We will discuss them, in brief, under sub-sub-section 5.3.2.4.

Check Your Progress

Notes: a) Space given below the question is for writing your answer.

b) Check your answer with the one given at the end of this unit under “Answers to ‘Check Your Progress’ Questions”.

1) How many parts are there in the Constitution of India? List these parts.

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2) Explain the significance of fundamental rights in a democratic country like India.

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5.3.2.2 Directive Principles of State Policy

The Directive Principles of State Policy (Articles 36-51) contained in the Part IV of the Constitution set out the aims and objectives to be realized by the States as a part of the governance of the country. This novel feature of the Constitution has been borrowed from the Constitution of Ireland which had copied it from the Spanish Constitution.

The idea of Welfare State envisaged by our Constitution can only be achieved if the State endeavors to implement them with a high sense of moral duty and commitment. It was earlier thought that the State was mainly concerned with the maintenance of law and order and the protection of life, liberty and property of the subject. Such a restrictive role of the State is no longer a valid concept. Today we are living in an era of a Welfare State which has to promote the prosperity and well-being of all the people. The Directive Principles lay down certain economic and social policies to be pursued by the various Governments in India; they impose certain obligations on the State to take positive action in certain directions in order to promote the welfare of the people and achieve economic democracy.

The Directive Principles are rather the ideals which the Union and State Governments must keep in mind while they formulate policy or pass a law. They lay down certain social, economic and political principles, suitable to peculiar conditions prevailing in India. In the words of Sri G. N. Joshi (Mentioned in Pandey, 2007, p385) “they constitute very comprehensive political, social and economic programme for a modern democratic State”. Dr. B. R. Ambedkar aptly described these principles as objectives of a Welfare State (Ibid):

“... Our Constitution lays down what is called Parliamentary democracy. By Parliamentary democracy we mean “one man, one vote”. We also mean that every Government shall be on the anvil, both in its daily affairs and also at the end of a certain period when the voters and the electorate will be given an opportunity to assess the work done by the Government. The reason why we have established in the Constitution a political democracy is because we do not want to install by any means whatsoever a perpetual dictatorship of any particular body of people. While we have established political democracy, it is also the desire that we should lay down as our ideal ‘economic democracy’. We do not want merely to lay down a mechanism to enable people to come and capture power. The constitution also wishes to lay down an ideal before those who would be forming the Government. That ideal is economic democracy. The question is, have we got any fixed idea as to how we should bring about economic democracy? There are various ways in which people believe that economic democracy can be brought about — there are those who believe in individualism as the best form of economic democracy, or there are those who believe in having a socialistic State as the best form of economic democracy, or there are those who believe in the communistic idea as the most perfect form of economic democracy.”

We have, thus, left enough room for people of different ways of thinking, with regard to the reaching of the idea of economic democracy, to strike in their own way to persuade the electorates that it is the best way of reaching economic democracy, the fullest opportunity to act in the way in which they want to act.

There is no use giving a fixed, rigid form to something which is not rigid, which is fundamentally changing having regard to the circumstances, and at times keep on changing. It is, therefore, no use saying that the directive principles have no value. In any judgment, the directive principles have a great value; for they lay down that our ideal is economic democracy. We did not want merely a Parliamentary form of Government to be instituted through the various mechanisms provided in the constitution. The object in framing our Constitution is really two-fold: 1) to lay down the form of political democracy, and 2) to lay down that our ideal is economic democracy and also to prescribe that every Government whatsoever is in power, shall strive to bring about economic democracy.

It is, thus, clear that the main object in enacting the directive principles appear to have been to set standards of achievements before the Legislature and the Executive, the local and other authorities, by which their success or failure can be judged. It was also hoped that those failing to implement the directives might receive a rude awakening at the polls. It should, however, be noted that the directive principles do not impose any particular brand or pattern of economic or social order. They lay down the goals which may be achieved through various means which have to be devised from time to time.

Classification of the Directives: The Directives may be classified into the following groups:

- A) Social and Economic Charter.
- B) Social Security Charter.
- C) Community Welfare Charter.

We will discuss each of these charters below.

A) *Social and Economic Charter:* This charter provides for social directives and economic directives.

- 1) *Social Directives – For social order based on Justice:* Article 38(1) provides that the state shall strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice — social, economic and political — shall inform all the institutions of national life. This directive only reaffirms what has already been said in the Preamble according to which the function of the Republic is to secure to all its citizens social, economic and political justice.
- 2) *Economic Directives – For securing economic justice:* Principles of Directive Policy to be followed by the State should strive to secure economic justice. Article 39 specifically requires the state to direct its policy towards securing the following principles:
 - Equal right of men and women to adequate means of livelihood.
 - Distribution of ownership and control of the material resources of the community to the common good.
 - To ensure that the economic system should not result in concentration of wealth and means of production to the common detriment.

- Equal pay for equal work for both men and women.
- To protect health and strength of workers and tender age of children and to ensure that they are not forced by economic necessity to enter avocations unsuited to their age or strength.
- That children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity, and that childhood and youth are protected against exploitation and against moral and material abandonment.

B) *Social Security Charter:* Following are the important directives under this charter.

- 1) *Participation of workers in management of industries:* Article 43-A requires the State to take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organizations engaged in any industry.
- 2) *Right to work, education and public assistance in certain cases:* Article 41 directs the State to ensure the people within the limit of its economic capacity and development: a) employment, b) education, and c) public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of underserved want.
- 3) *Just and humane conditions of work:* Article 42 directs the state to make provision for securing just and humane conditions of work and for maternity relief.
- 4) *Living wage for workers:* Article 43 requires the State to try to secure, by suitable legislation or economic organization or in any other way, to all workers – agricultural, industrial or otherwise – a living wage, conditions of work ensuring a decent standard of life, full enjoyment of leisure and social and cultural opportunities, and in particular, the State shall endeavour to promote cottage industries on an individual or co-operation basis in rural areas. Article 43 refers to a ‘living wage’ and not “minimum wage”. The concept of living wage includes in addition to the bare necessities of life, such as food, shelter and clothing, provisions for education of children and insurance, etc.
- 5) *Provision for early childhood care and education to children below the age of six years:* Article 45 required the State to make provision within 10 years for free and compulsory education for all children until they complete the age of 14 years. The object was to abolish illiteracy from the country. In a landmark judgment in *Unni Krishnan v. State of A. P.* (1993, p.645) the Supreme Court held that the “Right to education” upto the age of 14 years is a fundamental right within the meaning of Article 21 of the Constitution, but thereafter the obligation of the State to provide education is subject to the limits of its economic capacity. “The right to education flows directly from the right to life”, the Court declared. Though late, it was followed by the Constitution (86th Amendment) Act, 2002 which has substituted a new Article for Art. 45 which provides that “the State shall endeavour to provide early childhood care and education for all children until they complete the age of six

years". This has been necessitated as a result of making the right to education of children upto the 14 years of age a fundamental right.

- 6) *Duty to raise the standard of living and improvement of health:* Article 47 imposes duty upon the State to raise the level of nutrition and the standard of living of its people and the improvement of public health. In particular, the State should bring about prohibition of the consumption, except for medicinal purposes, of intoxicating drinks and of drugs which are injurious to health.
- 7) *Promotion of educational and economic interest of weaker sections:* Article 46 enjoins the States to promote with special care the education and economic interests of the weaker sections of the people, and in particular of the Scheduled Castes and the Scheduled Tribes, and to protect them from social injustice and all forms of exploitation.
- 8) *Equal justice and free legal aid to economically backward classes:* Article 39-A directs the State to ensure that the operation of the legal system promote justice on the basis of equal opportunities and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. This article was added to the Constitution pursuant to the new policy of the government to give legal aid to economically backward classes of people.

'Legal aid' and 'speedy trial' have now been held to be the fundamental rights under Article 21 of the Constitution available to all prisoners and enforceable by the courts. The State is under duty to provide a lawyer to a poor person and it must pay to the lawyer his fee as fixed by the Court (See *H. M. Hoskot v State of Maharashtra*, 1978, p.1548; and *Hussainara Khatoon v Home Secretary, State of Bihar*, 1979, p.1322).

C) Community Welfare Charter: The essential directives under this charter include the following.

- 1) *Uniform Civil Code:* Article 44 requires the State to secure for the citizens a Uniform Civil Code throughout the territory of India.

In a historic judgment in *Sarla Mudgal v Union of India* (1995, p.635), the Supreme Court directed the Prime Minister Narsimha Rao to take fresh look at Art.44 of the Constitution which enjoins the State to secure a uniform civil code which, according to the court, is imperative for both protection of the oppressed and promotion of national unity and integrity. The court directed the Union Government through the Secretary to Ministry of Law and Justice, to file an affidavit by August 1995 indicating the steps taken and efforts made by the Government towards securing a uniform civil code for the citizens of India. The above direction was given by the Court while dealing with case where the question for consideration was 'whether a Hindu husband married under a Hindu law, after conversion to Islam, without dissolving the first marriage, can solemnize a second marriage?'. The Court held that such a marriage will be illegal and the husband can be prosecuted for bigamy under Section 494 of the Indian Penal Code.

- 2) *Organisation of agriculture and animal husbandry*: Article 48 directs that the State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter of cows and calves and other milch and draught cattle.
 - *Protection and improvement of environment and safeguarding of forests and wild life*: Article 48A requires that the State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.
- 3) *Protection of monuments and places and objects of national importance*: Article 49 requires that it shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, declared by or under law made by Parliament to be of national importance, from spoilage, disfigurement, destruction, removal, disposal or export, as the case may be.
- 4) *Separation of judiciary from executive*: Article 50 requires that the State shall take steps to separate the judiciary from the executive in the public services of the State.
- 5) *Promotion of international peace and security*: Article 51 provides that the State shall endeavour to: a) promote international peace and security; b) maintain just and honourable relations between nations; c) foster respect for international law and treaty obligations in the dealings of organised peoples with one another; and d) encourage settlement of international disputes by arbitration.
- 6) *Organisation of village panchayats*: Article 40 directs that the State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government (Pandey, 2007, pp.385-397).

Difference between Fundamental Rights and Directive Principles of State Policy: Though the basic objectives of both Fundamental Rights and Directive Principles of State Policy are identical there are significant differences between the two.

- 1) Fundamental rights are mostly political rights which tend to restrain the State. They are also called negative rights. Articles 14 and 21 are negatively worded. Directive Principles of State Policy are social rights in the form of positive obligations of the State and pertain to the economic field.
- 2) The scope of fundamental rights is limited, but that of the Directive Principles of State Policy covers a vast area.
- 3) Fundamental rights are justiciable. Courts protect them and compel the State to respect them. But, Courts cannot direct the State to give effect to a Directive Principle of State Policy. They are unenforceable rights.

Relation between Fundamental Rights and Directive Principles of State Policy: Fundamental Rights are legally enforceable because they are guaranteed rights. But, Directive Principles of State Policy cannot be legally enforced. This gives rise to two situations:

- a) The exercise of a Fundamental Right by a person seems to be inconsistent with a Directive Principle of State Policy — A butchers right to carry on his business and Art. 48 prohibiting slaughter of cows, etc.
- b) A legislation to give effect to a Directive Principle of State Policy infringes or abridges a fundamental right. A legislation fixing a minimum wage violates the right to carry on a trade under Art. 19(1)(g).

Article 31C accepts the view that there may be situations in which there may be a conflict between a Fundamental Rights and a Directive Principle of State Policy. It lays down that if a law is enacted to implement the principles contained in Part IV of the Constitution, then it shall not be open to attack on the ground that it is inconsistent with a Fundamental Right. The law will prevail over the Fundamental Rights. Thus, Art. 31C gives primacy to all laws implementing the Directive Principles of State Policy over the Fundamental Rights.

- In *Champakam's case* (1951, p.228) the Supreme Court clearly stated: The Directive Principles have to conform to and run subsidiary to the Fundamental Rights. Of course, there are opinions, disagreeing with the above observation of the Court and argued that it was incorrect to attribute superiority to Fundamental Rights. The two must be construed harmoniously.
- In the case of *Kerala Education Bill* (1959, p.995), the Supreme Court adopted the harmonious interpretation rule in 1959. It observed that the principle of harmonious construction should be adopted and attempt be made to give effect to both Fundamental Rights and Directive Principles of State Policy. In *Kesavanand's case* (1973, p.1461), the Court again clearly came out in favour of no superiority. It enunciated two principles:
 - i) Both Fundamental Rights and Directive Principles of State Policy are equally fundamental though Directive Principles of State Policy are not directly enforceable by courts.
 - ii) Fundamental Rights and Directive Principles of State Policy are complementary and supplementary to each other.
- In *Minerva Mills' case* (1980, p.1789), the Court reiterated that harmony and balance between Fundamental Rights and Directive Principles of State Policy is an essential feature of the basic structure of the Constitution. As a result, even after insertion of Art. 31-C, Directive Principles of State Policy have no primacy over Fundamental Rights. The Supreme Court has revised its views expressed in earlier decisions conferring superiority on Fundamental Rights. Both Fundamental Rights and Directive Principles of State Policy are on the same level. In case of an apparent conflict, it is for the court to resolve it in exercise of its power of judicial review.

The court cannot declare a law which is inconsistent with a Directive Principle of State Policy as void, but the courts have upheld the validity of a law on the ground that it was enacted to implement the Directive Principle(s) of State Policy. In *Sanjeev Coke's case* (1983, p.239), the Supreme Court took the view that the effect of the Courts opinion in *Minerva Mills* case is that Art. 31-C exists in the form in which it was before the 42nd Amendment. It protects only those laws which seek to implement Art. 39(b) and (c).

Dr. Ambedkar's view: "In my judgment, the directive principles have a great value, for they lay down that our ideal is economic democracy. Because we did not want merely a parliamentary form of Government to be instituted through the various mechanisms provided in the Constitution, without any direction as to what our economic idea is or as to what our social order ought to be, we deliberately included the Directive Principles in our Constitution".

Check Your Progress

Notes: a) Space given below the question is for writing your answer.

b) Check your answer with the one given at the end of this unit under "Answers to 'Check Your Progress' Questions".

3) Highlight the significance of the Directive Principles of State Policy in our Constitution.

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5.3.2.3 Fundamental Duties

Like the Directive Principles of State Policy cast duty on the State to carry out the constitutional mandate in the interest of the citizens, some duties are also cast on the citizens who are bound to perform them. *Fundamental duties* of the citizen of India are dealt under Part IV-A of the Constitution of India. They were added to the Constitution of India by the Constitution (42nd Amendment) Act, 1976 in the form of Article 51-A. It states that, 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 amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
- f) To value and preserve the rich heritage of our composite culture;
- g) To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;

Article 51-A declares the fundamental duties of the citizens of India but silent about their enforcement. These duties are purely personal. They are imposed on the citizens and not upon the State. Laws must be made for their implementation, *e. g.* Prevention of Insults to National Honour Act, 1971. In *Chandra Rajakumari v Police Commissioner, Hyderabad* (1998, p.302), conduct of *beauty contests* by exposing the figure of a woman, body or any parts of the body in any indecent or derogatory manner was held to be violative of Article 14, 21 and 51A-(e) of the Constitution.

[illegible]

5.3.2.4 Institutional Mechanism for Protection and Promotion of the Rights, Principles and Duties

As discussed under sub-sub-section 5.3.2.1, the Fundamental Rights are those rights and freedoms of the people of India, which enjoy constitutional recognition and guarantee. The Supreme Court of India and State High Courts have the power to enforce Fundamental Rights. The Supreme Court is the guardian, protector of fundamental rights; ensure that people enjoy the fundamental rights guaranteed in the Constitution. The Constitution of India does not give any recognition to natural or un-granted rights.

Enforcement of duties: The duties incorporated in the Constitution by the 42nd Amendment are statutory duties and shall be enforceable by law. Parliament, by law, will provide penalties to be imposed for failure to fulfill those duties and obligations. The success of this provision would, however, depend much upon the manner in which and the person against whom these duties would be enforced. For the proper enforcement of duties, it is necessary that they should be made known to all. This should be done by a systematic and intensive education of the people, that is, by publicity or by making it a part of the syllabi and curriculum of education. Most of the people of this country are illiterate and not politically conscious of what they owe to society and country. Homes, universities, officers and their places of work should all be made centres for imparting education in the performance of their obligations. In *M. C. Mehta v Union of India* (1983, p.471) the Supreme Court has held that under Article 51-A(g) it is the duty of the Central Government to introduce compulsory teaching of lessons at least for one hour in a week on protection and improvement of natural environment in all the educational institutions of the country.

Under the Indian legal system, jurisdiction to issue 'prerogative writs' is given to the Supreme Court and the High Courts of Judicature of all Indian States. Parts of the law relating to writs are set forth in the Constitution of India. The Supreme Court, the highest court in the country, may issue writs under Article 32 of the Constitution for enforcement of Fundamental Rights and under Article 139 for enforcement of rights other than Fundamental Rights, while High Courts, the superior courts of the States, may issue writs under Article 226. The Constitution broadly provides for five kinds of "prerogative" writs: *habeas corpus*, *certiorari*, *mandamus*, *quo warrant* and *prohibition*. We will discuss these writs in detail in Unit-14 of Block-4 of this course.

5.4 LET US SUM UP

In this Unit, we have presented you the broad list of contents, particularly the Parts of the Constitution of India, and highlighted the fundamental rights and duties as well as the directive principles of state policy including their significance in the socio-economic, political and other contexts of India. We have also touched upon the institutional mechanism meant for protection and promotion of the constitutional rights, duties and principles. We believe that the discussion in this Unit must have given you broader understanding of the basic framework and features of the Constitution including the place and significance of the rights and duties of the citizens and of the State in carrying out the constitutional mandates and directives. We hope your understanding will enable you to play your roles, as a citizen and as an adult educator, in more effective manner.

5.5 ANSWERS TO 'CHECK YOUR PROGRESS' QUESTIONS

1) There are 22 parts in the Constitution of India. These are as follows.

Part-I	: The Union and its Territory
Part-II	: Citizenship
Part-III	: Fundamental Rights
Part-IV	: Directive Principles of State Policy
Part-IV-A	: Fundamental Duties
Part-V	: The Union
Part-VI	: The States
Part-VII	: The States in Part-B of the First Schedule
Part-VIII	: The Union Territories
Part-IX	: The Panchayats
Part-IX-A	: The Municipalities
Part-X	: The Scheduled and Tribal Areas
Part-XI	: Relations Between the Union and the States
Part-XII	: Finance, Property, Contracts and Suits
Part-XIII	: Trade, Commerce and Intercourse within the Territory of India
Part-XIV	: Services under the Union and the States (2 Chapters with Articles)
Part-XIV-A	: Tribunals
Part-XV	: Elections
Part-XVI	: Special Provisions Relating to Certain Classes
Part-XVII	: Official Language
Part-XVIII	: Emergency Provisions
Part-XIX	: Miscellaneous
Part-XX	: Amendment of the Constitution
Part-XXI	: Temporary, Transitional and Special Provisions
Part-XXII	: Short Title, Commencement, Authoritative Text in Hindi and Repeals.

2) *Fundamental rights and their significance:* Part III of the Constitution of India titled 'Fundamental Rights' (Articles 12-35) secures to the people of India certain basic, natural and inalienable rights. These rights have been declared essential rights in order that "human liberty may be preserved, human personality is developed and an effective social and democratic life is promoted" under all conditions and to keep them unaffected by the shifting majorities in the legislatures. It is to preserve certain basic human rights against interference by the State. One's right to life, liberty and property, to

free speech, a free press, freedom of worship and assembly and other fundamental rights may not be submitted to vote, they depend on the outcome of no election. Hence, fundamental rights are deemed essential to protect the rights and liberties of the people against the encroachment of powers of the Government, Legislative as well as executive, and for the preservation of public and private rights, notwithstanding the representative character of political instrument.

Speaking about the importance of fundamental rights in the historic judgment of *Maneka Gandhi v Union of India*, Bhagwati J. observed: “these fundamental rights represent the basic values cherished by the people of this country (India) since the Vedic times and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent. They weave a ‘pattern of guarantee’ on the basic structure of human rights, and impose negative obligations on the State not to encroach on individual liberty in its various dimensions”.

These rights are regarded as fundamental because they are most essential for the attainment by the individual of his full intellectual, moral and spiritual status. The negation of these rights will keep the moral and spiritual life stunted and his potentialities undeveloped. The declaration of fundamental rights serve as reminder to the Government in power of certain liberties assured to the people by the Constitution which are to be respected by it.

The object of their declaration is not merely to provide security and equality of citizenship of the people living in this land and thereby helping the process of nation building, but also to provide certain standards of conduct, citizenship, justice and fair play. They were intended to make all citizens and persons appreciate that the paramount law of the land has swept away privileges and has laid down the paramount perfect equality between one section of the community and another in the matter of all those rights which are essential for the material and moral perfection of man.

Fundamental Rights are those rights and freedoms of the people of India, which enjoy constitutional recognition and guarantee. The Supreme Court of India and State High Courts have the power to enforce Fundamental Rights. Supreme Court is the guardian protector of fundamental rights. The Constitution makes the rights equally binding upon all authorities — the Union, the States, the Parliament and all other State authorities.

- 3) The Directive Principles of State Policy (Articles 36-51) contained in the Part IV of the Constitution set out the aims and objectives to be realized by the States as a part of the governance of the country. The idea of welfare state envisaged by our Constitution can only be achieved if the States endeavor to implement them with a high sense of moral duty and commitment. Today we are living in an era of a Welfare State which has to promote the prosperity and well-being of the people. The Directive Principles lay down certain economic and social policies to be pursued by the various Governments in India; they impose certain obligations on the State to take positive action in certain directions in order to promote the welfare of the people and achieve economic democracy. The Directive Principles are rather the ideals which

the Union and State Governments must keep in mind while they formulate policy or pass a law. They lay down certain social, economic and political principles suitable to peculiar conditions prevailing in India.

Thus, it is clear that the main object in enacting the directive principles appear to have been to set standards of achievements before the Legislature and the Executive, the local and other authorities, by which their success or failure can be judged. It was also hoped that those failing to implement the directives might receive a rude awakening at the polls. It should, however, be noted that the directive principles do not impose any particular brand or pattern of economic or social order. They lay down the goals which may be achieved through various means which have to be devised from time to time.

- 4) Fundamental duties of the citizens of India are dealt under Part IV-A of the Constitution of India. They were added to the Constitution of India by the Constitution (42nd Amendment) Act, 1976. According to Article 51-A, 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 amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
 - f) To value and preserve the rich heritage of our composite culture;
 - g) To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
 - h) To develop the scientific temper, humanism and the spirit of inquiry and reform;
 - i) To safeguard public property and to abjure violence;
 - j) To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement;
 - k) who is a parent or guardian, to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years {Inserted by the Constitution (86th Amendment) Act, 2002}.

The fundamental duties have been incorporated in the Constitution to remind every citizen that they should not only be conscious of their rights but also of their duties.

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UNIT 6 RIGHT TO INFORMATION – RIGHT TO INFORMATION ACT, 2005

Structure

- 6.0 Introduction
- 6.1 Objectives
- 6.2 Need for and Significance of Information
- 6.3 Evolution of the Right to Information
 - 6.3.1 Movement for the Right to Information
- 6.4 Right to Information Act, 2005
 - 6.4.1 Meaning of Information
 - 6.4.1.1 What Constitutes Information?
 - 6.4.1.2 Exempted Information
 - 6.4.2 Right to Information
 - 6.4.2.1 Scope of Information that Can be Accessed
 - 6.4.2.2 Who Can Access Information?
 - 6.4.2.3 Third Party Information
 - 6.4.3 Obligations of Public Authorities
 - 6.4.4 Procedure for Accessing Information
 - 6.4.4.1 Information Officers
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 - 6.4.4.5 Appeals
- 6.5 Some Instances/Relevant Cases
- 6.6 Let Us Sum Up
- 6.7 Answers to 'Check Your Progress' Questions
- 6.8 References

6.0 INTRODUCTION

In Unit-5, “The Constitution of India”, you have learnt about its basic framework, philosophy and salient features, among others. We are aware that information is indispensable for the functioning of a true democracy. People have to be kept informed about current affairs and broad issues — political, social and economic. Free exchange of ideas and free debate are essentially desirable for the Government of a free country. In this Age of Information, its value as a critical factor in socio-cultural, economic and political development is being increasingly felt. In a fast developing country like India, availability of information needs to be assured in the fastest and simplest form possible. This is very important because every developmental process depends on the availability of information to the concerned.

Therefore, securing right to information is essential and that is possible only through proper legislation. And, the government must do every thing possible to make implementation of such law very effective to ensure the high levels of transparency in the affairs of the government and realize the true meaning of the

word democracy in governance. In view of these, in the present Unit, we will present you the need and significance of information, evolution of right to information and the Right to Information Act, 2005.

6.1 OBJECTIVES

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

- Explain the meaning and significance of the information and right to information;
- Describe evolution of right to information in a democratic country like India;
- Explain what constitutes information and what is exempted information;
- Evaluate the obligations of public authorities under the Right to Information Act, 2005;
- Elucidate the procedure provided under the Right to Information Act, 2005 for accessing information; and
- Examine the composition, functions and powers of information Commissions at various levels.

6.2 NEED FOR AND SIGNIFICANCE OF INFORMATION

Lack of information denies people the opportunity to develop their potential to the fullest extent and realize the full range of their human rights. Individual personality, political and social identity, and economic capability are all shaped by the information that is available to each person and to society at large. The practice of routinely holding information away from the public creates 'subjects' rather than 'citizens' and is a violation of their rights. This was recognized by the Universal Declaration of Human Rights, 1946 when it is resolved: "Freedom of information is a fundamental human right and it is the touchstone for all freedoms." 'Right to information' was first recognized in Article 19 of Universal Declaration of Human Rights and then given the status of legally binding treaty obligation in Article 19 of the International Covenant on Civil and Political Rights, 1976 which states: "everyone has the right to freedom of opinion and expression. This right includes freedom to hold opinion, without interference, and to seek, receive and impart information and ideas through any media and regardless of frontiers." This has placed the right to access information firmly within the body of Universal Human Rights Law (Kulwant Singh, 2006, p.49).

Right to know is also closely linked with other basic rights such as freedom of speech and expression and right to education. Its independent existence as an attribute of liberty cannot be disputed. Viewed from this angle, information or knowledge becomes an important resource. An equitable access to this resource must be guaranteed. Soli Sorabjee, stressing on the need of Right to Information aimed at bringing transparency in administration and public life, says: "Lack of transparency was one of the main causes for all pervading corruption, and Right to Information would lead to openness, accountability and integrity" (www.legalservicesindia.com/articles; and <http://www.nic.in/rtrtd>).

According to P. B. Sawant, “the barrier to information is the single most cause responsible for corruption in society. It facilitates clandestine deals, arbitrary decisions, manipulations and embezzlements. Transparency in dealings, with their every detail exposed to the public view, should go a long way in curtailing corruption in public life.” (www.scribd.com/doc/49553262/RTI).

Thus, it is utmost necessary that the government must strike a balance between the official secrets and the information to be delivered to the public. Strategic sectors have to be kept outside the purview of delivering the information to the public. Now, a debate has been cropping up that there is a vast scale privatization of the public sector, there has been privatisation of certain necessary services that were initially instituted for only public welfare schemes. Regarding hospitals, educational institutes and even many transportation systems being privatized, there arises the need to make them transparent. The fundamental principle of a private sector is to maximize their profits and for this many of these private players forget their business ethics and, thus, it is the public who has to suffer. Hence, it is important to make information regarding these sectors available to the public as one of the essentials of the democracy is to ensure social and public welfare.

In view of the peoples’ need for information and the significance of information in their own development and of their nation, the need for Right to Information has been widely felt in all sectors of the country and this has also received judicial recognition through some landmark judgments of Indian courts.

6.3 EVOLUTION OF THE RIGHT TO INFORMATION

‘Information’ as a term has been derived from the Latin words ‘Formation’ and ‘Forma’ which means giving shape to something and forming a pattern, respectively. Information adds something new to our awareness and removes the vagueness of our ideas.

Constitutional aspect of the right to information: Article 19(1)(a) of the Constitution guarantees the fundamental rights to free speech and expression. The prerequisite for enjoying this right is knowledge and information. The absence of authentic information on matters of public interest will only encourage wild rumours and speculations and avoidable allegations against individuals and institutions. Therefore, the Right to Information becomes a constitutional right, being an aspect of the right to free speech and expression which includes the right to receive and collect information. This will also help the citizens perform their fundamental duties as set out in Article 51A of the Constitution. A fully informed citizen will certainly be better equipped for the performance of these duties. Thus, access to information would assist citizens in fulfilling these obligations.

6.3.1 Movement for the Right to Information

In early 1989, the then the Prime Minister Mr. V. P. Singh declared the attitude of the new Government on the Right to Information and transparent government. He said, “An open system of governance is an essential prerequisite for the fullest flowering of democracy. Free flow of information from the Government to the

people will not only create an enlightened and informed public opinion but also render those in authority accountable. In the recent past, we have witnessed many distortions in our information system. The veil of secrecy was lowered many a time not in the interest of national security, but to shield the guilty, vested interests or gross errors of judgments. Therefore, the National Front Government has decided to make the Right to Information a Fundamental Right A large area of information dissemination also relates to development programmes, their progress and their impact. This will need to be done at the Panchayat and Municipal levels, to encourage not only multi-level planning but also the common man in the villages” (www.legalservicesindia.com/articles).

The demand for Right to Information has taken the form of mass movement at the grass-root level. A mass-based organisation called the *Mazdoor Kisan Shakti Sangathan* (MKSS) took an initiative to lead the people in a very backward region of Rajasthan – Bhim Tehsil – to assert their right to information by asking for copies of bills and vouchers and names of persons who have been paid wages according to muster-rolls on the construction of schools, dispensaries, small dams and community centres. On paper, such development projects were all completed, but it was common knowledge of the villagers that there was gross misappropriation of funds with roofless school buildings, dispensaries without walls, dams left incomplete and community centres having no doors and windows (legalservicesindia.com/article).

After years of knocking at officials’ doors and despite the usual apathy of the State government, MKSS succeeded in getting photocopies of certain relevant documents. Misappropriation of funds was clearly obvious. In some cases, the muster rolls contained names of persons who either did not exist at all or died years before. This incident is more than sufficient to show the importance of the ability of information for eradicating mal-practices. With so many scandals emerging from time to time, it becomes vital for the management of public fund and survival of democracy.

MKSS organised a Jan Sunwai (People’s hearing), the first ever in the history of Rajasthan. Politicians, administrators, landless labourers, private contractors were all invited to listen, respond and, if willing, to defend themselves. Popular response was phenomenal, but village officials and politicians stayed away and remained silent, and thereby weakened their position and darkened their image. Between December 1994 and April 1995, several other public hearings were organised. People’s anger made one engineer of the State Electricity Board to return in public an amount of Rs. 15,000 he had extracted from a poor farmer. This grassroots movement began to spread to other areas of Rajasthan and to other States establishing firmly that information is power and people should have the right to official information (unpan1.un.org/intradoc/groups/public/documents).

Drafting of the Bill: In 1996, Justice P. B. Sawant, the Chairman of the Press Council of India, drafted the bill keeping in view the dire need of the day and the observations made by eminent persons that, in a democracy, it is the people who are the masters and those utilising public resources and exercising public power are their agents. The draft Bill was submitted to the Government of India in 1996. The core of the Bill is Clause 3 which says: every citizen shall have the Right to Information from public body; it shall be the duty of the public body to maintain all records duly catalogued and indexed (www.rtigateway.org.in/.../Obligations).

The public body shall be under a duty to make available to the person requesting information, as it is under an obligation to obtain and furnish and shall not withhold any information or limit its availability to the public except the information specified in Clause 4, and all individuals whether citizens or not, shall have the right to such information that affects their life and liberty. The Bill defines information as any fact relating to the affairs of a public body and records relating to its affairs. Public body includes: a) state within the meaning of Article 12 of the Constitution of India, b) all public undertakings and non-statutory authorities, and c) a company, corporation, society, trust, firm or a co-operative society whether owned or controlled by the Government or by private individuals and institutions whose activities affect the public interest.

The Bill says that Right to Information is subject to restrictions on grounds in clause(s) to Article 19(1)(a) such as the security of the State. Clause (r)(1) of the Bill reproduces many of them and also adds 'Investigation of an Offence.' Sub-clauses (2) and (3) include personal or medical information of a private nature and trade and commercial secrets protected by the law. The Bill also enumerates the procedure for the enforcement of this right. The officer in charge will be held responsible in the event of refusal of information, and information must be furnished within 30 days of application. The officer must provide solid reason for any refusal and appeal against refusal should be made to the principal civil judge of the region.

Keeping in view the burning problem, the Govt. of India, Department of Personnel decided to set-up a Working Group on January 2, 1997 under the chairmanship of Mr. H. D. Shouri. The Working Group on the 'Right to Information and Promotion of Open and Transparent Government' submitted its comprehensive and detailed report and the draft Bill on Freedom of Information on 24 May 1997 (www.rrtd.nic.in).

The salient features of the Bill: i) When enacted, it will also apply to State governments, overriding State legislations to the extent they clash with the Central legislation; ii) A fee would be paid by the citizen while seeking information from Government, and the officer or the department concerned can be held responsible and taken to a Consumer Court for not providing the information within the prescribed time limit of 30 days; iii) Every Government department should appoint a Public Information Officer for this purpose; iv) Section 5 of the Official Secrets Act should be suitably amended to make it easier for a citizen to obtain official information, and information can be withheld only in respect of especially 'exempted' items; v) Clauses 123 and 124 of the Indian Evidence Act which inhibit public officials from submitting information to Courts, should be suitably amended, and the basis and the procedure for classification of official documents (as 'Secret', 'Secret and confidential') should be suitably amended so that availability of information to the public becomes the rule rather than the exception; vi) Not only the Central and the State Ministries, but also public sector undertakings, municipal bodies and panchayats and other bodies substantially funded by the Government, would come within the purview of the Act.

Main Points of Resolution: The Press Council of India, the Press Institute of India, the National Campaign for People's Right to Information and the Forum for Right to Information unanimously submitted the resolution to Government of India to amend the proposed Bill.

- The Right to Information should also be extended in respect of companies, NGOs and international agencies whose activities are of a public nature and have a direct bearing on public interest.
- The law must contain strong, penal provisions against willful and wanton withholding or delay in supplying information or deliberately supplying misleading or inaccurate information.
- The law should contain an appeal mechanism of an independent nature to provide reliable redress to any citizen dissatisfied with any decision of a public authority under this law. In the present draft Bill, all appeals are to other Government authorities.
- The categories of information, which can be restricted or withheld by the Government, are too wide in the draft Bill. In particular, the restriction on disclosing internal notings and official correspondence between public officials and offices has no justification whatsoever. In a democracy, people have the right to know how and why a particular decision has been arrived at and who made what recommendations with what justification. We do not support the view that this will deter candour in the expression of views of public servants. Honest public servants expressing their opinions honestly cannot be deterred by the knowledge that their opinions will become known to the people.
- Similarly, the restriction on confidential communications between the State and Centre and their agencies have no justification, unless they harm public interest.
- The restriction on disclosure of the record of discussions of Secretaries and other public servants also needs to be removed.

The Freedom of Information Bill 2000: This Bill introduced in the Lok Sabha on 25th July 2000 says that:

- a) Information means any material in any form relating to the administration, operations or decisions of a public authority;
- b) The bill defines public authority as any authority or body established or constituted by or under the Constitution, by any law made by the appropriate Government, and includes any other body owned, controlled or substantially financed by funds provided directly or indirectly by the appropriate Government.
- c) Freedom of information means the right to obtain information from any public authority by means of inspection, taking of extracts and notes, certified copies of any records of such public authority and diskettes, floppies or any other electronic mode or through print-outs where such information is stored in a computer or in any other device.

It will be interesting to mention that Press Council of India prepared a draft Bill in 1996 to make a provision for securing right to information. This draft Bill was named Right to Information Bill, 1996. The Institute of Rural Development, Hyderabad also prepared a bill in 1997. Both the bills initiated a national debate on the issue of Effective and Responsive Administration. The Govt. of India appointed a working group on January 2, 1997. The terms of reference of the

Working Group included the examination of feasibility and need to introduce a full fledged Right to Information Bill. This group recommended that a legislation in this regard is not only feasible but is also vitally necessary. The Working Group recommended that the bill should be named as Freedom of Information Bill as the Right to Information has already been judicially recognised as a part of the fundamental right to free speech and expression.

Freedom of Information Act, 2002: Government appointed a national level working group to discuss on the passage. There was no upper limit on the charges that could be levied. There were no penalties for not complying with a request for information. The Freedom of Information Act, consequently, never came into effective force.

State Level Laws: The RTI Laws were first successfully enacted by the state governments of — Tamil Nadu (1997), Goa (1997), Rajasthan (2000), Karnataka (2000), Delhi (2001), Maharashtra (2002), Assam (2002), Madhya Pradesh (2003), and Jammu and Kashmir (2004). The Maharashtra and Delhi State level enactments are considered to have been the most widely used. The Delhi RTI Act is still in force. Jammu & Kashmir, has its own Right to Information Act of 2009, the successor to the repealed J&K Right to Information Act, 2004 and its 2008 amendment.

6.4 RIGHT TO INFORMATION ACT, 2005

The Right to Information Act, 2005 (RTI) is an Act of the Parliament of India. It is the implementation of freedom of information legislation in India on a national level “to provide for setting out the practical regime of right to information for citizens.” The Act applies to all States and Union Territories of India, except the State of Jammu and Kashmir — which is covered under a State-level law. Under the provisions of the Act, any citizen (excluding the citizens within J&K) may request information from a “public authority” (a body of Government or “instrumentality of State”) which is required to reply expeditiously or within thirty days. The Act also requires every public authority to computerize their records for wide dissemination and to proactively publish certain categories of information so that the citizens need minimum recourse to request for information formally. This law was passed by Parliament on 15 June 2005 and came fully into force on 13 October 2005. Information disclosure in India was hitherto restricted by the Official Secrets Act, 1923 and various other special laws, which the new RTI Act now relaxes.

The Right to Information Act, 2005 has been enacted by the Parliament in order to provide for setting out the practical regime of the right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority through constitution of the Central Information Commission and State Information Commission for matters connected therewith or incidental thereto.

Reflection

Have you ever thought that information is power and right to information is an integral part of democracy? Don't you think that the Right to Information Act, 2005 is a powerful weapon in the hands of the citizens for the transparency of administration? Being a citizen of India, don't you think that you should be aware of and use the right to information for the realization of democratic values? Don't you think that it is your duty to make common man know about the right to information and the legislative perspectives to have access to information in order to protect them from various forms of exploitation? Don't you think that you should have a copy of the Right to Information Act, 2005 with you for above purposes? Just reflect upon these questions and do what you feel is right.

6.4.1 Meaning of Information

In this sub-section, we focus on the meaning of information as to what constitutes information that can be accessed and what information is exempted from having access.

6.4.1.1 What Constitutes Information?

Section 2(f) of the Act defines Information as any material in any form. It includes records, documents, memos, e-mail, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data, material held in any electronic form relating to any private body which can be accessed by the public authority under any law for the time being in force.

Further, Central Information Commission clarified that although 'opinion' is indeed information, to so qualify it must be held in material form. The issue concerning the disclosure of "file noting" under the Right to Information Act first came up before this commission in the case of *Satyapal v CPIO TCIL* which was decided by a Division Bench. It was held that note file would be incomplete without note sheets. These recordings are generally known as "file notings". Thus, a combined reading of Section 2(f), (i) & (j) would indicate that a citizen has the right of access to a file of which the file notings are an integral part of a file.

6.4.1.2 Exempted Information

Sub-section (1) of Section 8 and Section 9 of the Act enumerate the categories of information which are exempted from disclosure. Sub-section (2) of Section 8, however, provides that information exempted under sub-section (1) or that exempted under the Official Secrets Act, 1923 can be disclosed if public interest in disclosure overweighs the harm to the protected interest. Further, sub-section (3) of Section 8 provides that information exempted from disclosure under sub-section (1), except as provided in clauses (a), (c) and (i) thereof, would cease to be exempted after 20 years from the date of occurrence of the related event, etc.

It may be noted that Section 8(3) of the Act does not require the public authorities to retain records for indefinite period. The records should be retained as per the record retention schedule applicable to the concerned public authority. Information generated in a file may survive in the form of an OM or a letter or in any other form even after destruction of the file/record.

The Act requires furnishing of information so available after the lapse of 20 years even if such information was exempt from disclosure under sub-section (1) of Section 8. It means that the information which, in normal course, is exempt from disclosure under sub-section (1) of Section 8 of the Act, would cease to be exempted if 20 years have lapsed after occurrence of the incident to which the information relates. However, the following types of information would continue to be exempted and there would be no obligation, even after lapse of 20 years, to give any citizen:

- information disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interest of the State, relation with foreign state or lead to incitement of an offence;
- information disclosure of which would cause a breach of privilege of Parliament or State Legislature; or
- Cabinet papers including records of deliberation of the Council of Ministers, Secretaries and other Officers subject to the conditions given in proviso to clause (i) of sub-section (1) of Section 8 of the Act.

Check Your Progress

Notes: a) Space given below the question is for writing your answer.

b) Check your answer with the one given at the end of this unit under “Answers to ‘Check Your Progress’ Questions”.

1) Explain the need and significance of information.

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2) What do you understand by the term ‘exempted information’ under the Right to Information Act, 2005?

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6.4.2 Right to Information

A citizen has a right to seek such information from a public authority which is held by the public authority or which is held under its control. This right includes inspection of work, documents and records; taking notes, extracts or certified copies of document or records; and taking certified samples of material held by the public authority or held under the control of the public authority (Section 2(j) of Right to Information Act, 2005).

6.4.2.1 Scope of Information that Can be Accessed

The act gives the citizen a right to information at par with the Members of Parliament and the Members of State Legislatures. According to the Act, the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person. A citizen has a right to obtain an information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through print-outs, provided such information is already stored in a computer or in any other device from which the information may be transferred to diskettes, etc.

The information to the applicant should ordinarily be provided in the form in which it is sought. However, if the supply of information sought in a particular form would disproportionately divert the resources of the public authority or may cause harm to the safety or preservation of the records, supply of information in that form may be denied.

Only such information is required to be supplied under the Act which already exists and is held by the public authority or held under the control of the public authority. It is beyond the scope of the Act to create information; or to interpret information; or to solve the problems raised by the applicants; or to furnish replies to hypothetical questions.

6.4.2.2 Who Can Access Information?

The Act gives the right to information only to the citizens of India (Section 3, Right to Information Act, 2005) like ordinary citizens, patients, consumers, voters, etc. in their corresponding situations. It does not make provision for giving information to corporation, Associations, Companies, etc., which are legal entities/ persons. However, if an application is made by an employee or office bearer of any Corporation, Association, Company, NGO, etc. indicating his name and such employee/office bearer is a citizen of India; information may be supplied to him/her. In such cases, it would be presumed that a citizen has sought information at the address of the Corporation, etc. concerned.

6.4.2.3 Third Party Information

Third Party: Section 11(1) defines 'third party' to mean a person other than the citizen making a request for information and includes a public authority. Thus, when a person makes a request for an information which is not related to himself, he is requesting for an information related to third party.

Right of Third Party: If a PIO receives a request for an information which is related to or has been supplied by a third party, then he shall within 5 days of receipt of such request, give a written notice to such third party informing him of the request and the fact that the officer intends to disclose the information on

record, or any part thereof. The third party is entitled to make a submission in writing or orally as to whether such information be disclosed or not, within 10 days from the date of receipt of notice. And the officer shall keep in view such submission while taking a decision in this matter,

The following shall be considered while disclosing Third Party Information:

- a) Trade or commercial secrets protected by law should not be disclosed.
- b) In case public interest in disclosure outweighs in importance than any possible harm or injury to the interests of third party, then the information may be disclosed.

The information is to be provided where a third party has been given an opportunity to make representation under Section 11(2). The PIO shall within 40 days from the date of receipt of request, make a decision as to whether or not to disclose the information or record or part thereof. A written notice of the decision shall be sent to the third party, also informing him that he may prefer an appeal under Section 19 against such a decision.

Where a PIO decides to provide the information, he shall send intimation to the applicant, stating:

- a) The details of fees, towards cost of providing the information, together with the calculation details, and requesting him to deposit fees.
- b) The applicant can seek review of the decision on fees charged by him or the form of access provided including the particulars of the Appellate Authority, time limit, process and any other forms.

Check Your Progress

Notes: a) Space given below the question is for writing your answer.

b) Check your answer with the one given at the end of this unit under “Answers to ‘Check Your Progress’ Questions”.

3) Define third party information.

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6.4.3 Obligations of Public Authorities

According to Section 2(h) of the Right to Information Act, 2005 public authority means any authority or body or institution of self-government established or constituted:

- a) By or under the Constitution;
- b) By any other law made by Parliament;
- c) By any other law made by State Legislature;
- d) By notification issued or order made by the appropriate Government, and includes any:
 - i) body owned, controlled or substantially financed by appropriate Government; and
 - ii) non-Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government;

Public authority should include private bodies performing public functions. This measure will facilitate the right to information described by Section 6(b) of the Consumer Protection Act, 1986.

The Act casts important obligation on public authorities so as to facilitate the citizens or the country to access the information held under their control. The obligations of the authority are basically the obligations of the head of the authority, which should ensure that these are met in right earnest. Reference made to public authority in this document is, in fact, a reference to the head of the public authority.

Timely Supply of Information: The Act requires that except in some special circumstances, decision on an application for information should be given within 30 days of the receipt of the request. Where the information sought for concerns the life or liberty of a person, the same should be provided within forty-eight hours of the receipt of the request. If the decision on the request for information is not given within the prescribed period, it is deemed that the request has been refused. It is pertinent to note that if a public authority fails to comply with the specified time limit, the information to the concerned applicant would have to be provided free of charge.

Maintenance and Computerisation of Records: Proper management of records is of utmost importance for effective implementation of the provisions of the Act. A public authority should, therefore, maintain all its records properly. It should ensure that the records are duly catalogued and indexed in such a manner and from that it may facilitate the right to information. The public authority should computerize all its records which are appropriate to be computerized, Record so computerized should be connected through a network on different systems so that access to such records is facilitated.

Suo Motu Disclosure: Every public authority should provide as much information suo motu to the public through various means of communications so that the public have minimum resort to the use of the Act to obtain information. Internet being one of the most effective means of communications, the information may be posted on the website.

Section 4(1)(b) of the Act, in particular, requires every public authority to publish following sixteen categories of information:

- ✓ the parliament of its organization, functions and duties;
- ✓ the powers and duties of its officers and employees;
- ✓ the procedure followed in the decision-making process, including channels of supervision and accountability;
- ✓ the norms set by it for the discharge of its functions;
- ✓ the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;
- ✓ a statement of the categories of document that are held by it or under its control;
- ✓ the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof;
- ✓ a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as part or for the purpose of its advice, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public;
- ✓ directory of its officers and employees;
- ✓ the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;
- ✓ the budget allocated to each of its agencies, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;
- ✓ the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;
- ✓ particulars of recipients of concessions, permits or authorizations granted by it;
- ✓ details in respect of the information, available to or held by it, reduced into an electronic form;
- ✓ the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if reduced into an electronic form;
- ✓ the names, designations and other particulars of the Public Information Officers.

Besides the categories of information enumerated above, the Government may prescribe other categories of information to be published by any public authority. It need not be stressed that publication of the information as referred to above is not optional. It is a statutory requirement which every public authority is bound to meet. Another important point to note is that it is not sufficient to publish the above information once. The public authority is obliged to update such information every year. It is advisable that, as far as possible, the information should be updated as and when any development takes place. Particularly, in case of publication on the internet, the information should be kept updated all the time.

Dissemination of Information: The public authority should widely disseminate the information. Dissemination should be done in such form and manner which is easily accessible to the public. It may be done through notice boards, newspapers, public announcements, media broadcast, the internet or any other means. The public authority should take into consideration the cost-effectiveness, local language and most effective method of communication in the local area while disseminating the information.

Publication of Facts about Policies and Decision: Public authorities formulate policies and take various decisions from time to time. As provided in the Act, while formulating important policies or announcing the decisions affecting the public, the public authority should publish all relevant facts about such policies and decisions for the information of public at large.

Providing Reasons for Decisions: The public authorities take various administrative and quasi-judicial decisions which, some times, affect the interests of certain persons. It is mandatory for the concerned public authority to provide reasons for such decisions to the affected persons. It may be done by using appropriate mode of communication.

Acceptance of Fee: According to the Right to Information (Regulation of Fee and Cost) Rules, 2005 as amended by the Right to Information (Regulation of Fee and Cost) Rules, 2006, an applicant can make payment of fee in cash or by demand draft or bankers cheque or Indian Postal Order payable to the Accounts Officer of the public authority. The public authority should ensure that payment by any of the above modes is not denied or the applicant is not compelled to draw IPO, etc. in the name of any officer other than the Accounts Officer. If any public authority does not have any Accounts Officer, an officer may be designated as such for the purpose of receiving fee under the RTI Act or rules made thereunder.

Transfer of Applications: The Act provides that if an application is made to a public authority requesting for an information which is held by another public authority or the subject matter of which is more closely connected with the functions of another public authority, the public authority to which such application is made, shall transfer the application or relevant part of it to that other public authority within five days from the receipt of the application. The public authority should sensitise its officers about this provision of the Act lest the public authority is held responsible for delay.

Compliance with the Orders of the CIC: While deciding an appeal, the Central Information Commission, may require the concerned public authority to take such steps as may be necessary to secure compliance with the provisions of the Act. In this regard the Commission may pass an order to provide information to an applicant in a particular form; appoint a Public Information Officer; publish certain information or categories of information; make necessary changes to its practices in relation to the maintenance, management and destruction of records; enhance the provision of training for officials; provide an annual report as prepared in compliance with clause (b) of sub-section (1) of Section 4.

The Commission has power to pass orders requiring a public authority to compensate the complainant for any loss or other detriment suffered by him. It also has power to impose penalty on the Public Information Officer as provided

in the Act. It may be noted that penalty is imposed on the Public Information Officer which is to be paid by him. However, the compensation ordered by the Commission to be paid to an applicant would have to be paid by the public authority. The decisions of the Commission are binding. The public authority should ensure that the orders passed by the Commission are implemented. If any public authority is of the view that an order of the Commission is not in consonance with the provisions of the Act, it may approach the High Court by way of a Writ petition.

Annual Report of the CIC: The Central Information Commission, after the end of each year, is required to prepare a report on the implementation of the Provisions of the Act during that year. Each Ministry or Department is required, in relation to the public authorities within its jurisdiction, to commission for preparation of the report. The report of the Commission, inter-alia, contains the following information in respect of the year to which the report relates:

- the number of requests made to each public authority;
- the number of decisions where applicants were not entitled to access to the documents pursuant to the requests, the provisions of the Act under which these decisions were made and the number of times such provisions were invoked;
- particulars of any disciplinary action taken against any officer in respect of the administration of the Act;
- the amount of charges collected by each public authority under the Act; and
- any facts which indicate an effort by the public authorities to administer and implement the spirit and intention of the Act.

Every public authority should send necessary material to its administrative Ministry/Department soon after the end of the year so that the Ministry/Department may incorporate the same in its report.

If it appears to the Central Information Commission that a practice of the public authority in relation to the exercise of its functions under the Act does not conform with the provisions or spirit of the Act, it may give a recommendation to the authority specifying the steps ought to be taken for promoting such conformity. The concerned public authority should take necessary action to bring its practice in conformity with the Act.

Development of Programmes: It is expected of each public authority that it would develop and organize educational programmes to advance the understanding of the public, in particular of disadvantaged communities, as to how to exercise the rights contemplated under the Act and ensure timely and effective dissemination of accurate information about their activities. Training of the Public Information Officers and other officers of a public authority is very important for meeting these expectations and effective implementation of the provisions of the Act. The public authorities should, therefore, arrange for training of their officers designated as Public Information Officer/First Appellate Authority and other officers who are directly or indirectly involved in the implementation of the provisions of the Act.

Check Your Progress

Notes: a) Space given below the question is for writing your answer.

b) Check your answer with the one given at the end of this unit under “Answers to ‘Check Your Progress’ Questions”.

4) Define public authority, in the context of right to information.

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6.4.4 Procedure for Accessing Information

In this sub-section, we deal with the procedure related to accessing of information from the public authorities or information officers including the appeals to the concerned as may be required in respect of obtaining the information. The first and the foremost you can approach are the concerned information officers.

6.4.4.1 Information Officers

Section 5 of the Right to Information Act, 2005 provides for the designation of Public Information Officer. According to this section, within 100 days from the commencement of the Act all public authorities shall designate some of their officers as Central/State Public Information Officers. They shall also designate some of their officers as Central/State Assistant Public Information Officers.

Public Information Officers are officers of the whole public authority. They do not have any territorial jurisdiction or subjective jurisdiction. It is not possible to fix the Public Information Officer concerned with any one Department or section of Public Authority. That is why, the Act provided that the Public Information Officers shall seek the needed information from any source within the public authority. Public Information Officer is deemed to be repository of all the information available with public authority (Acharya, 2008, p.27).

6.4.4.2 Central Information Commission

Section 12 of the RTI Act, 2005 provides for Central Information Commission. It was constituted by the Central Government by notification in the official gazette. The Chief Information Commissioner and number of Central Information Commissioners (not exceeding 10) are appointed by the President on the recommendations of a committee consisting of:

- 1) Prime Minister as Chairperson;
- 2) Leader of the Opposition in Lok Sabha; and
- 3) A Union Cabinet Minister to be nominated by the Prime Minister.

The Chief Information Commissioner and Information Commissioners shall be persons of eminence in public life with knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance. Such commissioners shall not be members of parliament or members of the state legislatures or union territories or hold any other office of profit or connected with any political party or carrying any business or profession.

6.4.4.3 State Information Commission

It is constituted by State Government by notification in official gazette under section 15 of the RTI Act, 2005. The State Commission consists of the State Chief Information Commissioner and number of State Information Commissioners (not exceeding 10). These Commissioners shall be appointed by the Governor on the recommendations of a committee consisting of:

- 1) The Chief Minister as the Chairperson;
- 2) The Leader of opposition in the Legislative Assembly; and
- 3) A Cabinet Minister to be nominated by the Chief Minister.

6.4.4.4 Procedure for Accessing Information

Here, we will look at some details related to accessing information.

Request for Information (Section 6): Any person, who desires to obtain any information, shall make a request in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made to the Central Public Information Officer or State Public Information Officer or the Assistant CPIO or PIO of the public authority concerned. The request should specify the particulars of the information sought by the applicant and should be accompanied by the requisite fee and full details of his identification, i.e. name, address, etc. There is no requisite fee for those who are residing in below poverty line.

When an applicant cannot make a request in writing, the Public Information Officer shall render all reasonable assistance to the applicant making the request orally to reduce same in writing.

The applicants need not to give any reason for requisitioning the information or any other personal details except those that may be necessary for contacting him.

Time limit for Disposal of Request: A request shall be disposed off as expeditiously as possible, subject to the maximum time limit as follows:-

- a) In ordinary course — 30 days;
- b) If the information concerns the life or liberty of a person — 48 hours;
- c) If the request is made to an Assistant Public Information Officer — Normal time + five days;
- d) If the request relates to third party – 40 days;
- e) If the request involves information pertaining to the allegation of human rights violation in relation to specified Intelligence and Security Organization — 45 days.

Disposal of Request: On receipt of a request for information, the PIO shall, either provide the information on payment of prescribed fee or reject the request. If the request pertains to information concerning a third party, then the representation made by the third party shall be taken into consideration by the PIO before taking decision on the request.

6.4.4.5 Appeals

We discuss below the procedure related to appeals under the RTI act.

- i) **First Appeal:** The information sought by an applicant should either be supplied to him or his application should be rejected within the time prescribed by the Act. If additional fee need be charged for the application, communication in this regard should be sent to the applicant within the time limit prescribed for sending information. If the applicant does not receive information or decision about rejection or request or communication about payment of additional fee within the specified time, he can make an appeal to the First Appellate Authority. Appeal can also be made if the applicant is aggrieved by the decision of the CPIO regarding supply of information or the quantum of fee decided by CPIO.

Appeal in relation to Third Party Information: Third party in relation to the Act means a person other than the citizen who has made the request for information. Any public authority other than the public authority to whom the request has been made shall also be included in the definition of third party.

It may be noted that information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, is exempt from disclosure. Section 8(I)(d) requires that such information should not be disclosed unless the competent authority is satisfied that larger public interest warrants the disclosure of such information.

If an applicant seeks any information which relates to or has been supplied by a third party and that third party has treated that information as confidential, the Central Public Information Officer should consider whether the information should be disclosed or not. The guiding principle in such cases should be that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs the importance or any possible harm or injury to the interests of such third party. However, procedure as given below should be followed before disclosing such information.

It may be noted that this procedure need be followed only when the third party has treated the information as confidential. If the CPIO intends to disclose the information, he should within five days from the receipt of the application, give a written notice to the third party that the information has been sought by the applicant under the RTI Act and that he intends to disclose the information. He should request the third party to make a submission in writing or orally, regarding whether the information should be disclosed. The third party should be given a time of ten days, from the date of receipt of the notice by him, to make representation against the proposed disclosure, if any.

The Central Public Information Officer should make a decision regarding disclosure of the information keeping in view the submission of the third party. Such a decision should be taken within forty days from the date of receipt of the request for information. After taking the decision, the CPIO should give a notice of his decision to the third party in writing. The notice given to the third party should include a statement that the third party is entitled to prefer an appeal under Section 19 against the decision.

The third party can prefer an appeal to the First Appellate Authority against the decision made by the Central Public Information Officer within thirty days from the date of the receipt of notice. If not satisfied with the decision of the First Appellate Authority, the third party can prefer the second appeal to the Central Information Commission. If an appeal has been filed by the third party against the decision of the CPIO to disclose the third party information, the information should not be disclosed till the appeal is decided.

Time Limit for Filing of First Appeal: The first appeal may be made within 30 days from the date of expiry of the prescribed period or from the date of receipt of communication from the CPIO. If the First Appellate Authority is satisfied that the appellant was prevented by sufficient cause from filing the appeal, the appeal may be admitted after 30 days also.

Disposal of Appeal: Deciding appeals under the RTI Act is a quasi-judicial function. It is, therefore, necessary that the appellate authority should see to it that the justice is not only done but it should also appear to have been done. In order to do so, the order passed by the appellate authority should be a speaking order giving justification for the decision arrived at.

Time Limit for Disposal of Appeal: The appeal should be disposed off within 30 days of receipt of the appeal. In exceptional cases, the Appellate Authority may take 45 days for its disposal. However, in cases where disposal of appeal takes more than 30 days, the Appellate Authority should record in writing the reasons for such delay.

If an appellate authority comes to a conclusion that the appellant should be supplied information in addition to what has been supplied to him by the CPIO, he may either: i) pass an order directing the CPIO to give such information to the appellant; or ii) himself give information to the appellant while disposing off the appeal. In the first case the appellate authority should ensure that the information ordered by him to be supplied is supplied to the appellant immediately. It would, however, be better if the appellant authority chooses the second course of action and he himself furnishes the information along with the order passed by him in the matter.

If, in any case, the CPIO does not implement the order passed by the appellant authority and the appellate authority feels that intervention of higher authority is required to get his order implemented, he should bring the matter to the notice of the officer in the public authority competent to take action against the CPIO. Such competent officer shall take necessary action so as to ensure implementation of the provisions of the RTI Act.

ii) Second Appeal: It is dealt with under Section 19 which is as follows.

- 1) Any person who does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of Section 7, or is

aggrieved by a decision of the Central Public Information Officer or State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the date of receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or State Public Information Officer as the case may be, in each public authority:

- Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.
- 2) Where an appeal is preferred against an order made by a Central Public Information Officer or a State Public Information Officer, as the case may be, under Section 11 to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order.
 - 3) A second appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission:
 - Provided that the Central Information Commission or the State Information Commission, as the case may be, may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.
 - 4) If the decision of the Central Public Information Officer or State Public Information Officer, as the case may be, against which an appeal is preferred relates to information of a third party, the Central Information Commission or State Information Commission, as the case may be, shall give a reasonable opportunity of being heard to that third party.
 - 5)
 - 6)
 - 7) The decision of the Central Information Commission or State Information Commission, as the case may be, shall be binding.
 - 8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to:
 - a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including:
 - by providing access to information, if so requested, in a particular form;
 - by appointing a Central Public Information Officer or State Public Information Officer, as the case may be;
 - by publishing certain information or categories of information;
 - by making necessary changes to its practices in relation to the

maintenance, management and destruction of records;

- by enhancing the provision of training on the right to information for its officials;
 - by providing it with an annual report in compliance with clause (b) of sub-section (1) of Section 4;
- a) require the public authority to compensate the complainant for any loss or other detriment suffered;
 - b) impose any of the penalties provided under this Act;
 - c) reject the application.
- 9) The Central Information Commission or State Information Commission, as the case may be, shall give notice of its decision, including any right of appeal, to the complainant and the public authority.
 - 10) The Central Information Commission or State Information Commission, as the case may be, shall decide the appeal in accordance with such procedure as may be prescribed (Srinivas Madhav, 2008, p.145).

Bar to Jurisdiction of Courts: Section 23 of the Act provides that no court shall entertain any suit, application or other proceeding in respect of any order made under the Act and no such order shall be called in question otherwise than by way of an appeal under the Act.

Check Your Progress

Notes: a) Space given below the question is for writing your answer.

b) Check your answer with the one given at the end of this unit under “Answers to ‘Check Your Progress’ Questions”.

- 5) What is the procedure for accessing information under the Right to Information Act, 2005?

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6.5 SOME INSTANCES/RELEVANT CASES

In *Mr. X v Hospital Z* (1998, p.296), the Supreme Court held that it was open to the hospital authorities or the doctors concerned to reveal such information to the persons related to the girl whom he intended to marry as she has a right to know about the HIV positive status of the appellant.

Mr. Anil Kumar Sharma (2006/00648 Dt 04/04/07) requested for certified copy of the written statements of the Directors during survey and it was held that Information was denied u/s 8(1)(d) and also because it was third party information.

The CIC held that it has been a consistent view that result of enquiry conducted by a public authority should be given to the person making the request deleting from it the names of the informer, etc., u/s 10(1), or the info may be denied if the investigation is in progress. The CIC has steadfastly declined to disclose information of depositions, sources of information received by the public authority, statements by witnesses, etc., under Section 8(1)(g).

Mr. Rajesh Bhatia, Hyderabad (2007/00282 Dt 28/05/07) requested for details of tax evasion and it was held that the matter was still undergoing enquiry and, therefore, the information in the present shape cannot be disclosed. Whether it can be disclosed after the assessment has been finalized and the tax liability determined, is a matter which can be taken up at an appropriate time.

Mr. Jatinder Kumar Aggarwal (2007/00115 Dt 05/04/07) requested for file notings pertaining to the issue of a Notification and it was held that File noting of open files (not budget files) should be disclosed. If the respondents wish then as per provisions of section 10(1) the names and other details may be deleted.

In *Union of India v Association for Democratic Reforms and another* (2001, p.2112) the Supreme Court held that under our constitution, Art.19(1) provides for freedom of speech, and expression in case of election would include casting of votes, that is to say, voter speaks out or expresses by casting vote. For this purpose, information about the candidate's antecedents including criminal past of his candidate contesting election for MP or MLA is much more fundamental and basic for survival of democracy. The little man may think over before making his choice of electing law-breakers as law-makers.

6.6 LET US SUM UP

We have presented you the need and significance of information to an individual in promoting transparency and accountability of public offices and the officers toward the society and the nation. We have highlighted the concept of right to information, the evolution of right to information, and important aspects of the Right to Information Act, 2005.

We believe that the knowledge and understanding you have got here will enable you, as a citizen in general and as an adult educator in particular, to play your roles in more effective manner in protecting and promoting the democratic values and transparency in administration and governance of the country.

6.7 ANSWERS TO 'CHECK YOUR PROGRESS' QUESTIONS

- 1) Information is indispensable for the functioning of a true democracy. People have to be kept informed about current affairs and broad issues related to political, social and economic development of the nation. Free exchange of ideas and free debate are essentially desirable for the Government of a free country. In this Age of Information, value of information as a critical factor in socio-cultural, economic and political development is being increasingly felt. In a fast developing country like India, availability of information needs to be assured in the fastest and simplest form possible. This is important

because every developmental process depends on the availability of information – information is power that helps in promoting transparency, democracy and development.

- 2) Sub-section (1) of Section 8 and Section 9 of the RTI Act enumerate the categories of information which is exempted from disclosure. Sub-section (2) of Section 8, however, provides that information exempted under sub-section (1) or that exempted under the Official Secrets Act, 1923 can be disclosed if public interest in disclosure overweighs the harm to the protected interest. Further, sub-section (3) of Section 8 provides that information exempted from disclosure under sub-section (1), except as provided in clauses (a), (c) and (i) thereof, would cease to be exempted after 20 years from the date of occurrence of the related event, etc.

It may be noted that Section 8(3) of the Act does not require the public authorities to retain records for indefinite period. The records should be retained as per the record retention schedule applicable to the concerned public authority. Information generated in a file may survive in the form of an OM or a letter or in any other event after destruction of the file/record.

The Act requires furnishing of information so available after the lapse of 20 years even if such information was exempt from disclosure under sub-section (1) of Section 8. It means that the information which, in normal course, is exempt from disclosure under sub-section (1) of Section 8 of the Act, would cease to be exempted if 20 years have lapsed after occurrence of the incident to which the information relates. However, the following types of information would continue to be exempted and there would be no obligation, even after lapse of 20 years, to give any citizen:

- information disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interest of the State, relation with foreign state or lead to incitement of an offence;
 - information the disclosure of which would cause a breach of privilege of Parliament or State Legislature; or
 - Cabinet papers including records of deliberation of the Council of Ministers, Secretaries and other Officers subject to the conditions given in proviso to clause (i) of sub-section (1) of Section 8 of the Act
- 3) *Third Party*: Section 11(1) defines 'third party'; to mean a person other than the citizen making a request for information and includes a public authority. Thus, when a person makes a request for an information which is not related to himself, he is requesting for an information related to third party.

Right of Third Party: If a PIO receives a request for an information which is related to or has been supplied by a third party, then he shall within 5 days of receipt of such request, give a written notice to such third party informing him of the request and the fact that the officer intends to disclose the information on record, or any part thereof. The third party is entitled to make a submission in writing or orally as to whether such information be disclosed or not, within 10 days from the date of receipt of notice. And the officer shall keep in view such submission while taking a decision in this matter.

- 4) According to Section 2(h) of the Right to Information Act, 2005 Public authority means any authority or body or institution of self-government established or constituted:
- a) By or under the Constitution;
 - b) By any other law made by Parliament;
 - c) By any other law made by State Legislature;
 - d) By notification issued or order made by the appropriate Government, and includes any:
 - i) body owned, controlled or substantially financed by the appropriate Government; and
 - ii) non-Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government.

Public authority should include private bodies performing public functions. This measure will facilitate the right to information described by Sec.6(b) of the Consumer Protection Act, 1986.

- 5) Following is the procedure for accessing information.

Request for Information (Sec 6): Any person, who desires to obtain any information, shall make a request in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made to the Central Public Information Officer or State Public Information Officer or the Assistant CPIO or PIO of the public authority concerned. The request should specify the particulars of the information sought by the applicant and should be accompanied by the requisite fee and full details of his identification, i.e. name, address, etc. There is no requisite fee for those who are living below poverty line.

When an applicant cannot make a request in writing, the Public Information Officer shall render all reasonable assistance to the applicant making the request orally to reduce same to writing. The applicants need not to give any reason for requisitioning the information or any other personal details except those that may be necessary for contacting him.

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UNIT 7 PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

Structure

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7.0 INTRODUCTION

Women constitute about one-half of the global population. Branded as a “weaker sex” they have been subjected to man’s sense of male superiority and dominance. For centuries we have been taught that it is ‘natural’ for men to protect and dominate and for women to respect and defer.

The women are subjected to exploitation both in the house and outside the house. The gender based violence is faced by the women throughout their life. The violence against women has become a global problem. The number of legislations enacted proved insufficient to improve the status of woman. The moment she goes out of the house to complain about harassment and violence, she is not accepted in both the houses – maternal and matrimonial. Any type of proceedings against the husband or in-laws affects the continuation of matrimonial home.

Women are still being treated as commodity and as a result atrocities on women are increasing. It is popular misconception that the home is a place of security and safety; violence only occurs outside the home. In almost all over the world in the recent past there has been persistent and frequent commission of domestic violence against women violating their basic human right of dignity and honour. India is no exception to it.

The felt need to have a comprehensive legislation on domestic violence has resulted in enactment of *The Protection of Women from Domestic Violence Act 2005*. It gives an exhaustive definition of 'domestic violence'. This enactment is legislated with a hope that the legislation will act as deterrent to the domestic violence acts. This Act came into effect from 26th October 2006. In this unit we attempt to present to you the important aspects of this Act.

7.1 OBJECTIVES

After you go through this Unit, we expect you to be able to:

- Appreciate the objectives with which the Act was made;
- Explain the broad features and provisions of the Act; and
- Identify and contextualize the ways and means in which the Act would be helpful in protecting the women against domestic violence.

7.2 THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

The Act consists of 37 sections. The act is civil in nature, and it is in addition to other existing legislations. It is a general law and applies to all the citizens irrespective of religion, caste and culture. It extends to the non-resident Indians also. But, the execution process becomes difficult.

7.2.1 Objectives of the Act

The objectives of the Act include the following.

- i) The act is intended to protect the women and make the legislation effective in real sense.
- ii) The act does not apply anything done to a women elsewhere outside than the domestic environment. The act assures protection for women against deprivation of her right to life by the male members of the family and not females except in case where such woman is married woman.
- iii) Domestic violence is undoubtedly a human right issue. The state acts through this legislation to protect women against violence of any kind that takes place within the family.

- iv) It is intended to protect and promote gender equality within the meaning of Articles 14, 15, 21 of the Indian Constitution and to provide for a remedy to women under the civil law from being victims of domestic violence in the family.
- v) It extends to those women who are in living relationship with the abusers where both the parties have lived together in shared house-hold and are related by consanguinity/marriage. The relationships with family members living together as a joint family are also included.
- vi) It gives the exhaustive definition of the word 'Domestic Violence' and ensures the right of the residence or securing the house-holds to the woman.
- vii) It empowers the Magistrate to pass protection orders in favour of the aggrieved women, besides providing for the appointment of Protection Officers and Service Providers involving the Non-Governmental organizations.

7.2.2 Some Specific Terms Defined

Section 2 deals with the definitions of certain expressions used in the Act. The expressions 'aggrieved person', 'domestic relationship', 'domestic violence', 'domestic incident report', 'shared household' and 'Protection officers', which are new to the law, are explained in this Act.

- 'Aggrieved person' means any woman, who is or has been in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent. A daughter is not aggrieved person against mother or sister, but can be against father and brother. The legislation covers not only wife but extends to "women" — sisters, widows, mothers, single women, concubine or mistress.
- 'Domestic incident report' means a report made in the prescribed form on receipt of a complaint of domestic violence from an aggrieved person.
- 'Domestic relationship' means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.
- Domestic violence: Any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it:
 - a) harms or injures or endangers the health, safety, life, limb or wellbeing, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse, and economic abuse; or
 - b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or
 - c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or
 - d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation 1: For the purpose of this section —

- i) 'physical abuse' means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;
- ii) 'sexual abuse' includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;
- iii) 'verbal and emotional abuse' includes:
 - a) insult, ridicule, humiliation, name-calling and insults or ridicule specially with regard to not having a child or a male child; and
 - b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.
- iv) 'economic abuse' includes:
 - a) deprivation of all or any economic or financial resource to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property jointly or separately owned by the aggrieved person, payment or rental related to the shared household and maintenance;
 - b) disposal of household effects, any alienation of assets whether movable or immovable, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and
 - c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Section 3: The act provides comprehensive definition of 'domestic violence'. Even single act or series of acts of commission or omission may constitute domestic violence. There is no limitation of time for filling of incidence report. For the purpose of deciding the 'domestic violence', over-all facts and circumstances of the case shall be taken into consideration. The word violence, cruelty or harassment has been widened. So the words 'domestic relationship' and 'domestic violence' have been used. It covers not only wife but other females in the house.

7.2.3 Powers and Duties of Protection Officers and Service Providers

Here, we will focus on the information related to different protection officers and the services they provide in protecting the women against domestic violence.

7.2.3.1 Information to Protection Officers and Exclusion of Liability of Informant

Section 4 deals with protection officers.

- 1) any person who has reason to believe that an act of domestic violence has been, or is being, or is likely to be committed, may give information about it to the concerned Protection Officer.
- 2) No liability, civil or criminal, shall be incurred by any person for giving in good faith of information for the purpose of sub-section (1).

7.2.3.2 Duties of Police Officers, Service Providers and Magistrate

A Police Officer, Protection Officer, Service Provider or Magistrate who has received a complaint of domestic violence or is otherwise present at the place of an incident of domestic violence or when the incident of domestic violence is reported to him, shall inform the aggrieved person (Section 5):

- a) of her right to make an application for obtaining a relief by way of a protection order, an order for monetary relief, a custody order, a residence order, a compensation order or more than one such order under this Act;
- b) of the availability of services of Service Providers;
- c) of the availability of services of the Protection Officers;
- d) of her right to free legal services under the Legal Services Authorities Act, 1987 (39 of 1987);
- e) of her right to file a complaint under Section 498A of the Indian Penal Code (45 of 1860) wherever relevant.
 - Provided that nothing in this Act shall be construed in any manner as to relieve a police officer from his duty to proceed in accordance with law upon receipt of information as to the commission of a cognizable offence.

7.2.3.3 Duties of Shelter Homes

If an aggrieved person or on her behalf a Protection Officer or a Service Provider requests the person in charge of a shelter home to provide shelter to her, such person in charge of the shelter home shall provide shelter to the aggrieved person in the shelter home (Section 6).

7.2.3.4 Duties of Person In-charge of Medical Facilities

If an aggrieved person or, on her behalf a Protection Officer or a Service Provider requests the person in charge of a medical facility to provide any medical aid to her, such person in charge of the medical facility shall provide medical aid to the aggrieved person (Section 7).

7.2.3.5 Appointment of Protection Officers

Appointment of Protection Officers is dealt with in Section 8.

- The State Government shall, by notification, appoint such number of Protection Officers in each district as it may consider necessary and shall also notify the area or areas within which a Protection Officer shall exercise the powers and perform the duties conferred on him by or under this Act.

- The Protection Officers shall, as far as possible, be women and shall possess such qualifications and experience as may be prescribed.
- The terms and conditions of service of the Protection Officer and the other officers subordinate to him shall be such as may be prescribed.

7.2.3.6 Duties and Functions of Protection Officers

Duties and functions of Protection Officers are given under Section 9.

1) It shall be the duty of the Protection Officer:

- to assist the Magistrate in the discharge of his functions under this Act.
- to make a 'domestic incident report' to the Magistrate, in such form and in such manner as may be prescribed, upon receipt of a complaint of domestic violence and forward copies thereof to the police officer in charge of the police station within the local limits of whose jurisdiction domestic violence is alleged to have been committed and to the service providers in that area.
- to make an application in such form and in such manner as may be prescribed to the magistrate, if the aggrieved person so desires, claiming relief for issuance of a protection order;
- to ensure that the aggrieved person is provided legal aid under the Legal Services Authorities Act, 1987 (39 of 1987) and make available free of cost the prescribed form in which a complaint is to be made;
- to maintain a list of all service providers providing legal aid or counseling, shelter homes and medical facilities in a local area within the jurisdiction of the Magistrate;
- to make available a safe shelter home, if the aggrieved person so requires and forward a copy of his report of having lodged the aggrieved person in a shelter home to the police station and the Magistrate having jurisdiction in the area where the shelter home is situated;
- to get the aggrieved persons medically examined, if she has sustained bodily injuries and forward a copy of the medical report to the police station and the Magistrate having jurisdiction in the area where the domestic violence is alleged to have been taken place;
- to ensure that the order for monetary relief under Section 20 is complied with and executed, in accordance with the procedure prescribed under the Code of Criminal Procedure, 1973 (2 of 1974); and
- to perform such other duties as may be prescribed.

2) The Protection Officer shall be under the control and supervision of the Magistrate, and shall perform the duties imposed on him by the Magistrate and the Government by, or under, this Act.

7.2.3.7 Service Providers

Section 10 deals with Service Providers.

1) Subject to such rules as may be made in this behalf, any voluntary association registered under the Societies Registration Act, 1860 (21 of 1860) or a

company registered under the Companies Act, 1956 (1 of 1956) or any other law for the time being in force with the objective of protecting the rights and interests of women by any lawful means including providing legal aid, medical, financial or other assistance shall register itself with the State Government as a service provider for the purposes of this Act.

- 2) A service provider registered under sub-section (1) shall have the power to:
 - a) record the domestic violence incident report in the prescribed form if the aggrieved persons so desires and forward a copy thereof to the Magistrate and to the Protection Officer having jurisdiction in the area where the domestic violence took place;
 - b) get the aggrieved person medically examined and forward a copy of the medical report to the Protection Officer and the police station within the local limits of which the domestic violence took place;
 - c) ensure that the aggrieved person is provided shelter in a shelter home, if she so requires and forward a report of the lodging of the aggrieved person in the shelter home to the police station within the local limits of which the domestic violence took place.
- 3) No suit, prosecution or other legal proceeding shall lie against any service provider or any member of the service provider who is, or who is deemed to be, acting or purporting to act under this act, for anything which is in good faith done or intended to be done in the exercise of powers or discharge of functions under this act towards the prevention of the commission of domestic violence.

Check Your Progress

Notes: a) Space given below the question is for writing your answer.

b) Check your answer with the one given at the end of this unit under “Answers to ‘Check Your Progress’ Questions.”

- 1) Explain the necessity of ‘Protection of Women from Domestic Violence Act’ along with significance of powers and duties of Protection Officers and Service Providers.

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7.2.4 Duties of the Government

Section 11 deals with the duties of government.

The Central Government and every State Government, shall take all measures to ensure that:

- the provisions of this act are given wide publicity through public media including the television, radio and the print media at regular intervals;
- the Central Government and State government officers including the police officers and the members of the judicial services are given periodic sensitization and awareness training on the issues addressed by this Act.
- effective co-ordination between the services provided by concerned Ministries and Departments dealing with law, home affairs including law and order, health and human resources to address issues of domestic violence and periodical review of the same is conducted;
- the Protocols for the various Ministers concerned with the delivery of services to women under this Act including the courts are prepared and put in place.

On receiving the report of aggrieved women, police officer, protection officer, service provider or magistrate shall inform the woman of her right to make an application for obtaining a relief by way of a protection order, a compensation order as mentioned under this section.

7.2.5 Procedure for Obtaining Orders of Relief

Section 12 deals with the procedure for obtaining orders of relief. It states:

- 1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this act.
- 2) The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent:
 - Provided that where a decree for any amount as compensation or damages has been passed by any Court in favor of the aggrieved person, the amount, if any, paid if payable in pursuance of the order made by the Magistrate under this Act shall be set-off against the amount payable under such decree and the decree shall, notwithstanding, anything contained in the C.P.C 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set-off.
- 3) Every application under subsection (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.
- 4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the Court.
- 5) The magistrate shall endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing.

Under Section 13, a notice of the date of hearing fixed under Section 12 shall be given by the Magistrate to the Protection officer, who shall get it served on the respondent within a maximum period of two days or such reasonable time. A declaration of service of notice shall be the proof that the notice is served.

Under Section 14, the Magistrate may direct the respondent to undergo counseling. The Magistrate in such case shall fix the next date of hearing of the case within a period of two months.

Under Section 16, the Magistrate considers that the circumstances of the case so warrant he may conduct the proceedings in camera.

Section 17 assures that every woman in a domestic relationship shall have the right to reside in the shared house-hold, whether or not she has any right or title. The respondent shall not evict the aggrieved person from the shared household or any part of it. 'Shared household' means owned or rented where the aggrieved person has lived in the domestic relationship with the respondent or with joint family. The right of residence is higher right when compare to residential right in any other legislations and this right extends to joint prosperities in which the husband has a right of share. The women has right to reside in shared household.

7.2.5.1 Protection Orders

Section 18: The Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person and prohibit the respondent from:

- committing any act of domestic violence;
- aiding or abetting in the commission of acts of domestic violence;
- entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;
- attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;
- alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her stridhan or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;
- causing violence to the dependants, other relatives or any person who gives the aggrieved person assistance from domestic violence;
- committing any other act as specified in the protection order.

7.2.5.2 Residence Orders

Section 19 deals with Residence Orders.

- 1) While disposing of an application under sub-section (1) of Section 12, the magistrate may, on being satisfied that domestic violence has taken place, pass a residence order:

- a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;
 - b) directing the respondent to remove himself from the shared household;
 - c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;
 - d) restraining the respondent from alienating or disposing off the shared household or encumbering the same;
 - e) restraining the respondent from renouncing his rights in the shared household except with the leave of the magistrate; or
 - f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same if the circumstances so require;
 - Provided that no order under clause (b) shall be passed against any person who is a woman.
- 2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.
 - 3) The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.
 - 4) An order under sub-section (3) shall be deemed to be an order under Chapter VII of the Code of Criminal procedure, 1973 (2 of 1974) and shall be dealt with accordingly.

While passing an order under sub-section (1), sub-section (2) or sub-section (3), the court may also pass an order directing the officer in charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.

While making an order under sub-section (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.

The Magistrate may direct the officer in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order.

The Magistrate may direct the respondent to return to the possession of the aggrieved person her stridhan or any other property or valuable security to which she is entitled to. The protection under this provision assures that she should not be thrown out of the house overnight.

7.2.5.3 Monetary Relief

Section 20 deals with monetary relief.

- 1) While disposing of an application under sub-section (1) of Section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child

of the aggrieved person as a result of the domestic violence and such relief may include, but not limited to:

- the loss of earnings;
 - the medical expenses;
 - the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and
 - the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.
- 2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved persons is accustomed.
 - 3) The Magistrate shall have the power to order an appropriate lump-sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.
 - 4) The Magistrate shall send a copy of the order for monetary relief made under sub-section (1) to the parties to the application and to the in charge of the police station within the local limits of whose jurisdiction the resident resides.
 - 5) The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub-section (1).
 - 6) Upon the failure on the part of the respondent to make payment in terms of the order under sub-section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.

7.2.5.4 Custody Orders

Section 21: Notwithstanding anything contained in any other law for the time being in force, the Magistrate may, at any stage of hearing of the application for protection order or for any other relief under this Act, grant temporary custody of any child or children to the aggrieved person or the person making an application on her behalf and specify, if necessary, the arrangements for visit of such child or children by the respondent.

- Provided that if the Magistrate is of the opinion that any visit of the respondent may be harmful to the interests of the child or children, the Magistrate shall refuse to allow such visit.

7.2.5.5 Compensation Orders

Section 22: In addition to other reliefs as may be granted under this Act, the Magistrate may on an application being made by the aggrieved person, pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by that respondent.

Check Your Progress

Notes: a) Space given below the question is for writing your answer.

b) Check your answer with the one given at the end of this unit under “Answers to ‘Check Your Progress’ Questions”.

2) Mention different relief orders available under this Act.

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7.2.6 Power to Grant Interim and Ex-parte Orders

Section 23: In any proceeding before him under this act, the Magistrate may pass such interim order as he deems just and proper.

If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex-parte order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under Section 18, Section 19, Section 20, Section 21 or, as the case may be, Section 22 against the respondent.

7.2.6.1 Court to Give Copies of Order Free of Cost

Section 24: The Magistrate shall, in all cases where he has passed any order under this Act, order that a copy of such order, shall be given free of ‘cost’, to the parties to the application, the police officer in-charge of the police station in the jurisdiction of which the Magistrate has been approached, and any service provider located within the local limits of the jurisdiction of the court and if any service provider has registered a domestic incident report, to that service provider.

7.2.6.2 Duration and Alteration of Orders

Section 25: A protection order made under section 18 shall be in force till the aggrieved person applies for discharge.

If the magistrate, on receipt of an application from the aggrieved person or the respondent, is satisfied that there is a change in the circumstances requiring alteration, modification or revocation of any order made under this Act he may, for reasons to be recorded in writing pass such order, as he may deem appropriate.

7.2.7 Relief in Other Suits and Legal Proceedings

Section 26: Any relief available under Sections 18, 19, 20, 21 and 22 may also be sought in any legal proceedings, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceedings was initiated before or after the commencement of this Act.

Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceedings before a civil or criminal court.

In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.

7.2.8 Jurisdiction

Section 27 specifies the competent court under the Act.

1) The court of judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which:

- the person aggrieved permanently or temporarily resides or carries on business or is employed; or
- the respondent resides or carries on business or is employed; or
- the cause of action has arisen,

shall be the competent court to grant a protection order and other orders under this Act and to try offences under this Act.

2) Any order made under this act shall be enforceable throughout India.

7.2.8.1 Appeal

Section 29: There shall lie an appeal to the Court of Session within thirty days from the date on which the order made by the magistrate is served on the aggrieved person or the respondent, as the case may be, whichever is later.

The protection officers and members of service providers under Section 30, while acting or purporting to act in pursuance of any of the provisions of this Act or any rules or orders made thereunder shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code (45 of 1860).

7.2.9 Penalty for Breach of Protection Officer's Order by Respondent

Section 31: A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

The offence under sub-section (1) shall as far as practicable be tried by the Magistrate who had passed the order, the breach of which has been alleged to have been caused by the accused.

While framing charges under sub-section (1), the Magistrate may also frame charge under section 498A of the Indian Penal code (45 of 1860) or any other provision of that Code or the Dowry Prohibition Act, 1961 (28 of 1961), as the case may be, if the facts disclosed the commission of an offence under those provisions.

7.2.9.1 Cognizance of Offences

Section 32: Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offence under sub-section (1) of Section 31 shall be cognizable and non-bailable.

Upon the sole testimony of the aggrieved person, the court may conclude that an offence under sub-section (1) if section 31 has been committed by the accused.

7.2.9.2 Penalty for not Discharging Duty by Protection Officer

Section 33: If any Protection Officer fails or refuses to discharge his duties as directed by the Magistrate in the protection order without any sufficient cause, he shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

7.2.9.3 Cognizance of Offence Committed by Protection Officer

Section 34: No prosecution or other legal proceeding shall lie against the Protection Officer unless a complaint is filed with the previous sanction of the State Government or an officer authorized by it in this behalf.

7.2.9.4 Protection of Action taken in Good Faith

Section 35: No suit, prosecution or other legal proceeding shall lie against the Protection Officer for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act or any rule or order made thereunder.

7.2.9.5 Power of Central Government to make Rule

- 1) The Central government may, by notification, make rules for carrying out the provisions of this Act.
- 2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:
 - a) the qualifications and experience which a Protection Officer shall possess under sub-section (2) of Section 8;
 - b) the terms and conditions of service of the Protection officers and the other officers subordinate to him, under sub-section (3) of Section 8;
 - c) the form and manner in which a domestic incident report may be made under clause (b) of sub-section (1) of Section 9;
 - d) the form and the manner in which an application for protection order may be made to the Magistrate under clause (c) of sub-section (1) of Section 9;
 - e) the form in which a complaint is to be filed under clause (d) of sub-section (1) of Section 9;
 - f) the other duties to be performed by the Protection officer under clause (i) of sub-section (1) of Section 9;
 - g) the rules regulating registration of service providers under sub-section (1) of Section 10;
 - h) the form in which an application under sub-section (1) of Section 12 seeking reliefs under this Act may be made and the particulars which such application shall contain under sub-section (3) of that section;

- i) the means of serving notices under sub-section (1) of Section 13;
- j) the form of declaration of service of notice to be made by the Protection Officer under sub-section (2) of Section 13;
- k) the qualifications and experience in counseling which a member of the service provider shall possess under sub-section (1) of Section 14;
- l) the form in which an affidavit may be filed by the aggrieved person under sub-section (2) of Section 23; and
- m) any other matter which has to be, or may be, prescribed.

7.3 LET US SUM UP

To sum-up, we can highlight the salient features of the Act as follows.

- The Domestic Violence report is treated as civil case.
- The aggrieved party need not approach the police station for necessary proceedings. She can file an incidence report to the Judicial Magistrate.
- The respondent is not addressed as accused.
- The application filed by the aggrieved party is, not treated as 'FIR' but treated as 'Domestic Violence Report'.
- Creation of protection officer and service provider is an innovative scheme. They are vested with a duty to help the aggrieved right from the time the domestic violence takes place or reported.
- Right to residence is provided as a higher right.
- Maintenance, custody of the children and compensatory orders made available to the aggrieved immediately.
- Quick remedy is available. The magistrate is empowered to issue a notice to the respondent within two days and fix up third day for hearing the case.
- The Magistrate shall dispose of the case within 60 days.
- Magistrate is empowered to issue interim and ex-parte orders.
- The Magistrate is empowered to execute the orders issued by him without being moved for execution.
- In cases where there is no evidence except the testimony of the aggrieved women, it shall be relied upon in deciding.
- There is no second appeal provided under the Act. The aggrieved women is not humiliated by moving to the higher courts and wait for the decision.
- Criminal prosecution for offences like 498A, Dowry Prohibition Act etc are not prohibited as this Act is not substitute to other legislations.
- Accountability of protection officer is assured; failing which PO is liable for punishment.
- Involvement of police officer is not totally excluded.
- The Act is only a protective legislation and not a punishing legislation. The matrimonial relationship may not be strained as in the case of criminal cases.

- Recommendation of CEDAW is achieved as it is an important woman's right issue.
- It is statutory responsibility of Govt. to give wide publicity through public media like, T.V. radio and print media.
- This Act is only protective legislation but not a punishing legislation.
- Relief provided under this Act is only temporary.
- There is no apprehension of arrest, custody and prosecution of the respondent. This may lead to amicable settlement of matrimonial problem.
- The respondent attitude towards women may not be unpleasant as it involves civil proceedings.
- Filing of criminal cases like 498-A or dowry harassment may further aggravate the relationship resulting more broken homes.
- Multiple package of remedies are available like custody of children, monetary relief, etc.
- It is also observed that 498A and criminal legislation are abused or misused by the women. No such allegation arises under this Act.
- Exclusive protection officers under the act are not appointed. Additional responsibility is conferred on the project officers which weakens the cause of the women.
- Provisions have been made for counseling.
- Interim compensation can also be given.
- The definition of 'physical abuse' has been enlarged and made specific.

We can appreciate that the Act is overwhelming in assuring the protection to the women. However, most often, it may not be practicable for the Magistrate to hear the case in four days and dispose the case in 60 days as provided for in the Act.

7.4 ANSWERS TO 'CHECK YOUR PROGRESS' QUESTIONS

- 1) The Protection of Women from Domestic Violence Act, 2005 is very much required for the following reasons: The harmony of matrimonial home is the choice of a healthy society. Women are subjected to domestic violence, which almost became a global phenomenon. Though a number of legislations exist, they are not providing satisfactory protection to the women in respect of violence both in the house and in the society. The better, effective and easily approachable legislation is felt as the need, and hence this legislation is enacted with a hope that it will act as an effective deterrent to the domestic violence.

The significance of powers and duties of Protection Officers and Service Providers lies in the following: They assist the Magistrate in the discharge of his functions under the Act. They make a domestic violence incidence report, provide legal aid and maintain a list of service providers, shelter homes and medical facilities in the local area. Further, monetary relief to the victim under the Act is ensured.

- 2) The relief orders available under this Act include the following: Residence orders, monetary relief orders, custody orders for children and compensation orders.

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UNIT 8 RIGHT TO EDUCATION – RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009

Structure

- 8.0 Introduction
- 8.1 Objectives
- 8.2 Evolution of Right to Education: A Constitutional Perspective
- 8.3 The Right of Children to Free and Compulsory Education Act, 2009
 - 8.3.1 Provision ~~for~~ and Protection of Education of Children
 - 8.3.2 Duties of Government, Local Authority and Parents
 - 8.3.3 Responsibilities of Schools and Teachers
 - 8.3.3.1 Responsibilities of Schools
 - 8.3.3.2 Qualifications for Appointment, Terms and Conditions of Service, and Duties of Teachers
 - 8.3.4 Curriculum and Completion of Elementary Education
- 8.4 Let Us Sum Up
- 8.5 Answers to 'Check Your Progress' Questions
- 8.6 References

8.0 INTRODUCTION

Education is an integral part of a country's development. At individual level, education brings qualitative changes in one's life leading to perfection in life. Education is an effective means to promote individual's growth and development. Education qualifies a person to fulfill certain economic, political and cultural functions and hereby improves his/her socio-economic status.

At the international level, Article 26 of the Universal Declaration of Human Rights, 1948 provided for Right to Education as:

- 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 all 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.

Education which was once considered a charity or philanthropy became an occupation that received the protection by the Constitution of India. The makers

of the Indian Constitution were, thus, aware of the Right to Education as the basic need and, therefore, incorporated this right as one of the Directive Principles of State Policy. It imposed a duty upon the State to take suitable steps in this regard to enable everyone to receive education up to specified period in early years of life of an individual.

The United Nations Declaration of the Rights of the Child, 1959 provided 10 principles to affirm the rights of the child and one among them is the right to receive education. India is a party to the Declaration. Accordingly, India adopted a National Policy on Children in 1974. The policy reaffirmed the constitutional provisions for adequate services to children, both before and after birth and through the period to ensure their full physical, mental and social development. Consequently, the government initiated action to review the National and State legislations to make them in line with the provisions of the constitution.

Later, India also became a signatory to the World Declaration on the Survival, Protection and Development of Children, 1990. In pursuance of the commitment made at the World Summit, the Department of Women and Child Development under the Ministry of Human Resource Development has formulated a National Plan of Action for Children. The priority areas of the plan are health, nutrition, education, water, sanitation and environment.

The international Declarations, made time and again, have, thus, had their impact on the national laws including the constitutions, policies and programmes of different countries; and as shown above, India is no exception to it.

In this Unit, we will highlight the evolution of right to education into a fundamental right, the Right of Children to Free and Compulsory Education Act, 2009 with an emphasis on the duties and responsibilities of the constitutional authorities, local authorities, schools, teachers and parents regarding ensuring children's right to education in India.

8.1 OBJECTIVES

After going through this Unit, you should be able to:

- Describe the evolution of right to education into a fundamental right;
- Elucidate the salient features of the Right of Children to Free and Compulsory Education Act, 2009;
- Analyse the duties of the government, local authority and parents regarding children's right to education; and
- Evaluate the responsibilities of schools and teachers towards the children and elementary education.

8.2 EVOLUTION OF RIGHT TO EDUCATION: A CONSTITUTIONAL PERSPECTIVE

The Constitution of India, initially, did not expressly guarantee the Right to Education as a fundamental right. But, the Supreme Court has implied the right to education as a Fundamental Right from Article 21 of the constitution. The Supreme Court through a creative interpretation stated that the word 'life' in

Article 21 includes 'education' because education promotes good and dignified life. In *Mohini Jain v State of Karnataka* (1992, p.1858), the Supreme Court held that the right to education flows directly from the 'right to life', and that the 'Right to Education' is, thus, concomitant to the Fundamental Rights. In this landmark judgment, the Supreme Court held that the right to education is a fundamental right under Article 21 of the Constitution which cannot be denied to a citizen by charging higher fee known as the capitation fee. The right to education flows directly from right to life. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education. In this case, the petitioner Miss Mohini Jain of Meerut, Uttar Pradesh had challenged the validity of a Notification issued by the government under the Karnataka Educational Institutions Act, 1984 which was passed to regulate tuition fee to be charged from students was as follows:

"Candidates admitted against Government seats will be charged Rs.2,000 per year, the Karnataka Students Rs.25,000 per annum and students from outside Karnataka Rs.60,000 per annum. The petitioner was denied admission on the ground that she was unable to pay the exorbitant tuition fee or Rs.60,000 per annum. The two-judge Division Bench consisting of Justices Kuldip Singh and R. N. Sahai held that the right to education at all levels is a fundamental right of citizen under Article 21 of the Constitution and charging capitation fee makes the availability of education beyond the reach of poor. The right to education is concomitant to the fundamental rights enshrined under Part III of the Constitution. The fundamental right to speech and expression cannot be fully enjoyed unless a citizen is educated and conscious of his individualistic dignity. The education in India has never been a commodity for sale," their Lordships declared.

In *Unnikrishnan v State of Andhra Pradesh* (1993, p.2178) the Supreme Court had reiterated the proposition that the Right to Education is implicit in and flows from the right to life guaranteed by Art.21. But, the court has stated that the right to education is not absolute and it has to be determined in the light of Articles 41, 45 and 46 under the Directive Principles of State policy. The Court held that every citizen has a right to free education until he completes the age of 14 years (Dhan, 2006, pp.439-440).

In *TMA Pai Foundation v State of Karnataka* (2003, p.355), an eleven-Judge Constitution-Bench of the Supreme Court has overruled the Unnikrishnan decision partly. The court held that the scheme relating to admission and the fixing of the fee were not correct and to that extent, they are overruled.

Article 41 of the Indian Constitution, which falls under the Directive Principles of State policy, directs the State to ensure the people within the limit of its economic capacity and development, right to work, right to education and right to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of underserved want.

Article 45 of the Constitution directs that the state shall endeavour to provide within a period of 10 years from the commencement of the Constitution, free and compulsory education for all children until they complete the age of 14 years. The Constitution (86th Amendment) Act, 2002 has substituted a new Article for Article 45 which provides that "the State shall endeavour to provide early childhood care and education for all children until they complete the age of 6

years”. This has been necessitated as a result of making the right to education of children up to the 14 years of age a fundamental right. Justice Bhagwati, in a famous case, namely, *Fancis Coralie v Union Territory of Delhi* (1981 p.746) held that the right to life included the right to live with human dignity including the facilities for reading, writing and expressing oneself in diverse forms.

The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the Right to Education. Another important aspect regarding right to education is: What are the boundaries or parameters of this right to education? Whether the state is to be directed through the writs to provide education of their choice to all persons, and to establish as many institutions of different disciplines as necessary for that purpose? In *Mohini Jain's case*, Kuldip Sing, J. opined that “the state is under a constitutional mandate to provide educational institutions at all levels for the benefits of the citizens”. The main object of the learned judge behind the above observation might be that all citizens of India should get education and also opportunity to acquire education. This will imply that every citizen of this country can call upon the state to provide him education at all stages. This interpretation which is very broad has been laid down by the Apex court by supplementing Article 21 with the directive principle under Article 41.

The Constitution of India, in a Directive Principle contained in Article 45, has made a provision for free and compulsory education for all children up to the age of fourteen years within ten years of promulgation of the Constitution. We could not achieve this goal even after 50 years of adoption of this provision. The task of providing education to all children in this age-group gained momentum after the National Policy of Education (NPE) was announced in 1986. The Government of India, in partnership with the State Governments, has made strenuous efforts to fulfill this mandate and, though significant improvements were seen in various educational indicators, the ultimate goal of providing universal and quality education still remains unfulfilled. In order to fulfill this goal, it is felt that an explicit provision should be made in the part relating to Fundamental Rights of the Constitution.

With a view to making right to free and compulsory education a fundamental right, the Constitution (Eighty-third Amendment) Bill, 1997 was introduced in Parliament to insert a new Article, namely, Article 21A conferring on all children in the age group of 6 to 14 years the right to free and compulsory education. The said bill was scrutinized by the Parliamentary Standing Committee on Human Resource Development and the subject was also dealt within its 16th Report by the Law Commission of India.

After taking into consideration the report of the Law Commission of India and the recommendations of the Standing Committee of Parliament, the following amendments have been proposed in Part III, Part IV and Part IV-A of the Constitution:

- a) to provide for free and compulsory education to children in the age group of 6 to 14 years and for this purpose, a legislation would be introduced in Parliament after the Constitution (Ninety-third Amendment) Bill, 2001 is enacted;
- b) to provide in Article 45 of the Constitution that the State shall endeavour to provide early childhood care and education to children below the age of six years; and

- e) to amend Article 51A of the Constitution with a view to providing that it shall be the obligation of the parents to provide opportunities for education to their children.

The Bill sought to achieve the above objects.

The Constitution 86th Amendment Act has added a new Article 21A after Article 21 and has made education for all children of the age of 6 to 14 years a fundamental right. The provision reads as: the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

8.3 THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009

The present Act has its history in the drafting of the Indian constitution at the time of Independence, but is more specifically to the Constitutional Amendment that included the Article 21A in the Indian Constitution making Education a Fundamental Right. This amendment, however, specified the need for a legislation to describe the mode of implementation of the same which necessitated the drafting of a separate Education Bill. The rough draft of the bill was composed in the year 2005. It received much opposition due to its mandatory provision to provide 25% reservation for disadvantaged children in private schools. The sub-committee of the Central Advisory Board of Education which prepared the draft Bill held this provision as a significant prerequisite for creating a democratic and egalitarian society. Indian Law commission had initially proposed 50% reservation for disadvantaged students in private schools.

The Parliament has, thus, enacted “the Right of Children to Free and Compulsory Education Act, 2009” (No.35 of 2009) on 4th August 2009. The said Act of Parliament received the assent of the President on the 26th August 2009. The Right of Children to Free and Compulsory Education Act or popularly called Right to Education (RTE) Act, describes the modalities of the provision of free and compulsory education for children between 6 and 14 years of age in India under Article 21A of the Indian Constitution. India became one of 135 countries to make education a fundamental right of every child when the Act came into force on 1st April 2010.

We will discuss the salient aspects of this Act in the sub-sections that follow.

Check Your Progress

Notes: a) Space given below the question is for writing your answer.

b) Check your answer with the one given at the end of this unit under “Answers to ‘Check Your Progress’ Questions”.

1) Write in brief about the constitutional perspective of Right to Education.

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8.3.1 Provision and Protection of Education to Children

Following sections of the Act deal with important aspects of provision and protection of a free and compulsory education to all children of the age of six to fourteen years.

Section 2: Definitions: Some of the terms defined under this Act are reproduced below for clarity of understanding of the important aspects of the Act.

2(a): 'appropriate Government' means —

- i) in relation to a school established, owned or controlled by the Central Government, or the administration of the Union territory, having no legislature, the Central Government;
- ii) in relation to a school, other than the school referred to in sub-clause (i), established within the territory of:
 - A) a State, the State Government;
 - B) a Union territory having legislature, the Government of that Union territory.

2(b) 'capitation fee' means any kind of donation or contribution or payment other than the fee notified by the school.

2(c) 'child' means a male or female child of the age of six to fourteen years.

2(d): 'child belonging to disadvantaged group' means a child belonging to the Schedule Caste, the Scheduled Tribe, the socially and educationally backward class or such other group having disadvantage owing to social, cultural, economical, geographical, linguistic, gender or such other factor, as may be specified by the appropriate Government by notification.

2(e): 'child belonging to weaker section' means a child belonging to such parent or guardian whose annual income is lower than the minimum limit specified by the appropriate Government, by notification.

2(f): 'elementary education' means the education from first class to eighth class.

2(h): 'local authority' means a Municipal Corporation or Municipal Council or Zila Parishad or Nagar Panchayat or Panchayat, by whatever name called, and includes such other authority or body having administrative control over the school, or empowered by or under any law for the time being in force to function as a local authority in any city, town or village.

2(i) 'National Commission for Protection of Child Rights' means the National Commission for Protection of Child Rights constituted under section 3 of the Commissions for Protection of Child Rights Act, 2005 (4 of 2006).

2(m) 'Schedule' means the Schedule annexed to this Act.

2(n): 'school' means any recognized school imparting elementary education and includes:

- i) a school established, owned or controlled by the appropriate Government or a local authority;
- ii) an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;

iii) a school belonging to specified category; and

iv) an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority.

2(p): 'specified category', in relation to a school, means a school known as Kendriya Vidyalaya, Navodaya Vidyalaya, Sainik School or any other school having a distinct character which may be specified, by notification, by the appropriate Government.

Above definitions of specified terms will help us in understanding these terms in their right perspective, in which they are used in the Act. Following sections of this Act deal with different aspects of provision and protection of free and compulsory education to all children of the age of six to fourteen years.

Section 3: Right of child to free and compulsory education: It states as follows.

- 1) Every child of the age of six to fourteen years shall have a right to free and compulsory education in a neighbourhood school till completion of elementary education.
- 2) For the purpose of sub-section (1), no child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing the elementary education:
 - Provided that a child suffering from disability, as defined in clause (i) of Section 2 of the Persons with Disabilities (Equal Opportunities, Protection and Full Participation) Act, 1996 (1 of 1996), shall have the right to pursue free and compulsory elementary education in accordance with the provisions of Chapter V of the said Act.

Section 4: Special provisions for children not admitted to, or who have not completed elementary education: According to this section, where a child above six years of age has not been admitted in any school or though admitted could not complete his or her elementary education, then, he or she shall be admitted in a class appropriate to his or her age:

- Provided that where a child is directly admitted in a class appropriate to his or her age, then, he or she shall, in order to be at par with others, has a right to receive special training, in such manner, and within such time-limits, as may be prescribed;
- Provided further that a child so admitted to elementary education shall be entitled to free education till completion of elementary education *even after fourteen years*.

Section 5: Right of transfer to other school: This section deals with right of a child to transfer to other school.

- 1) Where, in a school, there is no provision for completion of elementary education, a child shall have a right to seek transfer to any other school, excluding the school specified in sub-clauses (iii) and (iv) of clause (n) of Section 2, for completing his or her elementary education.
- 2) Where a child is required to move from one school to another, either within a State or outside, for any reason whatsoever, such child shall have a right to

seek transfer to any other school, excluding the school specified in sub-clauses (iii) and (iv) of clause (n) of Section 2, for completing his or her elementary education.

- 3) For seeking admission in such other school, the Head-teacher or in-charge of the school where such child was last admitted, shall immediately issue the transfer certificate:
 - Provided that delay in producing transfer certificate shall not be a ground for either delaying or denying admission in such other school;
 - Provided further that the Head-teacher or in-charge of the school delaying issuance of transfer certificate shall be liable for disciplinary action under the service rules applicable to him or her.

Under section 31 of the Act, protection of right of children to free and compulsory education has been provided in the name of monitoring and Section 32 by providing redressal for grievances.

Section 31: Monitoring of child's right to education: It states as follows.

- 1) The National Commission for Protection of Child Rights constituted under Sec. 3, or, as the case may be, the State Commission for Protection of Child Rights constituted under Section 17 of the Commissions for Protection of Child Rights Act, 2005 (4 of 2006), shall, in addition to the functions assigned to them under that Act, also perform the following functions, namely:
 - a) examine and review the safeguards for rights provided by or under this Act and recommend measures for their effective implementation;
 - b) inquire into complaints relating to child's right to free and compulsory education; and
 - c) take necessary steps as provided under Sections 15 and 24 of the said Commissions for Protection of Child Rights Act.
- 2) The said Commissions shall, while inquiring into any matters relating to child's right to free and compulsory education under clause (c) of sub-section (1), have the same powers as assigned to them respectively under Sections 14 and 24 of the said Commissions for Protection of Child Rights Act.
- 3) Where the State Commission for Protection of Child Rights has not been constituted in a State, the appropriate Government may, for the purpose of performing the functions specified in clauses (a) to (c) of sub-section (1), constitute such authority, in such manner and subject to such terms and conditions, as may be prescribed.

Section 32: Redressal of grievances: It provides for redressal of grievances.

- 1) Notwithstanding anything contained in Section 31, any person having any grievance relating to the right of a child under this Act may make a written complaint to the local authority having jurisdiction.
- 2) After receiving the complaint under sub-section (1), the local authority shall decide the matter within a period of three months after affording a reasonable opportunity of being heard to the parties concerned.

- 3) Any person aggrieved by the decision of the local authority may prefer an appeal to the State Commission for Protection of Child Rights or the authority prescribed under sub-section (3) of Section 31, as the case may be.
- 4) The appeal preferred under sub-section (3) shall be decided by State Commission for Protection of Child Rights or the authority prescribed under sub-section (3) of Section 31, as the case may be, as provided under clause (c) of sub-section (1) of Section 31.

8.3.2 Duties of Government, Local Authority and Parents

The duties of Government, local authority and parents as provided for in the Act are as follows.

Section 6: Duty of appropriate Government and local authority to establish school: For carrying out the provisions of this Act, the appropriate Government and the local authority shall establish, within such area or limits of neighbourhood as may be prescribed, a school where it is not so established, within a period of three years from the commencement of this Act.

Section 7: Sharing of financial and other responsibilities: These are as follows.

- 1) The Central Government and the State Governments shall have concurrent responsibility for providing funds for carrying out the provisions of this Act.
- 2) The Central Government shall prepare the estimates of capital and recurring expenditure for the implementation of the provisions of the Act.
- 3) The Central Government shall provide to the State Governments, as grants-in-aid of revenues, such percentage of expenditure referred to in sub-section (2) as it may determine, from time to time, in consultation with the State Governments.
- 4) The Central Government may make a request to the President to make a reference to the Finance Commission under sub-clause (d) of clause (3) of Article 280 to examine the need for additional resources to be provided to any State Government so that the said State Government may provide its share of funds for carrying out the provisions of the Act.
- 5) Notwithstanding anything contained in sub-section (4), the State Government shall, taking into consideration the sums provided by the Central Government to a State Government under sub-section (3), and its other resources, be responsible to provide funds for implementation of the provisions of the Act.
- 6) The Central Government shall:
 - a) develop a framework of national curriculum with the help of academic authority specified under Section 29;
 - b) develop and enforce standards for training of teachers; and
 - c) provide technical support and resources to the State Government for promoting innovations, researches, planning and capacity building.

Section 8: Duties of appropriate Government: The appropriate Government shall:

- a) provide free and compulsory elementary education to every child:
 - Provided that where a child is admitted by his or her parents or guardian, as the case may be, in a school other than a school established, owned, controlled or substantially financed by funds provided directly or indirectly by the appropriate Government or a local authority, such child or his or her parents or guardian, as the case may be, shall not be entitled to make a claim for reimbursement of expenditure incurred on elementary education of the child in such other school.

Explanation: The term “compulsory education” means obligation of the appropriate Government to:

- i) provide free elementary education to every child of the age of six to fourteen years; and
 - ii) ensure compulsory admission, attendance and completion of elementary education by every child of the age of six to fourteen years;
- b) ensure availability of a neighbourhood school as specified in Section 6;
 - c) ensure that the child belonging to weaker section and the child belonging to disadvantaged group are not discriminated against and prevented from pursuing and completing elementary education on any grounds;
 - d) provide infrastructure including school building, teaching staff and learning equipment;
 - e) provide special training facility specified in Section 4;
 - f) ensure and monitor admission, attendance and completion of elementary education by every child;
 - g) ensure good quality elementary education conforming to the standards and norms specified in the Schedule;
 - h) ensure timely prescribing of curriculum and courses of study for elementary education; and
 - i) provide training facility for teachers.

Section 9: Duties of local authority: Every local authority shall:

- a) provide free and compulsory elementary education to every child:
 - Provided that where a child is admitted by his or her parents or guardian, as the case may be, in a school other than a school established, owned, controlled or substantially financed by funds provided directly or indirectly by the appropriate Government or a local authority, such child or his or her parents or guardian, as the case may be, shall not be entitled to make a claim for reimbursement of expenditure incurred on elementary education of the child in such other school;
- b) ensure availability of a neighbourhood school as specified in Section 6;
- c) ensure that the child belonging to weaker section and the child belonging to disadvantaged group are not discriminated against and prevented from pursuing and completing elementary education on any grounds;

- d) maintain records of children up to the age of fourteen years residing within its jurisdiction, in such manner as may be prescribed;
- e) ensure and monitor admission, attendance and completion of elementary education by every child residing within its jurisdiction;
- f) provide infrastructure including school building, teaching staff and learning material;
- g) provide special training facility specified in Section 4;
- h) ensure good quality elementary education conforming to the standards and norms specified in the Schedule;
- i) ensure timely prescribing of curriculum and courses of study for elementary education;
- j) provide training facility for teachers;
- k) ensure admission of children of migrant families;
- l) monitor functioning of schools within its jurisdiction; and
- m) decide the academic calendar.

Section 10: Duty of parents and guardian: It shall be the duty of every parent or guardian to admit or cause to be admitted his or her child or ward, as the case may be, to an elementary education in the neighbourhood school.

Section 11: Appropriate Government to provide for pre-school education: With a view to prepare children above the age of three years for elementary education and to provide early childhood care and education for all children until they complete the age of six years, the appropriate Government may make necessary arrangement for providing free pre-school education for such children.

Check Your Progress

Notes: a) Space given below the question is for writing your answer.

b) Check your answer with the one given at the end of this unit under “Answers to ‘Check Your Progress’ Questions”.

2) What are the duties of local authorities under the Act?

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8.3.3 Responsibilities of Schools and Teachers

The Act provides for the following responsibilities of schools and teachers.

8.3.3.1 Responsibilities of Schools

Sections 12 to 17 of the Act provides for the responsibilities of schools.

Section 12: Extent of school's responsibility for free and compulsory education: It is as follows.

- 1) For the purposes of this Act, a school:
 - a) specified in sub-clause (i) of clause (n) of Section 2 shall provide free and compulsory elementary education to all children admitted therein;
 - b) specified in sub-clause (ii) of clause (n) of Section 2 shall provide free and compulsory elementary education to such proportion of children admitted therein as its annual recurring aid or grants so received bears to its annual recurring expenses, subject to a minimum of twenty-five per cent.;
 - c) specified in sub-clauses (iii) and (iv) of clause (n) of Section 2 shall admit in class I, to the extent of at least twenty-five per cent, of the strength of that class, children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education till its completion:
 - Provided further that where a school specified in clause (n) of Section 2 imparts pre-school education, the provisions of clauses (a) to (c) shall apply for admission to such pre-school education.
- 2) The school specified in sub-clause (iv) of clause (n) of Section 2 providing free and compulsory elementary education as specified in clause (c) of sub-section (1) shall be reimbursed expenditure so incurred by it to the extent of per-child-expenditure incurred by the State, or the actual amount charged from the child, whichever is less, in such manner as may be prescribed:
 - Provided that such reimbursement shall not exceed per-child-expenditure incurred by a school specified in sub-clause (i) of clause (n) of Section 2;
 - Provided further that where such school is already under obligation to provide free education to a specified number of children on account of it having received any land, building, equipment or other facilities, either free of cost or at a concessional rate, such school shall not be entitled for reimbursement to the extent of such obligation.
- 3) Every school shall provide such information as may be required by the appropriate Government or the local authority, as the case may be.

Section 13: No capitation fee and screening procedure for admission: It deals with fee and procedure for admission.

- 1) No school or person shall, while admitting a child, collect any capitation fee and subject the child or his or her parents or guardian to any screening procedure.
- 2) Any school or person, if in contravention of the provisions of sub-section 1),

- a) receives capitation fee, shall be punishable with fine which may extend to ten times the capitation fee charged; and
- b) subjects a child to screening procedure, shall be punishable with fine which may extend to twenty-five thousand rupees for the first contravention and fifty thousand rupees for each of subsequent contraventions.

Section 14: Proof of age for admission: It states as follows.

- 1) For the purposes of admission to elementary education, the age of a child shall be determined on the basis of the birth certificate issued in accordance with the provisions of the Births, Deaths and Marriages Registration Act, 1886 or on the basis of such other document, as may be prescribed.
- 2) No child shall be denied admission in a school for lack of age proof.

Section 15: No denial of admission: A child shall be admitted in a school at the commencement of the academic year or within such extended period as may be prescribed:

- Provided that no child shall be denied admission if such admission is sought subsequent to the extended period; and
- Provided further that any child admitted after the extended period shall complete his studies in such manner as may be prescribed by the appropriate Government.

Section 16: Prohibition of holding back and expulsion: No child admitted in a school shall be held back in any class or expelled from school till the completion of elementary education.

Section 17: Prohibition of physical punishment and mental harassment to child: It is as follows.

- 1) No child shall be subjected to physical punishment or mental harassment.
- 2) Whoever contravenes the provisions of sub-section (1) shall be liable to disciplinary action under the service rules applicable to such person.

Section 18: No School to be established without obtaining certificate of recognition: It provides as follows.

- 1) No school, other than a school established, owned or controlled by the appropriate Government or the local authority, shall, after the commencement of this Act, be established or function, without obtaining a certificate of recognition from such authority, by making an application in such form and manner, as may be prescribed.
- 2) The authority prescribed under sub-section (1) shall issue the certificate of recognition in such form, within such period, in such manner, and subject to such conditions, as may be prescribed:
 - Provided that no such recognition shall be granted to a school unless it fulfils norms and standards specified under section 19.
- 3) On the contravention of the conditions of recognition, the prescribed authority shall, by an order in writing, withdraw recognition:

- Provided that such order shall contain a direction as to which of the neighbourhood school, the children studying in the recognized school, shall be admitted; and
 - Provided further that no recognition shall be so withdrawn without giving an opportunity of being heard to such school, in such manner, as may be prescribed.
- 4) With effect from the date of withdrawal of recognition under sub-section (3), no such school shall continue to function.
 - 5) Any person who establishes or runs a school without obtaining certificate of recognition, or continues to run a school after withdrawal of recognition, shall be liable to fine which may extend to one lakh rupees and in case of continuing contraventions, to a fine of ten thousand rupees for each day during which such contravention continues.

Section 19: Norms and standards for a school: These include the following.

- 1) No school shall be established, or recognised, under section 18, unless it fulfils the norms and standards specified in the Schedule.
- 2) Where a school established before the commencement of this Act does not fulfill the norms and standards specified in the Schedule, it shall take steps to fulfill such norms and standards as its own expenses, within a period of three years from the date of such commencement.
- 3) Where a school fails to fulfill the norms and standards within the period specified under sub-section (2), the authority prescribed under sub-section (1) of section 18 shall withdraw recognition granted to such school in the manner specified under sub-section (3) thereof.
- 4) With effect from the date of withdrawal of recognition under sub-section (3), no school shall continue to function.
- 5) Any person who continues to run a school after the recognition is withdrawn, shall be liable to fine which may extend to one lakh rupees and in case of continuing contraventions, to a fine of ten thousand rupees for each day during which such contravention continues.

8.3.3.2 Qualifications for Appointment, Terms and Conditions of Service, and Duties of Teachers

The sections below deal with qualifications for appointment, terms and conditions of service, and duties of teachers.

Section 23: Qualifications for appointment and terms and conditions of service of teachers: These are as provided below.

- 1) Any person possessing such minimum qualifications, as laid down by an academic authority, authorized by the Central Government, by notification, shall be eligible for appointment as a teacher.
- 2) Where a State does not have adequate institutions offering courses or training in teacher education, or teachers possessing minimum qualifications as laid down under sub-section (1) are not available in sufficient numbers, the Central

Government may, if it deems necessary, by notification, relax the minimum qualifications required for appointment as a teacher, for such period, not exceeding five years, as may be specified in that notification;

- Provided that a teacher who, at the commencement of this Act, does not possess minimum qualifications as laid down under sub-section (1) shall acquire such minimum qualifications within a period of five years.
- 3) The salary and allowances payable to and the terms and conditions of service of teachers shall be such as may be prescribed.

Sections 24 and 28 of the Act prescribe certain duties of the teachers.

Section 24: Duties of teachers and redressal of grievances: It states as follows.

- 1) A teacher appointed under sub-section (1) of Section 23 shall perform the following duties, namely, —
 - a) maintain regularity and punctuality in attending school;
 - b) conduct and complete the curriculum in accordance with the provisions of sub-section (2) of Section 29;
 - c) complete entire curriculum within the specified time;
 - d) assess the learning ability of each child and accordingly supplement additional instructions, if any, as required;
 - e) hold regular meetings with parents and guardians and apprise them about the regularity in attendance, ability to learn, progress made in learning and any other relevant information about the child; and
 - f) perform such other duties as may be prescribed.
- 2) A teacher committing default in performance of duties specified in sub-section (1), shall be liable to disciplinary action under the service rules applicable to him or her:
 - Provided that before taking such disciplinary action, reasonable opportunity of being heard shall be afforded to such teacher.
- 3) The grievances, if any, of the teacher shall be redressed in such manner as may be prescribed.

Section 25: Pupil-Teacher Ratio: It is as follows.

- 1) Within six months from the date of commencement of this Act, the appropriate Government and the local authority shall ensure that the Pupil-Teacher Ratio, as specified in the Schedule, is maintained in each school.
- 2) For the purpose of maintaining the Pupil-Teacher Ratio under sub-section (1), no teacher posted in a school shall be made to serve in any other school or office or deployed for any non-educational purpose, other than those specified in section 27.

The Schedule referred to under Sections 19 and 25 above is given below.

Norms and Standards for a School (Ref. Sections 19 and 25)

Sl. No.	Item	Norms and Standards	
1.	Number of teachers: a) For first class to fifth class	Admitted children: • Up to sixty • Between sixty-one to ninety • Between ninety-one to one hundred and twenty • Between one hundred and twenty-one to two hundred • Above one hundred and fifty children • Above two hundred children	Number of Teachers • Two • Three • Four • Five • Five plus one Head-teacher • Pupil-Teacher Ratio (excluding Head-teacher) shall not exceed forty.
	b) For sixth class to eighth class	1) At least one teacher per class so that there shall be at least one teacher each for – i) Science and Mathematics; ii) Social Studies; iii) Languages. 2) At least one teacher for every thirty-five children. 3) Where admission of children is above one hundred i) a full-time Head-teacher; ii) part-time instructors for – A) Art Education; B) Health and Physical Education; C) Work Education.	
2.	Building	All-weather building consisting of – i) at least one class-room for every teacher and an office-cum-store-cum-Head teacher's room; ii) barrier-free access; iii) separate toilets for boys and girls; iv) safe and adequate drinking water facility to all children; v) a kitchen where mid-day meal is cooked in the school; vi) playground; vii) arrangements for securing the school building by boundary wall or fencing.	

3.	Minimum number of working days/ instructional hours in an academic year	i) Two hundred working days for first class to fifth class. ii) Two hundred and twenty working days for sixth class to eighth class. iii) Eight hundred instructional hours per academic year for first class to fifth class. iv) One thousand instructional hours per academic year for sixth class to eighth class.
4.	Minimum number of working hours per week for the teacher	Forty-five teaching including preparation hours.
5.	Teaching-learning equipment	Shall be provided to each class as required.
6.	Library	There shall be a library in each school providing newspaper, magazines and books on all subjects, including story-books.
7.	Ply material, games and sports equipment	Shall be provided to each class as required.

Section 28: Prohibition of private tuition by teacher: No teacher shall engage himself or herself in private tuition or private teaching activity.

Check Your Progress

Notes: a) Space given below the question is for writing your answer.

b) Check your answer with the one given at the end of this unit under “Answers to ‘Check Your Progress’ Questions”.

3) What are the duties of the teachers under the RTE Act?

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8.3.4 Curriculum and Completion of Elementary Education

Following sections of the Act deal with curriculum and completion of elementary education.

Section 29: Curriculum and evaluation procedure: It provides as follows.

- 1) The curriculum and the evaluation procedure for elementary education shall be laid down by an academic authority to be specified by the appropriate Government, by notification.
- 2) The academic authority, while laying down the curriculum and the evaluation procedure under sub-section (1), shall take into consideration the following, namely,

- a) conformity with the values enshrined in the Constitution;
- b) all round development of the child;
- c) building up child's knowledge, potentiality and talent;
- d) development of physical and mental abilities to the fullest extent;
- e) learning through activities, discovery and exploration in a child friendly and child-centered manner;
- f) medium of instructions shall, as far as practicable, be in child's mother tongue;
- g) making the child free of fear, trauma and anxiety and helping the child to express views freely;
- h) comprehensive and continuous evaluation of child's understanding of knowledge and his or her ability to apply the same.

Section 30: Examination and completion certificate: It is as follows.

- 1) No child shall be required to pass any Board examination till completion of elementary education.
- 2) Every child completing his elementary education shall be awarded a certificate, in such form and in such manner, as may be prescribed.

Check Your Progress

Notes: a) Space given below the question is for writing your answer.

b) Check your answer with the one given at the end of this unit under "Answers to 'Check Your Progress' Questions".

- 4) What is the procedure for curriculum and evaluation under the RTE Act?

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8.4 LET US SUM UP

In this Unit, we have highlighted the significance of right to education, and evolution of the right to education with an emphasis on Constitutional perspective of it. We have also highlighted the salient features of the Right of Children to Free and Compulsory Education Act, 2009, which is popularly called the RTE Act, touching upon the right to education of the child, protection of the child's right to education, duties and responsibilities of governments, local authorities, parents, schools and teachers, and curriculum and evaluation, among other things.

8.5 ANSWERS TO 'CHECK YOUR PROGRESS' QUESTIONS

- 1) The Supreme Court through a creative interpretation stated that the word 'life' in Article 21 includes 'education' because education promotes good and dignified life. The Supreme Court has, thus, implied the right to education as a Fundamental Right from Article 21 of the Constitution. Article 41 of the Indian Constitution which falls under the Directive Principles of State policy directs the State to ensure the people within the limit of its economic capacity and development right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of underserved want.

Article 45 of the Constitution directs that the state shall endeavour to provide within a period of 10 years from the commencement of the constitution, free and compulsory education for all children until they complete the age of 14 years. The Constitution (86th Amendment) Act, 2002 has substituted a new Article for Article 45 which provides that "the State shall endeavour to provide early childhood care and education for all children until they complete the age of 6 years". This has been necessitated as a result of making the right to education of children up to 14 years of age a fundamental right.

Based on the recommendations of the Standing Committee of Parliament, the following amendments have been proposed in part III, Part IV and Part IV-A of the Constitution.

- a) to provide for free and compulsory education to children in the age group of 6 to 14 years and for this purpose, a legislation would be introduced in Parliament after the Constitution (Ninety-third Amendment) Bill, 2001 is enacted;
- b) to provide in Article 45 of the Constitution that the State shall endeavour to provide early childhood care and education to children below the age of six years; and
- c) to amend Article 51A of the Constitution with a view to providing that it shall be the obligation of the parents to provide opportunities for education to their children.

The Bill sought to achieve the above objects.

The constitution 86th Amendment Act has added a new Article 21A after Article 21 and has made education for all children of the age of 6 to 14 years a fundamental right. The provision reads as: the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine. Accordingly, the Parliament has enacted "The Right of Children to Free and Compulsory Education Act, 2009" (No.35 of 2009).

- 2) Section 9 of the RTE Act provides for the duties of the local authorities. According to it, every local authority shall:
 - a) provide free and compulsory elementary education to every child:
 - Provided that where a child is admitted by his or her parents or guardian, as the case may be, in a school other than a school established, owned, controlled or substantially financed by funds

provided directly or indirectly by the appropriate Government or a local authority, such child or his or her parents or guardian, as the case may be, shall not be entitled to make a claim for reimbursement of expenditure incurred on elementary education of the child in such other school;

- b) ensure availability of a neighbourhood school as specified in Section 6;
 - c) ensure that the child belonging to weaker section and the child belonging to disadvantaged group are not discriminated against and prevented from pursuing and completing elementary education on any grounds;
 - d) maintain records of children up to the age of fourteen years residing within its jurisdiction, in such manner as may be prescribed;
 - e) ensure and monitor admission, attendance and completion of elementary education by every child residing within its jurisdiction;
 - f) provide infrastructure including school building, teaching staff and learning material;
 - g) provide special training facility specified in Section 4;
 - h) ensure good quality elementary education conforming to the standards and norms specified in the Schedule;
 - i) ensure timely prescribing of curriculum and courses of study for elementary education;
 - j) provide training facility for teachers;
 - k) ensure admission of children of migrant families;
 - l) monitor functioning of schools within its jurisdiction; and
 - m) decide the academic calendar.
- 3) Section 24 of RTE Act specifies that:
- i) A teacher appointed under sub-section (1) of Section 23 shall perform the following duties, namely –
 - a) maintain regularity and punctuality in attending school;
 - b) conduct and complete the curriculum in accordance with the provisions of sub-section (2) of Section 29;
 - c) complete entire curriculum within the specified time;
 - d) assess the learning ability of each child and accordingly supplement additional instructions, if any, as required;
 - e) hold regular meetings with parents and guardians and apprise them about the regularity in attendance, ability to learn, progress made in learning and any other relevant information about the child; and
 - f) perform such other duties as may be prescribed.
 - ii) A teacher committing default in performance of duties specified in sub-section (1), shall be liable to disciplinary action under the service rules applicable to him or her:
 - Provided that before taking such disciplinary action, reasonable opportunity of being heard shall be afforded to such teacher.

- iii) The grievances, if any, of the teacher shall be redressed in such manner as may be prescribed.
- 4) Section 29 of RTE Act deals with Curriculum and Evaluation Procedure. According to it:
 - i) The curriculum and the evaluation procedure for elementary education shall be laid down by an academic authority to be specified by the appropriate Government, by notification.
 - ii) The academic authority, while laying down the curriculum and the evaluation procedure under sub-section (1), shall take into consideration the following, namely,
 - a) conformity with the values enshrined in the Constitution;
 - b) all round development of the child;
 - c) building up child's knowledge, potentiality and talent;
 - d) development of physical and mental abilities to the fullest extent;
 - e) learning through activities, discovery and exploration in a child-friendly and child-centered manner;
 - f) medium of instructions shall, as far as practicable, be in child's mother tongue;
 - g) making the child free of fear, trauma and anxiety and helping the child to express views freely; and
 - h) comprehensive and continuous evaluation of child's understanding of knowledge and his or her ability to apply the same.

Section 30 of the Act deals with examination and completion certificate: 1) No child shall be required to pass any Board examination till completion of elementary education; and 2) Every child completing his elementary education shall be awarded a certificate, in such form and in such manner, as may be prescribed.

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UNIT 9 RIGHT TO WORK – NATIONAL RURAL EMPLOYMENT GUARANTEE ACT, 2005

Structure

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9.0 INTRODUCTION

Right to work is at the core of all human rights though labour jurisprudence developed rather independently of human rights discourses. Because “labour” was perceived as a means of earning livelihood, work was taken as a necessary part of survival strategy (Madhava Menon, 1998, p.1).

The right to work has been regarded by *Harold Laski* as the most important of the rights of the individual. In spite of the constitution of the Soviet Union, he pleaded that this must be given to each citizen. In his own words “The citizen has a right to work... to leave him without access to the means of existence is to deprive him of that which makes possible the realization of personality” (books.google.co.in/books).

Work is a bodily or mental effort exerted to do something or perform a purposeful activity. It includes labour, employment, occupation, business, trade, craft, profession, duty or a task; something that has been made or done specifically. A person may or may not have remunerative employment, but has manner, style and quality of working. In other words, work involves three states, namely, *action*, *performance* and *achievement*. In the *first state*, action, work is to perform a function, to operate or to act which leads to *second state*, performance effectively or to ferment which leads to *third state*, achievement, to produce results or to exert an influence. So, it is a change of specified condition by repeated movement.

Work is a means of earning income. Employment needs physical or mental activity to achieve the result after accomplishing a predetermined plan. Thus, from the above said meaning, work can be defined as ‘an activity involving mental or physical effort done in order to achieve a purpose or result in an effective manner producing the desired effect or result’ (Advanced Oxford Dictionary, 2011).

Employment, the act of being engaged in a work or occupation for wages, determines the standard of living, dignity and the status of human beings. Work or employment provides the source of livelihood as it generates income and purchasing power in the form of wages with the help of which one can secure the basic necessities of life such as food, clothing, shelter, education, health and other comforts of life (Ramadass, 1998, p.1).

Realising the importance and necessity of work or employment for everyone, efforts have been made at national and international level to ensure every one the right to work. These efforts present national and international perspective of an individual’s right to work. In India, the National Rural Employment Guarantee Act, 2005 is a landmark legislation that guarantees every one with reasonable work or employment to ensure proper income to the individuals and the families below the poverty line.

In this Unit, we, therefore, attempt to touch upon different perspectives of right to work with an emphasis on the National Rural Employment Guarantee Act, 2005.

9.1 OBJECTIVES

After going through this Unit, you should be able to:

- Explain the significance of work and evolution of right to work;
- Describe the constitutional perspectives of right to work in India;
- Analyse the attitude and approach of the judiciary in treating right to work as a fundamental right; and
- Evaluate the salient features of the National Rural Employment Guarantee Act, 2005.

9.2 RIGHT TO WORK: INTERNATIONAL AND INDIAN PERSPECTIVES

Work is core aspect of every one’s life; since without work as means of income or source of livelihood one’s life will be miserable. It is essential that such ‘work’ is provided, protected and promoted to ensure quality of life and improvement in living standards of the people. A brief look at the legal measures that have been taken at the national and international levels will provide us an understanding of the perspectives at these levels. We will discuss these perspectives, in brief, below.

9.2.1 International Perspective

The whole concept of human rights is based on the premise that there are certain human values, which do have universal application. These include such basic aspects of human existence as the right to life and freedom from arbitrary

detention, torture or fear. The Universal Declaration of Human Rights, 1948 reflects the philosophy of modern welfare state — the right to social security, right to work, equal pay for equal work, right to form and join trade unions, right to rest and leisure, and so on. The United Nations Organisation (UNO) has played a very important and crucial role in promoting the common language of humanity. Right to work is at the core of all human rights, though work jurisprudence developed rather independently of human rights discourses. Because, 'work' was perceived as a means of earning a livelihood, work was taken as a necessary part of survival strategy. When work was taken as a commodity and exploited by those who employ people, conflicts arose and justice was sought in terms of improving conditions of labour. International Labour Organisation (ILO) endeavoured to define, protect and promote human rights in the world of work. In 1944, the ILO Declaration at Philadelphia stated that:

- Labour is not a commodity;
- All human beings have the right to pursue both their material well-being and their spiritual development in condition of freedom and dignity, economic security and equal opportunity.

Other important ILO Conventions that laid emphasis on work, employment and related aspects include the following.

- 1) Freedom of Association and Protection of the Right to Organize Convention, 1948.
- 2) Right to Organise and Collective Bargaining Convention, 1949.
- 3) Equal Remuneration Convention, 1951.
- 4) Abolition of Forced Labour Convention, 1957.
- 5) Discrimination in Employment Convention, 1958.
- 6) The Employment Policy Convention, 1964
- 7) Minimum Age Convention, 1973.
- 8) The Employment Policy Convention & Recommendations, 1984.

As mentioned above, the Universal Declaration of Human Rights, 1948 reflects the philosophy of modern welfare state. Article 23 of this Declaration presents the essence of right to work as follows.

- Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

Under the International Convention on Elimination of All forms of Racial Discrimination, 1965 the State parties undertook to prohibit and eliminate social discrimination in all its forms and to guarantee the right of every one, without distinction as to race, colour or national or ethnic origin, to equality before law in the enjoyment of certain economic, social and cultural rights which include the following (Art.5):

- 1) Right to work.
- 2) Right to free choice of employment.
- 3) Right to protection against exploitation in employment.

- 4) Right to equal pay for equal work.
- 5) Right to just and favourable remuneration.

The International Covenant on Economic, Social and Cultural Rights, 1966, under Articles 6 and 7, lays down that the State Parties to the present Covenant recognise the right to work which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right. In order to achieve full realisation of this right the State shall provide for:

- Technical and vocational guidance and training programmes;
- Politics and techniques to achieve steady economic, social and cultural development; and
- Full and productive employment under conditions safeguarding fundamental political and economic freedom to the individual.

With this international perspective of right to work/employment, you will better understand the Indian perspective presented below.

9.2.2 Indian Constitutional Perspective

Article 19(1)(g) under the Fundamental Rights (Part-III) of Indian constitution guarantees to all citizens of India the right to practise any profession or to carry on any occupation, trade or business. The Directive Principles of State Policy (Part-IV of the Constitution of India) spell out the right to work under certain Articles. Article 41 of the Constitution provides that “the State shall within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want” (See also Article 6 of the ICESCR). Article 38 states that the state shall strive to promote the welfare of the people, and Article 43 states that the State shall endeavor to secure a living wage and a decent standard of life to all workers. One of the contexts in which the problem of enforceability of such a right was posed before the Supreme Court was of large-scale abolition of posts of village officers in the State of Tamil Nadu in India. In negating the contention that such an abolition of posts would fall foul of the Directive Principles of State Policy (DPSP), the court said:

It is no doubt true that Article 38 and Article 43 of the Constitution insist that the State should endeavour to find sufficient work for the people so that they may put their capacity to work into economic use and earn a fairly good living. But, these Articles do not mean that everybody should be provided with a job in the civil service of the State and, if a person is provided with one he should not be asked to leave it even for a just cause. If it were not so, there would be no justification for a small percentage of the population being in Government service and in receipt of regular income and a large majority of them remaining outside with no guaranteed means of living. It would certainly be an ideal state of affairs if work could be found for all the able-bodied men and women and everybody is guaranteed the right to participate in the production of national wealth and to enjoy the fruits thereof. But, we are today far away from that goal.

The question, whether a person who ceases to be a government servant according to law should be rehabilitated by giving him an alternative employment, is, as the law stands today, a matter of policy on which the court has no voice (*K. Rajendran v State of Tamil Nadu*, 1982, p.294). But, the court has since then felt freer to interfere even in areas which would have been considered to be in the domain of the policy of the executive. Where the issue was of regularizing the services of a large number of casual (non-permanent) workers in the posts and telegraphs department of the government, the court has not hesitated to invoke the DPSP to direct such regularization. The explanation was:

Even though the above directive principle may not be enforceable as such by virtue of Article 37 of the Constitution of India, it may be relied upon by the petitioners to show that, in the instant case, they have been subjected to hostile discrimination. It is urged that the State cannot deny at least the minimum pay in the pay scales of regularly employed workmen even though the Government may not be compelled to extend all the benefits enjoyed by regularly recruited employees. We are of the view that such denial amounts to exploitation of labour. The Government cannot take advantage of its dominant position, and compel any worker to work even as a casual labourer on starvation wages. It may be fact that the casual labourer has agreed to work on such low wages. That he has done, because he has no other choice. It is poverty that has driven him to that state. The Government should be a model employer. We are of the view that, on the facts and in the circumstances of this case, the classification of employees into regularly recruited employees and casual employees for the purpose of paying less than the minimum pay payable to employees in the corresponding regular cadres, particularly in the lowest rungs of the department where the pay scales are the lowest, is not tenable ... It is true that all these rights cannot be extended simultaneously. But, they do indicate the socialist goal. The degree of achievement in this direction depends upon the economic resources, willingness of the people to produce and more than all, the existence of industrial peace throughout the country. Of those rights the question of security of work is of utmost importance.

In *Bandhua Mukti Morcha v Union of India* (1984, p.161), a PIL by an NGO highlighted the deplorable condition of bonded labourers in a quarry in Haryana, not very far from the Supreme Court. A host of protective and welfare-oriented labour legislation, including the Bonded Labour (Abolition) Act and the Minimum Wages Act, were being observed in the breach. In giving extensive directions to the state government to enable it to discharge its constitutional obligation towards the bonded laborers, the court said: The right to live with human dignity enshrined in Article 21 derives its life-breath from the Directive Principles of State Policy and particularly clauses (a), (e) and (f) of Article 39 and Article 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State has the right to take any action which will deprive a person of the enjoyment of these basic essentials. Since the Directive Principles of State Policy contained in clauses (e) and (f) of Article 39, Articles 41 and 42 are not enforceable in a court of law, it

may not be possible to compel the State through the judicial process to make provision by statutory enactment or executive fiat for ensuring these basic essentials which go to make up a life of human dignity, but where legislation is already enacted by the State providing these basic requirements to the workmen and, thus investing their right to live with basic human dignity. Article 21 of the Indian Constitution under part III, Fundamental Rights, spells that no person shall be deprived of his life or personal liberty except according to procedure established by law. Right to life under Article 21 includes right to livelihood in turn right to work because there is no meaning of life without livelihood.

In *Olga Tellis v Bombay Municipal Corporation* (1986, p.180), popularly known as *pavement dwellers case*, the Supreme Court held that the right to life includes right to livelihood.

Check Your Progress

Notes: a) Space given below the question is for writing your answer.

b) Check your answer with the one given at the end of this unit under “Answers to ‘Check Your Progress’ Questions”.

- 1) Present, in brief, the Indian constitutional perspective of the Right to Work

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9.3 THE NATIONAL RURAL EMPLOYMENT GUARANTEE ACT, 2005

A majority of the poor in rural areas of the country depend mainly on the wages they earn through unskilled, casual manual labour. They are often on threshold levels of subsistence, and are vulnerable to the possibility of sinking from transient to chronic poverty. Inadequate labour demand or unpredictable crises that may be general in nature, like natural disaster or personal ill-health, all adversely impact their employment opportunities.

History of wage-employment programmes: The need to evolve a mechanism to supplement existing livelihood sources in rural areas was recognized early in development planning in India. The Government implemented work-fare programmes that offered wage-employment on public works at minimum wages. The wage employment programmes started as pilot projects in the form of Rural Manpower Programme (RMP) (1960-61), Crash Scheme for Rural Employment (CSRE) (1971-72), Pilot Intensive Rural Employment Programme (PIREP) (1972), Small Farmers Development Agency (SFDA), Marginal Farmers & Agricultural Labour Scheme (MFAL) to benefit the poorest of the poor. These experiments were translated into a full-fledged wage-employment programme

in 1977 in the form of Food for Work Programme (FWP). In the 1980's this programme was further streamlined into the National Rural Employment Programme (NREP) and Rural Landless Employment Guarantee Programme (RLEGP), Jawahar Rozgar Yojana (JRY) (1993-94), and Employment Assurance Scheme (EAS). Later, the Jawahar Rozgar Yojana (JRY) was merged with Jawahar Gram Samridhi Yojana (JGSY) from 1999-2000 onwards, and was made a rural infrastructure programme, which was later merged with Sampoorna Grameen Rozgar Yojana (SGRY) from 2001-02 onwards, and thereafter with National Food for Work (NFFWP) (2005). These wage-employment programmes implemented by State Governments with Central assistance were self-targeting, and the objective was to provide and enhance livelihood security, specially for those dependent on casual manual labour. At the State level, the Government of Maharashtra formulated the Maharashtra Employment Guarantee Scheme under Maharashtra Employment Guarantee Act, 1977 to provide wage employment to those who demanded it.

The National Rural Employment Guarantee Act, 2005 (NREGA): At the Central level, NREGA aims at enhancing the livelihood security of the people in rural areas by guaranteeing hundred days of wage employment in a financial year to a rural household whose members volunteer to do unskilled manual work. The objective of the Act is to create durable assets and strengthen the livelihood resource-base of the rural poor. The choice of works suggested in the Act addresses causes of chronic poverty like drought, deforestation, soil erosion, etc so that the process of employment generation is maintained on a sustainable basis. The Act is applicable to areas notified by the Central Government and will cover the whole country.

This Act consists of 34 sections; though small Act but very useful and effective.

9.3.1 Definitions of Certain Key Terms under the Act

Section 2 of the Act defines certain terms used in this Act. We will, however, present the definitions of select terms.

- 2(a): “adult” means a person who has completed his eighteenth year of age;
- 2(b): “applicant” means the head of a household or any of its other adult members who have applied for employment under the Scheme;
- 2(f): “household” means the members of a family related to each other by blood, marriage or adoption and normally residing together and sharing meals or holding a common ration card;
- 2(k): “preferred work” means any work which is taken up for implementation on a priority basis under a Scheme;
- 2(n): “project” means any work taken up under a Scheme for the purpose of providing employment to the applicants;
- 2(o): “rural area” means any area in a State except those areas covered by any urban local body or a Cantonment Board established or constituted under any law for the time being in force;
- 2(r): “unskilled manual work” means any physical work which any adult person is capable of doing without any skill or special training.

9.3.2 The Gist of the Act

The essential features of this Act are presented below.

9.3.2.1 Guarantee of Employment in Rural Areas

Section 3 of this Act provides a guarantee of rural employment to households as follows.

- 1) Save as otherwise provided, the State Government shall, in such rural areas in the State as may be notified by the Central Government, provide to every household whose adult members volunteer to do unskilled manual work not less than one hundred days of such work in a financial year in accordance with the Scheme made under this Act.
- 2) Every person who has done the work given to him under the Scheme shall be entitled to receive wages at the wage rate for each day of work.
- 3) Save as otherwise provided in this Act, the disbursement of daily wages shall be made on a weekly basis or in any case not later than a fortnight after the date on which such work was done.
- 4) The Central Government or the State Government may, within the limits of its economic capacity and development, make provisions for securing work to every adult member of a household under a Scheme for any period beyond the period guaranteed under sub-section (1), as may be expedient.

9.3.2.2 Employment Guarantee Scheme for Rural Areas

Section 4 provides for employment guarantee scheme for rural areas. It states:

- 1) For the purposes of giving effect to the provisions of section 3, every State Government shall, within six months from the date of commencement of this Act, by notification, make a Scheme for providing not less than one hundred days of guaranteed employment in a financial year to every household in the rural areas covered under the Scheme and whose adult members, by application, volunteer to do unskilled manual work subject to the conditions laid down by or under this Act and in the Scheme:
 - Provided that until any such Scheme is notified by the State Government, the Annual Action Plan or Perspective Plan for the Sampoorna Grameen Rozgar Yojana (SGRY) or the National Food for Work Programme (NFFWP) whichever is in force in the concerned area immediately before such notification shall be deemed to be the action plan for the Scheme for the purposes of this Act.
- 2) The State Government shall publish a summary of the Scheme made by it in at least two local newspapers, one of which shall be in a vernacular language circulating in the area or areas to which such Scheme shall apply.
- 3) The Scheme made under sub-section (1) shall provide for the minimum features specified in Schedule I of the Act.

9.3.2.3 Conditions for Providing Guaranteed Employment

Section 5 of this Act stipulates conditions for providing guaranteed employment. These conditions are mentioned under Schedule II. They include the adult members of every household who:

- i) reside in any rural areas; and
- ii) are willing to do unskilled manual work.

9.3.2.4 Payment of Unemployment Allowance

Section 7 makes a provision for payment of unemployment allowance as follows.

- 1) If an applicant for employment under the Scheme is not provided such employment within fifteen days of receipt of his application seeking employment or from the date on which the employment has been sought in the case of an advance application, whichever is later, he shall be entitled to a daily unemployment allowance in accordance with this section.
- 2) Subject to such terms and conditions of eligibility as may be prescribed by the State Government and subject to the provisions of this Act and the Schemes and the economic capacity of the State Government, the unemployment allowance payable under sub-section (1) shall be paid to the applicants of a household subject to the entitlement of the household at such rate as may be specified by the State Government, by notification, in consultation with the State Council:
 - Provided that no such rate shall be less than one-fourth of the wage rate for the first thirty days during the financial year and not less than one-half of the wage rate for the remaining period of the financial year.
- 3) The liability of the State Government to pay unemployment allowance to a household during any financial year shall cease as soon as:
 - a) the applicant is directed by the Gram Panchayat or the Programme Officer to report for work either by himself or depute at least one adult member of his household; or
 - b) the period for which employment is sought comes to an end and no member of the household of the applicant had turned up for employment; or
 - c) the adult members of the household of the applicant have received in total at least one hundred days of work within the financial year; or
 - d) the household of the applicant has earned as much from the wages and unemployment allowance taken together which is equal to the wages for one hundred days of work during the financial year.
- 4) The unemployment allowance payable to the household of an applicant jointly shall be sanctioned and disbursed by the Programme Officer or such local authority (including the Panchayats at the district, intermediate or village level) as the State Government may, by notification, authorise in this behalf.
- 5) Every payment of unemployment allowance under sub-section (1) shall be made or offered not later than fifteen days from the date on which it became due for payment.
- 6) The State Government may prescribe the procedure for payment of unemployment allowance under this Act.

Check Your Progress

Notes: a) Space given below the question is for writing your answer.

b) Check your answer with the one given at the end of this unit under “Answers to ‘Check Your Progress’ Questions”.

2) Elucidate the conditions prescribed under the Act for providing guaranteed employment.

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9.3.2.5 Implementing and Monitoring Authorities

There are implementing and monitoring authorities provided for in this Act, which are as follows.

Section 10: Central Employment Guarantee Council: It is as follows.

- 1) With effect from such date, as the Central Government may by notification specify, there shall be constituted a Council to be called the Central Employment Guarantee Council to discharge the functions, and perform the duties, assigned to it by or under this Act.
- 2) The headquarters of the Central Council shall be at Delhi.
- 3) The Central Council shall consist of the following members, to be appointed by the Central Government, namely—
 - a) a Chairperson;
 - b) not more than such number of representatives of the Central Ministries including the Planning Commission not below the rank of Joint Secretary to the Government of India as may be determined by the Central Government;
 - c) not more than such number of representatives of the State Governments as may be determined by the Central Government;
 - d) not more than fifteen non-official members representing Panchayati Raj Institutions, organisations of workers and disadvantaged groups:
 - Provided that such non-official members shall include two chairpersons of District Panchayats nominated by the Central Government by rotation for a period of one year at a time;
 - Provided further that not less than one-third of the non-official members nominated under this clause shall be women;
 - Provided also that not less than one-third of the non-official members shall be belonging to the Scheduled Castes, the Scheduled Tribes, the Other Backward Classes and Minorities;

- e) such number of representatives of the States as the Central Government may, by rules, determine in this behalf;
 - f) a Member-Secretary not below the rank of Joint Secretary to the Government of India.
- 4) The terms and conditions subject to which the Chairperson and other members of the Central Council may be appointed and the time, place and procedure of the meetings (including the quorum at such meetings) of the Central Council shall be such as may be prescribed by the Central Government.

Section 11: Functions and Duties of Central Council: These are as given below.

- 1) The Central Council shall perform and discharge the following functions and duties, namely:
 - a) establish a central evaluation and monitoring system;
 - b) advise the Central Government on all matters concerning the implementation of this Act;
 - c) review the monitoring and redressal mechanism from time to time and recommend improvements required;
 - d) promote the widest possible dissemination of information about the Schemes made under this Act;
 - e) monitoring the implementation of this Act;
 - f) preparation of annual reports to be laid before Parliament by the Central Government on the implementation of this Act;
 - g) any other duty or function as may be assigned to it by the Central Government.
- 2) The Central Council shall have the power to undertake evaluation of the various Schemes made under this Act and for that purpose collect or cause to be collected statistics pertaining to the rural economy and the implementation of the Schemes.

Section 12: State Employment Guarantee Council: It states as follows.

- 1) For the purposes of regular monitoring and reviewing of the implementation of this Act at the State level, every State Government shall constitute a State Council to be known as the (name of the State) State Employment Guarantee Council with a Chairperson and such number of official members as may be determined by the State Government and not more than fifteen non-official members nominated by the State Government from Panchayati Raj institutions, organisations of workers and disadvantaged groups:
 - Provided that not less than one-third of the non-official members nominated under this clause shall be women;
 - Provided further that not less than one third of the non-official members shall be belonging to the Scheduled Castes, the Scheduled Tribes, the Other Backward Classes and Minorities.
- 2) The terms and conditions subject to which the Chairperson and members of the State Council may be appointed and the time, place and procedure of the meetings (including the quorum at such meetings) of the State Council shall be such as may be prescribed by the State Government.

- 3) The duties and functions of the State Council shall include:
- a) advising the State Government on all matters concerning the Scheme and its implementation in the State;
 - b) determining the preferred works;
 - c) reviewing the monitoring and redressal mechanisms from time to time and recommending improvements;
 - d) promoting the widest possible dissemination of information about this Act and the Schemes under it;
 - e) monitoring the implementation of this Act and the Schemes in the State and coordinating such implementation with the Central Council;
 - f) preparing the annual report to be laid before the State Legislature by the State Government;
 - g) any other duty or function as may be assigned to it by the Central Council or the State Government.
- 4) The State Council shall have the power to undertake an evaluation of the Schemes operating in the State and for that purpose to collect or cause to be collected statistics pertaining to the rural economy and the implementation of the Schemes and Programmes in the State.

Section 13: Principal authorities for planning and implementation of Schemes: These are as follows.

- 1) The Panchayats at district, intermediate and village levels shall be the principal authorities for planning and implementation of the Schemes made under this Act.
- 2) The functions of the Panchayats at the district level shall be:
 - a) to finalise and approve block-wise shelf of projects to be taken up under a programme under the Scheme;
 - b) to supervise and monitor the projects taken up at the Block level and district level; and
 - c) to carry out such other functions as may be assigned to it by the State Council, from time to time.
- 3) The functions of the Panchayat at intermediate level shall be:
 - a) to approve the Block level Plan for forwarding it to the district Panchayat at the district level for final approval;
 - b) to supervise and monitor the projects taken up at the Gram Panchayat and Block level; and
 - c) to carry out such other functions as may be assigned to it by the State Council, from time to time.
- 4) The District Programme Coordinator shall assist the Panchayat at the district level in discharging its functions under this Act and any Scheme made thereunder.

Section 14: District Programme Coordinator: It provides as follows,

- 1) The Chief Executive Officer of the District Panchayat or the Collector of the district or any other district level officer of appropriate rank as the State Government may decide shall be designated as the District Programme Coordinator for implementation of the Scheme in the district.
- 2) The District Programme Coordinator shall be responsible for implementation of the Scheme in the district in accordance with the provisions of this Act and the rules made thereunder.
- 3) The functions of the District Programme Coordinator shall be:
 - a) to assist the district Panchayat in discharging its functions under this Act and any scheme made thereunder;
 - b) to consolidate the plans prepared by the Blocks and project proposals received from other implementing agencies for inclusion in the shelf of projects to be approved by the Panchayat at district level;
 - c) to accord necessary sanction and administrative clearance, wherever necessary;
 - d) to coordinate with the Programme Officers functioning within his jurisdiction and the implementing agencies to ensure that the applicants are provided employment as per their entitlements under this Act;
 - e) to review, monitor and supervise the performance of the Programme Officers;
 - f) to conduct periodic inspection of the works in progress; and
 - g) to redress the grievances of the applicants.
- 4) The State Government shall delegate such administrative and financial powers to the District Programme Coordinator as may be required to enable him to carry out his functions under this Act.
- 5) The Programme Officer appointed under sub-section (1) of Section 15 and all other officers of the State Government and local authorities and bodies functioning within the district shall be responsible to assist the District Programme Coordinator in carrying out his functions under this Act and the Schemes made thereunder.
- 6) The District Programme Coordinator shall prepare in the month of December every year a labour budget for the next financial year containing the details of anticipated demand for unskilled manual work in the district and the plan for engagement of labourers in the works covered under the Scheme and submit it to the district panchayat.

Section 15: Programme Officer: It is as follows.

- 1) At every Panchayat at intermediate level, the State Government shall appoint a person who is not below the rank of Block Development Officer with such qualifications and experience as may be determined by the State Government as Programme Officer at the Panchayat at intermediate level.
- 2) The Programme Officer shall assist the Panchayat at intermediate level in discharging its functions under this Act and any Scheme made thereunder.

- 3) The Programme Officer shall be responsible for matching the demand for employment with the employment opportunities arising from projects in the area under his jurisdiction.
- 4) The Programme Officer shall prepare a plan for the Block under his jurisdiction by consolidating the project proposals prepared by the Gram Panchayats and the proposals received from intermediate panchayats.
- 5) The functions of the Programme Officer shall include:
 - a) monitoring of projects taken up by the Gram Panchayats and other implementing agencies within the Block;
 - b) sanctioning and ensuring payment of unemployment allowance to the eligible households;
 - c) ensuring prompt and fair payment of wages to all labourers employed under a programme of the Scheme within the Block;
 - d) ensuring that regular social audits of all works within the jurisdiction of the Gram Panchayat are carried out by the Gram Sabha and that prompt action is taken on the objections raised in the social audit;
 - e) dealing promptly with all complaints that may arise in connection with the implementation of the Scheme within the Block; and
 - f) any other work as may be assigned to him by the District Programme Coordinator or the State Government.
- 6) The Programme Officers shall function under the direction, control and superintendence of the District Programme Coordinator.
- 7) The State Government may, by order, direct that all or any of the functions of a Programme Officer shall be discharged by the Gram Panchayat or a local authority.

Section 16: Responsibilities of the Gram Panchayats: These are as provided below.

- 1) The Gram Panchayat shall be responsible for identification of the projects in the Gram Panchayat area to be taken up under a Scheme as per the recommendations of the Gram Sabha and the Ward Sabhas and for executing and supervising such works.
- 2) A Gram Panchayat may take up any project under a Scheme within the area of the Gram Panchayat as may be sanctioned by the Programme Officer.
- 3) Every Gram Panchayat shall, after considering the recommendations of the Gram Sabha and the Ward Sabhas, prepare a development plan and maintain a shelf of possible works to be taken up under the Scheme as and when demand for work arises.
- 4) The Gram Panchayat shall forward its proposals for the development projects including the order of priority between different works to the Programme Officer for scrutiny and preliminary approval prior to the commencement of the year in which it is proposed to be executed.
- 5) The Programme Officer shall allot at least fifty per cent of the works in terms of its cost under a Scheme to be implemented through the Gram Panchayats.

- 6) The Programme Officer shall supply each Gram Panchayat with:
 - a) the muster rolls for the works sanctioned to be executed by it; and
 - b) a list of employment opportunities available elsewhere to the residents of the Gram Panchayat.
- 7) The Gram Panchayat shall allocate employment opportunities among the applicants and ask them to report for work.
- 8) The works taken up by a Gram Panchayat under a Scheme shall meet the required technical standards and measurements.

9.3.2.6 Establishment of National and State Employment Guarantee Fund and Audit

This Act provides for establishment of National and State Employment Guarantee Fund and Audit as follows.

Section 20: National Employment Guarantee Fund: It is as follows.

- 1) The Central Government shall, by notification, establish a fund to be called the National Employment Guarantee Fund for the purposes of this Act.
- 2) The Central Government may, after due appropriation made by Parliament by law in this behalf, credit by way of grants or loans such sums of money as the Central Government may consider necessary to the National Fund.
- 3) The amount standing to the credit of the National Fund shall be utilised in such manner and subject to such conditions and limitations as may be prescribed by the Central Government.

Section 21: State Employment Guarantee Fund: It is as follows.

- 1) The State Government may, by notification, establish a fund to be called the State Employment Guarantee Fund for the purposes of implementation of the Scheme.
- 2) The amount standing to the credit of the State Fund shall be expended in such manner and subject to such conditions and limitations as may be prescribed by the State Government for the purposes of implementation of this Act and the Schemes made thereunder and for meeting the administrative expenses in connection with the implementation of this Act.
- 3) The State Fund shall be held and administered on behalf of the State Government in such manner and by such authority as may be prescribed by the State Government.

Section 22: Funding pattern: It is as given below.

- 1) Subject to the rules as may be made by the Central Government in this behalf, the Central Government shall meet the cost of the following, namely:
 - a) the amount required for payment of wages for unskilled manual work under the Scheme;
 - b) up to three-fourths of the material cost of the Scheme including payment of wages to skilled and semi-skilled workers subject to the provisions of Schedule II;

- c) such percentage of the total cost of the Scheme as may be determined by the Central Government towards the administrative expenses, which may include the salary and allowances of the Programme Officers and his supporting staff, the administrative expenses of the Central Council, facilities to be provided under Schedule II and such other items as may be decided by the Central Government.
- 2) The State Government shall meet the cost of the following, namely:
 - a) the cost of unemployment allowance payable under the Scheme;
 - b) one-fourth of the material cost of the Scheme including payment of wages to skilled and semi-skilled workers subject to the provisions of Schedule II;
 - c) the administrative expenses of the State Council.

Section 23: Transparency and accountability: It provides as follows.

- 1) The District Programme Coordinator and all implementing agencies in the District shall be responsible for the proper utilisation and management of the funds placed at their disposal for the purpose of implementing a Scheme.
- 2) The State Government may prescribe the manner of maintaining proper books and accounts of employment of labourers and the expenditure incurred in connection with the implementation of the provisions of this Act and the Schemes made thereunder.
- 3) The State Government may, by rules, determine the arrangements to be made for the proper execution of Schemes, and programmes under the Schemes and to ensure transparency and accountability at all levels in the implementation of the Schemes.
- 4) All payments of wages in cash and unemployment allowances shall be made directly to the person concerned and in the presence of independent persons of the community on pre-announced dates.
- 5) If any dispute or complaint arises concerning the implementation of a Scheme by the Gram Panchayat, the matter shall be referred to the Programme Officer.
- 6) The Programme Officer shall enter every complaint in a complaint register maintained by him and shall dispose of the disputes and complaints within seven days of its receipt and in case it relates to a matter to be resolved by any other authority it shall be forwarded to such authority under intimation to the complainant.

Section 24: Audit of accounts: It states as follows.

- 1) The Central Government may, in consultation with the Comptroller and Auditor General of India, prescribe appropriate arrangements for audits of the accounts of the Schemes at all levels.
- 2) The accounts of the Scheme shall be maintained in such form and in such manner as may be prescribed by the State Government.

9.3.2.7 Penalty for Non-compliance

Section 25 deals with penalty for non-compliance with the provisions of the Act. According to it, whoever contravenes the provisions of this Act shall, on conviction, be liable to a fine which may extend to one thousand rupees.

Check Your Progress

b) Check your answer with the one given at the end of this unit under “Answers to ‘Check Your Progress’ Questions”.

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9.5 ANSWERS TO 'CHECK YOUR PROGRESS' QUESTIONS

- 1) The Directive Principles of State Policy, in Part-IV of the Constitution of India, spells out right to work under certain Articles. Article 41 of the Constitution provides that “the State shall within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want”. Article 38 states that the State shall strive to promote the welfare of the people and Article 43 states that the State shall endeavor to secure a living wage and a decent standard of life to all workers. One of the contexts in which the problem of enforceability of such a right was posed before the Supreme Court was of large-scale abolition of posts of village officers in the State of Tamil Nadu in India. In negating the contention that such an abolition of posts would fall foul of the DPSP, the court said: It is no doubt true that Article 38 and Article 43 of the Constitution insist that the State should endeavour to find sufficient work for the people so that they may put their capacity to work into economic use and earn a fairly good living. But, these Articles do not mean that everybody should be provided with a job in the civil service of the State and if a person is provided with one he should not be asked to leave it even for a just cause. If it were not so, there would be no justification for a small percentage of the population being in Government service and in receipt of regular income and a large majority of them remaining outside with no guaranteed means of living. It would certainly be an ideal state of affairs if work could be found for all the able-bodied men and women and everybody is guaranteed the right to participate in the production of national wealth and to enjoy the fruits thereof. But, we are today far away from that goal.

Article 21 of the Indian Constitution, under Part III, Fundamental Rights, spells that no person shall be deprived of his life or personal liberty except according to procedure established by law. Right to life under Article 21 includes right to livelihood in turn right to work because there is no meaning of life without livelihood.

- In *Olga Tellis v Bombay Municipal Corporation* (1986, p.180), popularly known as pavement dwellers case, the Supreme Court held that the right to life includes right to livelihood.

- 2) The conditions of employment guarantee are mentioned under Schedule II of the NAREGA, 2005. They include the adult members of every household who:
- i) reside in any rural areas; and
 - ii) are willing to do unskilled manual work.
- 3) Implementing and monitoring authorities under the Act include the following.
- Central Employment Guarantee Council (Section 10).
 - State Employment Guarantee Council (Section 12).
 - Panchayats at district and intermediate and village levels (Section 13).
 - District Programme Coordinator (Section 14).
 - Programme Officers (Section 15).

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