



Block

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BLOCK 5 SPECIAL RIGHTS LAW

Introduction to the Block

This Block deals with laws related to rights of certain special groups of the society – children, women, workers, Dalits and Tribals, landholders, persons with disabilities, and parents and senior citizens — who deserve special protection by law. Containing seven Units, the Block discusses the laws related to these groups.

Unit 20 is on “*Rights of Children*”. It presents the measures taken at international level for protecting and promoting children’s rights with special reference to the International Declarations, Conventions, Summits and Conferences in this regard. It also presents the Indian perspective of the measures taken for protection and promotion of rights of children and their welfare in terms of the Constitutional provisions, evolution of child labour policy and the laws enacted to prohibit and regulate child labour in India. It touches upon the right of children to free and compulsory education. It also covers juvenile justice and the National and State Commissions available for protection of child rights.

Unit 21 deals with “*Rights of Women*”. It touches upon different international conventions and declarations that advocated equality of opportunities for women in different walks of life so as to make their participation and contribution more effective to the society and the nation. Further, it highlights different provisions in the Indian Constitution and national Acts, Commissions, etc., which are of great relevance to the empowerment and development of women.

Unit 22 titled “*Rights of Workers*” focuses on the rights and protection of workers in both organised (formal) and unorganised (informal) sectors. It highlights the comparative needs and problems of workers in these sectors and different protective measures available in terms of legislation, schemes and programmes for the workforce of the country. It also points to the lack of specific and comprehensive schemes or legislation at the national level for addressing the specific problems and issues of workers in unorganised sector.

Unit 23 titled “*Rights of Dalits and Tribals*” presents the status of ‘Dalits’ and ‘Tribals’ in India with reference to the constitutional and legal protection available to them for their uplift and welfare.

Unit 24, “*Rights of Land Holders*”, presents historical perspective of the rights and issues of the land-holders with emphasis on their rights of ownership, possession and use of land. It highlights the significance of regulation of land by the State through suitable land reforms, time and again, for striking a balance in the interests of the existing landholders and of those who do not have access to land and in securing social and economic justice to them all. It also explains the need, purpose and process/mechanism of land acquisition including payment of compensation to the concerned, their rehabilitation and resettlement, etc. In this context, it also throws light on the concept of ‘beyond compensation’ to the displaced people.

Unit 25 is about “*Rights of Persons with Disabilities*”. It highlights the international and national perspectives of the rights of the persons with disabilities, and protection of their rights, including the role of Non-Governmental Organizations (NGOs) in this regard.

Unit 26 titled “*Rights of Parents and Senior Citizens*” discusses the needs, problems, issues and the rights of or the elderly and the older persons or senior citizens, i.e. the persons above the age of 60. It highlights various measures available in the form of laws, special schemes and policies including the National Policy on Older Persons for protection of their rights, interests and welfare at large. It lays special emphasis on the provisions made for shelter to the incident senior citizens, for their healthcare, for protection of their life and property including punishment to persons who abandon senior citizens. It also touches upon the significant initiatives/measures taken at the international level in this regard.

UNIT 20 RIGHTS OF CHILDREN

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20.0 INTRODUCTION

In a civilized society, the importance of child welfare cannot be underestimated, because the welfare of the entire community and its growth and development depends on the health and well-being of its children. Children are a “supremely important national asset”. The future well-being of the nation depends on how its children grow and develop. The problems relating to children are basically rooted in poverty and illiteracy. But, there are certain other causative dimensions of the problem, including, at some places, the social structure and the employers of the child labour, among others, which together subject children to exploitation of various kinds affecting their healthy growth and development.

Kofi A. Annan, Secretary-General of the United Nations (2000), observed that: "There is no trust more sacred than the one the world holds on the children. There is no duty more important than ensuring that their rights are respected, that their welfare is protected, that their lives are free from fear and want and that they grow up in peace." There has been great concern for the welfare of the children at the international and national levels. Exceptional vulnerability of children to exploitation gained international attention and led to the passing of various instruments to protect the rights of children. It is necessary to study these various instruments as these are basis for child rights in India.

20.1 OBJECTIVES

In this Unit, we discuss the children's rights and protection and promotion of their interest and welfare. After going through this unit, you should be able to:

- Describe the status of children under international and national law;
- Explain the children's rights and special protection available to them under relevant laws; and
- Appreciate and promote the special protection given to children by the National Commission for Children.

20.2 INTERNATIONAL MEASURES FOR PROTECTION OF CHILDREN'S RIGHTS

Long ago, countries basically had no concern for children and their rights. It is pertinent to mention the abuses of factory system in England where child-labour force could be recruited and made to work for long hours from the age of eight years. Very often, the children, while working at the machines for a long time, used to sleep and get rolled into them along with cotton bales.

20.2.1 Origin of Movement for the Rights of Child

The beginning of the movement for the rights of child can be traced back to the mid-nineteenth century with the publication of an article titled *The Rights of the Children* in June 1852 by Slagvolk, followed by Kate Kliggin's, *Children's Rights* in 1892. With the attention gradually shifting to the working conditions of the children, the legal position of the children in England began to change, more so with the introduction of factory laws which concentrated on the amelioration of the working conditions of employees, especially children.

The first impression of international concern over the "situation of children" came in 1923 in Geneva, when the Council of the newly established non-governmental organization, "Save the Children International Union", adopted a five-point declaration on the rights of child. This Declaration was endorsed in the following year, i.e. in 1924, by the fifth Assembly of the League of Nations. In 1948, the General Assembly of the United Nations approved an expanded version of the text and, in 1959 it went on to adopt a new declaration for child welfare and protection. The Convention on the Rights of the Child, 1989 marked the culmination of the efforts to bring the international community to recognize the needs of children (Justice Gulab Gupta, 2002, p.195).

20.2.2 Declaration of the Rights of Child, 1959

The Preamble of this Declaration adopted by the General Assembly of the United Nations on 20th November 1959 states:

- Whereas the people of the United Nations have, in the charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of human person, and have determined to promote social progress and better standards of life in larger freedom;
- Whereas the United Nations has, in the Universal Declaration of Human Rights, proclaimed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status;
- Whereas the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth;
- Whereas the need for such special safeguards has been stated in General Declaration of the Rights of Child, 1924 and recognized in the Universal Declaration of Human Rights and in the statutes of specialized agencies and international organizations concerned with the welfare of the children;
- Whereas the mankind owes to the child the best it has to give.

The General Assembly proclaimed this *Declaration of the Rights of the Child* and called upon the parents, upon men and women as individuals, and upon voluntary organizations, local authorities and national governments to recognize these rights and strive for their observance, through legislative and other measures progressively taken in accordance with ten principles. These principles are:

- *Principle (1)* states that the child shall enjoy all the rights set forth in this Declaration. Every child, without any exception whatsoever, shall be entitled to these rights, without distinction or discrimination on account of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, whether of himself or of his family.
- As per *Principle (2)*, the child shall enjoy special protection, and shall be given special opportunities and facilities by law and by other means to enable him to develop, physically, mentally, morally, spiritually and socially in a locality in normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration.
- Under *Principle (3)* the child shall be entitled from his birth to a name and nationality.
- As per *Principle (4)* the child shall be enjoying the benefits of social security. He shall be entitled to grow and develop in health; to this end, special care and protection shall be provided both to him and to his mother including adequate prenatal care; the child shall have the right to adequate nutrition, housing, recreation, and medical services.

- *Principle (5)* states that a child who is physically, mentally or socially handicapped shall be given the special treatment, education and care required by his particular condition.
- *Principle (6)* stresses that the child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care, in atmosphere of affection and of moral and material security; a child of tender year shall not, save in exceptional circumstances, be separated from his mother. Society and public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support. Payment of state and other assistance towards the maintenance of children of large families is desirable.
- *Principle (7)* mentions that the child is entitled to receive the education, which shall be free and compulsory, at least in the elementary stage. He shall be given an education which will promote his general culture and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgment, and his sense of moral and social responsibility and to become a useful member of society. The best interest of child shall be the guiding principle of those responsible for his education and guidance; the responsibility lies in the first place with his parents. The child shall have full opportunity to play and recreation which should be direct to same purposes as education; society and public authorities shall endeavour to promote his enjoyment of his right.
- *Principle (8)* states that the child, in all circumstances and among all, shall be the first to receive the protection and relief.
- As per *Principle (9)*, the child shall be protected against all forms of neglect, cruelty and exploitation; the child shall not be the subject of traffic in any form. The child shall not be admitted to employment before an appropriate age; he shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education, or interfere with his physical, mental or moral development.
- *Principle (10)* states that the child shall be protected from practices which may foster racial, religious and any other form of discrimination. He shall be brought up in a spirit of understanding, tolerance, friendship, peace and universal brotherhood; and in full consciousness that his energy and talents should be devoted to the service of his fellowmen.

20.2.3 Convention on Rights of the Child, 1989

The Convention on the Rights of the Child, drafted by the U. N. Commission on Human Rights, was adopted by the General Assembly of the United Nations on 20th November 1989. The Convention is a set of international standards and measures intended to protect and promote the well-being of children in the society.

The Convention draws attention to four sets of civil, social, economic and cultural rights of every child. These rights are:

- 1) *The Right to Survival*: This right includes the right to life, the highest attainable standards of health, nutrition and adequate standards of living. It also includes the right to the name and nationality.

- 2) *The Right to Protection:* This includes the freedom from all forms of exploitation, abuse inhuman, or degrading treatment and neglect, including the right to special protection in situations of emergency and armed conflicts.
- 3) *The Right to Development:* It contains the right to education, support for early childhood development and care, social security, and the right to leisure, recreation and cultural activities.
- 4) *The Right to Participation:* It includes respect for the views of child, freedom of expression, access to appropriate information, and freedom of thought, conscience and religion.

Part I of the Convention on Rights of the Child, 1989 contains the 53 Articles in all; some of the points of focus are the following:

- A child means any human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.
- State parties recognized that every child has the inherent right of life.
- The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible the right to know and be cared by his or her parents.
- State parties shall respect the right of the child to freedom of thought, conscience and religion.
- State parties recognized the rights of child to freedom of association and to freedom of peaceful assembly.
- State parties should recognize and /or permit the system of adoption and shall ensure that the best interest of the child shall be paramount consideration.
- State parties recognized the right of disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child of assistance for which application is made to those responsible for his or her care, and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.
- State parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility of the child, both within the State and abroad. In particular, where the person having financial responsibility of the child lives in a State different from that of the child, State parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.
- State parties should recognize the right of the child to education and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
 - a) Make primary education compulsory and available freely to all;
 - b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education, and offering financial assistance in case of need;

- c) Make higher education accessible to all on the basis of capacity by every appropriate means;
 - d) Make education and vocational information and guidance available and accessible to all children;
 - e) Take measures to encourage regular attendance at schools and the reduction of dropout rates.
- State parties should recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
- State parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present Article. To this end, and having regard to the relevant provisions of other international instruments, State Parties shall in particular:
- a) Provide for a minimum age or minimum wages for admission to employment;
 - b) Provide for appropriate regulation of the hours and conditions of employment;
 - c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present Article.

State parties should undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, State parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- b) The exploitative use of children in prostitution or other unlawful sexual practices;
- c) The exploitative use of children in pornographic performances and materials.

Monitoring under Convention: A Committee on the Rights of the Child, set up under Article 43 of the Convention, monitors the implementation of the provisions of the Convention by the States who have ratified it. The Committee formed by the elected members of the member-States reviews the report submitted by the States and information received through other sources. The Committee exercises its influence through dialogue because of the lack of sanctions and also because some States due to their economic conditions cannot implement the provisions without assistance. It is pertinent to mention here that certain NGOs too are involved in the process of monitoring.

20.2.4 The World Summit for Children, 1990

The World Summit for Children was a follow-up action to the Convention. It was held at the UN Headquarters and was the first ever World Summit which enabled national leaders to focus exclusively on issues affecting the future of children. Among the goals adopted at this Summit were:

- Reduction in child deaths and child malnutrition;
- Increasing immunization level;

- Halving maternal mortality; and
- The universal ratification of the Convention on the Rights of the Child.

20.2.5 United Nations Conference on Environment and Development, 1992

The United Nations Conference on Environment and Development was held at Rio de Janeiro, Brazil in June 1992. The real achievement was Agenda 21 which reinforces the commitments made at the World Summit for Children. Specific goals for child survival, development and protection were agreed upon at the World Summit for Children and remain valid also for Agenda 21. *Chapter 25 of this Agenda 21 is devoted to children and youth*, and specifically urges the governments:

- Important programmes to reach the goals set by the World Summit for children;
- Ratify and implement the Convention on the Rights of the Child;
- Promote primary environmental care activities to improve the environment by meeting basic needs and empowering local communities;
- Expand children's education especially for the girl-child;
- Incorporate children's concerns into all relevant policies and strategies for environment and development.

20.2.6 World Conference on Human Rights, 1993

In this Conference considerable energy was expressed for the protection and implementation of the rights of the child. The World Conference reiterates the principle of "first call for children". In this respect, it underlined the importance of the role of the UNICEF in the protection and action for the rights of the child "Human Right being with children's right" is the new perception given by the UNICEF for the promotion of the rights of the child. An opinion was also expressed that measures should be taken to achieve universal ratification of the Convention as well as its effective implementation.

20.2.7 International Labour Organisation (ILO)

The ILO has been instrumental in protecting the rights of children and laying down conditions and standards regarding wages and welfare of working children. Some of the points of focus of the ILO are:

- a) Prescribing and pressing uniform minimum age for employment of children under all the Acts;
- b) Identifying hazardous occupations and banning the employment of children in such occupations;
- c) Recommending laws, rules, regulations, Acts and legislations for protecting children in employment and for progressive elimination of child labour; and
- d) Suggesting labour welfare and social welfare measure to protect working children from exploitation and suitable machinery for enforcement and implementation of provisions adopted for welfare of working children.

Some Other Instruments are:

- 1) International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966 (Article 10).
- 2) International Covenant on Civil and Political Rights (ICCPR), 1966 (Article 24).
- 3) Declaration on Social Progress and Development, 1969 (Part-I and Part-II).
- 4) The United Nations Commission on Human Right 1994, which considered the rights of children under a separate agenda.
- 5) The United Nations Commission on Crime Prevention and Criminal Justice, 1994, which adopted resolutions on violence against women and children and international traffic in minors.
- 6) The Fourth World Conference on Women in Beijing, which paid special attention to ensure right of girl-children and protecting them against violence and other forms of crimes.
- 7) Conventions regarding minimum age: Minimum Age (Industry) Convention, 1919; Minimum Age (Agriculture) Convention, 1921; Minimum Age (Non-Industrial Employment) Convention, 1932; Minimum Age (Revised) Convention, 1937; Minimum Age (Non-Industrial Employment) Convention, 1937; Minimum Age (Underground Work) Convention, 1965; Convention on Minimum Age for Employment, 1973, Minimum Age (Sea) Convention, 1920, Minimum Age (Trimmers and Strikers) Convention, 1921, and Minimum Age (Sea revised) Convention, 1936.
- 8) Conventions Regarding Work at Night: Night Work of Young Persons (Industry) Convention, 1919; Night Work of Young Persons (Non-Industrial Occupation) Convention, 1946, Night Work of Young Persons (Industry) (Revised) Convention, 1948.
- 9) Some of the regional instruments on Human Rights also provide for the protection of rights of the child but in a limited way.

With the above understanding of the international scenario, we will now turn to the national laws related to children's rights and their protection.

20.3 INDIAN PERSPECTIVE OF CHILDREN'S RIGHTS AND THEIR PROTECTION

Let us look at the constitutional provisions related to rights of children.

20.3.1 Constitutional Provisions

Children are the most vulnerable section of society. They become the victims of exploitation and ill-treatment easily and can be directed into undesirable channels by anti-social elements. The Constitution-makers reflecting their anxiety to protect and safeguard the interest and welfare of the children incorporated Articles 15(3) which provides that the State shall not be prevented from making any special provision for women and children. This is in reference to provisions which are to their advantage and which give them the extra protection they need.

Exploitation of children by different profit-makers for their personal gain has been made punishable. In this regard Article 23 of the Constitution is a charter of human dignity and provided that:

- 1) Traffic in human being and begging and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law;
- 2) Nothing in this Article shall prevent the State from imposing compulsory service for public purposes and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

Article 24 of the Constitution, accepting the fact of prevalent child labour in India, provides that no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment. Considering the fact that India is a welfare State, the founding fathers of the Constitution recognized the importance of the rights of the child in a nation's development.

Article 39(e) of the Constitution enjoins that the State shall direct its policy towards securing the health and strength of worker, men and women; and those children of tender age will not be abused; that citizens should not be forced by economic necessity to enter into avocations unsuited to their age or strength. Article 39(f) enjoins that the state shall direct its policy towards securing that children are given opportunity and facilities to develop in a healthy manner and in conditions of freedom and dignity and that children and youth are protected against exploitation and moral and material abandonment.

Article 45 mandates that the State shall endeavor to provide free and compulsory education for all children until they complete the age of 14.

Article 51-A, on in the fundamental duties of the citizens of India, provides that citizens shall act in such a manner that the nation constantly rises to higher levels of endeavor and achievement. However, unless facilities and opportunities are provided to children, the nation stands to lose human resources and good citizens.

Thus, the constitution mandates that every child shall have the right to health, well-being, education and social protection without any discrimination on the ground of caste, birth, color, sex, language, religion, social origin, property or birth alone. The national policies influence lawmaking, clarify laws and ultimately have the effect of supporting rights. The national policies concerned with the children are as follows:

- National Children Policy;
- National Child Labour Policy;
- National Education Policy; and
- National Policy of Handicapped Persons.

Yet, it is unfortunate that it has taken 52 years from the commencement of the constitution to initiate same measures by amending the constitution to start with although 40% of the population is still illiterate and 10% of the total population is working as child labour.

We will now highlight relevant laws and policies, in brief, below.

20.3.2 Laws that Prohibit and Regulate Child Labour in India

Most of the pre-independence laws on child-labour prevention prescribed punishment for the child labour on the parents of the child and also employer, while the post-Independence laws exempted the parents from punishment.

20.3.2.1 Pre-Independence Laws

The origin of statutory protection of child labour in India can be traced back to the Indian Factories Act, 1881 which provides for the following:

- Minimum age of seven years for employment.
- Successive employment (employment in two factories on the same day) prohibited.
- Duration of employment (working hours not to exceed nine hours a day and at least four holidays to be given in a month).
- Factories employing one hundred or more persons were covered by this Act.

Thus, Factories Act, 1881 does not prevent the employment of children. The factories Act, 1881 was revised in 1891 with respect to the following matters:

- Minimum age increased to nine years.
- Hours of work (maximum seven hours per day with prohibition of work at night between 8 p.m. and 5 a.m.).

Later on the Children Act, 1933 was enacted to prohibit the pledging of labour of children below 14 years by parents. It prescribes punishment for parents and employer of the child labour. It imposes minimum fine of Rs.200 to the employer for employing child labour and also Rs.50 for the parents who pledged their children for the labour.

Subsequently, the Employment of Children Act, 1938 was enacted. This Act was passed to implement the Convention adopted by the twenty-third session of ILO (1937). This Act:

- Prohibited employment of children less than fifteen years old in occupations connected with transportation of goods, passengers and mails or in the railways.
- Raised the minimum age of handling goods on docks from twelve to fourteen years.
- Provided for the requirement of a certificate of age.

20.3.2.2 Post-Independence Laws: The Child Labour (Prohibition and Regulation) Act, 1986

After attaining the Independence, India enacted the Factories Act in the year 1948. Under Section 19 of this Act, children below the age of 14 years are prohibited from employment in the factories and the employers who are employing children as such are liable to be punished with imprisonment or fine or with both.

Later on some of the provisions in the enacted laws like the following prohibited the employment of children below a certain age.

- The Plantation Labour Act, 1951;
- The Mines Act, 1952;
- The Indian Factories Act, 1948;
- The Motor Transport Act and the Apprentice Act 1961;
- The Minimum Wages Act, 1948;
- The Atomic Energy Act 1962;
- The Shops and Commercial Establishments Act 1969;
- The Biddies and Cigar Workers (Condition and Employment) Act, 1966.

The problem of child labour continues to pose a challenge before the nation. Government has been taking various pro-active measures to tackle this problem. However, considering the magnitude and extent of the problem and that it is essentially a socio-economic problem inextricably linked to poverty and illiteracy it requires concerted efforts from all sections of the society to make a dent in the problem.

Way back in 1979, Government formed the first committee called Gurupadaswamy committee to study the issue of child labour and to suggest measures to tackle it. The committee examined the problem in detail and made some far-reaching recommendations. Essentially, it observed that as long as poverty continued, it would be difficult to totally eliminate child labour and hence, any attempt to abolish it through legal recourse would not be a practical proposition. The committee felt that in the circumstances the only alternative left was to ban child labour in hazardous areas and to regulate and ameliorate the conditions of work in other areas. It recommended that a multiple-policy approach was required in dealing with the problems of working children.

Based on the recommendation of Gurupadaswamy committee, the Child Labour (Prohibition and Regulation) Act was enacted in 1986. Since this Act is very comprehensive we will focus our discussion on some important provisions of this Act.

The Child Labour (Prohibition and Regulation) Act, 1986: This Act was enacted with a view to rationalizing earlier legislation on child-labour, progressive elimination of child labour in hazardous employment, and regulation of conditions of child-labour in non-hazardous industries. The Act, thus, prohibits employment of children in certain specified hazardous occupations and processes, and regulates the working conditions in others. Further, the list of hazardous occupations and processes is progressively being expanded on the recommendation of Child Labour Technical Advisory Committee constituted under the Act. The main and the most important point was that this Act aimed at identifying more hazardous processes and industries with a view to banning child labour in those industries and regulating conditions for children in non-hazardous occupations.

Definition of child labour: The National Sample Survey defined 'child-worker' as "a person below the age of 14 years who is wage-earner". The concern for working children, a Bangalore based organization described a child labour as "a

person who has not completed fifteen years of age and is working with or without wage on apart time or full time basis.” The actual number of child labour vary according to deferent concepts and definition as to what exactly child labour means. It is estimated that a number of working children in India is close to 100 million. The estimated data shows that 10% of the total population of India is child-labour.

With this clarity on the definition of child labour, let us now look at some aspects of CLPRA.

a) The Objectives of the Child Labour (Prohibition and Regulation) Act, 1986 are:

- To ban the employment of children, i.e. those who have not completed their fourteenth year, in specified occupations and processes;
- To lay down procedures to decide modifications to the schedule of banned occupations or processes;
- To regulate the conditions of work of children in employment where they are not prohibited from working.

b) Significant Provisions of the CLPRA: The preamble to the Act states that it is an Act to prohibit the engagement of children in certain employment and to regulate the conditions of work of children in certain other employment. The Act, thus, classifies all establishments into two categories:

- Those in which employment of child labour is prohibited, and
- Those in which the working conditions of child labour shall be regulated.

CLPRA 1986, Section 3: ‘No child shall be employed or permitted to work in any of the occupations set forth in Part A of the Schedule or in any workshop wherein, any of the processes set forth in Part B of the Schedule is carried on’.

Gazette constitutes an advisory committee called the Child Labour Technical Advisory Committee for the purpose of addition of occupations and process to the Schedule (CLPRA 1986, Section 5).

- Reacting liberally to the problem of child labour in *People’s Union for Democratic Rights v Union of India* (1982, p.235), a liberal interpretation was given by the Court to the term ‘hazardous employment’ to include employment in construction work and directed that the schedule to the Employment of Children Act, 1938 should be suitably amended to include the construction industry in it.

c) Regulation of Conditions of Work : Part III of the Act which came into force from 26-5- 1993 lays down provisions for regulating the conditions of work of children and applied to an establishment or a class of establishments in which none of the occupations or processes referred to in Section 3 are carried on.

Hours and Periods of Work/Weekly Holidays: The conditions regarding hours and periods of work to be performed by a child have been laid down in Section 7 of the Act, and are as follows.

- No child shall be required to work in excess of hours which are prescribed for such establishments.
- No period of work shall exceed three hours.
- No child shall work for more than three hours unless he has had an interval of at least one hour.
- Inclusive of period of rest, periods of work shall not spread over six hours.
- No child shall work from 7 p.m. to 8 a.m.
- There shall be no overtime for a child.
- No child shall be required or permitted to work in any establishment on any day on which he has already been working in another establishment.
- Every child shall be allowed a holiday of one whole day in each week.

The day shall be specified in a notice exhibited in some conspicuous place. The day so notified shall not be altered more than once in three months.

- d) **Notice to Inspector Regarding Employment of Children:** Section 9 lays down that every occupier who employs or permits any child to work shall within a period of thirty days from the date of such employment send to the Inspector within whose local limits the establishment is situated a written notice containing:

- Name and situation of establishment;
- The name of the person in actual management of the establishment;
- The address to which communication relating to an establishment should be sent; and
- The nature of the occupation or process carried on in the establishment.

In case of a dispute regarding the age of any child it will be referred to the prescribed medical authority.

- e) **Maintenance of Registers:** Section 11 mandates the occupier of an establishment where children are employed to maintain a register showing:

- name and date of birth of every child employed,
- hours and periods of work, intervals of rest for a child,
- nature of work of any such child,
- such other particulars as may be prescribed.

This register is to be made available for inspection to an Inspector at all times. Inspectors are appointed by the appropriate government under Section 17 for securing compliance with the provisions of this Act.

- f) **Health and Safety Provisions:** The appropriate government may, by notification in the Official Gazette, make rules for the health and safety of children employed or permitted to work under Section 13 of the Act. Rules may provide for all or any of the following: i) cleanliness; ii) disposal of wastes and effluents; iii) ventilation and temperature; iv) dust and fumes; v) artificial humidification; vi) lighting; vii) drinking water; viii) latrines

and urinals; ix) spittoons; x) fencing of machinery; xi) work at or near machinery in motion; xii) employment of children on dangerous machines; xiii) instructions, training and supervision in relation to employment of children on dangerous machines; xiv) device for cutting off power; xv) self-acting machines; xvi) easing of new machinery; xvii) floor, stairs and means of access; xviii) pits, sumps, opening in floors, etc. xix) excessive weights; xx) protection of eyes; xxi) explosive or inflammable dust, gas, etc; xxii) precautions in case of fire; xxiii) maintenance of building; and xxiv) safety of buildings and machinery.

Failure to give notice, failure to maintain a register or making any false entry, failure to display a notice or failure to comply with or contravene any other provision shall be punishable with fine which may extend to ten thousand rupees or simple imprisonment which may extend to one month or both.

g) Procedure for prosecution relating to offences: Section 16 of the Act provides the following procedure relating to offences:

- i) Any Person, Police Officer or Inspector may file a complaint about the commission of an offence under this Act in any court of competent jurisdiction.
- ii) Every certificate as to the age of a child which has been granted by a prescribed medical authority shall, for the purposes of this Act, be conclusive evidence as to the age of the child to whom it relates.
- iii) No court inferior to that of a Metropolitan Magistrate or Magistrate of the first class shall try any offence under this Act.

h) Penalties under the Act: The penalties under this Act are relatively more stringent than the earlier Acts and violating the provisions relating to child labour in certain other Acts results in a penalty under this Act (Section 14). The penalties under this Act are as follows:

- Whoever employs any child or permits any child to work in any hazardous employment shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to one year, or with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees, or with both. For a repeat offence, the punishment is imprisonment for a term which shall not be less than six months but which may extend to two years.
- For failing to give notice to the inspector as required by Section 9, or failing to maintain a register as required by Section 11, or making any false entry in the register, or failing to display an abstract of Section 3, or failing to comply with any other provisions of this Act or rules, the punishment is imprisonment which may extend to one month, or with fine which may extend to ten thousand rupees, or both.

It is to be noted that the Act provides for both fines as well as imprisonment. But, in practice, in those few instances where the employer is prosecuted, he is generally fined.

- The Supreme Court, in *M. C. Mehta v State of Tamil Nadu* (1997, p.699) case, issued directions to State Governments to fulfill the legislative intent behind the enactment. The offending employers were directed to pay compensation of Rs.20,000 for every child employed.
- In *N. Bhageerathan v State* (1999, p.632), it was held that if an accused or employer is unable to prove that children employed were not below 14 years, he can be convicted for the offence of employing child labour.

1) Some positive features of the Act: These include the following.

- It increases and makes more stringent the penalties for employing child labour in violation of the law for factories, mines, merchant shipping and motor transport [Section 15(1) and (2)].
- It empowers the Union government to bring into force provisions that regulate conditions of work of children in non-hazardous employment and also empowers state governments to make rules for further regulation. It provides the machinery, i.e. the Child Labour Technical Advisory Committee, for adding to the list of occupations and processes in which the employment of child labour is prohibited. (This was not possible in the Employment of Children Act 1938).
- It permits any person, besides a police officer or inspector, to file a complaint against anyone employing or permitting a child below fourteen in the prohibited occupations and processes.
- It makes the display of Sections 3 and 14 of CLPRA a mandatory requirement for the railway administration, the port authority, and to the occupier.

Critique of the laws and law reform: The CLPRA 1986 needs to be amended for better implementation and enforcement. The following are the areas of concern that need legal reform.

- CLPRA covers only 10 per cent of the total working children. Moreover, the agricultural sector, which constitutes more than 75 per cent of the child employment, is not covered by the Act. The CLPRA is not easy to enforce in the unorganized sector because the units are numerous and unregistered. The employer-employee relationship is continuously changing, and frequently the unit is a tiny family-based one. Most of these units spring up and disappear overnight and are very difficult to keep track of, in the absence of any requirement of registration.
- Section 3 of the CLPRA keeps the occupation, work or process that is carried on by the occupier with the aid of his family out of the purview of the Act. The intention of the Act is to exempt a family enterprise in which all or several of the members of the family are involved. It was not intended to exempt framed-out, piece-rate work, where the home merely replaces the factory premises. This proviso is abused by employing children in respect of families and work experience acquired by children. This provision helps employers to 'pose as family members' the children working in their premises and thus continue to exploit the children. When any action is taken against any employer for employing

a child, the excuses given are that 'the child is a relative and is helping in housework' or 'the child being trained for a family trade' and so on. Therefore, there is a need to add to the provision that 'it shall be presumed that occupier is also the employer for the purpose of the Act and the onus to prove that the child is a member of his or her family would rest on the occupier.

20.4 EVOLUTION OF CHILD LABOUR POLICY IN INDIA

The circumstances of child labour are influenced by many factors. No single cause can be isolated for the prevalence of child labour. Following are the important causes that led to child labour in India.

- Poverty, parental illiteracy and ignorance, tradition of making children learn the family skills, absence of universal compulsory primary education, non-availability of and non-accessibility to schools, irrelevant and unattractive school curriculum.
- Employer's preference to children for their cheap labour, inability of children to organize against exploitation, family work, level of technology, apathy of trade unions, ineffective enforcement of the legal provisions pertaining to child-labour.
- Many steps are being taken by the Indian government from the pre-independence period for the eradication of these drastic problems but till now the problem remains unsolved and the magnitude of child labour has been growing day-by-day due to poverty, in spite of evolution in the child labour policy of India.

The following chart shows the evolution of Child Labour Policy in India.

Table 20.1: Evolution of Child Labour Policy in India

Sl. No	Event	Date	Detail
1	Ratification of ILO, Night Work of Young Persons (Industry), Convention 1919 (No.6).	July 1921	Night work by young persons in any public or private industrial undertaking prohibited.
2	Ratification of ILO, Minimum Age of Trimmers and Stokers Convention, 1921 (No.15).	November 1922	Employment of young persons as trimmers and stokers in vessels or ports prohibited.
3	Ratification of ILO, Medical Examination of Young Persons (Sea) Convention 1921 (No.16).	November 1922	Compulsory medical examination of children and young persons employed at sea provided for.
4	Enactment of Children (Pledging of Labour) Act 1933.	February 1933	Pledging of labour of children prohibited and penalty for parents/guardians pledging child labour prescribed. Employment of children below fifteen years prohibited in certain occupations.

5	Enactment of Employment of Children Act, 1938.	February 1938	Employment of children below fifteen years prohibited in certain occupations.
6	Adoption and Enactment of the Constitution of India Act by the Constituent Assembly.	November 1949	Prohibition of employment of children below fourteen years of age in factories, mines, and hazardous employment in terms of a fundamental right; and directive principles laid down against the abuse of the tender age of the children and for free and compulsory education for children up to fourteen years of age.
7	Ratification of ILO. Night Work of Young Persons (Industry) Convention (Revised) 1948 (No.90).	July 1950	Night work by children and young persons abolished.
8	Ratification of ILO, Minimum Age (Industry) Convention 1919 (No.5)	July 1950	Employment of children under fourteen years of age in public or private industrial undertaking prohibited.
9	Report of the National Labour Commission.	August 1969	Recommended combination of work with education and flexible employment hours, which would not inhibit education.
10	Ratification of ILO. Minimum Age (Underground Work) Convention 1965 (No.123)	March 1975	Employment of persons below sixteen years of age for work underground in mines prohibited.
11	Report of Gurupadaswamy Committee	December 1979	Recommended setting up of Child Labour Advisory Board; fixation of minimum age of entry to any establishment; strengthening of enforcement machinery; formulation of effective educational policy with emphasis on integration of educational requirements with local crafts.
12	Establishment of the Central Child Labour Advisory Board with labour minister as chairman.	March 1981	To review implementation of existing laws; to suggest legislative and welfare measures for working children; and to recommend to industries where child labour should be eliminated.
13	Enactment of Child Labour (Prohibition and Regulation) Act, 1986.	December 1986	Employment of children below fourteen years of age prohibited in specific occupations and processes; procedure for modification of schedule of banned occupations or processes laid down; regulation of working conditions for children in non-prohibited employment provided

			for; penalties for violation of the law provided for; and uniformity in definition of 'child' in related laws provided for.
14	Adoption of the National Child Labour Policy 1987	August 1987	Provided for a legislative action plan; focus laid on general development programmes for the benefit of working children; and formulation of project-based action plan in areas of high concentration of child labour.
15	Report of the Task Force on Child Labour set up by the Child Labour Advisory Board under the Chairmanship of Dr. L. M. Singhvi	December 1989	Recommended amendments to child labour laws and National Policy on Child Labour.
16	Report of the National Commission on Rural Labour	July 1991	Recommended enactments of Compulsory Primary Education Acts by states; creation of non-formal education centres; enhancement of outlays for elementary education guaranteed; wage employment for parents of working children; universal prohibition of child labour; media publicity against child labour.
17	Report of the study group on women and children of the II National Commission on Labour	2002	Recommended the enactment of Child Labour (Prohibition and Education) Bill.

Source: Asha Bajpai. 2006. *Child Rights in India: Law, Policy and Practice*. Delhi: Oxford University Press.

20.4.1 National Policy on Child Labour

The National Policy on Child Labour is a landmark endeavor in the progressive elimination of child labour in India. A National Policy on Child Labour has been formulated in conjunction with the legal measures to address the socio-economic issues having a bearing on child labour and to provide a framework for concrete programmes of action. The policy attempts to deal with the situation where the children work, or are compelled to work, on a regular or a continuous basis to earn wages for themselves and/or for their families, and where their conditions of work result in their being severely disadvantaged and exploited, and where abuses connected with such factors impacting on wage-employed children need to be given close attention by the state for rectification, amelioration, and regulation through specific legal and administrative instruments and measures. The policy encompasses action in the fields of education, health, nutrition, integrated child development, and employment.

The National Policy on Child Labour is set under the following three heads:

- The Legislative Action Plan.
- Focusing on general programmes for benefiting child labour, wherever possible.

- Project-based plan of action in areas of high concentration of child labour engaged in wage/quasi-wage employment.

The Government is committed to eliminate child labour in all its forms and is moving in this direction in a targeted manner. The multi-pronged strategy being followed by the Government to achieve this objective also found its echo during the recent discussions held in the Parliament on the Private Member's Bill. It was unanimously recognized therein that the problem of child labour, being inextricably linked with poverty and illiteracy, cannot be solved by the legislation alone. The ideal scenario on child welfare would be when every child enjoys the fullness of childhood through education, recreation and adequate health facilities. It is impossible to attain these facilities by the child labour. All the children were able to enjoy the completeness of childhood only:

- when the true conscience of the nation is awakened;
- when all the policy makers and the bureaucrats take the issue of child labour seriously and commit themselves to the cause of the holistic development of every child in India;
- when the employers would not even contemplate the idea of employing a child for any work which might deny the child of a normal childhood;
- when all the parents will become aware of the jeopardy of child labour and take upon themselves the duty of caring for the physical, social, psychological and mental development of the child;
- when all the policies laid down by the Government under various plans and laws were implemented properly;
- when the government and the legal personnel conduct campaigns to educate the people about the legal provisions existing for abolition of the child labour.

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) Define child-labour.

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2) What are the objectives of the CLPRA, 1986?

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- 3) Explain how CLPRA, 1986 helps in regulating the conditions of work by children.

20.5 RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION

Indian Parliament enacted the Constitution (86th Amendment) Act 2002 which aimed at making education a fundamental right. This Amendment Act has added a new Article 21-A which made education of all children up to the age of 14 years a fundamental right. It provides that the “state shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the state may, by law, determine”.

Thus, elementary education has become the right of every child. Right to education of every child is clearly a human right. Education is important as it enables the child:

- To develop and realize her/his full potential as a human being;
- To develop the ability to think, question and judge independently;
- To develop a sense of self-respect, dignity and self-confidence;
- To develop and internalize a sense of moral values and critical judgment;
- To learn to love and respect fellow human beings and nature;
- To develop civic sense, citizenship and values of participatory democracy; and
- To enable decision-making.

Education is a human right with immense power to transform. On its foundation rest the cornerstones of freedom, democracy, and sustainable human development. Education is desired for itself as it opens up a vast world of opportunities and ideas to the educated person. It is also of great instrumental value in the process of economic growth and development. Education plays a critical role in demographic transition; female education, in particular, is seen to be important in the process of economic growth and development (UNICEF, 1999). Education also plays a critical role in the process of lowering fertility and mortality. Primary schooling is associated with better health outcomes. There is a strong correlation

between literacy and life expectancy. The returns to education are large and positive. Schooling has been seen to have a positive impact on agricultural output. In political and social terms too, schooling creates an educated population and a more constructive citizenry. Education empowers and empowerment affects larger social processes (Swaminathan and Rawal, 2000, p.68). In recent decades, the importance of education has been reflected in increased budgetary allocations to basic education, compulsory schooling legislation, and widespread media attention to education and development issues.

Millions of young people growing-up around the world are unable to build decent lives for themselves because they are denied their right to education. The State of the World's Children, 1999 points out that 130 million children in the developing world are denied this right – almost two-thirds of them are girls. Denying girls their right to a quality education effectively denies them all other human rights and minimizes the chances of successive generations, particularly the chances of their daughters, to develop to their fullest potential. Thus, as the world has become more complex, school systems have expanded in both size and complexity along with the challenges they face. People see growing disparities and gaps in costs, quality, achievement and certification, and this has led to a 'crisis of confidence' in public schooling throughout much of the world.

Regarding the comprehensive details of the right of child to education in the Indian context, including the Right of Children to Free and Compulsory Education Act, 2009, you do revisit Unit-8 of Block-2 of this Course, i.e. MAEE-002.

20.6 JUVENILE JUSTICE

"So long as little children are allowed to suffer, there is no true love in the world." Justice is everybody's right. Children's justice is to be ensured by adults because they cannot lobby for themselves. As mentioned in Section 20.2 above, several measures have been taken for protection of children at international level.

The Juvenile Justice (Care and Protection of Children) Act 2000 is the primary legal framework for Juvenile Justice in India. The Act provides for a special approach towards the prevention and treatment of juvenile delinquency and provides a framework for the protection, treatment and rehabilitation of children in the purview of the Juvenile Justice System. Prior to discussing this Act, let us have a glance at the background of juvenile justice in India.

20.6.1 Background of Juvenile Justice

The Juvenile Justice Policy in India is structured around the constitutional mandate presumed in the language of Articles 15(3), 24, 39(e), (f), 45 and 47 — The constitution mandates child protection as a special provision in Article 15(3); Article 24 prevents children from working in hazardous situation below 14 years; Article 39(e), (f) provide protection of children's healthy development; Article 45 provides for the Right of Children for Free and Compulsory Education; and Article 47 prohibits the consumption of liquor and intoxicating drugs, except for medical purposes.

Indian Penal Code (1860) provides protection of children from: sexual abuse (sections 354, 375 and 509); procurement, importation and selling of minors for prostitution 366, 366A, 366B and 372); buying minors for the purpose of prostitution (Section 373); and non-consensual assault of male children (section 377).

Juvenile Justice Act, 1986 provides for criminal or quasi-criminal jurisdiction covering proceedings for both the categories of children, viz. *delinquent juveniles* as well as the *neglected juveniles*.

International covenants, such as the UN Convention on the Rights of the Child (CRC) and the UN Standard Minimum Rules for Administration of Juvenile Justice (Beijing Rules), 1985, UN Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), 1990, UN Resolution 1997 – Administration of Juvenile Justice.

20.6.2 Juvenile Justice (Care and Protection of Children) Act, 2000

The Juvenile Justice (Care and Protection of Children) Act 2000 has been enforced in the whole of India except the State of Jammu & Kashmir. On coming into force this Act has repealed and replaced the Juvenile Justice Act, 1986. The Juvenile Justice (Care and Protection of Children) Act has been enacted to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection by providing for proper care and protection and treatment, by catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their intimate rehabilitation through various institutions established under this enactment.

The Juvenile Justice (Care and Protection of Children) Act, 2000 contains five chapters accommodating 70 sections. *Chapter I* relates to the short title, extent and commencement of the Act, definitions of various terms, the expressions used therein and the continuation of inquiry in respect of a juvenile who has ceased to be a juvenile. *Chapter II*, containing 25 sections, deals with juveniles in conflict with law and the establishment, procedure and powers of Juvenile Justice Board, observation homes, and special homes for these juveniles. It also deals with custody of a child in conflict with law. It defines the provisions for bail and information to the parents or guardian. It also includes special offences in respect of juveniles and punishments thereof. *Chapter III*, containing 10 sections, deals with a child in need of care and protection. It deals with the establishment of child welfare committees, their procedure and powers. It also contains provisions regarding children's homes, shelter homes, their inspection and social auditing. Chapter IV, incorporating 6 sections, deals with the processes of rehabilitation and social reintegration, adoption, foster care, sponsorship, after-care organizations, their linkages and co-ordination. *Chapter V* contains miscellaneous provisions, link attendance, appeal, revision, transfer between various homes contribution of parents, funds, special juvenile police unit, powers of delegation, making rules and removing difficulties.

The JJ (C & P) Act applies to persons who have not completed the age of 18 years. They are referred to as children or juvenile. The term juvenile refers to those children who are either alleged to have committed an offence or found to have committed one. Within the definition of child a large number of categories 'in need of care and protection' have been included from the deprived and marginalized sections of society as well as those with different needs and vulnerabilities. Protection of the JJ (C & P) Act for the children falling under its purview may be obtained by the police, public servants, non-governmental

organizations, authorized individuals or the children themselves. The JJ (C & P) Act has made provision for the stationing a juvenile / child welfare officer in each police station and a juvenile police unit in each district. Any child who is taken charge of has either to be handed over to the special police officer or to the competent authority. The competent authority for 'children in need of care and protection' is known as the Child Welfare Committee (Committee) and for 'juvenile in conflict with law' the Juvenile Justice Board (Board). The Committee shall consist of five members among whom one shall be a woman and another expert on matters concerning children. The Board shall consist of a magistrate and two social workers, one of whom shall be a woman. All the members need to have special knowledge of child psychology and child welfare. All inquiries under the JJ (C & P) Act should be completed within a period of four months. Subject to other provisions of the JJ (C & P) Act and any rules made under it the competent authority is required to follow the summons procedure in holding inquiries. No appeal lies against a finding that the child did not need any state care or had not committed an offence. In other cases one appeal can be preferred to the court of sessions and the High Court may in any case exercise its power of revision.

The responsibility of taking care of children during the pendency of their proceedings before the Board as well as after disposal resides with Children Homes, whether established or recognized by the state government. Observation Homes are required to look after children only during the pendency of their cases before the Board. And, Special Schools are required to receive the children after disposal when so directed. A child may also be kept with parent or guardian during the pendency of proceedings, if found suitable. The following orders may be made in case of a child found to have committed an offence:

- Permission to go home after advice or admonition following an inquiry.
- With counseling of parent or guardian and the child.
- Group counseling and similar activities.
- Community service.
- Payment of fine by parent or the child if the child is above 14 years of age and earning money.
- Release on probation of good conduct under the care of parent, guardian or other fit person with or without surety for a maximum period of three years.
- Release on probation of good conduct under the care of a fit institution for not more than three years.
- Residence in a special home for not less than two years if the child is over seventeen years but less than eighteen years, and in other cases till he/she ceases to be a child.

A child found to have committed an offence cannot be sentenced to death or given life imprisonment. Nor can a child be committed to prison in default of payment of fine or furnishing security. In case of a child above the age of 16 years, on the request of a competent authority the state government may make special arrangements for his protective custody.

In relation to children in need of care and protection, the JJ (C & P) Act provides that if they have no family or ostensible support, they may be allowed to remain

in a Children Home or Shelter Home till they are rehabilitated or they attain the age of eighteen years.

Chapter IV of the JJ (C & P) Act lays down some other measures for rehabilitation and reintegration which may be undertaken for children either found to have committed an offence or found to be in need of care and protection. It provides that the process of rehabilitation and reintegration of children shall be carried out alternatively by adoption, foster-care, sponsorship and sending the child to an after-care organization. A child may be given in adoption to any family or individual irrespective of the number or gender of living biological children. Foster care may be used for short or extended period till the children may return to their own families or a permanent family is found for them. To provide additional support to families or institutions, sponsorship programmes are envisaged for the medical, educational and other needs of children that could improve the quality of their lives.

With a view to provide for better implementation and administration of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 as amended by the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006 in its true spirit and substance, the central government, in pursuance of the said provisions and in the exercise of the power conferred by the proviso to sub-section (1) of section 68 of the Juvenile Justice (Care and Protection of Children) Act 2000 makes the rules and lays down the fundamental principles to be applied in administration of juvenile justice such as: principle of presumption of innocence, principle of dignity and worth, principle of right to be heard, principle of best interest, principle of family responsibility, principle of safety (no harm, no abuse, no neglect, no exploitation and no maltreatment), principle of positive measures, principle of non-stigmatizing semantics, decisions and action, principle of non-waiver of rights, principle of equality and non-discrimination, principle of right to privacy and confidentiality, principle of last resort, principle of repatriation and restoration, principle of fresh start, among others. These principles are to be borne in mind by all the concerned stakeholders while discharging their duties under the Act.

The Supreme Court has always been sensitive and active to the problems and needs of juvenile offenders. The Constitution also mandates the Court to interpret the provisions in such a way so as to provide relief and give individualized treatment, acting more as parent's parties.

Some Relevant Cases — Important Judgements: Regarding basic rights and plight of juvenile offender, P. N. Bhagwati and R. S. Pathak, JJ., in *Munna v State of U. P.* (1982, p.546), observed that:

“Juvenile delinquency is by and large the product of social and economic maladjustment. Even if it is found that these juveniles have committed any offence, they cannot be allowed to be maltreated ...”. The Court further observed that no person under 16 years of age should be sent to jail, instead he must be detained in a Children's Home or any other suitable place of safety as the law is very concerned with ensuring that a juvenile does not come into contact with hardened criminals and his chances of reformation are not belied by contact with habitual offenders.

The Supreme Court expressed similar concern in various cases.

- In *Sheela Barse v Union of India* (1986, p.596), the Court condemned and discouraged the detention of children below 16 years in jail. In a milestone decision, the court observed: "It is a matter of regret that despite statutory provisions and frequent exhortations by social scientists, there are still a large number of children in different jails in the country ...". On no account should the children be kept in jail and if a State Government has not got sufficient accommodation in its remand homes, the children should be released on bail instead of being subjected to incarceration in jail."
- Krishna Iyer, J., in *Hiralal Malick v State of Bihar* (1977, p.44), with respect to the sentencing policy towards juvenile delinquents, observed: "The family tie of the juvenile in jail must be kept alive." He directed that the appellant who was quite a young boy when the offence was committed shall not be forced to wear the uniform of a convict provided his guardians supply his normal dress. The stand was reiterated in the case of *Phul Singh v State of Haryana* (1979, p.413) as well.
- As for determination of age, it was laid down, in *Bhola Bhagat v State of Bihar* (1997, p.720), that if the accused raises the plea that he is a juvenile and if the Court entertains any doubt about his age, it has to hold an inquiry itself for determination of his age or cause an inquiry to be held and seek a report.
- In *Bandela Aillaiah v State* (1995, p.1083), it was observed that: "The Juvenile Justice Law appears to be so emphatic and mandatory that no juvenile delinquent shall be tried for any offence charged against him or must be convicted or sentenced for such an offence. On the other hand, a special treatment should be given to him for his care and protection by way of correctional measures." But, at the same time: "It is absolutely essential and this is something which we wish to impress upon the State Governments with all the earnestness at our command that they must set up Juvenile Courts, one in each district, and there must be a special cadre of Magistrates who must be suitably trained for dealing with cases against children ..., because these cases require a different type of procedure and qualitatively a different kind of approach."

To mete out justice is a grave and critical responsibility and it becomes graver when the person in question is a juvenile. The Juvenile Justice (Care and Protection) Act, 2000 was passed promising to usher in a new era of juvenile justice, keeping in mind various international instruments ratified by the Government of India. However, the Act has paid mere lip-service to many issues which required immediate attention. Not merely a legislative but a multipronged approach of logistic support by the State and a sensitized system are needed to deal with the problems of juveniles to fulfill the objectives of law.

It can be concluded that, in spite of having such a comprehensive legislation in place, it is often left that there is an inherent risk of violation of children's right within the juvenile justice system. This can be attributed not only to the weak implementation of the legislation but also to poor awareness about the same amongst the various authorities and stake holders. There have been numerous reports to the effect that children in need of care and protection continue to

languish in poorly managed institution, while children who come in conflict with the law continue to be treated as criminals. Therefore, one cannot understand the need to have a “child-friendly” juvenile justice system with appropriate prosecutors and protocols in place for police, prosecutors, judges, protection officers and home staff, all of which are crucial to ensure the protection of “child rights” and to ensure that the system works in the best interest of the child.

The improvement of the juvenile justice system is a gradual process which requires intensive and continual follow-up as well as long-term commitment rather than a series of ‘ad hoc’ exercises and ‘knee-jerk’ responses. Training programmes should be based on participatory techniques that promote sensitization and behavioral changes among the various stake-holders responsible for the working of the juvenile justice system. Training also creates opportunities for stake-holders to interact amongst themselves and get a better understanding of the constraints and bottlenecks at various levels. It is vital for the authorities involved in the juvenile justice system to build effective partnerships with civil society. Non-Governmental Organizations (NGO’s) have the capacity to provide community-based life-skills programmes, ‘group counseling’, community work opportunities, and open ‘custody group homes’ for children in conflict with law. Voluntary sector organizations can, thus, help the governmental agencies to engineer a substantial shift towards non-custodial alternatives for corrective measures involving juveniles.

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 are two different categories of children covered under the Juvenile Justice System in India?

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20.7 NATIONAL COMMISSION FOR CHILDREN

As we all know India participated in the United Nation (UN) General Assembly summit in 1990 which adopted a declaration on Survival, Protection and Development of Children. India also acceded to the Convention on the Rights of Child, 1992 which makes it incumbent upon signatory States to take all necessary steps to protect children’s rights enumerated in the convention. In order to ensure protection of rights of children, the government has adopted the National Charter for Children, 2003. To fulfil its international commitment, the Commission for Protection of Child Right Act, 2005 was passed. It is an Act to provide for the

constitution of a National Commission and State Commissions for Protection of Child Rights and children's courts for providing speedy trial of offences against children of violation of child rights.

20.7.1 National Commission for Protection of Child Rights

Section 3 of the Act envisages the constitution of a body known as the National Commission for the Protection of Child Rights. While sections 17 provides for constitution of State Commission. These Commissions, national and state, have similar functions and powers at national and the concerned state levels, respectively.

20.7.1.1 Functions

Section 13 specifies the functions of the Commission as follows.

- 1) To examine and review the safeguards provided by or under any law for the time being in force for the protection of child rights and recommend measures for their effective implementation;
- 2) To present to the Central Government, annually and at such other intervals as the commission may deem fit, reports upon the working of those safeguards;
- 3) To examine all factors inhibiting the enjoyment of rights of children affected by terrorism, riots, torture and exploitation, disaster, domestic violence, HIV/AIDS, trafficking, maltreatment, pornography and prostitution, and recommend appropriate remedial measures;
- 4) To look into the matters relating to children in distress, marginalized and disadvantaged children without family, and children of prisoners and recommend appropriate remedial measures;
- 5) To spread child rights literacy and promote awareness of the safeguards available for protection of these rights;
- 6) To inspect or cause to be inspected any Juvenile or custodial homes, or any other institution meant for children, under the control of Central Government or any State Government or any other authority, including any institution run by Social Organizations, where children are detained or lodged for the purpose of treatment, reformation or protection and take up with these authorities for remedial action, if found necessary;
- 7) To inquire into the complaints of violation of child rights including suo motu notice and recommend initiation of proceedings with appropriate authorities of matters of:
 - Deprivation and violation of child rights;
 - Non-implementation of children laws;
 - Non-compliance with policy decisions, guidelines and instructions for ensuring child welfare; and
 - Take up the issues relating to child protection or welfare with appropriate authorities.
- 8) To study treaties and other international instruments and undertake periodical review of existing law, policies, programmes and other activities on child

rights and make recommendations for their effective implementation in the best interest of children; and

- 9) To perform such other functions as it may consider necessary for the promotion of child rights and any other matter incidental to the above functions.

20.7.1.2 Powers

The powers given to the Commission, according to the Act, include the following.

- 1) Summoning and enforcing the attendance of any person and examining them on oath;
- 2) Discovery and production of any document;
- 3) Receiving evidence on affidavits;
- 4) Requisitioning of any public record or copy thereof from any court of office;
- 5) Issuing commissions for the examination of witnesses or documents;
- 6) Forwarding any case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case has been forwarded to him under section 346 of the Code of Criminal Procedure, 1973 (2 of 1974);
- 7) The Commission may take any of the following steps upon the completion of an inquiry;
 - Where the inquiry discloses the Commission of violation of child rights of a serious nature or contravention of provisions or any law for the time being in force, it may recommend to the concerned government or authority the initiation of proceedings for prosecution or such other action as the commission may deem fit against the concerned person or persons;
 - Approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary;
 - Recommend to the concerned Government or authority for the grant of such interim relief to the victim or the members of his family as the Commission may consider necessary.

20.7.1.3 Constitution of the Commission

The constitution of National and State commissions are given under section 3 and 17 of the Act respectively. The commission consists of:

- i) A chairperson who is a person of eminence and has done outstanding work for promoting the welfare of children;
- ii) Six members, out of whom at least two shall be women, to be appointed by the central or state government (as the case may be) from amongst persons of eminence, ability, integrity, standing and experience in the field of:
 - Education,
 - Child health care, welfare or child development,

- Juvenile justice or care of neglected or marginalized children or children with disabilities,
- Elimination of child labour or children in distress,
- Child psychology or sociology, and
- Laws relating to children.

20.7.2 Children's Court

For the purpose of providing speedy trial of offences against or of violation of child right, the State government may with the concurrence of the Chief Justice of the High Court by notification under section 25 specify at least a Court to try the said offences, provided that nothing in this section shall apply if:

- A Court of session is already specified as a special Court, or
- A special Court is already constituted for such offences under any other law for the time being in force.

For every *Children's Court* the State government shall, by notification, specify a public prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a special public prosecutor for the purpose of conducting cases in the court.

20.8 LET US SUM UP

In this Unit, we have discussed the measures taken to promote children's rights and protection at international level with special reference to the Declaration of the Rights of Child, 1959, the Convention on Rights of the Child, 1989, the World Summit for Children, 1990, the UN Conference of Environment and Development, 1992, the World Conference on Human Rights, 1993 and the International Labour Organisation (ILO). We have presented the Indian perspective of the measures taken for the protection and promotion child rights and welfare by highlighting the constitutional provisions, evolution of child labour policy and the laws enacted to prohibit and regulate child labour in India. We have also touched upon the right of children to free and compulsory education, juvenile justice and the National and State Commissions available for the protection of child rights.

20.9 ANSWERS TO 'CHECK YOUR PROGRESS' QUESTIONS

- 1) National Sample Survey defines child labour or child-worker as "a person below the age of 14 years who is wage-earner". A Bangalore based organization described a child labour as "a person who has not completed fifteen years of age and is working with or without wage on a part-time or full-time basis."
- 2) The objectives of the CLPRA are as follows:
 - To ban the employment of children, i.e. those who have not completed their fourteenth year, in specified occupations and processes;
 - To lay down procedures to decide modifications to the schedule of banned occupations or processes; and

- To regulate the conditions of work of children in employment where they are not prohibited from working.
- 3) The CLPRA, 1986 has regulated the conditions of work by children by specifying them. *Hours and Periods of Work/Weekly Holidays*: The conditions regarding hours and periods of work to be performed by a child have been laid down in Section 7 of the Act, and are as follows.
 - i) No child shall be required to work in excess of hours which are prescribed for such establishments.
 - ii) No period of work shall exceed three hours.
 - iii) No child shall work for more than three hours unless he has had an interval of at least one hour.
 - iv) Inclusive of period of rest, periods of work shall not spread over six hours.
 - v) No child shall work from 7 p.m. to 8 a.m.
 - vi) There shall be no overtime for a child.
 - vii) No child shall be required or permitted to work in any establishment on any day on which he has already been working in another establishment.
 - viii) Every child shall be allowed a holiday of one whole day in each week.
 - 4) Juvenile Justice System in India contemplates the legal response with respect to two categories of children, namely, '*those who are in conflict with law*' (an individual under the age of 18 years who is accused of committing an offence) and '*those in need of care and protection*' (children from deprived and marginalized sections of society as well as those with different needs and vulnerabilities).

20.10 REFERENCES

Child Labour (Prohibition and Regulation) Act, 1986. (Bare Act).

Justice Gulab Gupta. 2002. *Human Rights and Fundamental Freedoms in India*. Bhopal: M. P. Human Rights Commission.

Kofi A. Annan. 2000. *The State of the World's Children* (See Foreword). UNICEF.

Myron Weiner. 1991. *The Child and the State in India*. Delhi: Oxford University Press.

Swaminathan, M., and Rawal, V. 2000. *Primary Education for All: India Development Report*. New Delhi: Oxford University Press.

The Commission for Protection of Child Right Act, 2005. (Bare Act).

The Juvenile Justice (Care and Protection of Children) Act, 2000. (Bare Act).

The Right of Children to Free and Compulsory Education Act, 2009. (Bare Act).

UNICEF. 1999. *The State of the World's Children*. New York.

- A. V. Chandel v Delhi University*. 1978. AIR Del 308.
- Bandela Aillaiah v State*. 1995. Cri. LJ 1083.
- Bandhua Mukti Morcha v Union of India*. 1984. AIR SC 802.
- Bhola Bhagat v State of Bihar*. 1997. (8) SCC 720.
- Gaurav Jain v Union of India*. 1997. SCC (8) 114.
- Hiralal Malick v State of Bihar*. 1977. SCC (4) 44.
- Labourers Working on Salal Hydro Project v State of J & K*. 1983. SCC (2) 181.
- M. C. Mehta v State of Tamil Nadu*. 1997. AIR SC 699.
- Mohini Jain v State of Karnataka*. 1992. AIR SC 1858.
- Munna v State of U. P.* 1982. SCC (1) 546.
- N. Bhageerathan v State*. 1999. Cri LJ 632 (Mad).
- People's Union for Democratic Rights v Union of India*. 1982. SCC (3) 235.
- Phul Singh v State of Haryana*. 1979. SCC (4) 413.
- Sheela Barse v Secretary, Children's Aid Society*. 1987. SCC (3) 50.
- Sheela Barse v Union of India*. 1986. SCC (3) 596.
- Sheela Barse v Union of India*. 1993. SCC (4) 204.
- University of Delhi v Ram Nath*. 1963. AIR SC 1873.
- Unni Krishnan J. P. and Others v State of Andhra Pradesh*. 1993. AIR SC 2178.

Suggested Readings

- Asha Bajpai. 2006. *Child Right in India: Law, Policy and Practice*. Delhi: Oxford University Press, Delhi,
- Chaudhary. R. N. 2010. *Law Relating to Juvenile Justice in India*. New Delhi: Orient Publishing Company.
- Helen Sekar. 2001. *Ensuring their childhood*. New Delhi: V. V. Giri National Institute.
- Mamta Rao. 2008. *Law Relating to Women and Children*. Lucknow: Eastern Book Company.
- Ved Kumari. 2003. "Appraisal of Juvenile Justice (Care and Protection of Children) Act, 2000", *Nalsar Law Review*.
- Ved Kumari. 2010. *The Juvenile Justice System in India: From Welfare to Right*. Delhi: Oxford University Press.
- Vijay Hansaria, and Jose, P. I. 2010. *Juvenile Justice System*. New Delhi: Universal Law Publishing Company.

UNIT 21 RIGHTS OF WOMEN

Structure

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21.0 INTRODUCTION

Hon'ble Justice K. Ramaswamy of the Supreme Court, in *Madhukiswar v State of Bihar* (1996, p.148), stated the position of women: "Half of the Indian population is women. Women have always been discriminated against and have suffered and are suffering all inequities, indignities, incongruities and discrimination in silence".

Like children, women also constitute a special social group; they too have been given special rights, privileges and protection. Therefore, in Unit-21, we will focus on these aspects of women that help in their empowerment.

21.1 OBJECTIVES

We will discuss women's rights with special reference to the position of women under international law, women's rights under various legislations in India, the special benefits available to women, and the special protection given to women by Constitution of India and the National Commission of Women.

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

- Describe the position of women under international law;
- Discuss women's rights under various legislations in India;
- Analyse the special benefits available to women in India related to maternity; and
- Appreciate the special protection given to women by the Constitution of India and the National Commission for women.

21.2 INTERNATIONAL LAW AND WOMEN'S STATUS

We all know that from the very moment of her birth, the girl child confronts a world which undervalues her existence in comparison with a boy. Girls face obstacles in their education, nutrition, health and other areas solely because of their sex. They are viewed as having a "transient presence" to be married young and then judged by their ability to procreate. As they mature into women, they are thrust into cycle of disempowerment and that is very likely to be their daughters' destiny as well. This is the position of women, in general, in the global and national (Indian) contexts.

The United Nations, from the very day of its inception in 1945 till date, has been striving to secure women's legal equality. It found that in many parts of the world the women have constantly been denied equality in law, and in practice they are also compelled to live under male-dominated world and are subjected to a variety of discriminations. The U.N. has chalked out a comprehensive programme by means of various conventions to uplift and develop the status of women in the field of education, politics and in social life. As a result, the U.N. has incorporated in several treaties and conventions many provisions to achieve equal political rights, among others, of women worldwide. These include:

- 1) United Nations Charter, 1945.
- 2) Commission on the Status of Women, 1946.
- 3) Universal Declaration of Human Rights, 1948.
- 4) International Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, 1949.
- 5) Convention on the Political Rights of Women, 1952.
- 6) Convention on the Nationality of Married Women, 1957.
- 7) Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage, 1962.
- 8) Declaration on the Elimination of Discrimination Against Women, 1967.

- 9) World Conference on Women's Human Rights, 1975.
- 10) United Nations Development Fund for Women's, 1976.
- 11) Convention on the Elimination of All Forms of Discrimination against Women, 1979.
- 12) Declaration on Elimination of Violence Against Women, 1993.
- 13) Vienna Declaration on Human Rights of Women, 1993.
- 14) Beijing Declaration, 1995.
- 15) Optional Protocol to the Convention on the Elimination of Discrimination Against Women, 1999.

We will, now, have a brief look at the essence of each of them.

21.2.1 United Nations Charter, 1945

Provisions of United Nations Charter 1945 are concerned with Human Rights of Women. Advancement of right of women has been the concern of world community since the end of Second World War. Some of the important and relevant provisions of this Charter are as follows.

- 1) In the preamble it is stated, "we the people of the United Nations are determined to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women, and of large and small nations.
- 2) In Art-1, the charter lays down that one of the purposes of the United Nations is to achieve international cooperation in solving international problems of an economic, social and cultural or humanitarian character, and in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.
- 3) Art-8 "Equality of Opportunity" of the Charter lays down that the United Nations shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs." Thus, equality of opportunity has been assured to the women in the matter of participation in the work of the United Nations.
- 4) Art-13 of the Charter lays emphasis upon promoting international cooperation in the economic, social, cultural, educational and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.
- 5) Art-55 of the Charter also lays emphasis upon the promotion of universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

Thus, the principle of equality of men and women in the matter of promotion and observance of human rights and fundamental freedom has been fully established under the charter of the United Nations.

21.2.2 The Commission on the Status of Women, 1946

It is an organization established under the United Nations system. It is a functional Commission of the Economic and Social Council (ECOSOC). In the initial period, this Commission was particularly concerned with:

- the improvement of the status of women in law, particularly private law; and
- the advancement of women's enjoyment of their rights to education, employment and health care.

The Commission on the Status of Women has done valuable work promoting the right of women in political, economic, civil, social, and educational fields and in achieving the goal of women having rights equal to those of men.

The Commission has requested the International Labour Organization (ILO) to promote the principle of equal pay for equal work and to complete a convention on this subject.

It has also requested the UNESCO to provide equal opportunities for women in education:

- Equal access to education at all levels.
- Equal economic rights and opportunities for women.
- Equal pay for equal work.
- Equality in various aspects of family law and property rights.

The Commission on the Status of Women was instrumental to the following Conventions and Declarations:

- The Convention on the Political Rights of Women, 1952.
- The Convention on the Nationality of Married Women, 1957.
- The Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage, 1962.
- The Declaration on the Elimination of Discrimination Against Women, 1967.
- The Convention on the Protection of Women & Children during Emergency and Armed Conflicts, 1974.

The Commission has served as the preparatory body for the world conferences on women, held in Mexico city (1975), Copenhagen (1980), Nairobi (1985) and Beijing (1995). It has now been assigned with "the functions of promoting the objectives of equality, development and peace, monitoring the implementation of measures for the advancement of women, and reviewing and appraising process made at the national, sub-regional, regional, sectoral and global levels.

21.2.3 Universal Declaration of Human Rights, 1948

The UDHR has been hailed as an historic event of the greatest achievements of the United Nations. The Preamble clearly declares the common standard of achievement for all the peoples and all nations. The declaration shows the importance and necessity of having faith in the fundamental human rights and dignity of individuals including men and women. In view of Jurist C. Bunch (Transforming Human Rights from a Feminist Perspective, 1995): "Human Rights Instruments and mechanisms provide avenues for challenging the systematic abuse of women, and governments can be made to take gender-based violations more seriously by being held accountable for the implementation of laws against them."

The Declaration dealt with civil and political rights of men and women in terms of equality. It also dealt with the social and economic right. The principle of equal rights of men and women has been incorporated in the Universal Declaration of Human Rights.

- **Art. 1:** All human being are born free and equal in dignity and rights.
- **Art. 2:** Everyone, without distinction of any kind such as race, colour, sex, language, religion, political or other status, is entitled to all the rights and freedoms set forth in this Declaration.
- **Art. 3:** Everyone has the right to life, liberty and security of person irrespective of the country of territory he/she belongs to.
- **Art. 4:** Prohibition of slavery and slavery trade.
- **Art. 5:** Prohibition of torture, cruel, inhuman or degrading treatment or punishment.
- **Art. 6:** Right to be recognized as person before law.
- **Art. 7:** Emphasises that all are equal before the law and are entitled, without any discrimination, to equal protection of law.
- **Art. 10:** Right to a full equality to a fair and public hearing by an independent and impartial tribunal.
- **Art. 11:** Right to education, without any discrimination.
- **Art. 13:** Freedom from arbitrary interference with privacy, family, home and correspondence or attack on honour or reputation and right to protection by law against such interference.
- **Art. 14:** Right to freedom of movement and residence within the borders of the state.
- **Art. 15:** Right to leave any country, including his/her own, and to return to his/her country.
- **Art. 16:** Right to seek and enjoy in other country asylum from persecution in respect of political crimes.
- **Art. 17:** Freedom from arbitrary deprivation of nationality and to change nationality (right to a nationality).
- **Art. 18:** Right to marry with the free and full consent and to found a family and equal rights to men and women as to marriage, during marriage and at its dissolution.
- **Art. 19:** Right to own property and freedom from arbitrary deprivation of property.
- **Art. 20:** Right to freedom of thought, conscience and religion.
- **Art. 21:** Right to freedom of opinion and expression.
- **Art. 22:** Right to freedom of peaceful assembly and association.
- **Art. 23:** Right to take part in the government of the country.

- **Art. 24:** Right of equal access to public services in the country.
- **Art. 25:** Right to social security and the right to realization of the economic, social and cultural rights.
- **Art. 26:** Right to work and favourable conditions of work.
- **Art. 27:** Right to equal pay for equal work.
- **Art. 28:** Right to just and favourable remuneration.
- **Art. 29:** Right to form and to join trade unions.
- **Art. 30:** Right to rest and leisure.
- **Art. 31:** Right to living wages, adequate for the health and well-being of himself/herself and his/her family.
- **Art. 32:** Right of all children to enjoy same social protection.

Legal effect of the Declaration (i.e. the UDHR, 1948) is a proclamation of the U.N. providing common standard of achievement. It recognized the inherent dignity and equality among the people, i.e. men and women. The concept of human rights mentioned in the proclamation is universal, indivisible, interdependent and interrelated. It is the duty of the states to promote and protect the social, political, civil and economic rights of all human beings. The said proclamation was not meant to be legally binding and therefore it did not impose any legal obligation on the state to give effect to its provisions. The nature of provision as contemplated in the said proclamation is only recommendatory and it was not strictly binding on the states.

21.2.4 International Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, 1949

It emphasized that the prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community. Subsequently, with respect to the suppression of the traffic in women and children, several international instruments have also come into force.

21.2.5 Convention on the Political Rights of Women, 1952

This convention intends to implement the principle of equality of rights for men and women on equal terms.

- i) *The right to vote:* Art. I of the convention lays down that the women shall be entitled to vote in all elections on equal terms with men without any discrimination.
- ii) *Eligibility for election:* Art. II of the convention provides that women shall be eligible for election to all publicly elected bodies established by national law on equal terms with men and without any discrimination.
- iii) *The right to hold public office:* Women shall be entitled to hold public office and to exercise all public functions, established by national law, on equal terms with men and without any discrimination.

21.2.6 The Convention on the Nationality of Married Women, 1957

This convention provides for determination of nationality of a married woman in the context of marriage and also of its dissolution.

21.2.7 Convention and Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage, 1962

It aimed at prohibiting child marriage and at safeguarding the principle of free consent to marriage. No marriage shall be legally entered into without the full and free consent of both parties, such consent to be expressed by them in person after due publicity and in the presence of the authority competent to solemnize the marriage and of witnesses, as prescribed by law. State parties to this Convention shall take legislative action to specify a minimum age for marriage. No marriage shall be legally entered into by any person under the so specified age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses. All marriages shall be registered in an appropriate official register by the competent authority.

21.2.8 Declaration on the Elimination of Discrimination Against Women, 1967

Declaration on the Elimination of Discrimination Against Women (DEDAW) united in a single instrument the principles and standards relating to the rights of women in all spheres of family life and society. It was adopted unanimously by the General Assembly on 7th November 1967. In the preamble to the Declaration, it has been laid down that as the discrimination against women has continued to exist even after the charter of the United Nations, the Universal Declaration of Human Rights and other Instruments and the progress made in the matter of equality of rights, it becomes necessary to make this Declaration in order to attain equality of rights of men and women, and the Elimination of discrimination based on sex. It emphasises the following.

- 1) That the discrimination against women, denying or limiting their equality of rights with men is fundamentally unjust and constitutes an offence against human dignity.
- 2) That the existing laws, customs, regulations and practices which are discriminatory against women must be abolished. The adequate legal protection for equal rights of men and women must be provided. The international Instruments of the U. N. and specialized agencies relating to the elimination of discrimination against women and their full implementation must be ratified or accede to, as soon as possible.
- 3) Appropriate measures shall be taken to generate public opinion towards the eradication of prejudice against women.
- 4) That all appropriate measures be taken to ensure to women on equal terms with men and without any discrimination the right to vote in all elections and be eligible for election to all publicly elected bodies and the right to hold public office and to exercise all public functions.

- 5) That woman shall have the same rights as men to acquire, change or retain their nationality and that marriage to an alien shall not automatically affect the nationality of the wife.
- 6) That all appropriate measures, particularly legislative measures, shall be taken to ensure to women, married or unmarried, equal rights with men in the field of civil law, e.g. property, marriage, children, etc.
- 7) That all provisions in Penal Code which constitute discrimination against women shall be repealed.
- 8) That all appropriate measures shall be taken to ensure to girls and women, married or unmarried, equal rights to seek education at all levels.
- 9) That all appropriate measures shall be taken to ensure to women equal rights with men in the field of economic and social life.
- 10) That all appropriate measures shall be taken to combat all forms of traffic in women and exploitation of prostitution of women.
- 11) That child marriage and the brothel of young girls before puberty should be prohibited.
- 12) That equal protection in employment and professional advancement shall be ensured.

21.2.9 Convention on the Elimination of all Forms of Discrimination Against Women, 1979

General Assembly adopted this Convention (CEDAW) on December 18, 1979. The State parties to this Convention determined to implement the principles set forth in the preceding declaration and for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations. The term “discrimination against women” means any distinction, exclusion or restriction made on the basis of sex which has the effect of impairing enjoyment by women irrespective of their marital status, on a basis of equality of men and women, of human rights in the political, social, cultural, civil or any other field.

The specialized agencies have to be established in order to achieve the fundamental objectives of the conventions and the efforts should be made to root out all the forms of discrimination between men and women, as discrimination of any kind is a sure obstacle to the participation of women with men.

The State parties to the Convention were fully convinced that discrimination is an important factor causing obstruction in the development and advancement of women with men at national and international levels. It was realized that to achieve equality of women with men it is indispensable to bring awareness in the society across the world because it is needed most in the present scenario.

21.2.10 Declaration on Elimination of Violence Against Women, 1993

This declaration is the first of its kind which exclusively dealt with the elimination of violence against women and intends to protect the fundamental right of freedom of women.

Art. 1 of the said Declaration provides as under: Any act of gender-based violence that results in or is likely to result in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life should be eliminated. Violence is not only physical or sexual harm to women, but also psychological harm caused to women.

Following are the World Conferences on Human Rights which are worth noting, particularly the Vienna Conference.

- 1) First Conference held at Mexico City (1975): Focussed on equality, development and peace at the international level.
- 2) Second world conference (1980) was held in Copenhagen: Focused on education, employment and health for all.
- 3) Third World Conference at Nairobi (1985): Reviewed and assessed the achievements during the period commencing from the year 1976 to 1985.
- 4) Fourth at Vienna, 1993: Took up 23 varieties of points covering aspects such as AIDS, aging, refugee and displaced women, poverty and apartheid. Pledged unanimously on the Elimination of Violence against Women and also realized that it is a major hurdle to the achievement of equality, development and peace. It was for the first time that the subject of physical, sexual and psychological violence against women was addressed vehemently.

21.2.11 Beijing Declaration, 1995

In September, 1995 the Forth World Conference on Women was held in Beijing, China. The outcome of this Conference was a '*Platform for Action*' that emphasized the human rights of women and the need to mainstream a gender perspective in all sections and at all levels of policy-making and planning to achieve gender equality. The Platform for Action recommended action in *twelve areas* of concern as these areas were considered then hurdle in the women's advancement. These areas of concern are: poverty, education, health, violence, armed and other conflicts, economic participation, power, sharing and decision-making, national and international machineries, human rights, mass media, environment and development of the girl child.

21.2.12 United Nations Development Fund for Women, 1976

United Nations Development Fund for Women (UNIFEM) provides financial and technical assistance to innovative programmes and strategies that foster women's empowerment. It is the women's fund at the United Nations dedicated to advancing women's rights and achieving gender equality. UNIFEM works on the premise that it is the fundamental right of every woman to live a life free from discrimination and violence, and that gender equality is essential to achieving development and to building just societies.

21.2.13 Optional Protocol to the Convention on the Elimination of Discrimination Against Women, 1999

By means of this protocol it was realised by the State parties to the Convention on the Elimination of all Forms of Discrimination Against Women, 1979 that there is an urgent need to gear up by all adequate means to ensure full and equal

enjoyment of freedom by women of all human rights. In this context, India, which is one of the signatories to the Protocol, has shown the Parliamentary Endeavour in the relevant field. As a result, in the year 2005, the Parliament has passed the enactment called the Protection of Women from the Domestic Violence Act, 2005.

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) Highlight some of the important provisions of United Nations Charter, 1945 relating to women.

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- 2) Explain the relevance of U. N. Commission on the Status of Women.

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- 3) What is the meaning of the term ‘discrimination against women’ under the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), 1999?

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21.3 WOMEN'S RIGHTS AND THEIR PROTECTION IN INDIA

Prior to focusing on various legislations relating to women in India, we need to understand the status of women vis-a-vis the international conventions, etc., discussed above.

Status of India vis-a-vis International Conventions: India is a signatory to most of the aforesaid international Instruments. The Indian Constitution, which came into force from 26th January, 1950, has also adopted the various rights that have been mentioned under the international Conventions, and given them the status of fundamental rights in part III. The various rights that have been included are: the right to equality (Art. 14), freedom of speech and expression in various forms (Art. 19), Right to life and personal liberty (Art. 21), right to practice one's own religion (Art. 25), etc. Further, though any of the aforesaid conventions do not have any binding value, the courts have time and again relied on such conventions and have used them while delivering judgments in cases such as *Keshavanand Bharti v State of Kerala* (1973, p.1461). In this case, the Supreme Court observed that the Universal Declaration of Human Rights, 1948 may not be a legally binding instrument but it shows how India understood the nature of human rights at the time Constitution was adopted. Thereafter, on several occasions the Supreme Court clarified that a number of Indian Constitutional provisions are similar to the provisions contained in the Declaration and the provisions of the Declaration can be referred while constructing judicial pronouncements and interpreting the Indian Constitutional provisions.

Rights of women as provided for in the Constitution of India are given in brief below.

21.3.1 Rights Guaranteed to Women under the Constitution

Our Constitution, the fountain head of all laws and the organic law of the land, recognizes equality of the sexes and prohibits discrimination on the basis of sex. There are many other constitutional privileges that are available to women. All provisions of the constitution are applicable in equal measure to men and women and can, therefore, be invoked by the women for assertion of their rights. It also provides legislation to be made to confer more rights on women by making special provisions. Further, there are many constitutional privileges that are available to women.

Part III of the Constitutions, consisting of Article 12 to 35, relating to Fundamental Rights, is considered the 'heart' of the constitution. The fundamental rights are regarded as fundamental because they are most essential for the attainment by the individual of his full intellectual, moral and spiritual status.

Part III and Part IV provide the backbone of legislature for socio-economic emancipation of women. These are the foundations on which protective legislations for women have been designed.

The essence of these constitutional provisions along with relevant and important cases is presented below so as to highlight their significance in protection and promotion of women's rights and privileges.

- **Art.14: Right to Equality:** It enunciates the general principle of right to equality and prohibits the State from denying to any person “equality before the law or the equal protection of laws.” Thus, it provides equality before law for women. The underlying principle of Art.14 of the Constitution of India is reflected in the statement, “like should be treated alike and not that unlike should be treated alike.” Therefore, amongst equals, law should be equal and should be equally administered. It recognizes “women” as a class and declares this “class” to be different from men as a class. In the case of *Chitraghosh v Union of India* (1970, p.35), the Court permits reasonable classification, yet classification based on sex is not permissible. Other relevant and important cases are: i) *Uttarkhand Mahila Kalyan Parishad v State of UP* (1992, p.1695) – on differential treatment between man and woman in educational department; ii) *Air India International v Nargesh Meerza* (1981, p.1829) – on discriminatory service conditions.
- **Article 15: It prohibits discrimination on ground of religion, race, caste, sex or place of births:** Article 15(3) empowers the State to take affirmative measures for women, based on protective discrimination principle. It permits making special provision for women and children by the State and the Courts have upheld the validity of special measures in legislation or executive orders favoring woman. In particular, provisions in the criminal law, in favor of woman or in the procedural law discriminatory in favor of woman, have been upheld. Important cases are: i) *Smt. Savitri v Bose* (1972, p.305) – granting license for opening liquor shop, Art. 15 (3) advantage; ii) *Dattatraya v State of Bombay* (1952, p.181) – Educational Institution can be establish exclusively for woman.
- **Article 16: Equality of opportunity in matters of public employment:** It ensures equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. It is an extension of the goal of “equality of status and opportunity”. Important and relevant cases are: i) *Randhir Singh v Union Of India* (1982, p.879) – upheld the principle of equal pay for equal work; ii) *Uttarkhand Mahila Kalyan Parishad v State of U. P.* (1992, p.1695) – difference in pay scales of male and female employees.
- **Article 19: Right to Freedom:** 19 (1)(g) gives protection to certain rights regarding freedom of speech, etc., to practice any profession, or to carry on any occupation, trade or business. Important and relevant cases are: i) *Vishaka v State of Rajasthan* (1997, p.3011) – The Supreme Court laid down exhaustive guidelines to prevent sexual harassment of working women at their working place; ii) *Delhi Domestic working Woman's Forum v Union of India* (1995, p.14) – The Supreme Court called for protection to the victims relating to rape and violence against working woman.
- **Article 21: Protection of life and personal liberty:** No person shall be deprived of his/her life or personal liberty except according to procedure established by Law. Important and relevant cases are: i) *State of Maharashtra v Madhukar Narain* (1991, p.207) – the Court held that woman of easy virtue is entitled to privacy; ii) *State of Punjab v Gurmit Singh* (1996, p.998) – rape trial must be held in-camera; iii) *Bodhi Satwa Gautam v Subra Chakraborty* (1996, p.490) – The right to life also includes the right to live with human dignity and rape violates this right of woman.

- **Article 23: Right Against Exploitation:** It prohibits traffic in human beings and forced labour. Traffic in human beings means selling and buying human beings as slaves and also includes immoral traffic in woman and children for other purpose.

To curb the deep rooted social evil of prostitution and to give effect to this Article the Parliament has passed *the Immoral Traffic (Prevention) Act, 1956*. Important and relevant cases are: i) *Vishal Jeet v Union of India* (1990, p.1412) – prohibited prostitution; ii) *Gaurav Jain v Union of India* (1997, p.3021) – the Supreme Court has placed emphasis on the need to provide to prostitute opportunities for education and training so as to facilitate their rehabilitation; iii) *Sanjit Ray v State of Rajasthan* (1983, p.328) – held that the payment of wage less than the prescribed under the minimum wages Act amounts to forced labor or beggary; iv) *Neeraj Choudhary v State of M.P.* (1984, p.328) – compelling to work in unhygienic conditions amounted to violation of Art. 21 and Art. 23; v) *Laxmi Kant v Union of India* (1984, p.469) – selling the female infants and girls to foreigners under the guise of inter-country adoption and marriage violates Art.23. Guidelines laid down for foreign adoption.

- **Article 39** enjoins the State to provide an:
 - ✓ adequate means of livelihood to men and women,
 - ✓ equal pay for equal work, and
 - ✓ men and women not forced by economic necessity to enter avocations.

To give effect to this Article, the parliament has enacted *the Equal Remuneration Act, 1976* which provides for payment of equal remunerations to men and woman workers. Important and relevant cases are: i) *Randhir Singh v Union of India* (1982, p.879; ii) *Mackinnon Mackenzie and Co. Ltd. v Andrey D' Kosta* (1987, p.1281) – upheld equal pay for equal work (Stenographers).

- **Article 42: State to ensure the provision for just and humane conditions of work and maternity relief:** The State shall make provision for securing just and humane conditions of work and for maternity relief. Legislations which promoted the objectives of this Article are:
 - 1) Workmen's Compensation Act, 1923.
 - 2) The Employees State Insurance Act, 1948.
 - 3) The Minimum Wages Act, 1948
 - 4) The Maternity Benefit Act, 1961.
 - 5) The payment of Bonus Act, 1965.

Important and relevant cases are: *Municipal Corporation of Delhi v. Female workers (Muster Roll)* (2000, p.1274) – held that the maternity benefit extends even to daily wage employees.

- **Article 44: Uniform Civil Code:** The State shall endeavor to secure for the citizens a Uniform Civil Code throughout the territory of India. Important and relevant cases are: i) *Mohd. Ahmed Khan v Shah Bano Begum* (1985.

p.945) – Sec 125 of Cr.P.C. Act. After this case, the Muslim Women (Protection of Rights on Divorce) Act, 1986 was enacted.

- **Article 46:** The State to promote with special care the educational and economic interests of the weaker sections of the people and to protect them from social injustice and all forms of exploitation.
- **Article 51-A(e): Fundamental duties** – It shall be the duty of every citizen of India to renounce practices derogatory to the dignity of woman. This provision found its manifestation through the enactment of The Indecent Representation of Woman Prohibition Act, 1986.
- **Article 243D and Article 243T** have been added to the Constitution by the 73rd and 74th Amendments. 81st Amendment Bill reserves 1/3 of seats for woman in the Lok Sabha and the State Assemblies.
 - **Article 243D:** Reservations of seats for women belonging to SC & ST in every panchayat – not less than 1/3 of the total number of seats. Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat to be reserved for women and such seats to be allotted by rotation to different constituencies in a Panchayat (Article 243D(3)). Not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level to be reserved for women (Article 243D(4)).
 - **Article 243T:** Reservations of seats for women belongs to SC and ST in every municipality, not less than 1/3 of the total number of seats. Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality to be reserved for women and such seats to be allotted by rotation to different constituencies in a Municipality (Article 243T(3)). Reservation of offices of Chairpersons in Municipalities for the Scheduled Castes, the Scheduled Tribes and women in such manner as the legislature of a State may by law provide (Article 243T(4)).

Further, the Constitution of India has provided in Part IV the Directive Principles of State Policy. These directives impose certain obligations on the State to take positive action in some circumstances that can promote the welfare of the people. Nevertheless, it can be concluded that despite the Constitutional safeguards and the active judicial support towards the women, the status of women is not yet equal to men. Laws written in black and white are not enough to combat the evils. It is expected that the courts should deal with cases relating to women in a more realistic manner. A socially sensitive judge should handle the cases of crimes against woman. Awakening of the collective consciousness is the need of the day to rise the status of women.

21.3.2 Specific Legislations and Policies Related to Women: An Overview

The State (India) has enacted various legislative measures intended to ensure equal rights to women, to counter social discrimination and various forms of

violence and atrocities against them and to provide support services, especially to working women, to uphold the constitutional mandate. Although all laws are not gender specific, the provisions of law significantly affecting women have been reviewed periodically and amendments have been carried out to keep pace with the emerging requirements. Some Acts which have special provisions to safeguard women and their interests are:

- The Employees State Insurance Act, 1948
- The Plantation Labour Act, 1951
- The Special Marriage Act, 1954
- The Hindu Marriage Act, 1955
- The Hindu Succession Act, 1956
- Immoral Traffic (Prevention) Act, 1956
- The Maternity Benefit Act, 1961
- Dowry Prohibition Act, 1961
- The Medical Termination of Pregnancy Act, 1971
- The Contract Labour (Regulation and Abolition) Act, 1976
- The Equal Remuneration Act, 1976
- The Child Marriage Restraint (Amendment) Act, 1979
- The Criminal Law (Amendment) Act, 1983
- The Family Courts Act, 1984
- The Factories (Amendment) Act, 1986
- Indecent Representation of Women (Prohibition) Act, 1986
- Commission of Sati (Prevention) Act, 1987
- Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994
- Protection of Women from Domestic Violence Act, 2005
- Prohibition of Child Marriage Act, 2006

Thus, the State took measures to enact, amend or abolish specific legislations and policies affecting or discriminating against women and to facilitate effective participation of women. These, in nutshell, include the following.

A) *Labour Laws relating to Women*

- 1) *The Factories Act, 1948*: Section 34 provides that the State government can lay down rules prescribing weights that may be carried by men and women.
- 2) *The Contract Labour (Abolition and Regulation) Act and Rules*: Prescribed separate provision of utilities for women and fixed working hours (These laws have proper implementation mechanisms; however, there is no provision for monitoring the effect of these laws on women. Further, allowance for special provisions for women has often proven to be detrimental to their employment opportunities).

- 3) *Maternity Benefit Act, 1961*: It provides measures and benefits to women in service during pregnancy.
- 4) *Equal Remuneration Act, 1976*: It mandates equal pay for equal hours of work for men and women.

B) Trafficking

- 1) *Immoral Traffic Prevention Act, 1956*.

C) Domestic Violence

- 1) *Criminal law*: Section 498A.
- 2) *Protection of Women from Domestic Violence Act, 2005 & Rules*: It is a civil law on domestic violence. It gives protection to women by providing shelter, custody, medical facilities, compensation, etc. The cases under it are disposed in 60 days. Protection officers and service providers are appointed under this Act to help the women victims.

Problems in implementation: Followings are some of the problems in implementation.

- Despite specific provisions under PWDVA, Protection Officers have yet not been appointed in all states. States that have identified Protection Officers have “deputed” officials as opposed to the required “full-time” appointments.
- Despite legislations mandating provisions of legal aid, women are often unable to avail of the services. Services are also often inadequate and not of quality. High cost of litigation deters court action by women. Lack of awareness of rights amongst community prevents women from taking or sustaining action. Inadequate responses and lack of co-ordination by multiple agencies in combating violence and discrimination are other problems.

D) Dowry

- 1) *Dowry Prohibition Act, 1961*: Prohibits giving and taking of gifts or money at the time of marriage.

E) Sex Determination and Abortions

- 1) *Pre-conception and Pre-natal Diagnostic (Prohibition of Sex Selection) Act, 1994*: It requires the following bodies to undertake publicity efforts and allows for the filing of compliance reports on a regular basis:
 - Policy-making Bodies at the Centre and State.
 - Implementing Authorities at State, District and Sub-district levels.
 - Advisory Bodies at State, District and sub-district levels.
- 2) *Medical Termination of Pregnancies Act 1971*: Prescribes guidelines and procedures to the medical fraternity with regard to abortion.
 - Despite legislations on sex selective practices, use of technology in conducting pre-natal sex selection continue to support female foeticide. Lack of enforcement of the legislations coupled with inadequate recognition of equal rights of women serve in continuance of such sex discriminatory practices.

F) Sexual Harassment

- 1) *Indian Penal Code: Section 354 - Outraging the modesty of a woman:* Criminalizes all non-penetrative sexual offences against women and is often used in cases of sexual harassment.
- 2) *Supreme Court Guidelines on the prevention of sexual harassment at workplace (Visakha v State of Rajasthan):* Prescribes preventive steps and provides for a complaints mechanism through setting up of complaint committees and disciplinary action.
- 3) *Proposed Bill on Sexual Harassment at workplace:* This bill provides for prevention and redressal mechanisms in cases of sexual harassment at work places.
- 4) *Personal Laws:* Personal laws are based on religious practices. It deals with marriage, property rights, guardianship, custody rights and maintenance. Some of the personal laws are codified, and some are uncoded. Customary practices of communities are recognized under Law.
 - *Madhu Kishwar v State of Bihar* (1996, p.125): Challenged a tribal law dis-entitling tribal women from inheriting land as being discriminatory. The court struck down the discriminatory provisions and ruled that women could assert a right of occupation against male inheritors but not alienate it.
 - *Daniel Latifi Case* (2001, p.740): Challenged discriminatory provisions on maintenance for Muslim women. Although the court did not strike down the law, it held that unless Muslim women are paid not just a provision for the iddat period (three months) but a reasonable and fair provision for life, the provision would be liable to be struck down. The advantage of the challenge was to gain substantial rights to maintenance for Muslim women.

Obstacles to implementation: Personal laws relating to marriage, divorce and inheritance governed by laws of the specific community overshadow constitutional guarantees of equality. Discriminatory provisions under personal laws deny women equal protection or equality before the law. Some of the discriminatory practices are: triple talaq practice giving unilateral power of divorce to men; Hindu women have the right to guardianship only in the absence of the male guardian, discriminatory property rights under Hindu laws persist even after amendments. However, fact is that, none of the discriminatory personal laws have been struck down in entirety on the basis of violating fundamental rights of women.

G) Political Participation

- 73rd and 74th Amendments to the Constitution had given reservations for women in Panchayats and Municipal Bodies (local governments). Panchayati Raj Acts have been passed by several State governments giving effect to the Constitutional provisions.

21.3.3 Protection of Women under Criminal Laws

Women have a right to protect their person or body from being violated by men. Women belong to weaker section of the community, and in most circumstances unable to secure their person and honours and need keen and immediate relief from the courts in such matters.

Under the Indian Penal Code, there are certain offences against women which are punishable with imprisonments of description for different terms or with fine or with both. These offences are covered under relevant sections of IPC, mentioned, in brief, below.

- **Section 312 — Causing miscarriage:** Whosoever voluntarily causes a women with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished. A woman who causes herself to miscarry also falls within the meaning of this section.
- **Section 313 — Causing miscarriage,** defined in the preceding section, *without women's consent.*
- **Section 314 — Death caused by act done with intent to cause miscarriage.**
- **Section 315 — Act done with intent to prevent child being born alive or to cause it to die after birth.**
- **Section 316 — Causing death of quick unborn child by act amounting to culpable homicide.**
- **Section 354 — Outraging the modesty of women:** The test of the outrage of modesty must be whether a reasonable man will think that the act of the offender was intended to or was known to be likely to outrage the modesty of a woman.
- **Section 375 — Rape:** A man is said to commit 'rape' if he has sexual intercourse with a women under circumstances falling under any of the six following descriptions:
 - i) Against her will;
 - ii) Without her consent;
 - iii) With her consent (fear of death or hurt);
 - iv) With her consent not his wife (lawfully married).
 - v) With her consent (unsoundness of mind and intoxication).
 - vi) With or without her consent, when she is under 16 years of age.

Explanation: Penetration is sufficient to constitute the sexual intercourse. Sexual intercourse includes that by a man with his own wife if his wife is within fifteen years of age.

- **Section 376(2)(g) — Gang Rape:** Where a women is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section.
- **Section 376-A: Intercourse by a man with his wife without consent during separation.**

- **Section 376-B:** Intercourse by public servant with woman in his custody.
- **Section 376-C:** Intercourse by superintendent of jail, remand home, etc.
- **Section 376-D:** Intercourse by any member of the management or staff of a hospital with any woman in that hospital (advantage of his official position).
- **Section 493:** Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.
- **Section 494:** *Marrying again during lifetime of husband or wife:* This section does not extend to any person whose marriage with such husband or wife has been declared void by a court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife if such husband or wife at the time of the subsequent marriage shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage, shall before such marriage takes place informs the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.
- **Section 495:** *Offence under Section 494 committed with concealment of former marriage from person with whom subsequent marriage is contracted.*
- **Section 496:** *Marriage ceremony fraudulently gone through, without lawful marriage.*
- **Section 497:** *Adultery:* Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man without the consent or connivance of that man such sexual intercourse not amounting to the offence of rape is guilty of the offence of adultery.
- **Section 498:** *Enticing or taking away or detaining with criminal intent a married woman.*
- **Section 498-A:** *A husband or relative of husband of a woman subjecting her to cruelty.*

For the purpose of this section cruelty means:

- a) Any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger of life, limb or health (whether mental or physical) of the women; or
- b) Harassment of the women where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

In addition to the above, **Section 113-A of Indian Evidence Act, 1872** provides that when a married woman commits suicide within a period of seven years from the date of her marriage, the court may presume that such suicide is abetted by the husband or his relations and the burden of proving that it was not dowry-death is on the husband and his relatives as the case may be.

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) How far is Protection of Domestic Violence Act, 2005 an effective legislation?

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21.3.4 Maternity Protection under Maternity Benefit Act, 1961

The Maternity Benefit Act, 1961 is an employer's liability scheme. 'Employer's liability' here implies that the employer solely bears the full amount of liability for providing maternity protection to pregnant employees and the employees are not required to make any contribution for availing of the maternity benefits. This is a Central Act and covers the whole of India. It aims to impart social justice to women employees. It protects the dignity of motherhood by providing for full and healthy maintenance of the woman employee and her child during the period of her confinement.

The Maternity Benefit Act, 1961 also aims at regulation of employment of women in certain establishments for certain periods before and after birth of the child and to provide maternity benefit and certain other benefits and facilities to the women employees such as paid-maternity leave, cash benefits, exemption from arduous work, protection from dismissal, and nursing breaks to the pregnant women employees in a dignified manner so that they may overcome the state of motherhood honorably, peaceably and undeterred by the fear of being victimized for forced absence during the pre- or post-natal period. Indeed, this is a major legislative enactment providing for maternity benefits in the formal sector.

In the case of *B. Shah v Labour Court, Coimbatore* (1978, p.12), the Supreme Court, while interpreting the provisions of maternity benefit legislation, stated:

"the beneficent rule of construction which would enable the woman worker is not only to subsist but also to make-up her dissipated energy, nurse her child, preserve her efficiency as a worker and maintain the level of her previous efficiency and output".

The Maternity Benefit Act, 1961 applies to every establishment, being a factory, mine, or plantation including any such establishment wherein persons are employed for the exhibition of aerobatics, equestrian, and other performances. It was amended in the year 1988 to extend its application to the shops and establishments employing ten or more. This Act also covers those establishments, which are covered under the enabling provisions of the Act in different states.

Significantly, there is no wage limit for coverage under the Maternity Benefit Act, 1961, which covers all women in the applicable establishments. It is not applicable to the employees working in factories and other establishments, which are covered by the Employees' State Insurance Act, 1948.

Quite noteworthy feature is that the Maternity Benefit Act, 1961 does not mandate that a woman employee be married to avail of these benefits. The act prohibits any woman from working in an establishment during the six weeks after her delivery or miscarriage. Also, the employers are forbidden to knowingly employ women during this period and employed women are required to take a paid leave of six weeks.

This Act enshrines that a woman shall be entitled to the maternity benefit for a maximum period of 12 weeks of which not more than six weeks shall precede the date of her expected delivery. If a woman employee could not avail of six weeks' leave preceding the date of her delivery, she was entitled to only six weeks' leave following the day of her delivery. However, by virtue of an Amendment in 1989, the position has changed. Now, in case a woman employee does not avail six weeks' leave preceding the date of her delivery, she can avail of that leave following her delivery, provided the total leave period, that is, preceding and following the day of delivery of her delivery does not exceed 12 weeks. The possibility for women to choose how they wish to divide up their maternity leave on a pre-natal and post-natal basis appears to be in the interests of a better harmonization of work and family responsibilities.

In this context, it is worth mentioning that the ILO Maternity Protection Convention, 2000 (No.183) stipulates a period of maternity leave of not less than 14 weeks while the ILO Maternity Protection Recommendation, 2000 states that the members should endeavor to extend the period of maternity leave to at least 18 weeks. Interestingly, the pregnant women employees working in the Central Government are entitled to maternity leave of 135 days whereas the pregnant women under the Employees' State Insurance Act, 1948 the Maternity leave is up to a maximum of 12 weeks only.

Apart from this, women who suffer from illness arising out of pregnancy, delivery, premature birth, or miscarriage have the right to take an extra month's paid leave. In case of miscarriage, a woman shall, on production of such proof as may be prescribed, be entitled to leave with wages at the rate of maternity benefit for a period of six weeks immediately following the day of her miscarriage. Whereas a woman employed in the Central Government, in case of miscarriage/abortion (induced or otherwise), is entitled to a total leave of 45 days in the entire service period (excluding such leave taken prior to 16 June, 1994).

Maternity Benefit Act, 1961 is also applicable to casual workers and daily wage workers. In *Municipal Corporation of Delhi v Female Workers* (2000, p.1274), the Supreme Court declared that there is nothing in the Maternity Benefit Act which entitles only regular women employees to the benefit of maternity leave and not those who are engaged on casual basis or on muster roll on daily-wage basis. Also, in a very recent case, *Anima Goel v Haryana State Agricultural Marketing Board* (2007, p.479), the Punjab and Haryana High Court held that even when a female employee is engaged on contractual basis, she would be entitled to maternity benefit under Section 5 of the Maternity Benefit Act, 1961.

The Act lays down that every woman shall be entitled to the maternity benefit and her employer shall be liable for payment to the woman worker at the rate of average daily wages for the period of her actual absence immediately preceding and including the day of her delivery and for six weeks immediately following that day. In this regard, it is noteworthy that without making any contributions whatsoever the pregnant woman is entitled to derive maternity benefits provided she has worked for not less than 80 days in the establishment during the 12 months preceding the day of her expected delivery whereas under the Employees' State Insurance Act, 1948 a woman employee, to be eligible for the maternity benefits, must have paid weekly contributions for not less than 13 weeks in the contribution period. In addition, every woman entitled to maternity benefit shall also be allowed a medical bonus of Rs.1,000, if there was no pre-natal confinement and post-natal care is provided by the employer free of cost. The Central Government may, before every three years, by notification in the official Gazette, increase the amount of medical bonus of Rs.20,000. If any woman who has been allowed to go on maternity leave, works in any other establishment for any period during the authorized leave, then her claim to the maternity benefit for such period worked shall be forfeited. In case a woman employee dies during the period when the maternity benefit is due to her, she is entitled to benefits up to including the day of her death. However, if she bears a child that survives her, the employer is obliged to pay benefits up to six weeks after delivery or as long as the child survives whichever is less. In such eventuality, the payment is to be made to the person she has nominated or if no one is nominated, to the legal representative.

However, no woman employee under the Maternity Benefit Act, 1961 shall be entitled to the maternity benefit unless she has actually worked in an establishment of the employer from whom she claims maternity benefit for a period of not less than 80 days in the twelve months immediately preceding the date of expected delivery. In *Bharati Gupta (Mrs) v Rail India Technical and Economical Services Ltd.* (2005, p.1108), the court held that the female employee on contractual appointment, having worked for 80 days will be entitled to maternity benefits. For calculating the number of days on which a woman has actually worked during the preceding twelve months, the days on which she has been laid off or was on holidays with wages shall also be counted.

During pregnancy, exposure to certain hazardous and arduous job or unsafe working environment may have adverse effects on the health of a woman employee and her unborn child. In line with the requirements of the *ILO Maternity Protection Recommendation, 1952 (No.95)*, our legislation — Maternity Benefit Act, 1961 — provides for measures to protect the health of pregnant women and their children, seeking to minimize fatigue by the reorganization of working time or to protect women against dangerous or unhealthy work. Accordingly, the pregnant woman employee can opt not to perform work which entails long hours of standing and is likely to cause a miscarriage or otherwise to adversely affect her health. This act prohibits the employer from making deductions from her wages because of the nature of work that may be reassigned to her.

When a woman employee returns to work after delivery of a child, she has the right to two breaks per day for nursing until the child attains the age of fifteen months. In this regard, the *ILO Maternity Protection Convention, 2000 (No.183)* provides that a woman shall be provided with the right to one or more daily

breaks or a daily reduction of hours of work to breastfeed her child. Further, it outlines that, where practicable, provision should be made for the establishment of facilities for nursing under adequate hygienic conditions at or near the workplace. Indubitably, it is a step for the care and improvement of a newly born child's health. This measure is in addition to her normal interval for rest. It is to be noted that the employers are prohibited from decreasing woman's wages on account of the nursing breaks.

When a woman employee absents herself from work in accordance with the provisions of the Maternity Benefit Act, 1961, it shall be unlawful for her employer to discharge or dismiss her during or on account of such absence, or to give notice of discharge or dismissal on such a day that the notice will expire during such absence, or to vary to her disadvantage any of the conditions of her service. It guarantees that a working woman who is discharged at any time during her pregnancy but who would otherwise have been eligible for benefits will still have a right to maternity benefits and medical bonus. In this respect, the ILO Maternity Protection Convention, 2000 (No.183), also provides that it shall be unlawful for an employer to terminate the employment of a woman during her pregnancy, or absence on account of maternity leave, or during a period following her return to work to be prescribed by national laws or regulations, except on grounds related to the pregnancy or birth of the child and its consequences or nursing. The burden of proving that the reasons for dismissal are unrelated to pregnancy or childbirth and its consequences or nursing shall rest with the employer. By virtue of the Maternity Benefit Act, 1961, a woman is guaranteed the right to return to the same position or an equivalent position paid at the same rate at the end of her maternity leave.

It may, however, be mentioned that the protection against dismissal is not available to the pregnant woman employee if she is charged for gross misconduct, for example, willful destruction of employer's goods or property; assaulting any superior or co-employee at the place of work; criminal offence involving moral turpitude resulting in conviction in the court of law; theft, fraud, or dishonesty in connection with the employer's business or property. In such eventuality, the employer must notify her in writing that her benefits and bonus will be denied. Further, the pregnant woman employee, who is not eligible for benefits because she has worked less than the required period of time, is also not protected against dismissal.

As regards the term 'week', it is significant to note that neither the Employees' State Insurance Act, 1948 nor the Maternity Benefit Act, 1961 defines it. Thus, a question arises as to whether for the computation of maternity benefit for the period of 12 weeks — six weeks preceding the date of delivery (including the day of delivery) and six weeks (following that date), cover wages for non-working days such as Sundays falling during the period of absence. On this, the Supreme Court, in the case of *B. Shah v Labour Court, Coimbatore* (1978, p.12), opined that in the context of sub-sections (1) and (3) of Section 5 of the Act, the term 'week' has to be taken to signify a cycle of seven days including Sundays.

The language in which the aforesaid sub-sections are couched also shows that the legislature intended that computation of maternity benefit is to be made for the entire period of the women employees actual absence, that is, for all the days including Sundays which may be wage-less holidays, falling within that period

and not only for intermittent periods of six days thereby excluding Sundays falling within that period.

If any woman employee's claim for the maternity benefit to which she is entitled under the Maternity Benefit Act, 1961 has been improperly withheld or her employer has discharged or dismissed her during or on account of her absence from work, may make a complaint to the Inspector. Upon receipt of such a complaint from the woman employee, the inspector has the power to order for an enquiry and pass such orders as are just and proper according to the circumstances of the case. In furtherance, the Inspector can enter, at all reasonable time, any premises or place where women are employed or work is given to them in an establishment for the purposes of examining any registers, records, and notices required to be kept or exhibited under this act and require their production for inspection.

The Inspector can also ask the employer to give information regarding the names and addresses of women employed, payments made to them, and application or notes received from them under this act; and to take copies of any registers and records or notices or any portions thereof.

For failure to pay maternity benefit as provided under the Maternity Benefit Act, 1961 the employer is punishable with imprisonment from three months to one year and a fine from Rs.2,000 to Rs.5,000. If the court finds the employer guilty of failure to produce any register or document before the Inspector or obstructing the Inspector, or contravenes any other provision of the act or the rules, it can impose a punishment of imprisonment up to one year or a fine up to Rs.5,000 or both.

Shortcomings of Maternity Benefit Act, 1961: These include the following.

- All pregnant women employees are not covered for maternity benefits.
- The Employees' State Insurance Act, 1948 and the Maternity Benefit Act, 1961 providing maternity protection for women employees are, more or less, restricted to the formal sector, which represents a small proportion of economic activity. These acts do not apply to women in unregistered economic activities in the informal sector who, in reality, represent the majority of women employees, engaged in agriculture, dairying, small animal husbandry, fisheries, home-based industries, ready-made garments, zari and embroidery work, basket-making, cottage and handicraft industries, handloom and power loom, and khadi industries. The condition of women employees in the unorganized sector is such that there is a very strong need to compensate them for their loss of earnings during maternity.
- *Protection from dismissal of service only during maternity leave:* The Maternity Benefit Act, 1961 protects pregnant women from discharge/dismissal of their service by the employer during the period of maternity leave. In this connection, it may be mentioned that if a woman is dismissed during pregnancy it only safeguards her right to claim maternity benefits; it does not protect her service by forbidding discharge or dismissal of a pregnant woman.
- *Maternity leave of twelve weeks not enough:* The Maternity Benefit Act, 1961 as well as Employees' State Insurance Act, 1948 prescribe a maternity

leave of 12 weeks. In this context, it is of interest to note that the pregnant women employees in the Central Government are entitled to 135 days maternity leave. Keeping this in view, women who are covered under the Maternity Benefit Act, 1961 and under the Employees' State Insurance Act, 1948 should get at least a total of 14 weeks, if not equal to 135 days. Also, the ILO Maternity Protection Convention, 2000 stipulates 14 weeks maternity leave. Further, it is important to note that ILO Maternity Protection Recommendation, 2000 recommends 18 weeks maternity leave.

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 mean by 'Employer's liability' under the Maternity Benefit Act, 1961?

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- 6) For how many days is a pregnant women entitled to maternity leave?

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- 7) What was held by the Court in the case of *Municipal Corporation of Delhi v Female workers* (AIR 2000 SC 1274)?

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21.3.5 The National Commission for Women Act, 1990

The main objective of the National Commission for Women Act, 1990 is to constitute a National Commission for Women and to provide for all matters connected therewith or incidental thereto. The special features, functions, weaknesses and suggestions for improvement of the Commission are presented below.

21.3.5.1 Salient Features of the Commission

The National Commission for Women is constituted under Section 3 of the Act. The Commission shall consist of:

- a) A Chairperson committed to the cause of women, to be nominated by the Central Government;
- b) Five Members to be nominated by the Central Government found amongst persons of ability, integrity and standing who have had experience in law or legislation, trade unionism, management of an industry or organization committed to increasing the employment potential of women, women's voluntary organizations (including women activists), administration, economic development, health, education or social welfare. Provided that at least one member each shall be from amongst persons belonging to the Scheduled Castes and Schedule Tribes respectively;
- c) A Member-Secretary to be nominated by the Central Government, who shall be: i) An expert in the field of management, organization structure of sociological movement, or ii) An officer who is a member of civil service of the Union or of an all-India service who holds a civil post under the Union with appropriate experience.

They will hold office as fixed by law, and other officers and employees shall be appointed to assist the Commission. The Commission may appoint such committees as may be necessary for dealing with such special issues as may be taken by the Commission from time to time. The Commission or a committee thereof shall meet as and when necessary and shall meet at such time and place as the Chairperson may think fit. The Commission shall regulate its own procedure and the procedure of the Committees thereof. All orders and decisions of the Commission shall be authenticated by the Member-Secretary or any other officer of the Commission duly authorized by the Member-Secretary in this behalf.

21.3.5.2 Functions of the Commission

The functions of the Commission are specified under Section 10 of the Act.

- 1) The Commission shall perform all or any of the following functions, namely:
 - a) Investigate and examine all matters relating to the safeguards provided for women under the Constitution and other laws;
 - b) Present to the Central Government, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;
 - c) Make in such reports the recommendations for the effective implementation of those safeguards for improving the conditions of women by the Union or any State;

- d) Review, from time to time, the existing provisions of the Constitution and other laws affecting women and recommend amendments thereto so as to suggest remedial legislative measures to meet any lacunae, inadequacies or shortcomings in such legislation;
 - e) Take up the cases of violation of the provisions or the Constitution and of other laws relating to women with the appropriate authorities;
 - f) Look into complaints and also take suo motu notice of matters relating to:
 - Non-implementation of laws enacted to provide protection to women and also to achieve the objective of equality and development;
 - Non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships and ensuring welfare of women; and
 - Providing relief to women and take up the issues arising out of such matters with appropriate authorities.
 - g) Call for special studies or investigations into specific problems or situations arising out of discrimination and atrocities against women and identify the constraints so as to recommend strategies for their removal;
 - h) Undertake promotional and educational research so as to suggest ways of ensuring due representation of women in all spheres and identify factors responsible for impeding their advancement such as, lack of access to housing and basic services, inadequate support services and technologies for reducing drudgery and occupational health hazards and for increasing their productivity;
 - i) Participate and advise on the planning process of socio-economic development of women;
 - j) Evaluate the progress of the development of women under the Union and any State;
 - k) Inspect or cause to be inspected a jail, remand home, women's institution or other place of custody where women are kept as prisoners or otherwise, and take up with the concerned authorities for remedial action, if found necessary;
 - l) Fund litigation involving issues afflicting a large body of women;
 - m) Make periodical report to the Government on any matter pertaining to women and in particular various difficulties under which women toil; and
 - n) Any other matter which may be referred to it by the Central Government.
- 2) The Central Government shall cause all the reports referred to in clause (b) of sub-section (1) to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations.

- 3) Where any such report or any part thereof relates to any matter with which any State Government is concerned, the Commission shall forward a copy of such report or part of it to such State Government who shall cause it to be laid before the Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any of such recommendations.
- 4) The Commission shall, while investigating any matter referred to the matters in clause (a) or sub-clause (i) of clause (f) of sub-section (1), have all the powers of a civil court trying a suit and in particular, in respect of the following matters, namely:
 - a) Summoning and enforcing the attendance of any person from any part of India and examining him on oath;
 - b) Requiring the discovery and production of any document;
 - c) Receiving evidence on affidavits;
 - d) Requisitioning any public record or copy thereof from any court or office;
 - e) Issuing commissions for the examination of witnesses and documents; and
 - f) Any other matter which may be prescribed.

The Commission shall prepare, in such form and at such time, for each financial year, as may be prescribed, its annual report, giving a full account of its activities during the previous financial year and forward a copy thereof to the Central Government and the Central Government shall cause the annual report together with a memorandum of action taken on the recommendations contained therein, in so far as they relate to the Central Government, and the reasons for the non-acceptance, if any, of any of such recommendations and the audit report be laid as soon as may be after the reports are received, before each House of Parliament.

21.3.5.3 Specific Areas of Work Done by the Commission

Researches have been done and reports published by the Commission on the following matters:

- a) The conditions of women prisoners in Indian jails;
- b) Women and child prostitution;
- c) Codification of criminal laws pertaining to women;
- d) Family courts;
- e) Women in politics;
- f) Tribal women and employment;
- g) Amendments in the existing laws; and
- h) Framing new bills for empowerment of women.

Based on the researches, the NCW has done the following, among other things.

- 1) The Commission had made more than 300 concrete recommendations to elevate the status of women in the country. It had also been instrumental in

setting up enquiries, reviewing laws and suggesting amendments to 12 Acts, including the Commission for Sati Prevention Act, 1987 and Dowry Prohibition Act, 1961.

- 2) It has framed a Code of Conduct at work place to prevent sexual harassment of women. The Code of Conduct as framed in accordance with the Supreme Court judgment in *Vishaka v State of Rajasthan* (1997, p.384) has been sent to all government offices, ministries and industries with the hope that employers would become more sensitive towards women.
- 3) NCW has recently taken up several cases of killing and torture of women.

Weaknesses of the Commission: Following are the main weaknesses of the Commission.

- 1) The National Commission for Women (NCW) does not have enforcing power but enjoys only a recommendatory role, which makes it a toothless body.
- 2) The working of the Commission is hampered by lack autonomy and a clear status. The government is the controlling authority and, therefore, susceptible to bureaucratic and political interference and influence.
- 3) The NCW has not been granted an audience in Parliament or with the Cabinet. Reports and recommendations of NCW are tabled in Parliament by the Women and Child Development Wing of the HRD ministry.
- 4) The Commission cannot appoint its own staff. The appointment and removal of staff belonging to the lower cadre belongs to the Ministry. The usual red-tapism has hampered the working of the Commission.
- 5) A major constraint of the Commission is that it has no investigating agency of its own as in the case of National Human Rights Commission.
- 6) The Government is often keen to appoint only those persons who are seen to be close to its own ideology. The present method of nominating the Commission's Chairperson and members leaves it wide open to political manipulation. Yet, the activist's role played by the NCW in the past has not been appreciated by the government.
- 7) The commission is not financially independent. Without sufficient fund and staff the Commission has been reduced to a highly decimated body.
- 8) Persons who come to the Commission with a great hope to find solutions to their problems often go disappointed, as the commission does not have sufficient right, powers and facilities to solve their problems.
- 9) In some States, State-Commissions do not exist. So, poor and destitute women are left with no option but to approach the National Commission.
- 10) Different State Commissions, where they exist, have varying frameworks of powers, responsibilities and work-atmosphere. In some States, matters do not move quickly because of bureaucratic and political involvement.

In the light of the above weaknesses, the existing Act under which the NCW was constituted and its working must be critically reviewed and analyzed so that adequate amendments can be brought in to make it effective (Thomas B. Jeyaseelan, 2003).

21.4 LET US SUM UP

We dealt with different laws that empower women in many respects. We have touched upon different international conventions and declarations that advocated equality of opportunities for women in different walks of life to make their participation and contribution more effective to the society and the nation. We have also highlighted different provisions in the Indian Constitution and national Acts, Commissions, etc which are of great significance to the empowerment and development of women.

21.5 ANSWERS TO ‘CHECK YOUR PROGRESS’ QUESTIONS

- 1) Some of the important provisions of United Nations Charter, 1945 relating to women are:
 - Art-8 “Equality of Opportunity” of the Charter lays down that the United Nations shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs. Thus, equality of opportunity has been assured to the women in the matter of participation in the work of the United Nations.
 - Art-13 of the Charter lays emphasis upon promoting international cooperation in the economic, social, cultural, educational and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.
- 2) The U. N. Commission on the Status of Women is relevant as it helps in:
 - the improvement of the status of women in law, particularly private law;
 - the advancement of women’s enjoyment of their rights to education, employment and health care;
 - promoting the right of women in political, economic, civil, social, and educational fields and in achieving the goal of women having rights equal to those of men;
 - equal pay for equal work; and
 - equality in various aspects of family law and property rights.
- 3) Under the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), 1999, the term ‘discrimination against women’ means, any distinction, exclusion or restriction made on the basis of sex which has the effect of impairing enjoyment by women irrespective of their marital status, on a basis of equality of men and women, of human rights in the political, social, cultural, civil or any other field.
- 4) Protection of Women from Domestic Violence Act, 2005 is a useful legislation in the sense that it is a civil law on domestic violence. It gives protection to women by providing shelter, custody, medical facilities, compensation, etc. The cases under it are disposed in 60 days. Protection officers and service providers are appointed under this Act to help the women victim.

- 5) The 'Employer's liability' under the Maternity Benefit Act, 1961 implies that the employer solely bears the full amount of liability for providing maternity protection to pregnant employees and the employees are not required to make any contribution for availing of the maternity benefits.
- 6) A pregnant woman is entitled for a maternity leave of 12 weeks.
- 7) In *Municipal Corporation of Delhi v Female Workers* (AIR 2000 SC 1274) case, the Supreme Court declared that there is nothing in the Maternity Benefit Act which entitles only regular women employees to the benefit of maternity leave and not those who are engaged on casual basis or on muster roll on daily-wage basis.

21.6 REFERENCES

Commission of Sati (Prevention) Act, 1987. (Bare Act).

Dowry Prohibition Act, 1961. (Bare Act).

Immoral Traffic (Prevention) Act, 1956. (Bare Act).

Indecent Representation of Women (Prohibition) Act, 1986. (Bare Act).

Joseph Minattur. 1980. *Woman and the Law: Constitutional Rights and Continuing Inequalities*. New Delhi: Manohar Publications.

Swami Ananyananda. 1847. *Mayavati*, Pithoragarh Himalayas: Advaita Ashrama.

The Child Marriage Restraint (Amendment) Act, 1979. (Bare Act).

The Contract Labour (Regulation and Abolition) Act, 1976. (Bare Act).

The Criminal Law (Amendment) Act, 1983. (Bare Act).

The Employees State Insurance Act, 1948. (Bare Act).

The Equal Remuneration Act, 1976. (Bare Act).

The Factories (Amendment) Act, 1986. (Bare Act).

The Family Courts Act, 1954. (Bare Act).

The Hindu Marriage Act, 1955. (Bare Act).

The Hindu Succession Act, 1986. (Bare Act).

The Maternity Benefit Act, 1961 (Amended in 1995). (Bare Act).

The Medical Termination of Pregnancy Act, 1971. (Bare Act).

The Plantation Labour Act, 1951. (Bare Act).

The Special Marriage Act, 1954. (Bare Act).

Thomas B. Jeyaseelan. 2003. *Women Rights and Law*. New Delhi: Indian Social Institute.

United Nations. 1980. *World Conference on Women*. Copenhagen, July 14-30.

Cases

Air India International v Nargesh Meerza. 1981. AIR SC 1829.

Anima Goel v Haryana State Agricultural Marketing Board. 2007. LLR 479.

Bharati Gupta (Mrs) v Rail India 'Technical and Economical Services Ltd. 2005. LLR 1108.

B. Shah v Labour Court, Coimbatore. 1978. AIR SC 12.

- Chitraghosh v. Union of India*. 1970. AIR SC 35.
- Daniel Latifi Case*. 2001. SCC 740.
- Dattatraya v State of Bombay*. 1952. AIR SC 181.
- Delhi Domestic working Women's Forum v Union of India*. 1995. SCC (1) 14.
- Gaurav Jain v Union of India*. 1997. AIR SC 3021.
- Keshwanand Bharati v State of Kerala*. 1973. AIR SC 1461.
- Laxmi Kant v Union of India*. 1984. AIR SC 469.
- Mackinnon Mackenzie & Co. Ltd. v Andrey D' Kosta*. 1987. AIR SC 1281.
- Madhukishwar & Others v State of Bihar*. 1992. SCC (1) 102.
- Madhukiswar v State of Bihar*. 1996. SCC (5) 125, 148.
- Meneka Gandhi v Union of India*. 1978. AIR SC 597.
- Miss C. B. Muthamma v Union of India*. 1979. AIR SC 1868
- Mohd. Ahmed Khan v Shah Bano Begum*. 1985. AIR SC 945.
- Mst. Choki v State*. 1957. AIR Raj. 10.
- Municipal Corporation of Delhi v Female Workers (Muster Roll)*. 2000. AIR SC 1274.
- Neeraj Choudhary v State of M.P.* 1984. AIR SC 328.
- Randhir Singh v Union of India*. 1982. AIR SC 879.
- Revathi v Union of India*. 1988. AIR SC 835.
- Sanjit Ray v State of Rajasthan*. 1983. AIR SC 328.
- Sarla Mudgal v Union of India*. 1995. AIR SC 1531.
- Smt. Savitri v Bos*. 1972. AIR All 305.
- State of Maharashtra v Madhukar Narain*. 1991. AIR SC 207.
- Uttarkhand Mahila Kalyan Parishad v State of UP*. 1992. AIR SC 1695.
- Vishaka v State of Rajasthan*. 1997. AIR SC 3011.
- Vishal Jeet v Union of India*. 1990. AIR SC 1412.
- Yusuf Abdul Aziz v The state of Bombay*. 1952. AIR SC 321.

Suggested Readings

- Anjani Kant. 2003. *Women and Law*. New Delhi: APH Publishing Corporation.
- Bunch, Jurist C. 1995. "Transforming Human Rights From a Feminist Perspective" in Julie Peters and Andrea Wolper (eds.). *Women's Rights Human Rights: International Feminist Perspectives*. NY: Routledge.
- Mamta Rao. 2008. *Law relating to Women and Children*. Lucknow: Eastern Book Company.
- Shymal Kumar Mukherjee. 2006. "Protection of Women's Rights Under Constitution of India" *AIR, Journal Section*, April.
- Surinder Mediratta. 2009. *Oxford Handbook of Law, Women and Employment, Policies, Issues, Legislation and Case Law*. New Delhi: Oxford University Press.

UNIT 22 RIGHTS OF WORKERS

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- 22.2 Sectors of Workforce, their Legal Status and Magnitude
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22.0 INTRODUCTION

An important distinction that is made in all discussions relating to labour legislation is between workers in the organised/formal sector and those in the unorganised/informal sector. In India, the term informal sector has not been used in the official statistics or in the National Accounts Statistics (NAS). The terms used in the Indian NAS are 'Organised' and 'Unorganised' sectors. So, in this unit the focus of our discussion will be the rights and protection of workers in both organised and unorganised sectors.

22.1 OBJECTIVES

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

- Differentiate between the workers in organised and unorganised sectors;
- Identify the laws enacted for protection of labour/workers in both organized and unorganised sectors; and
- Analyse the emerging issues in labour welfare.

22.2 SECTORS OF WORKFORCE, THEIR LEGAL STATUS AND MAGNITUDE

In India, the workforce is engaged in both organised and unorganised sectors. In this section, we present you an overview of the workforce in these sectors with special reference to the legislation made for their protection.

22.2.1 Organised Sector and Social Security

In India, the organised sector, which accounts for about 7 per cent of the total workforce, benefits from a fair minimum standard of social security. The sector which is registered, follows Government rules and regulations, and has employees' and employers' unions is called *organised sector*. The company form of business comes under organised sector (Ratnam, 2006, pp.136-150).

Social security to the workers in the organized sector is provided in a major way through the Central Acts, namely, the Employees State Insurance Act, 1948, the Employees Provident Fund Act, 1952, Maternity Benefit Act, 1961, the Workmen's Compensation Act, 1923, the Payment of Gratuity Act, 1972, and the Persons With Disability Act, 1995.

The organized sector includes primarily those establishments which are covered by the Factories Act, 1948, the Shops and Commercial Establishments Acts of State Governments, the Industrial Employment Standing Orders Act, 1946, etc. This sector already has a structure through which social security benefits are extended to workers covered under these legislations. The organised sector comprises enterprises for which the statistics are available from the budget documents, reports, etc.

22.2.2 Unorganised Sector: Magnitude of Social Insecurity

The private retail business is called unorganised sector. The unorganised sectors or informal sector in India is broadly characterized as consisting of units engaged in the production of goods and services with the primary objectives of generating employment and incomes to the persons concerned. These units typically operate at low level of organisation, with little or no division between labour and capital as factors of production and on a small scale. Labour relations, where they exist, are based mostly on casual employment, kinship or personal or social relations rather than contractual arrangements with formal guarantees. Thus, production units in informal sector are not constituted as separate legal entities independently of the household or household members that own them and for which no complete sets of accounts are available which would permit a clear distinction of the production activities of the enterprises from the other activities of their owners.

The owners of their production units have to raise the finance at their own risk and are personally liable, without limit, for any debts or obligations incurred in the production process. For statistical purpose, the informal sector is regarded as a group of production units, which form part of the household sector as household enterprises or, equivalently, unincorporated enterprises, owned by households (Parthasarathy and Visalakshi, 2007).

The unorganized sector is characterised by the lack of labour law coverage, seasonal and temporary nature of occupations, high labour mobility, dispersed functioning of operations, casualization of labour, lack of organizational support, low bargaining power, etc. all of which make it vulnerable to socio-economic hardships. The nature of work in the unorganized sector varies between regions and also between the rural and the urban areas, which may include the remote rural areas as well as, sometimes, the most inhospitable urban concentrations. In the rural areas, the workforce comprises of landless agricultural labourers, small and marginal farmers, share croppers, persons engaged in animal husbandry, fishing, horticulture, bee-keeping, toddy tapping, forest workers, rural artisans, etc.; where as in the urban areas, it comprises mainly of manual labourers in construction, carpentry, trade, transport, communication, etc., and also includes street vendors, hawkers, head-load workers, cobblers, tin smiths, garment makers, etc. The informal sector can, therefore, be considered as a sub-set of the unorganised sector.

In India, a major portion of labor force is employed in the unorganized sector. The unorganized sector / informal employment consists of casual workers, contributing family workers, self-employed persons and private households; and these are not eligible either for paid, sick or annual leave or for any social security benefits given by the employer.

22.2.2.1 Relevance and Significance of Unorganised Sector in Indian Context

The unorganized sector plays a vital role in terms of providing employment opportunity to a large segment of workforce in the country and contributes to the national domestic product significantly. The contribution of the unorganized sector to the net domestic product and its share in the total NDP at current prices has been over 60%. In the matter of savings, the share of household sector in the total gross domestic saving, mainly of unorganized sector, is about three-fourth (Gupta, 2006).

According to the results of the National Sample Survey (NSS) conducted in 1999-2000, total workforce as on 1.1.2000 was of the order of 406 million. About 7% of the total workforce is employed in the formal or organized sector (all public sector establishments and all non-agricultural establishments in private sector with 10 or more workers) while remaining 93% workforce is in the informal or unorganized sector. The NSS 55th round, 1999-2000, also covered non-agricultural enterprises in the informal sector in India. As per the survey, there were 44.35 million enterprises and 79.71 million workers employed there in the non-agricultural informal sector of the economy. Among these, 25.01 million enterprises employing 39.74 million workers were in rural areas whereas 19.34 million enterprises with 39.97 million workers in the urban area. Among the workers engaged in the informal sector, 70.21 million are full time and 9.5 million part-timers. Percentage of female workers to the total workers is 20.2 percent.

As per the estimates of the National Commission for Enterprises in the Unorganised Sector (NCEUS), the unorganized sector/informal sector workers comprise about 86 per cent of workforce in the Indian economy in 2004-2005, and informal employment, both in the organised and unorganized sector, is 92 per cent (National Sample Survey Organisation, 2004-2005). This national level pattern of informal workers occupying around 90 per cent of the workforce is more or less similar in the case of most of the prominent States in the country. Among the unorganised sector workers, a considerable proportion (about 65 per cent) is engaged in agricultural sector, which in turn indicates the prominence of rural segment in the informal economy.

The growth of formal employment in the country has always been less than that of total employment, indicating a faster growth of employment in the informal sector. Temporal data suggests that within the formal sector also the proportion of informal / unorganised workers are on the increase. For instance, by providing a comparison of the NSSO Employment Data for 55th and 61st Rounds (for 1999-2000 and 2004-2005 respectively), the NCEUS (2007) explains that the country is currently in a state of 'informalisation of the formal sector', where the entire increase in the employment in the organised sector over this period has been informal in nature.

Thus, it is evident that unorganized sector has a crucial role in our economy in terms of employment and its contribution to the National Domestic Product, savings, and capital formation. The Government has to play a role of facilitator and promoter so that the workers employed in the unorganized/informal sector are able to get requisite level of protection and security to have decent work-environment enabling them to express their skills fully and according to their capabilities necessary for enhancing the competitiveness of their outputs and thereby raising their income and socio-economic status.

22.3 RIGHTS AND PROTECTION OF LABOUR

In India, the term social security is generally used in its broadest sense; it may consist of all types of measures preventive, promotional and protective as the case may be. The term encompasses social insurance, social assistance, social protection, social safety net and other steps involved. The measures may be statutory, public or private.

The history of labour legislation in India is naturally interwoven with the history of British colonialism. Considerations of British political economy were naturally paramount in shaping some of these early laws. To date, India has ratified 39 International Labour Organisation (ILO) conventions of which 37 are in force. Of the ILO's eight fundamental conventions, India has ratified four – Forced Labour, 1930; Equal Remuneration, 1951; Abolition of Forced Labour, 1957; and Discrimination (Employment and Occupation), 1958. The major objective of social security is to provide preventive, curative and rehabilitative services to meet the special needs of those vulnerable groups (Srinivasan Anand, 2009, p.518).

ILO (1984, p.2) defined the social security "as the protection which society provides for its members through a series of public measures, against the economic and social distress that otherwise would be caused by the stoppage or substantial

reduction of earning resulting from sickness, maternity, employment, injury, unemployment, invalidity, old age and death, the provision of subsidies for families with children”.

22.3.1 Prominent Features of Social Security

Social security consists of the following features.

- It is a part of social justice programme.
- It relates to social and economic conditions prevailing in the economy.
- It is a compensatory measure to protect the person having small means from risk and contingencies.
- It provides protection and stability to workforce.
- It incorporates benefits and other measures to help in case of sickness, old age, invalidity unemployment, maternity, death and such other things.

Thus, social security is an important part of public policy and government is supposed to provide regulatory framework for the same.

Social security measures bring in an element of stability and protection in the midst of stress and strains of life. It is major aspect of public policy and the extent of its prevalence is a measure of the progress made by a country towards the ideal of a Welfare State (Report of National Commission on Labour, 1969, p.162). The concept of social security is based on ideals of human dignity and social justice. The underlying idea is that a citizen who has contributed or is likely to contribute to his country's welfare should be given protection against certain hazards.

22.3.2 Legal Protection of Labour in Organised Sector

The provisions of social security for organised workers are mainly protective in nature and are ensured through a legal framework and institutional infrastructure created under enabling legislations. The measures providing protection to working class against contingencies like retirement, resignation, retrenchment, maternity, old age, unemployment, death, disablement and other similar conditions are said to be the social security for employees. Social security for employees is a concept which over time has gained importance in the industrialized countries.

In India, the Constitution levies responsibility on the State to provide social security to citizens of the country. The State, here, discharges duty as an agent of the society in order to help those who are in adverse situations or otherwise needs protection owing to above mentioned contingencies. Article 41, 42 and 43 of the Constitution do talk about the same (Shukla, 2004, pp.305-307). Also, the Concurrent List of the Constitution of India mentions issues like the following (ibid, p.960):

- Social Security and insurance, employment and unemployment.
- Welfare of Labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pension and maternity benefits.

Drawing from the Constitution of India and ILO Convention on Social Security ratified by India in 1964, some of the legislations that have been enacted for

social security are: Workmen's Compensation Act, 1923; Employees' State Insurance Act, 1948; Employees' Provident Fund and Miscellaneous Provisions Act, 1952; Maternity Benefit Act, 1961; Payment of Gratuity Act, 1972; etc. A social security division has also been set up under the Ministry of Labour and Employment which mainly focuses on framing policies for social security for the workers of organized sector. There are laws enacted and schemes established by the Central/State Governments providing for social security and welfare of working people in organised sector.

22.3.2.1 Administration of Certain Social Security Acts

Certain social security Acts are administered as mentioned below.

- The Employees' Provident Fund and Miscellaneous Provisions Act, 1952 is administered by the Government of India through the Employees' Provident Fund organisation (EPFO).
- Cash benefits under the Employees' State Insurance Act, 1948 are administered by the Central Government through the Employees' State Insurance Corporation (ESIC), whereas the State Governments and Union Territory Administrations are administering medical care under the Employees' State Insurance Act, 1948.
- The Payment of Gratuity Act, 1972 is administered by the Central Government in establishments under its control, and establishments having branches in more than one State, major ports, mines, oil fields and the railways by the State Governments and Union Territory Administrations in all other cases. This Act applies to factories and other establishments.
- In mines and circus industry, the provisions of the Maternity Benefit Act, 1961 are being administered by the Central Government through the Chief Labour Commissioner (Central) and by the State Governments in factories, plantations, and other establishments.
- The provisions of the Workmen's Compensation Act, 1923 are being administered exclusively by the State Governments.

We will, now, look into certain important aspects of selected social security Acts, among others.

22.3.2.2 Employees' Provident Fund and Miscellaneous Provisions Act, 1952

This Act is a welfare legislation enacted for the purpose of instituting a Provident Fund for employees working in factories and other establishments. The Act aims at providing social security and timely monetary assistance to industrial employees and their families when they are in distress and/or unable to meet family and social obligations and to protect them in old age, disablement, early death of the breadwinner and in some other contingencies. Presently, there are schemes that ensure terminal benefits to provident fund, superannuation pension, and family pension in case of death during service (Goswami, 1999, pp.740-791).

In this scheme both the employee and the employer make an equal contribution into a national fund. The contribution is made within the prescribed percent of the wage including a small percentage towards family pension. This contribution also attracts an annual interest at prescribed rates and the accumulated amount is

paid on retirement to the employee along with the interest that has accrued. Unfortunately, the employee is allowed to draw many types of loan from the fund such as for house construction, children's education, marriage of children, etc. As a result, very little is available at the time of retirement. This is also a benefit, which is steadily being extended to sections of the unorganised sector, especially where the employer is clearly identifiable.

Coverage of establishments and members: The Employees' Provident Fund and Miscellaneous Provisions Act, 1952 extends to the whole of India, excluding the state of Jammu & Kashmir. The Act is applicable to factories and other classes of establishments engaged in specific industries, classes of establishments employing 20 or more persons. The Act, however does not apply to cooperative societies employing less than 50 persons and working without the aid of power. The Act also does not apply to employees of the Central Government or State Government or local authority. The Central Government is empowered to apply the provisions of this Act to any establishment employing less than 20 persons after giving not less than two months notice of its intent to do so by a notification in the official gazette. Once the Act has been made applicable, it does not cease to be applicable even if the number of employees falls below 20. An establishment/factory, which is not otherwise coverable under the Act, can be covered voluntarily with mutual consent of the employers and the majority of the employees under Section 1(4) of the Act. Thus, membership of the fund is compulsory for employees drawing a pay not exceeding prescribed amount per month (at the time of joining). Every employee employed in or in connection with the work of a factory or establishment shall be entitled and required to become a member of the fund from the date of joining the factory or establishment.

22.3.2.3 Employees' Deposit-Linked Insurance Scheme, 1976

Employees' Deposit Linked Insurance Scheme 1976 is applicable to all factories/establishments with effect from August 01, 1976. All the employees, who are members of the Employees' Provident Fund are required to become members of this Scheme. Employers are required to pay contributions to the Insurance Fund at the rate of 0.5 per cent of pay, i.e. basic wages, dearness allowance including cash value of food concession and retaining allowance, if any (Goswami, 1999, p.796).

22.3.2.4 Employees' Pension Scheme, 1995

The Employees' Provident Fund and Miscellaneous Provisions Act, 1952 was amended and a separate Pension Scheme was launched from 16th November 1995 replacing the then Employees Family Pension Scheme, 1971 (Goswami, 1999, p.794).

- a) **Pension Criteria:** Superannuation pension will be payable on attaining the age of 58 years and on completion of 20 years of service or more. Early pension can be taken at a reduced rate between 50-58 years of age, on completion of 10 years pensionable service or more.
- b) **Benefits under the Scheme:** The Employees' Pension Scheme, 1995 provides the following benefit-package: i) Superannuation pension; ii) Early pension; iii) Permanent total disablement; iv) Widow or Widower's pension; v) Children pension or Orphan pension; vi) Nominee pension/dependent parents pension.

- c) **Contribution to Pension Fund:** From and out of the contributions payable by the employer in each month to the Provident Fund, a part of contribution representing 8.33% of the employee's pay is remitted to the Employee's Pension Fund. Employer to pay for cost of remittance. The Central Government contributes 1.16% of the pay of the employee to the Employees' Pension Fund. If the pay of the employee exceeds Rs.6500/- per month, the contribution payable by the employer and the Central Contribution will be limited to the amount payable on his pay of Rs.6500/- only. All accumulations in the ceased Family Pension Fund constitute the corpus of the Pension Fund (Sakthivel, S. Pinaki Joddar, 2006, pp.2107-2114).

22.3.2.5 The Employees' State Insurance Act, 1948

The Employees' State Insurance Act, 1948 provides for health care and cash benefit payments in the case of sickness, maternity and employment injury. The Act is applicable to non-seasonal factories using power and employing 10 or more employees and non-power-using factories and certain other establishments employing 20 or more employees. The Act is being implemented areas-wise, in a phase manner. The ESI Scheme is operated in 728 centres situated in 25 states/ union territories. As on 31.03.2006, 91.49 lakh insured persons and about 353.05 lakh beneficiaries are covered under the Scheme. The number of factories and establishments covered by the end of the year had gone up to about 3,05,294 (Khan and Khan, 2009, pp.495-540).

- a) **Administration:** As mentioned under 22.3.2.1 above, the ESI Scheme is administered by the Employees' State Insurance Corporation (ESIC), which is a statutory body and has members representing Employers, Employees, Central and State Governments, Medical Profession and the Parliament. The Union Minister for Labour and Employment is the Chairman. A Standing Committee constituted from among the members of the Corporation acts as the executive body for administration of the Scheme and is chaired by Secretary to the Government of India, Ministry of Labour and Employment. There are 24 Regional Boards and 345 Local Committees in existence at present. The Director General is the Chief Executive Officer of the Corporation and is also an ex-officio member of the Corporation as well as its Standing Committee. The ESI Corporation, apart from the Headquarters Office located at New Delhi, has a large number of field offices throughout the country. The Corporation has 24 Regional Offices, 14 Sub-Regional and 7 Divisional Offices throughout the country. Besides, there are 646 Branch Offices and 179 Pay Offices for administration of cash benefits to insured persons. For inspection and coverage of new factories / establishments, 248 Inspection Offices are also set up across the country (Ibid).
- b) **Funding and Operation of the Scheme:** The ESI Scheme is mainly financed by contributions from the employers and employees. The rates of the employers' and the employees' share of contribution are 4.75% and 1.75% respectively. The State Governments' share of the expenditure on the provision of medical care is to the extent of 12.5% (1/8th within the per capita ceiling). The Corporation has prescribed a ceiling on the shareable expenditure on medical care. All capital expenditure on construction of ESI hospitals, and other buildings including their maintenance is borne exclusively by the Corporation.

- c) **Investment:** All contributions received under the ESI Act and all other moneys belonging to the funds which are not immediately required for defraying day to-day expenses are invested in the manner prescribed statutorily.
- d) **Health Benefits:** The Scheme provides full medical facilities, from primary health care to super-specialty treatment in respect of the insured persons and their family members. The medical care under the Scheme is administered by the State Governments, except in Delhi. Besides ESI hospitals, the Corporation also directly administers 17 Model Hospitals in the country. It facilitates both outpatient and in-patient care and freely dispenses medicines and covers hospitalisation needs and costs. The ESIC has also taken certain new initiatives to promote and popularize Indian Systems of Medicines (ISM) along with Yoga and have drawn up programmes for establishing these facilities in ESI hospitals and dispensaries in a phased manner. Leave certificates for health reasons are forwarded to the employer who is obliged to honour them. Employment injury, including occupational disease is compensated according to a schedule of rates proportionate to the extent of injury and loss of earning capacity. Payment, unlike in the Workmen's Compensation Act, is monthly. Despite the existence of tripartite bodies to supervise the running of the scheme, the entire project has fallen into disrepute due to corruption and inefficiency. Workers in need of genuine medical attention rarely approach this facility though they use it quite liberally to obtain medical leave.

22.3.2.6 The Payment of Gratuity Act, 1972

The Payment of Gratuity Act, 1972 provides for a scheme of compulsory payment of gratuity to employees engaged in factories, mines, oil fields, plantations, ports, railway companies, motor transport undertakings, shops or other establishments (Puri, 2010, pp.623-638).

- a) **Administration:** The Act is enforced both by the Central and State Government. Mines, major ports, oil fields, railways, factories and established owned or controlled by the Central Government and establishments having branches in more than one State, are controlled by the Central Government. The remaining factories and /establishments are looked after by the State Governments.

Section 3 authorizes the appropriate government to appoint any officer as a Controlling Authority for the administration of the Act. The Central/State Governments appoint the Controlling Authorities and Inspectors for different areas to ensure that the provisions of the Act are complied with. The Central/ State Governments also frame rules for administration of the Act. In Maharashtra, the labour courts in different localities are notified as Controlling Authority for the administration of the Act.

- b) **Coverage:** i) Every factory, oilfields, plantations, port, Railway Company and mine; ii) Every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which 10 or more persons are employed or were employed on any day of the preceding 12 months; iii) Every motor transport undertaking in which 10 or more persons are employed or were employed on any day of the preceding 12 months; iv) Such other establishments or class of establishments

in which 10 or more employees are employed or were employed on any day of the preceding 12 months, as the Central Government may, by notification, specify in this behalf. A shop or establishment once covered shall continue to be covered notwithstanding that the number of persons employed therein at any time falls below 10.

- c) **Entitlement:** Every employee, other than apprentice irrespective of his wages is entitled to receive gratuity after he has rendered continuous service for five years or more. Gratuity is payable at the time of termination of his services either i) on superannuation, or ii) on retirement or resignation, or iii) on death or disablement due to accident or disease. Termination of services includes retrenchment. However, the condition of 5 years continuous service is not necessary if services are terminated due to death or disablement. In case of death of the employee, the gratuity payable to him is paid to his nominee, and if no nomination has been made, then to his heirs.

Retirement benefit is also available to workers under the Provident Fund Act where a worker who has put in not less than five years of work is entitled to a lumpsum payment equal to 15 days' wages for every completed year of service. Every month the employer is expected to contribute the required money into a separate fund to enable this payment on retirement or termination of employment.

- d) **Calculation of Benefits:** For every completed year of service or part thereof in excess of six months, the employer pays gratuity to an employee at the rate of 15 days wages based on the rate of wages last drawn by the concerned employee. The amount of the gratuity payable to an employee not to exceed (Rs.3,50,000).

22.3.2.7 The Maternity Benefits Act, 1961

The Maternity Benefit Act, 1961 is a piece of social legislation enacted to promote the welfare of working women. The Act prohibits the working of pregnant women for a specified period before and after delivery. It also provides for maternity leave and payment of certain monetary benefits for women workers subject to fulfillment of certain conditions during the period when they are out of employment on account of their pregnancy. The services of a woman worker cannot be terminated during the period of her absence on account of pregnancy except for gross misconduct. Maximum period for which a woman can get maternity benefit is twelve weeks. Of this, six weeks must be taken prior to the date of delivery of the child and six weeks immediately following that date. The Maternity Benefit Act is applicable to notified establishments. *Its coverage can, therefore, extend to the unorganised sector also, though in practice it is rare.* A woman employee is entitled to 90 days of paid leave on delivery or on miscarriage. Similar benefits, including hospitalisation facilities are also available under the law (Goswami, 1999, pp.169-179).

22.3.2.8 The Workmen's Compensation Act, 1923

After the Workmen's Compensation (Amendment) Act, the Workmen's Compensation Act, 1923 is now called *The Employees Compensation Act, 1923* and the definition of employee includes clerical employees and casual employees also. The main objective of the Act is to impose an obligation upon the employers to pay compensation to workers for accidents arising out of and in course of employment. It, thus, covers all cases of 'accidents arising out of and in the

course of employment' and the rate of compensation to be paid in a lump-sum, is determined by a schedule proportionate to the extent of injury and the loss of earning capacity. The younger the worker and the higher the wage, the greater is the compensation subject to a limit. The injured person or in case of his death the dependent can claim the compensation (Goswami, 1999, pp.375-456).

This law applies to the unorganised sectors and to those in the organised sectors who are not covered by the Employees State Insurance Scheme, which is conceptually considered to be superior to the Workmen's Compensation Act. Under the Workmen Compensation Act, persons employed as cooks in hotels/restaurants are made eligible for benefits of compensation w.e.f. July, 1998.

The Act applies to any person who is employed otherwise than in a clerical or administrative capacity, in railways, factories, mines, plantations, mechanically propelled vehicles, loading and unloading work on a ship, construction, maintenance and repairs of roads and bridges, electricity generation, cinemas, catching or trading of wild elephants, circus, and other hazardous occupations and other employments specified in Schedule II to the Act. Under Section 2(3) of the Act, the State Governments are empowered to extend the scope of the Act to any class of persons whose occupations are considered hazardous after giving three months' notice in the official gazette. The Act, however, does not apply to members serving in the Armed Forces of Indian Union, and employees covered under the provisions of the Employees' State Insurance Act, 1988 as disablement and dependents' benefit is available under this Act.

- a) **Administration:** The State Governments administer the provisions of this Act through the Commissioners appointed for specified areas. The State Governments also make rules for ensuring that the provisions of the Act are complied with.
- b) **Benefits:** The compensation has to be paid by the employer to a workman for any personal injury caused by an accident arising out of and in the course of his employment (Section 3). The employer will not be liable to pay compensation for any kind of disablement (except death) which does not continue for more than three days. If the injury is caused when the workman was under the influence of alcohol or drugs or willfully disobeyed a clear order or violated a rule expressly framed for the purpose of securing the safety of workman or willfully removed or disregarded a safety device. The rate of compensation in case of death is an amount equal to 50 per cent of the monthly wages of the deceased workman multiplied by the relevant factor or an amount of Rs.1,20,000, whichever is more. Where permanent total disablement results from the injury, the compensation will be an amount equal to 60 per cent of the monthly wages of the injured workman multiplied by the relevant factor or an amount of Rs.1,40,000, whichever is more. Hence, the maximum compensation can go up to 50% of Total Monthly Wages now, irrespective of limits. Funeral expenses limit extended to Rs.5000 (from Rs.2,500). The employee shall be reimbursed the actual (full) medical expenditure incurred by him for treatment of injuries caused during the course of employment. Time limit for disposal of cases relating to compensation has been introduced – The Commissioner shall dispose of the matter relating to compensation within 3 months of reference (The Employees Compensation Act, 1923).

The Industrial Disputes Act, 1947 provides for the settlement machinery above. The framework of this legislation, which is the principle legislation dealing with core labour issues, is of colonial origin. This law originated firstly in the Trade Disputes Act, 1929 introduced by the British, when there was a spate of strikes and huge loss of person-days, and secondly, through Rule 81A of the Defence of India Rules 1942, when the British joined the war efforts and wanted to maintain wartime supplies to the allied forces. Interestingly the interim government on the eve of formal independence retained this framework by enacting the ID Act, which still remains on the statute book (Goswami, 1999, pp.457-544).

Even though the ID Act was primarily meant for industry in the organised sector, its present application has now extended well into the unorganised sector, through judge-made law. Its pro-worker protection clauses and safeguards against arbitrary job losses have evolved over a period of time both through the process of sustained legislative amendments and through the process of judicial activism spread over more than five decades.

- a) **Regulation of job losses:** Under the present law any industrial establishment employing more than 100 workers must make an application to the Government seeking permission before resorting to lay-off, retrenchment, or closure; employers resorting to any of the said forms of creating job losses is acting illegally, and the workers are entitled to receive wages for the period of illegality. This has been identified as offering high rigidity in the area of labour redundancy, and has been targeted for change under globalisation and liberalisation.
- b) **Protection of service conditions:** A feature of the ID Act is the stipulation that existing service conditions cannot be unilaterally altered without giving a notice of 21 days to the workers and the union. Similarly, if an industrial dispute is pending before an authority under the ID Act, then the previous service conditions in respect of that dispute cannot be altered to the disadvantage of the workers without prior permission of the authority concerned. This has been identified as a form of rigidity that hampers competition in the era of the World Trade Organisation.
- c) **Removal from service:** A permanent worker can be removed from service only for proven misconduct or for habitual absence – due to ill health, alcoholism and the like, or on attaining retirement age. In other words, the doctrine of ‘hire and fire’ is not approved within the existing legal framework. In cases of misconduct, the worker is entitled to the protection of Standing Orders to be framed by a certifying officer of the labour department after hearing management and labour, through the trade union. Employers must follow principles of ‘natural justice’, which again is an area that is governed by judge-made law. An order of dismissal can be challenged in the labour court and if it is found to be flawed, the court has the power to order reinstatement with continuity of service, back wages, and consequential benefits.

The Industrial Disputes (Amendment Act), 2010 have brought few significant changes to the Industrial Disputes Act. By inserting sub-section (2) to the section 2-A, a provision has been made for the workman/employee to make an application

directly to the Labour Court or Tribunal for adjudication of the disputes relating to or arising out of discharge, dismissal, retrenchment or termination, after the expiry of the forty-five days from the date he has made the application to the conciliation officer of the appropriate Government for conciliation of the dispute. On receipt of the application, the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute. All the provisions of the Act shall apply in relation to such adjudication. A new sub-section (3) has been inserted to section 2-A, which clearly provides that the applications referred to above shall be made to the Labour Court or Tribunal before expiry of three years from the date of discharge, dismissal, retrenchment or termination as the case may be. The Amendment Act further provides that every industrial establishment employing twenty or more workmen shall have one or more grievance redressal committees for the resolution of disputes arising out of individual grievances. It has also brought a clear and fast mechanism for execution of the award, order or settlement made before Labour Court or Tribunal or National Tribunal.

22.3.2.10 The Trade Union Act, 1926

The Trade Union Act, 1926 defines a trade union “as a combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive condition on the conduct of any trade or business, and includes any federation of two or more trade unions”. Then this definition, primarily, talks about three relationships. They are the relationships between the: workmen and workmen, workmen and employers, and employers and employers (Srivastava, 2002, pp.75-385).

Thus, a trade union can be seen as a group that represents the interests of its members, and may even engage in political activity where legislation affects their members. Trade unions are voluntary associations formed for the pursuit of protecting the common interests of its members and also promote welfare. They protect the economic, political and social interests of their members. It is an association either of employers or employees or of independent workers.

The Trade Union Act facilitates unionisation both in the organised and the unorganised sectors. It is through this law that the freedom of association that is a fundamental right under the Constitution of India is realised.

Objectives of Trade Unions: Trade unions are formed to protect and promote the interests of their members. Their primary function is to protect the interests of workers against discrimination and unfair labor practices. Trade unions are formed to achieve the following objectives. i) Trade unions represent individual workers when they have a problem at work. Negotiation is where union representatives, discuss, the issues which affect people working in an organization; ii) Voice in decisions affecting workers which include determination of wage, selection of employees for lay offs, retrenchment, promotion and transfer; iii) They also play an important educational role, organizing courses for their members on a wide range of matters; and iv) Seeking a healthy and safe working environment is also prominent objective of union activity.

During the last few years, trade unions have increased the range of services they offer to their members. These include: education and training, legal assistance, financial discounts, and welfare benefits thereby promoting greater bargaining

power, minimize discrimination, providing sense of security, inducing the sense of participation and belongingness, as platform for self-expression, leading to the betterment of relationships.

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) What are the kinds of protection available for the labour in organised sector?

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22.3.3 Protection of Labour in Unorganised Sector

In recent times, provision of social security to unorganised sector workers assumed unprecedented significance in the development discourse in India. So far, there are no specific and comprehensive schemes or legislation at the national level, which exclusively address the issues of unorganised sector. Nevertheless, the workers in the unorganised sector benefit from several of the labour laws and social protection measures, which are more or less generic in nature. The Trade Union Act 1926, The Minimum Wages Act 1948, The Contract Labour (Regulation and Abolition) Act 1970, The Workmen’s Compensation Act 1923, and The Payment of Wages Act 1936 are examples of this type. In certain cases, even the Industrial Disputes Act, 1947 would be included. For instance, the Minimum Wages Act, 1948 directs both the Central and State Governments to periodically notify the minimum wage rates for various categories of informal labour. Wage determination in India has been achieved by various instruments. For the unorganised sector, the most useful instrument is the Minimum Wages Act, 1948. This law governs the methods to fix minimum wages in scheduled industries (which may vary from State to State) by using either a committee method or a notification method. A tripartite Advisory Committee with an independent Chairman advises the Government on the minimum wage. In practice, unfortunately, the minimum wage is so low that in many industries there is erosion of real wage despite revision of the minimum wage occasionally.

The other important legislations, which have some bearing on the welfare of unorganised sector workers include: Bonded Labour System (Abolition) Act, 1976, Payment of Wages Act, 1936, Employees State Insurance Act, 1948, Maternity Benefit Act, 1961, Personal Injuries (Compensation Insurance) Act, 1963, Payment of Gratuity Act, 1972, Workmen’s Compensation Act, 1923, Plantation Labour Act, 1948, Employees Provident Fund and Misc. Provisions Act, 1976, Inter-state Migrant Workmen (RECS) Act, 1979 and Child Labour (Prohibition and Regulation) Act, 1986. However, all these Acts are either

benefiting the select organised segments of the unorganised workforce or mostly with certain limited enabling provisions. Despite the implementation of all these acts, the workers in the sector are mostly inadequately protected in terms of security of employment; better working conditions (prescribed times of work and reasonable wages); and effective systems/machineries for identification of eligible beneficiaries, dispute resolution and so on.

During the past five decades, starting with the Community Development Programmes (CDP) in 1950s, the Government and other social institutions have launched various social security programmes to meet the basic subsistence and contingency needs of the unorganised and informal sector workers. Broadly, it is possible to group these measures into three categories, such as:

- i) Social Assistance Programmes;
- ii) Social Insurance Schemes; and
- iii) Welfare Funds.

A brief review of these programmes/Schemes is attempted below to provide some insights that help in strengthening the social protection to the unorganized workers.

22.3.3.1 Social Assistance Programmes

The social assistance programmes constitutes a varieties of measures such as *food-based transfer programmes, income-transfer programmes and cash-transfer programmes*.

- i) **Food-based transfer programmes:** The food-based social safety nets are designed to ensure livelihoods and adequate consumption, relieve deprivation and improve nutritional status of the poor and vulnerable sections of the population. Broadly, three types of interventions could be identified in this category such as:
 - self-targeted employment programmes for able bodied (Sampoorna Gram Swarozgar Yojana; Food for Work Programmes; and Employment Assurance Schemes);
 - welfare programmes for specific vulnerable groups (elderly and disabled, pregnant and lactating mothers, etc.); and
 - programmes for basic education and nutrition.

The **Public Distribution System (PDS)** is the key component in the overall food security arrangements in the country. Over the years, the PDS has played an important role in moderating open market prices and ensuring food security at the household level by providing food grains and other essential goods at lower prices. The main objective of the Targeted Public Distribution System (TPDS) is to improve the PDS consumption of the 'identified poor' by offering a specific quantum of cereals at highly subsidised prices. Despite the functioning of TPDS, the other food transfer schemes introduced subsequently include: *The Annapurna Scheme* launched by the central government in which 10 kgs of rice or wheat will have to be given to the destitute elderly who is not at all supported by any means either formally or informally; and *Antyodaya Anna Yojana / Antyodaya Anna Scheme* of the central government which targets to cover 10 million poorest of the poor

households from amongst 65 million below poverty line (BPL) families by making available 25 kg of wheat and rice at highly subsidised rates. These are widely reviewed that the overall improvement in nutritional status of the population due to these schemes are rather low, which highlights the need for further strengthening the existing food transfer measures. In 1995, a major scheme on providing *mid-day meals* was launched through which some amount of cooked food was ensured per day to the children of indigent families. This measure not only acted as a means of nutritional support to the families of unorganised sector labour but also provided an incentive for school enrolment of their children.

One of the commendable alternative initiatives towards provision of food security is the ***Community Grain Bank Scheme***, which was launched in late 1990s in 13 select States. As per the provisions, the Government provides a one time grant towards purchase of locally preferred variety of food grains at the rate of 1 quintal per member family for initial stock of the bank, setting up of traditional type of storage facilities and purchase of weights and scales. Within the first five years, nearly 2000-grain banks were set up at a cost of over Rs.100 million. The scheme is truly participative in nature. At the village level, a 7-member working committee manages the scheme, with the village headman as its chairman and all tribal population of the village living below poverty line as its members. The member families are entitled to take loans in 4 instalments of up to 25 kg each during the period of scarcity, which is repayable at the time of next successful harvest to recoup the stock. The interest on loan is 5 per cent up to 3 months and 10 per cent from 3 to 6 months. In the event of non-payment beyond 6 months, the membership of the individual is liable to lapse but may be revived after repayment. The reports suggest that food bank schemes have been quite successful at local levels in improving food security in remote and difficult areas for vulnerable groups (Remesh Babu, et al, 2006). This scheme, however, did not cover all the workers in the informal economy, as it was specifically designed towards safeguarding against fall in nutritional standards of scheduled tribes living in remote and backward areas.

- ii) **Income transfer programmes:** Income transfer programmes in India basically include the labour-based public works and infrastructure programmes (or workfare programmes) to promote rural and urban livelihoods. The first such scheme was started in early 1960s in the form of Rural Works Programme largely due to recognition of the fact that growth alone could not take care of poverty. Subsequent to this, a number of wage employment programmes such as Food for Work Programme (FFW-1977), Jawahar Rozgar Yojana (JRY), Sampoorna Gram Swarozgar Yojana ((SGRY), Jawahar Gram Samridhi Yojana (JGSY), Employment Assurance Scheme (EAS), Pradhan Mantri Gram Sadak Yojana (JGSY), Food for Work Programme for Calamity Hit States (FFW-2002) and so on were initiated from time to time. The latest addition to this set of schemes is the recently introduced Employment Guarantee Act, 2005 (i.e. The National Rural Employment Guarantee Act, 2005) which assures that the State Government shall provide to every poor rural-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. The minimum wage to be paid to the workers is stipulated and if it fails to provide

the minimum guaranteed level of employment, the appropriate government is liable to pay an unemployment allowance.

A major proportion of the beneficiaries of the scheme are agricultural labour, though the scheme is not specially designed to cater to farm workers. Also, it is widely established that the scheme was successful in terms of reducing poverty and unemployment, besides acting as an effective insurance mechanism.

- iii) **Cash Transfer Programmes:** Among the cash transfer programmes in the social security front, which are equally applicable to the agricultural workers, National Social Assistance Programme (NSAP) is very prominent. NSAP, which is a social security programme for the welfare of poor households, has *three components* such as National Old Age Pension Scheme (NOAPS), National Family Benefit Scheme (NFBS) and National Maternity Benefit Scheme (NMBS) (Prabhu, 2001).

22.3.3.2 Social Insurance Schemes

Social Insurance Schemes are another major category of social protection in India for the labour in unorganised sector (and, thus, for agricultural labour). These are meant to improve ability of the poor individuals and households to resist sudden shocks or losses caused by social and other contingencies. The two major generic schemes under this are the *Janshree Bima Yojana* (JBY), 2000 and the *Universal Health Insurance Schemes* (UHS), 2004. While the former envisages life insurance protections to persons between 18-60 years old and living below or marginally above poverty line in rural areas, the latter assures hospital care to poor persons and families. Other centrally sponsored schemes that benefit agricultural labourers are: *Personal Accident Insurance Scheme* for poor families and *Group Insurance Scheme* for landless agricultural labourers.

22.3.3.3 Welfare Funds

The various welfare funds, which are currently catering to different informal sector occupations in India, provide different types of welfare amenities to the workers such as healthcare, housing, educational assistance for children, drinking water and so on. At the central government level, there are no specific welfare funds functioning so far, which provide certain levels of social security to all the workers in the informal sector. However, at present the central government runs five occupation-based welfare funds set up under various Acts of Parliament. These funds are for: i) Beedi Workers, ii) Limestone and Dolomite Mine Workers, iii) Iron Ore, Chrome Ore and Manganese Ore Mine Workers, iv) Mica Mine Workers, and v) Cine Workers. A unique aspect of welfare funds is its effective involvement of multiple stakeholders in designing and implementing social safety nets (The welfare funds in Kerala are being run with active support from trade unions and through contributions from workers, employers and the government (Kannan, 2002).

Despite their impressive share in the workforce of the country, the unorganised labour in many occupations generally lacks comprehensive and effective legislations as well as welfare schemes that assure a certain minimum level of social security to them.

There are some specific enactments which have been introduced to bring in a positive growth and reforms in the field for providing protection to the labour forces. In 1996, two umbrella legislations were passed by the Parliament towards regulating the conditions of work and provision of a measure of social security to the group of construction workers. On the basis of these two legislations – *The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996*, and *The Building and Other Construction Workers Welfare Cess Act, 1996* – the Government notified the Building and Other Construction Workers (ECS) Central Rules, 1998, which stipulated several social security benefits to the construction workers including accident relief, old age pension, housing loans, payment of insurance premium, payment towards educational expenses of children, medical and maternity benefits and so on. Subsequently, various States were expected to enact state level legislations.

The Second National Commission on Labour (NCL), constituted by the Government in 1999 dealt with the social security concerns of unorganised sector in a detailed manner. In response to the Commission's recommendations, Unorganised Sector Workers Social Security Scheme (2004) was launched. As a part of designing this system the Ministry also experimented the introduction of identity cards and identity numbers (Social Security Cards and Social Security Numbers) to the unorganised sector workers, which was again in line with the recommendations of the NCL. Further, Unorganised Sector Workers Bill, 2004 was also prepared which contained measures relating to both social security and conditions of work in the informal sector. In 2004, a National Commission for Enterprises in the Unorganised Sector (NCEUS) was set up to review, inter alia, the social security system available for labour in the informal sector and make recommendations for expanding their converge. Based on its report The Unorganised Workers' Social Security (Draft) Bill, 2006, was drafted, which was formulated after detailed review and examination of all the hitherto similar exercises in the country.

The National Employment Guarantee Act (NREGA), 2005 is a step towards legal enforcement of the right to work, as aspect of the fundamental right to live with dignity. The Act ensures at least 100 days of guaranteed wage employment in a year to at least one adult member of very household. The work is to be provided within 15 days of demanding it and to be located within five kilometers distance. The salient features of the NREGA include the self-selection characteristics and the unemployment compensation to be paid by the government, in case the required minimum employment could not be provided. It assures that the State Government concerning the rural area shall provide to every poor 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. The minimum wage to be paid to the workers are stipulated and if fail to provide the minimum guaranteed level of employment, the appropriate government is liable to pay an unemployment allowance.

The Right to Information (RTI) Act, 2005 (Under the RTI Act, 2005 people can: demand from the government information pertaining to any of its departments; demand photocopies of government contracts, payments, estimates, measurements of engineering works etc.; demand to inspect any public development work that may be still under construction or completed; demand to inspect government documents – construction drawings, records, registers, etc.; demand status of the

requests or complaints and so on), is expected to improve the effectiveness of the social security programmes, as it is expected that it could do a lot towards the proper implementation of employment guarantee scheme (NREGA) and other social security programmes for the unorganised sector.

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 kinds of protection available to the labour in unorganised sector?

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22.4 EMERGING ISSUES IN LABOUR WELFARE

The studies suggest that the coverage and penetration of benefits of these employment generation programmes have been minimal in relation to the requirements. The drawbacks of these programmes suggested by various evaluation studies include: lower coverage of eligible job seekers, lesser number of average employment days generated, less labour intensive nature of the programmes, large leakages from the expenditure, delay in payment of wages, and inappropriate selection of programme areas.

The effort to provide an umbrella statute to take care of employment conditions and social welfare benefits for all unorganised sections is the recent issue to be considered so that a contemporary effort is made towards it. Common central legislation for all agricultural workers is also in the veil.

Powers of resolving the issues among the employers and employees are vested in quasi-judicial authorities, labour courts and magistrates' courts. The power of review is in the High Courts and finally in the Supreme Court. Even where statutes prescribe reasonable time limits, they are not adhered to. Frustration with labour-related justice is heightened by these unlimited delays. It has become a common trend that a case of dismissal takes almost ten years for the labour court to decide and if the parties decide to seek judicial review in the higher courts there can be unlimited delay.

The measures of social insurance schemes suffer generally from several drawbacks such as inadequate coverage, lack of effective beneficiary participation, and improper implementation. Further, the resource allocations towards these schemes are far from adequate and their sustainability would be in question, if all the eligible beneficiaries effectively utilise it.

Housing is one of the basic needs of every individual and family. The housing needs of the unorganised workers and the poor are ever increasing in the context of the decay of joint family system, migration and urbanisation. In urban areas, though housing is a major issue, the organised workers are supported by providing House Rent Allowances (HRA) or by providing houses through Housing Boards and by providing accommodation in the Quarters. These facilities are normally not available and could not be enjoyed by the unorganised workers. Moreover, the housing conditions of the rural workers are 'really poor' and there is scope for reconditioning, modification and reconstruction, in many matters.

Thus, foregoing discussion about the growing labour force, their characteristics, and social security initiatives of the Centre, State and NGO's indicate that the needs are much more than the supports provided and the efforts must be targeted and vast enough to cover the growing needs and problems of workers.

22.5 LET US SUM UP

In this Unit, we have attempted to make clear the terms 'formal' and 'informal' sectors or 'organised' and 'unorganised' sectors with reference to the workforce and their magnitude in these sectors. We have highlighted their comparative needs and problems as well as the protection available to them. While discussing different protective measures – legislation, schemes and programmes available for the workforce in both the sectors – we have also focused on the fact that there are no specific and comprehensive schemes or legislation at the national level, which exclusively address the issues of unorganised sector as a whole, thereby calling the attention of the central and state governments and non-governmental organisations to take up adequate measures to address the growing needs and problems of the labour in the unorganised sector.

22.6 ANSWERS TO 'CHECK YOUR PROGRESS' QUESTIONS

- 1) Some of the major legislations that have been enacted for protection of the labour in organised sectors are: Employees' State Insurance Act, 1948, Workmen's Compensation Act, 1923, Employees' Provident Fund and Miscellaneous Provisions Act, 1952, Maternity Benefit Act, 1961, Payment of Gratuity Act, 1972, and such other labour legislations, insisting for social security and speedy settlement of issues among the employers and employees.
- 2) So far, there are no specific and comprehensive schemes or legislation at the national level, which exclusively address the issues of the entire unorganised sector. Nevertheless, the workers in the unorganised sector benefit from several of the labour laws and social protection measures which are more or less generic in nature like The Trade Union Act 1926, The Minimum Wages Act 1948, The Workman's Compensation Act 1923, and The Payment of Wages Act 1936 are examples of this type. The other important legislations which have some bearing on the welfare of the unorganised sector workers include: Bonded Labour System (Abolition) Act, 1976, Payment of Wages Act, 1936, Employees State Insurance Act, 1948, Maternity Benefit Act, 1961, Personal Injuries (Compensation Insurance) Act, 1963, Payment of Gratuity Act, 1972, Plantation Labour Act, 1948, Employees Provident Fund

and Misc. Provisions Act, 1976, Inter-state Migrant Workmen (RECS) Act, 1979 and Child Labour (Prohibition and Regulation) Act, 1986. The other social security programmes launched to meet the basic subsistence needs and contingency needs of the labour in unorganised and informal sectors fall under three categories such as: i) Social Assistance Programmes; ii) Social Insurance Schemes; and iii) Welfare Funds.

22.7 REFERENCES

Goswami, V. G. 1999. *Labour and Industrial Law*. Allahabad: Central Law Agency.

Gupta S. P. 2006. *Globalisation, Economic Reforms and Employment Strategy in India*. New Delhi: Academic Foundation.

International Labour Organisation. 1984. *ILO Publications*. Geneva, Switzerland: International Labour Office, at <http://www.ilo.org>.

Khan, and Khan, 2009. *Labour and Industrial Law*. Hyderabad: Asia Law House.

Ministry of Labour and Employment and Rehabilitation. 1969. *Report of National Commission on Labour* (under the Chairmanship of P. B. Gajendragadkar). New Delhi: Government of India (<http://labour.nic.in>).

Ministry of Small Scale Industries. 2006 to 2008. *National Commission for Enterprises in the Unorganised Sector* (NCEUS). New Delhi: Dolphin Printo Graphics.

National Sample Survey Organisation (NSSO). 61st Round-2004-2005. New Delhi: Ministry of Statistics and Programme Implementation, Government of India, at <http://mospi.gov.in>.

Parthasarathy, S., and Visalakshi, A. K. 2007. "The Unorganized Sector Workers' Social Security Bill: Defending the Support-Led Security Approach", *Labour Law Journal*, Vol-III.

Prabhu, Seeta K. 2001. *Socio-economic Security in the Context of Pervasive Poverty: A Case Study of India, SES papers*. Geneva: International Labour Office.

Puri, S. K. 2010. *Labour and Industrial Law*. Faridabad: Allahabad Law Agency.

Ratnam, C. S. Venkata. 2006. *Social Security in the Organised Sector in India: Social Development Report*. (Centre for Social Development) pp.136-150. New Delhi: Oxford University Press.

Remesh, Babu, P. et.al. 2006. *Assessing the Social Security Measures and Promoting Effective Participation of Beneficiaries: An Action Research Project*, Report Submitted to HDRC/UNDP, New Delhi. Noida: V. V. Giri National Labour Institute (Mimeo).

Sakthivel, S. Pinaki Joddar, 2006. "Unorganised Sector Workforce in India: Trends, Patterns and Social Security Coverage", *Economic and Political Weekly*, May 27.

Shukla, V. N. 2004. *Constitution of India*. Lucknow: Eastern Book Co.

Srivastava, K. D. 2002. *Law relating to Trade Unions and Unfair Labour Practice in India*. Lucknow: Eastern Book Company.

The Employees Compensation Act, 1923.

The Employees' Provident Funds and Miscellaneous Provisions Act, 1952

The Employees' State Insurance Act, 1948

The Industrial Disputes (Amendment Act, 2010.

The Maternity Benefit Act, 1961

The National Rural Employment Guarantee Act, 2005.

The Payment of Gratuity Act, 1972.

The Right to Information Act, 2005.

The Trade Union Act, 1926.

The Unorganized Workers' Social Security Act, 2008.

The Workmen's Compensation Act, 1923.

Suggested Readings

Ahmedullah Khan. 2005. *Commentary on the International Labour Organisation and the Indian Response*. Hyderabad: Asia Law House.

"A Model for Social Security" (Editorial), *Economic and Political Weekly*, August 19, Vol.XLI, No.33.

Babu Mathew. 2004. "A Brief Note on Labour Legislation in India", *Asian Labour Update*, Issue No.46, January to March.

Dhas, A. C. and Helen, M. *Social Security for Unorganised Workers in India*, at <http://mpira.ub.uni-muenchen.de>.

Duggal, Ravi. 2006. "Need to Universalise Social Security", *Economic and Political Weekly*, Vol.XLI, No.32.

Economic and Political Weekly, August 19, Vol.XLI, No.33.

Economic and Political Weekly, Vol.XLI, No.32.

<http://labour.nic.in>

<http://mospi.gov.in>

<http://mpira.ub.uni-muenchen.de>.

www.ilo.org

www.nceus.com/reports/socialsecurity2006.

www.prs.com/legislativebrief/UnorganizedWorkersSocialSecurityAct.

UNIT 23 RIGHTS OF DALITS AND TRIBALS

Structure

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- 23.1 Objectives
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23.0 INTRODUCTION

Most often, the terms like 'Dalits', 'Tribals', 'Harijans', etc., are used very vaguely. But, these terms have their specific connotations and have also undergone change over time. The term 'Dalits', also called 'Harijans', is used as a designation for a group of people, traditionally regarded as of lower class sub-serving the interests of upper classes and considered unsuitable for making personal relationships. Dalits are a mixed population of numerous caste-groups all over South Asia, and speak various languages.

The word "Dalit" comes from the Sanskrit, and means "ground", "suppressed", "crushed", or "broken to pieces". It was first used by Jyotirao Phule in the nineteenth century, in the context of the oppression faced by the erstwhile "untouchable" castes of the twice-born Hindus (Oliver Mendelsohn and Marika Vicziany, 1998). Mahatma Gandhi coined the word 'Harijan', translated roughly as "Children of God", to identify the former untouchables. Politically active 'Untouchables' feel that this term 'Harijan' might evoke pity rather than respect, and prefer the term 'Dalits', which means, "oppressed".

While the *caste system* has been abolished under the Indian Constitution, there is still discrimination and prejudice against Dalits. Since Indian independence, significant steps have been taken to provide opportunities to Dalits in jobs and education. Many social organizations have encouraged proactive provisions to

better the conditions of Dalits through improved education, health and employment.

“Adi Dravida”, “Adi Karnataka” and “Adi Andhra” are words used in the states of Tamil Nadu, Karnataka and Andhra Pradesh, respectively, to identify people of former “untouchable” castes in official documents. These words, particularly the prefix of “Adi”, denote the ‘aboriginal’ inhabitants of the land (Leslie, 2004, p.46).

The more general term, “Adivasi” is derived from the Sanskrit words *adi* meaning primal, original or first + *bas* a verb root meaning to sit, settle, or stay; rendering Adivasi as “indigenous” people of India. People who identify themselves as Dalit may also identify themselves as Adivasi, but the distinction is analogous to that of Scheduled Tribes and Scheduled Castes in which there is some intersection but the two are distinct social identities. The terms “Scheduled Castes and Scheduled Tribes” (SC/ST) are the official terms used in Indian government documents to identify former “untouchables” and “tribals”. However, in 2008 the National Commission for Scheduled Castes, noticing that “Dalit” was used interchangeably with the official term “Scheduled Castes”, called such usage of the term “unconstitutional” and asked State Governments to end such use. But, the fact is that, while the Government documents use ‘Scheduled Caste’ as official term, the term ‘Dalits’ has become a popular usage in social context, including debates.

With this brief introduction about the terms, ‘Dalits’ and ‘Tribals’, among others, we will attempt to focus on their rights in this Unit.

23.1 OBJECTIVES

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

- Recognise the status of Dalits and Tribals in India;
- Discuss and appreciate the constitutional and legal rights and protection available to Dalits and Tribals in India; and
- Analyse the legislative and policy measures undertaken by the State for protection and promotion of their rights in India.

23.2 SOCIAL STATUS, CONSTITUTIONAL RIGHTS AND PROTECTION OF SCHEDULED CASTES (DALITS) AND SCHEDULED TRIBES (TRIBALS)

In the context of traditional Hindu society, ‘Dalit’ status has often been historically associated with occupations regarded as ritually impure, such as any involving leatherwork, butchering, or removal of rubbish, animal carcasses, and waste. Dalits work as manual labourers cleaning streets, latrines, and sewers. Engaging in these activities was considered to be polluting to the individual, and this pollution was considered contagious. As a result, Dalits were commonly segregated, and banned from full participation in Hindu social life. For example, they could not enter a temple or a school, and were required to stay outside the village. Elaborate precautions were sometimes observed to prevent incidental contact between Dalits and people of other castes. Discrimination against Dalits still exists in rural areas

in the private sphere, in everyday matters such as access to eating-places, schools, temples and water sources. It has largely disappeared in urban areas and in the public sphere. Some Dalits have successfully integrated into urban Indian society, where caste origins are less obvious and less important in public life. In rural India, however, caste origins are more readily apparent and Dalits often remain excluded from local religious life, though some qualitative evidence suggests that its severity is fast diminishing. Similarly, Scheduled Tribes form another section of people generally called 'tribals', who live isolated life cut off from the mainstream societies. In order to empower these sections of society – Dalits (Scheduled Castes) and Tribals (Scheduled Tribes) – and to bring them into mainstream social, economic, and political fields, the Constitution of India provided them certain special rights and protection which are highlighted below.

23.2.1 Constitutional Rights and Protection of Scheduled Castes and Scheduled Tribes: A Brief Overview

As mentioned above, Dalits are people belonging to weaker sections of society and mostly belong to Scheduled Castes and Scheduled Tribes. The Constitutional safeguards for Scheduled Castes and Scheduled Tribes, among other weaker sections of society, are as mentioned below.

- A) Development and Protective Safeguards:** These safeguards are contained in the Directive Principles of State Policy of the Constitution and a specific provision in Article 46 which is a comprehensive provision comprising both the developmental and regulatory aspects.
- **Article 46:** It states: "The State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation".
- B) Social and Economic Safeguards:** Some important social and economic safeguards include the following.
- **Article 17:** According to this Article "Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "untouchability" shall be an offence punishable in accordance with law.

To give effect to this Article, Parliament made an enactment, viz. the Untouchability (Offences) Act, 1955. To make the provisions of this Act more stringent, the Act was amended in 1976 and was also renamed as the Protection of Civil Rights Act, 1955. As provided under the Act, the Government of India also notified the Rules, viz. the PCR Rules, 1977 to carry out the provisions of this Act. As cases of atrocities on SCs/STs were not covered under the provisions of PCR Act, 1955, Parliament passed another important Act in 1989 for taking specific measures to prevent the atrocities on them. This Act, known as the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, became effective from 30-1-1990. For carrying out the provisions of this Act, the Government of India has notified the SCs and STs (Prevention of Atrocities) Rules, 1995 on 31-3-1995.

- **Article 23:** It prohibits traffic in human beings and beggar and other similar forms of forced labour and provides that any contravention of this provision shall be an offence punishable in accordance with law. It does not specifically mention Dalits or Scheduled Castes but since majority of bonded labour belong to Scheduled Castes, this Article has a special significance for these communities. In pursuance of this Article, Parliament has enacted the Bonded Labour System (Abolition) Act, 1976. For effective implementation of this Act, the Ministry of Labour is running a Centrally Sponsored Scheme for identification, liberation and rehabilitation of bonded labour.
- **Article 24:** It provides that no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment. There are Central and State laws to prevent child labour. This Article is also significant for SCs as a substantial portion of child-labour engaged in hazardous jobs belong to these groups.
- **Article 25(2)(b):** It provides that Hindu religious institutions of a public character shall be thrown open to all classes and sections of Hindus. This provision is relevant as some sects of Hindus used to claim that only members of the concerned sects had a right to enter their temples. This was only a subterfuge to prevent entry of SC persons into such temples. For the purpose of this provision the term Hindu includes Sikh, Jain and Buddhist.

C) Educational and Cultural Safeguards: Important safeguard in this regard is Article 15.

- **Article 15(4):** It empowers the State to make any special provision for the advancement of any socially and educationally backward classes of citizens or for the SCs and STs. This provision was added to the Constitution through the Constitution (First Amendment) Act, 1951, which amended several Articles. This provision has enabled the State to reserve seats for SCs and STs in educational institutions including technical, engineering and medical colleges and in scientific and specialized courses. In this Article as well as in Article 16(4), the term 'backward classes' is used as a generic term and comprises various categories of backward classes, viz. Scheduled Castes, Scheduled Tribes, Other Backward Classes, De-notified Communities (Vimukta Jatiyan) and Nomadic/Semi nomadic communities.

D) Political Safeguards: These include the following.

- **Article 164(I):** It provides that in the States of Chattisgarh, Jharkhand, Madhya Pradesh and Orissa there shall be a Minister in charge of tribal welfare who may, in addition, be in charge of the welfare of the Scheduled Castes and backward classes or any other work.
- **Article 330:** It provides for reservation of seats for the SCs and STs in the Lok Sabha.
- **Article 332:** It provides for reservation of seats for the SCs/STs in the State Vidhan Sabhas (Legislative Assemblies).

- **Article 334:** It originally laid down that the provisions relating to the reservation of seats for SCs/STs in the Lok Sabha and State Vidhan Sabhas (and the representation of the Anglo-Indian community in the Lok Sabha and the State Vidhan Sabhas by nomination) would cease to have effect on the expiration of a period of ten years from the commencement of the Constitution. This Article has been amended five times, extending the said period by ten years on each occasion. This provision will now expire in January 2020.
- **Article 371A:** It contains special provisions with respect to Nagaland.
- **Article 371B:** It contains special provisions with respect to Assam.
- **Article 371C:** It contains special provisions with respect to Manipur.
- **Article 371F:** It contains special provisions with respect to Sikkim.

E) Reservation for SC/ST in Government Employment: Important provisions related to reservation for SCs/STs in employment/appointment include the following.

- **Article 16(4):** It empowers the State to make “any provision for the reservation in appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State”.
- **Article 16(4A):** It provides that nothing in this Article shall prevent the State from making any provision for reservation in matters of promotion, “with consequent seniority” to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.
- **Article 16(4B):** It specifies that nothing in this Article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty percent reservation on total number of vacancies of that year.
- **Article 320(4):** It provides that nothing in clause (3) shall require a Public Service Commission to be consulted as respects the manner in which any provision under Article 16(4A) may be made or the manner in which effect may be given to the provisions of Article 335.
- **Article 335:** It mentions that the claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State.
 - Provided that nothing in this Article shall prevent in making of any provision in favour of member of SCs & STs for relaxation in

qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with affairs of Union or of a State (Added by the Constitutional 82nd Amendment Act, 2000).

F) Institutional Protection for the Scheduled Castes and the Scheduled Tribes: Institutional protection as available for the Scheduled Castes and Scheduled Tribes is discussed below.

- i) ***National Commission for Scheduled Castes & Scheduled Tribes:*** The National Commission for Scheduled Castes and Scheduled Tribes has been constituted under Article 338 of the Constitution of India. However, by the Constitution (89th Amendment) Act, 2003, the erstwhile National Commission for Scheduled Castes and Scheduled Tribes was replaced by two separate Commissions, namely, a) the National Commission for Scheduled Castes (NCSC), and b) the National Commission for Scheduled Tribes (NCST) w.e.f. 19 February 2004.

As amended by the Constitution (Eighty-Ninth Amendment) Act, 2003. The Commission shall consist of a Chairperson, a Vice-Chairperson and three other Members.

Methods of investigation and inquiry: The Commission may adopt any one or more of the following methods for investigating or inquiring into the matters falling within its authority: a) by the Commission directly; b) by an Investigating Team constituted at the Headquarters of the Commission; and c) through its State Offices.

- ***Investigation and Inquiry by the Commission directly:*** The Commission may hold sittings for investigation into matters relating to safeguards, protection, welfare and development of the Scheduled Castes for inquiry into specific complaints for which the Commission decided to take up investigation or inquiry directly. Such sittings may be held either at the Headquarters of the Commission or at any other place within the country. The sitting(s) of the Commission would be held after giving due notice to the parties intended to be heard and also due publicity notice to the general public. Care will be taken to see that the members of the Scheduled Castes who are affected in the matter under investigation or inquiry are given due information through notice or publicity. When a decision for direct investigation is taken, an officer not below the rank of Research Officer/Section Officer along with necessary staff may be attached to the Member(s) entrusted with such investigation or enquiry and they shall take all steps to arrange such sittings.

In accordance with clause 8 of Article 338 of the Constitution, while investigating into a matter referred to in sub-clause (a) or in inquiring into any complaint referred to in sub-clause (b) of clause (5) of Article 338, the Commission shall have all the powers of civil court trying a suit and in particular in respect of the following matters, namely:

- a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

- b) enquiring the discovery and production of any document;
- c) receiving evidence on affidavits;
- d) requisitioning any public record or copy thereof from any court or office;
- e) issuing commissions for the examination of witnesses and documents; and
- f) any other matter which the President may, by rule, determine.

The Commission, for the purpose of taking evidence in the investigation or inquiry, may require the presence of any person, and when considered necessary, may issue summons to him/her. The summons for enforcing attendance of any person from any part of India and examining him/her during the course of investigation and inquiry by the Commission shall provide at least 15 days notice to the person directed to be present before the Commission from the date of receipt of the summons.

Where the property, service/employment of Scheduled Castes and other related matters are under immediate threat and prompt attention of the Commission is required, the matter shall be taken cognizance by issue of telex/fax to the concerned authority for making it known to them that the Commission is seized of the issue. Urgent reply by telegram or fax shall be called from the concerned authority. In case no reply is received within ten working days, the authority concerned may be required to appear before the Commission at a shorter notice for enquiry.

The Commission may issue commission under clause 8(e) of Article 338 of the Constitution to take evidence in any matter under investigation or inquiry and for this purpose appoint any person by an order in writing. The Commission may make further rules for payment of fee and travelling and other allowances to persons appointed to take evidence on commission.

After holding the required sittings, the Member(s) who conducted the investigation shall make a report that shall be sent to the Secretary or any other officer authorized to receive the report. After examination, action may be initiated on the report with the approval of the Chairperson.

- *Investigation or inquiry by an Investigation Team constituted at the Headquarters of the Commission:* The Commission may decide about the matter that is to be investigated or enquired into by an Investigating Team of officials of the Commission, provided that, in case the matter is urgent, the decision for such investigation or inquiry may be taken by the Chairperson.

The Investigating Team shall hold the investigation or inquiry, as the case may be, promptly and for this purpose, may initiate necessary correspondence including issuance of notices for production of documents.

The Investigating Team may visit the area concerned, after observing due formalities for obtaining approval of tours and other administrative requirements, and after giving information to the

concerned local authorities regarding the matter, purpose, scope and procedure of the investigation or inquiry. The Investigating Team may require the help of the officers and staff of the concerned State Office but the responsibility of preparing and presenting the report shall rest with the head of the Investigating Team.

The Investigating Team shall submit the report of the investigation or inquiry, as the case may be, to the Secretary or a subordinate officer of the Commission as may be directed by general or specific orders within the stipulated time, if any. If the time limit stipulated is likely to be exceeded, the head of the Investigating Team shall obtain the orders of the Secretary through the Officer-in-charge of the matter. The report shall be examined and put up to the competent authority for a decision regarding the action to be taken on the report.

The report shall be placed before the Chairperson of the Commission who will take appropriate action in the matter.

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) List out important Articles that provide constitutional safeguards for the protection of SCs/STs.

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- 2) What are the various methods of investigation and enquiry followed by the National Commission for SCs/STs?

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23.2.2 Bonded Labour Abolition

The genesis of rural poverty in India dates back to the later half of the 18th century when the erstwhile colonial rulers introduced the Zamindari system. Subsequently the anti-farmers policies of the colonial government had also contributed towards the indebtedness of a large number of small and medium farmers and eventually pushing them into the category of landless labourers (Kartik Gupta, at www.jurisonline.in).

The problem of bonded labour closely linked to the broader socio economic problems of surplus labour, unemployment, under employment, inequitable distribution of land and assets, low wages, distress migration, social customs, etc. With the phenomenon of small and marginal farmers and rural artisans steadily becoming landless labourers generate environment which can perpetuate the system of bonded labour (Ibid).

The problem of bonded labour is mostly associated with the SCs and STs. The Government of India has consistently maintained a proactive approach to the issue of forced or bonded labour in the country. It recognizes this evil system as a gross infringement of the fundamental Human Rights of the affected citizens and is implacably committed to its total eradication in the shortest possible time.

The system of debt bondage in India is an outcome of certain categories of indebtedness, which have been prevailing for a long time involving certain economically-exploited helpless and weaker sections of society. Thus, this system originated from the uneven social structure characterized by feudal and semi-feudal conditions. Bonded labourers constitute, perhaps, the weakest section of rural poor (Ibid).

23.2.2.1 Constitutional and Legal Provisions

The Constitution of India guarantees to all its citizens, as has been mentioned in the preamble, justice — social, economic and political; freedom of thought, expression, belief, faith and worship; equality of status and of opportunity; and fraternity, dignity of individual and unity and integrity of the nation.

Under Article 23 of the Constitution, traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. Bonded labour system (Abolition) ordinance was promulgated which was later on replaced by the Bonded Labour System (Abolition) Act, 1976.

Under Article 42, the State shall make provision for securing just and humane conditions of work and for maternity relief.

Under Article 43, living wage, etc. for workers has been provided. The State shall endeavour to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work and living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities.

Under Section 374 of IPC, unlawful compulsory labour has been criminalised. Whoever unlawfully compels any person to labour against the will of that person, shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

India has ratified ILO Convention No.29 (Forced Labour Convention 1930) on 30.11.1954. Following the ratification, the bonded labour system was abolished by law throughout the country *w.e.f.* 25th October 1975 by an Ordinance. Subsequently, Bonded Labour System (Abolition) Act was passed by the Parliament in 1976 but given effect to it from 25.10.1975, the date when the Ordinance was promulgated. The Act provides for the abolition of bonded labour, bonded labour system and bonded debt.

This Act extends to whole of India and it came into force with retrospective effect on 25th day of October 1975. The object of the Act is to provide for the abolition of the bonded labour system with a view to prevent the economic and physical exploitation of the weaker sections of the people and for the matters connected therewith and incidental thereto.

Bonded labour: The Bonded labour under the Act has been defined as “any labour or service rendered under the bonded labour system”.

Bonded labour system: The Act further defines bonded labour system as “the system of forced, or partly forced labour under which a debtor enters, or has, or is presumed to have entered, into an agreement with the creditor to the effect that —

- i) in consideration of an advance obtained by him or by any of his lineal ascendants or descendants (whether or not such advance is evidenced by any document) and in consideration of the interest if any, on such advance, or
- ii) in pursuance of any social or customary obligation, or
- iii) in pursuance of an obligation devolving on him by succession, or
- iv) for any economic consideration received by him or by any of his lineal ascendants or descendants, or
- v) by reason of his birth in any particular caste or community –

he would:

- render by himself or through any member of his family, or any person dependent on him, labour or service to the creditor or for the benefit of the creditor, for a specified period or for an unspecified period, either without wages or for nominal wages, or
- forfeit the freedom of employment or other means of livelihood for a specified period or for an unspecified period, or
- forfeit the right to move freely throughout the territory of India, or
- forfeit the right to appropriate or sell, at market value, any of his property or product of his labour.

The main provisions as laid down under the Act are:

- **Abolition of Bonded Labour System:** As per Section 4 of this Act, the bonded labour system shall stand abolished and every bonded labourer shall stand freed and discharged from any obligation. Furthermore, no person shall: i) make any advance or in pursuance of bonded labour system, and ii) compel any person to render any bonded labour.
- **Extinguishment of liability to repay bonded debt:** As per Section 6 of the Act, every obligation of a bonded labour to repay any bonded debt shall be deemed to have been extinguished. No proceedings can be held in any civil court for the recovery of any bonded debt. Every attachment made of any movable property of the bonded labour or such movable property was seized or removed from his custody shall be resorted to the possession of the bonded

labourer. If the restoration is not made within 30 days from the coming of this Act into force, the aggrieved party may apply to the prescribed authority for the restoration of the possession of such property. Under this Act if any suit or proceeding for the recovery of any advance made to a bonded labourer is pending, such a suit will stand dismissed. Furthermore, every bonded labourer detained in civil prison shall be released from detention.

As per Section 7 of the Act, the property vested in a bonded labour which was under any mortgage, charge or lien shall stand freed and discharged from such mortgage, lien or charge and such property shall be resorted to the possession of the bonded labourer. In case of any delay, the matter may be referred to the civil court of the lowest pecuniary jurisdiction.

- **Punishment for violation of the Act:** The Act provided for suitable punishment of anyone who:
 - compels any person to render any bonded labour,
 - advances any bonded debt,
 - enforces any custom, tradition, contract, agreement or other instrument, by virtue of which any person or any member of the family of such person or any dependant of such person is required to render any service under the bonded labour system,
 - being required by this Act to restore any property to the possession of any bonded labourer, omits or fails to do so, within a period of thirty days from the commencement of this Act, and
 - abets any offence punishable under this Act.

Bonded Labour Liberation Front (*Bandhua Mukti Morcha*): *Bandhua Mukti Morcha* (BMM) was formed in 1981 to wage a battle against the pernicious bonded labour system in India. Administrative and political will to carry out the Constitutional mandate and enforce prohibitive laws of the land failed to produce any results. Against all odds, *Bandhua Mukti Morcha* has achieved the release of over 1,24,000 bonded Indians from the shackles of slavery. A large number of them have been rehabilitated. From the Carpet Industry alone, about a thousand children have been rescued and restored to their parents. Their rehabilitation has been monitored effectively. BMM has started a campaign for the provision of non-formal, full-time education for these children, along with the supply of nutrition to each and also some food security to their poor families (Kartik Gupta, See www.jurisonline.in).

As a result of BMM's efforts, the leaders of the leading political parties have expressed their concern on the issue of child labour and often made a mention of it in their election manifestos in Parliamentary/Assembly elections. *Bandhua Mukti Morcha* has been campaigning for a national minimum wage equivalent to first-day salary of a class IV employee in Government service. Its revision is to be done on cost price index as is done for the Government employees. The State Governments may fix minimum wage according to the local conditions but not below the National Minimum Wage (Ibid).

23.2.2.3 Role of National Human Rights Commission (NHRC)

The Supreme Court has directed that the NHRC should be involved in dealing with the issue of bonded labour. In pursuance to the above order, a central action group has been constituted in the NHRC.

In *Bandhwa Mukti Morcha case* (1984) the Supreme Court had issued certain directions to the central government and various authorities. In order to ensure compliance of the above directions, Ministry of Labour constituted a task force, comprising of central officers who are responsible for enforcement of various labour laws. The task force submits its reports to the central as well as state governments indicating the status of compliance on the part of the concerned authorities with the statutory provisions and the directions of the Supreme Court.

23.2.2.4 Rehabilitation of Bonded Labour – Centrally Sponsored Plan/Scheme

In order to assist the state governments in their task of rehabilitation of released bonded labourers, the Ministry of Labour launched a centrally sponsored scheme since May, 1978 for rehabilitation of bonded labourers. Under this scheme, rehabilitation assistance of Rs.20,000 per freed bonded labour is provided which is shared by the central and state governments on 50:50 basis. In the case of the Seven North-Eastern states, 100% central assistance is provided if they express their inability to provide their share. The scheme also provides for financing in respect of the following activities (Ibid).

- 1) Rs.2 lakhs per sensitive district can be provided to concerned state government to conduct survey for identification of bonded labour once in 3 years.
- 2) Central assistance of Rs.10 lakhs every year can be sanctioned to every state government to undertake awareness generation activities relating to bonded labour system.
- 3) Rs.5 lakhs every year can be sanctioned to every state government to study the impact of existing land debt related issues affecting bonded labourers and the impact of poverty alleviation programmes and financial assistance provided by various government sources so far.

Besides these, the state governments have also been advised to integrate the centrally sponsored scheme for rehabilitation of bonded labour with other ongoing poverty alleviation schemes such as *Swaran Jayanti Gram Swa Rojgar Yojna* (SJGSRY), tribal sub plan etc. Accordingly, the rehabilitation package provided by the concerned state governments for the freed bonded labourers includes the following major components.

- Allotment of house site and agricultural land.
- Land development.
- Provision of low cost dwelling units.
- Animal husbandry, dairy, poultry, piggery, etc.
- Training for acquiring new skills, developing existing skills.
- Wage employment, enforcement of minimum wages, etc.

- Supply of essential commodities under targeted public distribution system.
- Education for children.
- Protection of civil rights.

Freedom from bondage would be meaningful only when the uncertainty and insecurity associated with bondage is removed through productive and income generating schemes. In the absence of poverty eradication measures, the rehabilitated bonded labourers are likely to fall back into their original state of bondage. The scheme for rehabilitation should be chosen in consultation with the beneficiary and it should be well planned with all requisite components and infrastructural facilities tied up. By an order of immediate priority, the different parts of country which are dry, drought-prone and poverty-stricken and prone to other natural calamities, migration, indebtedness and also from where the incidence of bonded labour system have been reported on one time or the other, could be identified and surveys undertaken on selective basis to identify the bonded labour system. The bonded labour so identified should be released and rehabilitated on priority basis. Besides, special efforts should be made to remove the general economic backwardness of such area by focused integration of various ongoing plan programmes.

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) How does the Bonded Labour System (Abolition) Act, 1976 extinguish the liability of the bonded labour?

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23.2.3 Abolition of Untouchability and Protection of Dalits and Tribals

Because of the caste stigma in our society, an acute problem of untouchability is still prevailing and Scheduled Castes persons are not getting their due share of benefit in occupational opportunities as compared to other members of the society. Upper-caste Hindus consider the Dalits as being untouchable. The presence, touch or even the mere reference to a lower caste is considered to be polluting by the upper caste. The Dalits particularly employed as manual scavengers are considered to be untouchable even by other Dalits.

The instance of prevention of entry of Scheduled Castes into temples should be carefully tackled. Those encouraging such discriminatory practices and promoting disaffection in the society should be prevented from doing so by launching

prosecution against them. The State Governments have also issued various orders and instructions from time to time for the removal of various hardships and problems from which the members of Scheduled Castes have been suffering.

23.2.3.1 The Protection of Civil Rights Act, 1955

After independence, a provision was made under Article 17 of the Constitution of India, whereby untouchability was abolished. In accordance with this constitutional provision, the Government of India has adopted “The Protection of Civil Rights Act, 1955.” Under this Act, stringent measures have been made regarding punishment etc. and offence of untouchability has been made cognizable. Under the Act, 6 special courts and 2 designated courts have been established.

However, the Civil Rights Act, 1955 was basically concerned itself with superficial humiliations such as verbal abuse of the lower castes. Thus, it could not address the problem of untouchability in an effective manner.

23.2.3.2 The Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989

The Government of India, in 1989, passed the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, which delineates specific crimes against Scheduled Castes and Scheduled Tribes as “atrocities,” and describes strategies and prescribes punishments to counter these acts. The Act 1955 was replaced by the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act 1989. The Act came into force with effect from 30th January 1990. This legislation aims at preventing commission of offences by persons other than Scheduled Castes and Scheduled Tribes against Scheduled Castes and Scheduled Tribes. The Act provides for punishment for offences of atrocities committed against Scheduled Castes and Scheduled Tribes. Comprehensive Rules under the Act were notified in the year 1995, which *inter-alia* provides norms for relief and rehabilitation. The Act extends to whole of India except Jammu & Kashmir. The Act is implemented by the respective State Governments and Union Territory Administrations, which are provided due central assistance under the Centrally Sponsored Scheme for effective implementation of the provisions of the Act.

The Act attempts to curb and punish violence against Dalits through three broad means. *Firstly*, it identifies what acts constitute “atrocities.” *Secondly*, the Act calls upon all the states to convert an existing sessions court in each district into a Special Court to try cases registered under the Act. *Thirdly*, the Act creates provisions for states to declare areas with high levels of caste violence to be “atrocitiy-prone” and to appoint qualified officers to monitor and maintain law and order.

The cure has thus become part of the cause in this case; as members of the Scheduled Castes and Scheduled Tribes (SC/STs) avail themselves of the advantages of reservation, and awareness and assertion of their rights increases, the status quo of inter-caste relations in villages faces severe challenges. Increased violence and increased reporting of incidents of violence, is thus a natural product or consequence.

However, this increase in violence seems improbable in the light of the astonishing amount of international political and civil society attention that the Dalit cause

has been receiving. Dalit NGOs and political groups led a high-profile campaign at the World Conference against Racism in 2001 which has made even caste as one of their central concerns. Governments have also taken up the issue bilaterally with India (www.countercurrent.org).

The POA is a tacit acknowledgement by the government that caste relations are defined by violence, both incidental and systemic. The POA, thus, gives 'Dalits' vital ammunition in the form of legal redress for this violence.

Nevertheless, in practice, the Act has suffered from major failures in implementation. Ironically, the primary obstacles to implementation are intended to be the primary enforcers of the Act — the lowest rungs of the police and bureaucracy that form the primary node of interaction between state and society in the rural areas. Policemen have displayed a consistent unwillingness to register offences under the Act for various reasons including their ignorance. Thus, though the purpose of the Act was to prevent atrocities and help in social inclusion of Dalits into the society, it has failed to live up to its expectations.

Offenders, Victims and Offences under the Act: Any person who is not a member of a scheduled caste or a scheduled tribe and commits an offence listed in the Act against a member of a scheduled caste or a scheduled tribe is an offender. *The victim should be a member of a scheduled caste or a scheduled tribe against whom any of the following offences is committed by the offender:*

- 1) Forced to eat or drink an offensive or uneatable substance;
- 2) Caused annoyance, injury or insult by any excreta or waste matter being dumped in his premises or neighbourhood;
- 3) Paraded naked or with painted face or body;
- 4) Wrongfully deprived of cultivation of his land;
- 5) Wrongfully deprived of his rights over any land, premises or water;
- 6) Forced to do beggary or work as a bonded labourer;
- 7) Prevented from exercising his right to vote or to vote according to his wishes;
- 8) Subjected to false legal proceedings;
- 9) Caused injury or annoyance by a public servant on the basis of false information given to him;
- 10) Deliberately insulted and humiliated in public view;
- 11) A woman who is sexually assaulted;
- 12) Deprived of his right to clean drinking water;
- 13) Deprived of his right of passage to a public place;
- 14) Forced to leave his house or village;
- 15) Falsely implicated him in a criminal case, which might result in his imprisonment or execution;
- 16) Intended harm or injury by burning a place of his dwelling or worship; and

Besides this, section 2 of the Act provides that whoever, not being a member of a Scheduled Caste or a Scheduled tribe:

- i) gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is capital by the law for the time being in force shall be punished with imprisonment for life and with fine; and if an innocent member of a Scheduled Caste or a Scheduled Tribe be convicted and executed in consequence of such false or fabricated evidence, the person who gives or fabricates such false evidence, shall be punished with death;
 - which is not capital but punishable with imprisonment for a term of seven years or upwards, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years or upwards and with fine;
- ii) commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause —
 - damage to any property belonging to a member of a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;
 - destruction of any building which is ordinarily used as a place of worship or as a place for human dwelling or as a place for custody of the property by a member of a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for life and with fine;
- iii) commits any offence under the Indian Penal Code punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine;
- iv) knowingly or having reason to believe that an offence has been committed under this Chapter, causes any evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false, shall be punishable with the punishment provided for that offence; or
- v) being a public servant, commits any offence under this section, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence.

Nature of offences and extent of punishments under this Act: All offences listed in the Act are cognizable. The police can arrest the offender without warrant and start investigation into the case without taking any orders from the court.

The Act prescribes both minimum as well as maximum punishment. The minimum in most cases is six months imprisonment while the maximum, in

most cases, is five years sentence and with fine. However, in some cases, the minimum is enhanced to one year while the maximum goes up to life imprisonment or even death sentence.

Section 4 (of the Act) deals with punishment for neglect of duties by a public servant. According to this section, if a public servant, who is not a member of the Scheduled Caste or Scheduled Tribe, deliberately neglects his duties, which he should perform under the Act, he is liable for punishment with imprisonment up to six months.

Section 5 provides enhanced punishment for subsequent conviction. Whoever, having already been convicted of an offence under this Chapter is convicted for the second offence or any offence subsequent to the second offence, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence.

Constitution of Special Courts: Chapter 4 of the act clearly states about the constitution of special courts for hearing cases on atrocities against the Scheduled Caste and Scheduled Tribes. For the purpose of providing for speedy trial, the State Government shall with the concurrence of the Chief Justice of the High Court, by notification in the official gazette, establish in each district a Court of Session to be a Special Court exclusively to try the offences under this Act. Provided that in respect of districts where there are no atrocities against Scheduled Castes and Scheduled Tribes at all the Government may, with the concurrence of the National Commission for Scheduled Castes and Scheduled Tribes, either exempt such district or districts from this provision or combine such district(s) with any other neighbouring district(s) for the purpose of establishing exclusive special courts. The special courts set up under this provision shall not be the same as any of the existing courts of session. The exclusive Special Courts shall try offences under this Act on day-to-day basis.

The Act further provides that for every Special Court, the State Government shall, by notification in the Official Gazette, specify a Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court.

Investigation and Rehabilitation: Section 23 of the Act, authorises the Central Government to frame rules for carrying out the purpose of the Act. It was drawing power from this section that the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 were framed. According to Rule 7(1), investigation of an offence committed under the SC/ST Act cannot be investigated by an officer not below the rank of Deputy Superintendent of Police (DSP). In regard to this, various High Courts have vitiated the trial based on the above rule and, therefore set aside the order of conviction. The Andhra Pradesh High Court, in *D. Ramlinga Reddy v State of A.P.* (2000), took the position that provisions of Rule 7 are mandatory and held that investigation under the SC/St Act has to be carried out by only an officer not below the rank of DSP. An investigation carried out and charge sheet filed by an incompetent officer is liable to be quashed. Similarly, Madras High Court, in *M. Kathiresam v State of Tamil Nadu* (2000) held that investigation conducted by an officer other than a DSP is improper and bad in law. Proceedings based on such an investigation are required to be quashed. The Courts without taking into consideration the inadequacies of the State have been punishing SC/STs for the same.

The Act contains affirmative measures to weed out the root cause of atrocities, which has denied SC/STs basic civil rights. The Act has addressed the problem regarding the dispensation of justice, but failed to deal with the problem of 'rehabilitation'. There is mention of rehabilitation under Section 21(2)(iii), but there are no provisions addressing the same. As it has been stated earlier, the victims of atrocities are on a different level when compared to victims of other crimes. Hence, there should be special provision for the same. According to the report submitted by the National Commission for Review and Working of the Constitution, victims of atrocities and their families should be provided with full financial and any other support in order to make them economically self-reliant without their having to seek wage employment from their very oppressors or classes of oppressors. Also, it would be the duty of the State to immediately take over the educational needs of the children of such victims and provide for the cost of their food and maintenance. The number of SC/ST workers as agricultural labourer is increasing at a faster rate when compared to other sections of the society. This basically implies that after losing their land holdings, SC/ST cultivators are becoming agriculture labourers. Loss of land, on the one hand, is caused by atrocities against them, making them more vulnerable. This in turn fuels and promotes continuance of atrocities and untouchability. Marginalisation is one of the worst forms of oppression. It expels a whole category of people from useful participation in the society and therefore potentially subjected to material deprivation and this could even lead to extermination. Moreover, this leads to the state of powerlessness which perhaps is best described negatively, the powerless lack authority, status and a sense of self. Moreover, every right has three types of duties:

- Duties to avoid deprivation.
- Duties to protect from deprivation.
- Duties to aid the deprived.

Though the Act does cover the first two duties but totally ignores the third one, i.e. the duty to aid the deprived. Hence, it is necessary to make the SC/STs self-dependant.

A brief assessment of the functions of the Act: This Act is having many teeth but which seldom bites. Although the Prevention of Atrocities Act (POA) is a powerful and precise weapon on paper, in practice, the Act has suffered from a near-complete failure in implementation. Ironically, the primary obstacles to implementation are intended to be the primary enforcers of the Act — the lowest rungs of the police and bureaucracy that form the primary node of interaction between state and society in the rural areas. Policemen have displayed a consistent unwillingness to register offenses under the Act for various reasons including their ignorance. According to a 1999 study, nearly a quarter of those government officials charged with enforcing the Act are unaware of its existence (Dhruvam, et al, See www.legalserviceindia.com/.../1440-Scheduled-Castes-and-Tribes-Act).

In most cases, unwillingness to file a First Information Report (FIR) under the Act comes from caste-bias. Upper caste policemen are reluctant to file cases against fellow caste-members because of the severity of the penalties imposed by the Act. Most offenses are non-bailable and carry minimum punishments of five years imprisonment. Hard work by human rights defenders has slowly begun to decrease this problem. Nevertheless, the staggering scope of the problem

demands government intervention before cases can be properly registered under the Act (Ibid).

A bigger obstacle faces victims who actually manage to lodge a complaint. Failure to follow through with cases is alarmingly apparent at the lowest echelons of the judicial system. The statistics speak for themselves: out of 147,000 POA cases pending in the courts in 1998, only 31,011 were brought to trial. Such delay is endemic to the Indian judicial system. Although the POA mandated the creation of Special Courts precisely to circumvent this problem, only two states have created separate Special Courts in accordance with the law. In other states, existing sessions courts have been designated Special Courts, while still being asked to process their usual caseloads. Since many different Acts require the creation of Special Courts, such sessions courts are often overloaded with a number of different kinds of “priority” cases, virtually guaranteeing that none of these cases receive the attention they are mandated to receive.

Even if cases make to trial, the Act also suffers from abysmal rates of conviction. Out of the 31,011 cases tried under the Act in 1998, only a paltry 1,677 instances or 5.4% resulted in a conviction and 29,334 ended in acquittal. If we compare this to the conviction rate in cases tried under the Indian Penal Code, we find that in 1999, 39.4% of cases ended in a conviction and in 2000, 41.8% resulted in conviction. Judicial delay is just one cause of this low conviction rate; the lapse between the case being registered and the trial means that witnesses who are often poor and face intimidation in the interim, turn hostile and the case becomes too weak for a conviction. The long wait also results in many plaintiffs losing interest. Judicial bias against Dalits is rampant and unchecked, and court decisions frequently bear the mark of such bias (Ibid).

Besides these, the other main deficiencies in the Act is Section 14(2), which merely requires the State Governments to specify for each district a Sessions Court to be a Special Court to try atrocities, contradicting the very purpose “of providing for a speedy trial”. Merely calling an existing court a special court cannot speed up a trial. The law ought to have provided for a special court in each district exclusively to try cases of atrocities, on a day-to-day basis, with corresponding provisions for an exclusive special public prosecutor and a special Investigating Officer. This lacuna lays the foundation for a situation of crime without punishment.

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 nature of offences and extent of punishments under the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989?

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- 5) Who is the competent officer to investigate an offence committed under the above mentioned Act?

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23.2.4 Prohibition of Manual Scavenging

You must be aware that “Manual Scavenging” or “carrying the night soil” are terms used to delicately refer to the practice of removing human and animal excreta using brooms, small tin plates, and baskets from dry latrines and carrying it on the head to disposal grounds some distance away from the latrines.

This “job” is for Dalits, mainly women and young girls. Moreover, men, women and children – particularly from the Chuhar, Mehathar, Halalkhor, Lalbaghi, Bangi, Thotti and Jamadar lower castes – are commonly employed as manual scavengers in India. Being at the lowest in the caste hierarchy and due to the perceptions of pollution and impurity imposed upon them, the members of these communities are forced to live in isolated and remote corners within the cities and municipal corporations where they are employed. These places are often a corner in the municipal burial ground or a reclaimed garbage ground. The living conditions in these places are very poor. Facilities like schools and health centres do not exist for these families, being numerically low in these areas. Perceived as the lowest of the castes and due to the prejudices that exist in the Indian society, the children from these families are often prevented from attending schools and the members of these communities are denied medical treatment even in government facilities. This probably explains the large ratio of deaths in the manual scavenging community (Asian Legal Resource Centre, See www.alrc.net/doc/mainfile).

Manual scavenging is carried out without any form of protective gear. Even simple equipment like a face mask is not provided. A scavenger who enters a sewer without any protective gear is exposed to many forms of toxic chemicals and disease-causing bacteria.

The framers of the Indian Constitution abolished the practice of untouchability in the hope that it would serve to erase the caste bias inherent in Indian society. The practice of untouchability is a penal offence under law, punishable with a prison sentence and in some cases, forfeiture of property. More than 50 years on, however, even as the rest of India moves on to cutting-edge technology and economic power status, the Bhangis in Gujarat, the Pakhis in Andhra Pradesh, and the Sikkaliars in Tamil Nadu continue to carry other people’s filth on their heads and are perceived as untouchable. These communities feature at the bottom of the caste hierarchy in India and also the hierarchy of Dalit sub-castes. They live in segregated settlements in the outskirts of their villages, and are denied access to the local temple, religious community events, hotels, public water taps/wells, and are excluded from interpersonal social relations.

Manual scavengers are exposed to subhuman conditions of work, working amidst unbearable dirt and stench. They are required to clean public latrines, sometimes with as many as 400 seats on a daily basis and then carry the refuse to disposal grounds a long distance away. Needless to say, these working conditions pose serious health hazards. They are exposed to viral and bacterial infections that affect their skin, eyes, respiratory and gastrointestinal systems. The stench is so unbearable that many workers come to their place of work in a state of intoxication to be able to tolerate the stench.

Not only is the nature of work degrading and the conditions of work abysmal, the scavengers are employed at highly exploitative wages. Those working for urban municipalities earn Rs.30-40 per day and those working privately are paid as less as three to five rupees per day (www.halabol.com). The practice of manual scavenging as an offensive, inhuman practice in civilized society has long been recognized. In 1917, Mahatma Gandhi had insisted that the inmates of Sabarmati Ashram – which he had set up and which was run like a commune – clean their toilets themselves. The Maharashtra Harijan Sevak Sangh, in 1948 protested against the practice of manual scavenging and called for its abolition. The 1949 Barve Committee made several recommendations to improve the working conditions of the sanitary workers. In 1957, the Scavenging Conditions Enquiry Committee recommended the abolition of the practice of carrying human excreta in head loads. In 1968, the National Commission on Labour set up a committee to study the working conditions of “sweepers and scavengers”. All these Committees recommended the abolition of manual scavenging and rehabilitation of sanitary workers, or *safai karmacharis*, as they are also called, but none of the recommendations were implemented (Human Rights Report, See <http://www.hrdc.net/sahrdc>).

While government estimates suggest that there are about one million manual scavengers in India, 95 percent of whom are women, unofficially the figures are much higher. In order to tackle the problem of manual scavenging, the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 has been enacted. The Act prohibits the employment of manual scavengers or construction of dry latrines, not connected to proper drainage channels and violations of provisions of this Act can lead to imprisonment for up to one year and/or a fine of up to Rs.2,000. However, as the Comptroller and Auditor General (CAG) of India, pointed out in a 2003 report, the law had only been adopted by 16 states as of 2003, and it had not been enforced in any State (Comptroller and Auditor General, 2003).

The National Scheme of Liberation and Rehabilitation of Scavengers and their dependents was launched in March 1992 and the Ministry of Social Justice and Empowerment has been entrusted with the task of implementing the scheme. However, according to the CAG report, the scheme had failed to achieve its objectives despite an investment of more than INR 600 crore (60 billion). The preambular paragraph of the report most emphatically states (Ibid).

In 1993, the National Commission for *Safai Karmacharis* was set up under the National Commission for *Safai Karmacharis* Act, 1993. According to the National Commission for *Safai Karmacharis*, the main reason for unsatisfactory progress of the Scheme appears to be inadequate attention paid to it by the State Governments and concerned agencies. State governments routinely deny the

existence of manual scavengers. Part of the reason why such rehabilitation schemes fail is the state's complicity in the whole process. Many government offices and buildings still have dry latrines and municipalities employ manual scavengers to clean these latrines.

The CAG report faulted the Ministry of Social Justice and Empowerment for, among other things, delays in disbursing funds to the Scheduled Caste Development Financial Corporations – responsible for implementing income-generating rehabilitation schemes – and for having “hardly any workable monitoring machinery at the Ministry, State and District levels”. The Corporations and the banks, for their part failed to deliver as there was no clear definition of the path of occupational change. The loan rejection percentage, according to the CAG report, was 47 percent in Maharashtra and 74 percent in Tamil Nadu. As the report, perceptively, pointed out, “to expect an illiterate and poor scavenger to comply with the rigours of project-financing by commercial banks was to say the least, unimaginative” (Ibid).

The National Human Rights Commission, has on its part called upon states to adopt and implement the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 but it has noted that the response has been dismal, once again reflecting the complacency at the political level. It declared at a review meeting on eradication of manual scavenging with senior government officials that a survey was required to be conducted in states to understand the extent of the problem and tackle it in an efficient manner (Ibid).

The Indian Railways – a body that actually employs manual scavengers, according to a petition filed in the Supreme Court – in its recently announced Rs.24,000 crore Integrated Railways Modernization Plan (IRMP) does not have the elimination of manual scavenging on its radar. The Tenth Five Year Plan, however, has mentioned the eradication of manual scavenging by 2007 as a goal, which has still remained a dream (Ibid).

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”.

6) Explain the meaning of “untouchability” and “manual scavenging”.

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7) What are the legislations passed to tackle the problem of manual scavenging in India?

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8) What are the main reasons for the failure of the various schemes/ legislations relating to prohibition of manual scavenging?

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23.2.5 The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, though passed by Parliament in 2006 it came into force only on December 31, 2007 (i.e. one year later). The Rules to the Act, which provide for some of the operational details, were notified on January 1, 2008. The Tribal Development Department has executed the first phase of Scheduled Tribes and Other Traditional Forest Dwellers (Forest Rights Recognition) Act, 2006 in the tribal areas from 6th April, 2008.

The basic objective of the Act is to decide upon and recognize the forest rights of those tribal forest dwellers and others who have been living in forests since generations, but were subjected to historical injustice. The main objectives of Scheduled Tribes and Other Traditional Forest Dweller (Recognition of Forest Rights) Act, 2006 are:

- To decide and recognize forest rights of tribal forest dwellers living in forests.
- To recognize the ownership of the land to the tribal forest dwellers.
- To recognize the right of livelihood of the tribal peoples.

Any member of scheduled tribe, community or any other traditional forest dweller, who is dependent on forests for livelihood and has possession over forest land prior to 13th December, 2005 and continued ownership till 2nd January, 2007 can present their claims. The last dates for receiving claims will be decided in the Gram Sabha meeting.

- The Act provides for recognition and vesting of forest rights to Scheduled Tribes in occupation of forest land prior to December 13, 2005 and to other traditional forest dwellers who are in occupation of forest land for at least three generations, i.e. 75 years, up to a maximum of 4 hectares. These rights are heritable but not alienable or transferable. Forest rights include among other things, right to hold and live in the forest land under individual or common occupation for habitation, self cultivation for livelihood, etc.
- One of the most crucial aspects of the Forest Rights Act is the realization of forest rights within a protected area through declaration and demarcation of the “critical wildlife habitat” (CWLH).
- The present law has only diluted the interests of the forest dwelling Scheduled Tribes with that of the “Other Traditional Forest Dwellers”. The forest dwelling Scheduled Tribes no longer remain the focus of the law contrary to what it originally envisaged.
- There is no provision in the Act providing that cases under the Forest Conservation Act of 1980 against the forest dwelling Scheduled Tribes for accessing minor forest produce would be dropped or closed.
- The British established a mode of forest governance that imposed restrictions on local forest dwelling communities through a definition of forests as national property for colonial objectives, which tried to acquire control of forests for commerce and national development at the cost of local forest-based livelihoods. However, known as the Panchayats (Extension to Schedule Areas) Act, 1996 (or PESA), it decentralized existing approaches to forest governance by bringing the Gram Sabha at the center stage and recognized the traditional rights of tribals over “community resources” — land, water and forests.

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”.

- 9) What are the main objectives of Scheduled Tribes and Other Traditional Forest Dweller (Recognition of Forest Rights) Act, 2006? Do you think that the Act is potent enough to fulfill these objectives?

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23.3 LET US SUM UP

The Hindu caste system used to follow one basic premise — all men are born unequally, a premise rooted in ancient and so called sacred Indian texts. According to these texts, four varna groups emerged from various parts of the body of a primordial being. Each group fulfils a function in society. According to varna system of ancient India, Dalits fall into a fifth category outside the varna system. They are required to perform tasks that are considered so impure that they could not possibly be included in the traditional varna system. In ancient times, elaborate rules were applied to avoid “cross-contamination.” In northern India for example, Untouchables had to use drums to let others know of their arrival. Even their shadows were considered polluted. In the south, some Brahmins ordered Untouchables to keep at least 65 feet away from them (www.suite101.com).

Caste discrimination has allowed, and still does allow, upper castes to maintain their control over cultural, social, political and material capital. But, some Dalits are starting to fight their status of social and cultural outcasts. Small but growing groups of activists are working for the liberation of Untouchables. The reaction of authorities to their activism is often unforgiving and police brutality against untouchable activists is commonplace.

There are no easy solutions to the ongoing plight of India’s Dalits. The constitutional and legal safeguards and new rules and regulations are mostly theoretical constructs. In practice, India’s millions of Dalits and Tribes are yet trapped at the very bottom of a system that functions by virtue of their shameless and relentless exploitation.

23.4 ANSWERS TO ‘CHECK YOUR PROGRESS’ QUESTIONS

- 1) The Articles of the Constitution that provide safeguards for the protection of SCs/STs include the following.

Development and Protective Safeguards (Article 46 of the Constitution of India); Social Safeguards {Articles 17, 23, 24, 25(2)(b)}; Economic Safeguards (Articles 23, 24 and 46); Educational and Cultural Safeguards {Article 15(4)}; Political Safeguards {Articles 164(I), 330, 332, 334, 371A, 371B, 371C, 371F)}; Reservation for SCs and STs in Government Employment {Articles 16(4), 16(4A), 16(4B), 320, 335}.

- 2) Various methods of investigation and enquiry followed by the National Commission for SCs and STs include the following: by the Commission directly; by an Investigating Team constituted at the Headquarters of the Commission; and through its State Offices.
- 3) *Extinguishment of liability to repay bonded debt:* As per Section 6 of the Act, every obligation of a bonded labour to repay any bonded debt shall be deemed to have been extinguished. No proceedings can be held in any civil court for the recovery of any bonded debt. Every attachment made of any movable property of the bonded labour or such movable property was seized or removed from his custody shall be resorted to the possession of the bonded labourer. If the restoration is not made within 30 days from the coming of this Act into force, the aggrieved party may apply to the prescribed authority

for the restoration of the possession of such property. Under this Act if any suit or proceeding for the recovery of any advance made to a bonded labourer is pending, such a suit will stand dismissed. Furthermore, every bonded labourer detained in civil prison shall be released from detention.

- 4) *Nature of offences and extent of punishments under SC and ST Act, 1989:* All offences listed in the Act are cognizable. The police can arrest the offender without warrant and start investigation into the case without taking any orders from the court.

The Act prescribes both minimum as well as maximum punishment. The minimum in most cases is six months imprisonment while the maximum in most cases is five years sentence and with fine. However, in some cases, the minimum is enhanced to one year while the maximum goes up to life imprisonment or even death sentence.

Section 4 (of the Act) deals with punishment for neglect of duties by a public servant. According to this section, if a public servant, who is not a member of the Scheduled Caste or Scheduled Tribe, deliberately neglects his duties, which he should perform under the Act, he is liable for punishment with imprisonment up to six months.

Section 5 provides enhanced punishment for subsequent conviction. Whoever, having already been convicted of an offence under this Chapter is convicted for the second offence or any offence subsequent to the second offence, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence.

- 5) *Investigation and Rehabilitation:* Section 23 of the Act, authorises the Central Government to frame rules for carrying out the purpose of the Act. It was drawing power from this section that the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 were framed. According to Rule 7(1), investigation of an offence committed under the SC/ST Act cannot be investigated by an officer not below the rank of Deputy Superintendent of Police (DSP). In regard to this, various High Courts have vitiated the trial based on the above rule and, therefore set aside the order of conviction. The Andhra Pradesh High Court, in *D. Ramlinga Reddy v. State of AP*, took the position that provisions of Rule 7 are mandatory and held that investigation under the SC/St Act has to be carried out by only an officer not below the rank of DSP. An investigation carried out and charge sheet filed by an incompetent officer is liable to be quashed. Similarly, Madras High Court in *M. Kathiresam v. State of Tamil Nadu* held that investigation conducted by an officer other than a DSP is improper and bad in law. Proceedings based on such an investigation are required to be quashed. The Courts without taking into consideration the inadequacies of the State have been punishing SC/STs for the same.
- 6) 'Untouchability' means the system of excluding some persons from the main stream of the society. In Hindu religion, caste system prevails, in which the upper castes consider the lowest caste of the structure, i.e. Dalits, as 'untouchables' and they are not permitted to sit along with or to have personal relationships with the upper caste members of the society.

‘Manual scavenging’ means the practice of removing human and animal excreta using brooms, small tin plates, and baskets from dry latrines and carrying it on the head to disposal grounds some distance away from the latrines.

- 7) The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 has been passed in India to tackle the problem of manual scavenging. On the basis of this Act, the government used to pass various rules to prohibit manual scavenging. And the second important enactment is National Commission for Safai Karamachari Act, 1993.
- 8) The main reasons for the failure of the various schemes/legislations relating to prohibition of manual scavenging are:
 - The schemes were ill-conceived.
 - They failed in working out a coherent strategy for policy initiatives as it could not take advantage of an existing law that prohibited employment of scavengers.
 - The schemes lacked in enhancing or re-orienting the skill-levels of the beneficiaries, which is necessary for change of occupation. It means, these schemes try to differentiate liberation from rehabilitation.
 - Inadequate attention paid to it by the State Governments and concerned agencies to the schemes.
 - Delays in disbursing funds to the Scheduled Caste Development Financial Corporations – responsible for implementing income-generating rehabilitation schemes.
- 9) The main objectives of Scheduled Tribes and Other Traditional Forest Dweller (Recognition of Forest Rights) Act, 2006 are:
 - To decide and recognize forest rights of tribal forest dwellers living in forests.
 - To recognize the ownership of the land to the tribal forest dwellers.
 - To recognize the right of livelihood of the tribal peoples.

This Act is potent enough to fulfill its objectives, but the present law has only diluted the interests of the forest dwelling Scheduled Tribes with that of the “Other Traditional Forest Dwellers”. The forest dwelling Scheduled Tribes no longer remain the only focus of the law, contrary to what it originally envisaged.

23.5 REFERENCES

Asian Legal Resource Centre (ALRC). *India: Manual Scavenging, a Shame on the Nation*, Written Statement Submitted by the Asian Legal Resource Centre (ALRC), at www.alrc.net/doc/mainfile.

Bonded Labour System (Abolition) Act, 1976. New Delhi: Ministry of Labour, Government of India.

Comptroller and Auditor General. 2003. *Report of Comptroller and Auditor General of India*. New Delhi: CAG.

Dhruvan Gautham Kocheril, Mohan Roy Mathews and Shiv Shankar. *Scheduled Castes and Tribes (Prevention of Atrocities) Act—An overview*, at www.legalserviceindia.com/.../1440-Scheduled-Castes-and-Tribes-Act.

Goswami, B. 2003. *Constitutional Safeguards for Schedule Castes and Sechedule Tribes*. Jaipur: Rawat Publications.

Human Rights Report on Manual Scavenging, Manual Scavenging: Time to clean up our act. at <http://www.hrdc.net/sahrdc/>.

Kartik Gupta. *The Problem of Bonded Labour in India: An Analysis in the Light of Bonded Labour (abolition) Act, 1976.* at www.jurisonline.in

Leslie, Julia. 2004. *Authority and Meaning in Indian Religions*. Aldershot, United Kingdom: Ashgate Publishing Ltd.

Manual Scavenging: Time to Clean Up Our Act, at www.halabol.com.

Oliver Mendelsohn and Marika Vicziany, 1998. *The Untouchables: Subordination, Poverty, and the State in Modern India*. New York: Cambridge University Press.

Violence Against Dalits: The Unused Ammunition, at www.countercurrent.org.

www.im4change.org/empowerment/forest-and-tribal-rights.

Cases

Bandhua Mukti Morcha case. 1984. (3) SCC 161.

D. Ramlinga Reddy v State of A. P. 2000. Cri LJ 3125.

M. Kathiresam v State of Tamil Nadu. 2000. AIR SC 740.

Suggested Readings

Antony, M. J. 1997. *Dalit Rights: Landmark Judgments on SC/ST/Backward Classes*. New Delhi: Indian Social Institute.

Baxi, Upendra, "Caste, Class and Reservation", *Economic and Political Weekly*, 20(10): 1985.

Berreman, Gerald D. 1979. *Caste and Other Inequalities: Essays on Inequality*. Delhi: Manohar.

Beteille, Andre. 2000. "The Scheduled Castes: An Inter-Regional Perspective", *Journal of Indian School of Political Economy*, 12(3-4).

Burman, B. K. Roy 1970. (ed.) *Social Mobility Movement Among Scheduled Castes and Tribes of India*. New Delhi: Registrar General of India, Ministry of Home Affairs.

Charsley, Simon R. and Karanth, G.K. 1998. *Challenging Untouchability: Dalit Initiative and Experience From Karnataka*. New Delhi: Sage.

Debroy, Bibek and D. Shyam Babu (eds.). 2004. *The Dalit Question: Reforms and Social Justice*. New Delhi: Globus Books and Rajiv Gandhi Institute for Contemporary Studies.

Desai, A. R. (ed.). 1990. *Repression and Resistance in India: Violation of Democratic Rights of the Working Class, Rural Poor, Adivasis and Dalits*. Bombay: Popular.

- Dube, Saurabh. 1998. *Untouchable Pasts: Religion, Identity and Power Among a Central Indian Community, 1780-1950*. New York: State University of New York.
- Fisher, F. B. 1920. *Touching The Untouchables: India's Silent Revolution*. New York: Macmillan.
- Galanter, Marc. 1984. *Competing Equalities: Law and the Backward Classes in India*. Delhi: Oxford University Press.
- Gokhale, Jayashree B. 1993. *From Concessions to Confrontation: The Politics of an Indian Untouchable Community*. Bombay: Popular Prakashan.
- Jaswal, Surinder Singh. 2000. *Reservation Policy and The Law: Myth and Reality of Constitutional Safeguards to Scheduled Castes*. New Delhi: Deep and Deep.
- Jain, M . P. 2010. *Constitutional Law of India*. Nagpur: Wadhwa.
- Kamble, N. D. 1982. *Atrocities on Scheduled Castes and Scheduled Tribes in Post-Independence India (15th August 1947 to 15th August 1979)*. Delhi: Ashish Publishing.
- Kotani, H. (ed.). 1997. *Caste System, Untouchability and the Depressed*. New Delhi: Manohar. (Japanese Studies on South Asia, No.1).
- Kshirsagar, R. K. 1994. *Dalit Movement and Its Leaders 1857-1956*. New Delhi: M.D. Publishers.
- Limbale, Sharankumar. 2004. *Towards an Aesthetic of Dalit Literature: History, Controversies, and Considerations*. New Delhi: Orient Longman.
- Mahar, Michael J. (ed.). 1972. *The Untouchables in Contemporary India*. Tucson, Arizona: The University of Arizona Press.
- Michael, S. M. (ed.). 1999. *Dalits and Modern India: Vision and Values*. New Delhi: Vistaar Publications.
- Moffat, Michael. *An Untouchable Community in South India: Structure and Consensus*. Princeton, NJ: Princeton University Press, 1979.
- Naimishray, Mohan Das. 2003. *Caste and Race: Comparative Study of B. R. Ambedkar and Martin Luther King*. New Delhi: Rawat.
- Omvedt, Gail. 1994. *Dalits and the Democratic Revolution: Dr. Ambedkar and the Dalit Movement in Colonial India*. New Delhi: Sage Publications.
- Omvedt, Gail. 2004. *Ambedkar: Towards an Enlightened India*. New Delhi: Penguin Viking.
- Pal, R. M., and Bhargava, G. S. (eds). 1999. *Human Rights of Dalits: Social Violation*. New Delhi: Gyan Publishing House.
- Paswan, Sanjay and Paramanshi Jaideva. 2002. *Encyclopedia of Dalits in India (11 Vols)*. New Delhi: Kalpaz.
- Ram, Nandu. 1995. *Beyond Ambedkar: Essays on Dalits in India*. New Delhi: Har-Anand Publications.
- Shah, Gyanshyam (ed). 2001. *Dalit Identity and Politics. Cultural Subordination and the Dalit Challenge*. New Delhi: Sage Publications.

UNIT 24 RIGHTS OF LAND HOLDERS

Structure

- 24.0 Introduction
- 24.1 Objectives
- 24.2 Constitutional and Legal Status of Rights and Entitlements of Land Holders
 - 24.2.1 Property: Concept, Kinds, Ownership and Possession
 - 24.2.1.1 Dominion and Ownership
 - 24.2.1.2 Kinds of Property
 - 24.2.1.3 Adverse Possession
 - 24.2.2 Status of Right to Property as a Constitutional Right
 - 24.2.2.1 Pre-constitutional Position of Right to Property
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- 24.7 References

24.0 INTRODUCTION

Owning, possessing and using land by humans is an age-old phenomenon, history of which can be traced to the dawn of civilization. Thus, land has been one of the most sought after entities. With the growth of society into more complex web, the concept of land has transformed into issues of pride, prestige, wealth and dominance. History is a witness to the fact that the powerful has always subverted the poor. Owing to this culture, societal cleavage crept in. When India got subjugated by the British, the situation became worse. British played spoil-sport

by introducing reforms which went hay-wire and perpetuated unequal distribution of wealth. However, in the spirit of the objectives of the Constitution, land reforms were brought in by the government of independent India. Conferment of land holders' rights to poor, marginalized and landless people was the sole aim of the land reforms. As a result, the contentious issue such as land continued to create uproar in the way of reforms.

In this unit, we will, therefore, discuss different aspects and issues related to land holders' rights.

24.1 OBJECTIVES

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

- Explain the concept of property and the constitutional status of right to property;
- Discuss different aspects and issues of rights of land holders vis-à-vis land reforms and land acquisition;
- Describe the major reform policies initiated by the government; and
- Analyse and appreciate the problems and issues related to compensation, corporate responsibility as well as utility and scope of compensation including the concept of beyond compensation.

24.2 CONSTITUTIONAL AND LEGAL STATUS OF RIGHTS AND ENTITLEMENTS OF LAND HOLDERS

You have already studied the concept of property, among others, in Unit-1 of Block-1 of this Course. Now, in this section of the present Unit, we will introduce you to the concept of property from a different perspective along with rights and entitlements of the land holders, as per the existing constitutional and legal provisions.

24.2.1 Property: Concept, Kinds, Ownership and Possession

Generally speaking, the word 'property' has wide connotation, and is indicative and descriptive of every possible interest a person can have. It is not only limited to the concept of ownership alone but also encompasses within its fold the aspects of possession as well. Property can be defined as any physical (tangible) or intangible entity that is either owned by a person individually or jointly by group of individuals or any other legal entity. Land, for example, is one of the tangible and immovable properties. The owner has the right to deal with it in any manner, subject to the law of the land relating to this property.

24.2.1.1 Dominium and Ownership

Under the Roman law, *dominium* is the absolute right to a thing while *possession* denotes a mere physical control over a thing. However, under the English law, this distinction was missing, and the concept of ownership was developed through the concept of possession. For example, *seisin* is regarded as the best form of ownership which too can be understood only in terms of possession. A *seisin* is the possession of land by freehold or the act of taking such possession.

Thus, the concept of ownership in the English Law was developed *en route* the concept of possession; it may be noted, that it did not have the precision with which the Roman law had developed the concept of *dominium*. The concept of ownership of land or chattel, under English law, cannot be regarded as fully developed in comparison with Roman law. As we are aware, Indian law has its roots in the English law.

24.2.1.2 Kinds of Property

Although property can be classified into various forms, for the convenience of our discussion here, we can classify it into the following three broad kinds.

- i) **Private property:** It is the property which is owned by an individual or any legal entity in personal capacity. Person is free to deal with his property in any manner or form he desires. It is subject to one's own private control and management. The only rider is that the use and enjoyment of the property should not be to the detriment of others.
- ii) **Public property:** It is the property owned by the State or controlled by the Government. It is restricted in its use, insofar as the State directs. Generally, public property is used by State for serving the public purpose at large or benefit or welfare of the people. Individual cannot claim such property. In most of the cases, person might need to seek permission from the concerned State/Government, if (s)he wants to deal with the property in private capacity. For example, public park is a public property. It is managed out of State funds. But, in case any individual wishes to use it for any private purpose for any short duration, (s)he needs to obtain the permission of the State/Government.
- iii) **Common property:** It is the property not owned by any one, but belongs to everyone. No one can claim ownership of such property; albeit it is open to the free use of everyone. In early days of development of property, there was no concept of private property. There was only common property. Slowly and steadily, people started to claim right to property and, thus, originated the concept of private property. Even today, private property can be called as subset of common property.

24.2.1.3 Adverse Possession

Adverse possession is a concept by which the ownership of premises can be changed, to the one in its possession, due to long, uninterrupted possession which is adverse in nature to the owner. Adverse in the sense that it is without the consent of the owner and the owner does not object to such possession.

The concept of adverse possession was born in England around 1275 and was initially created to allow a person to claim right of "seisin" from his ancestry. Many felt that the original law that relied on "seisin" was difficult to establish, and around 1623 a statute of limitations was put into place that allowed a person in possession of property for twenty years or more to acquire title to that property. This early English doctrine was designed to prevent legal disputes over property rights that were time consuming and costly. The doctrine was also created to prevent the wastage of land by forcing owners to monitor their property or suffer the consequence of losing title (http://www.legalblog.in/2011_09_01_archive.html).

Adverse possession in one sense is based on the theory or presumption that the owner has abandoned the property to the adverse possessor on the acquiescence of the owner to the hostile acts and claims of the person in possession. It follows that sound qualities of a typical adverse possession lie in it being open, continuous and hostile.

Following are the requirements of adverse possession, to change the ownership:

- i) Actual possession of the property;
- ii) Continuous use of property (*S. M. Karim v Mst. Bibi Sakina*, 1964, p.1254);
- iii) Hostile and adverse use of the property; and
- iv) Notorious and exclusive use of the property.

Interestingly, the position with respect to adverse possession has been substantially changed in India. In the case of *State of Haryana v Mukesh Kumar and Ors* (See D Bhandari, J. 30 September, 2011, at <http://indiankanoon.org/doc/290532/>), the Supreme Court had to decide the question, Whether the State, which is in charge of protection of life, liberty and property of the people could be permitted to grab the land and property of its own citizens under the banner of the plea of adverse possession? The court held that Government Department, Public Undertaking, and much less the Police Department cannot be permitted to grab the property of its own citizens by taking the plea of adverse possession.

Hence, in effect, the revised position of this legal point is that adverse possession is no longer available to the Government or, in general, the State.

24.2.2 Status of Right to Property as a Constitutional Right

In this sub-section, we will highlight the status of right to property in India.

24.2.2.1 Pre-constitutional Position of Right to Property

The Constitution of India derives much of its provisions from the substratum of Government of India Act, 1935 and the Universal Declaration of Human Rights, 1948. Section 299 of the Government of India Act, 1935 contained provision related to the right to property. It also provided for the safeguards against expropriation without compensation and against acquisition for a non-public purpose. Article 17 of the Universal Declaration of Human Rights, 1948 also recognizes the right to private property. India is a signatory to that Declaration and hence it has to incorporate its international commitment in the most fundamental law of the country. After the debates in the Constituent Assembly, the framers of our Constitution attached sufficient importance to property to incorporate it in the chapter of Fundamental Rights.

24.2.2.2 Post-constitutional Position of Right to Property – Fundamental Right

In the Constitution of India, the right to property was given a special place — the place in Part III (Fundamental Rights). Article 19(1)(f) incorporated the right to property as one of the freedoms in the Constitution. Owing to its special place, it was obvious that it created certain impediment in the land reforms policies of the government. Article 32 of the Constitution provided for right to Constitutional remedy. Under it, any person who is entitled to any rights in Part III of the Constitution can approach the Supreme Court in case of the infringement of these rights.

On the other hand, as we have discussed in Unit-5 of Block-2, the Directive Principles of State Policy, lay down the fundamental principles of state policy and the governance of the country. These principles direct the State to strive to secure that the ownership and control of the material resources of the community (country) are so distributed as best to sub-serve the common good that the operation of the economic system does not result in concentration of the wealth and means of production in a few persons to the common detriment of many or all.

24.2.2.3 Fundamental Rights versus Directive Principles of State Policy: Removal of Right to Property from Fundamental Rights

The conflict between the citizen's right and the state's power to implement the said principles has to be harmonized so as to bring about effective implementation of social reforms. Fundamental rights are subject to the law of reasonable restrictions in the interest of the general public. The power of the state is also subject to the condition that the law made by it in so far as it infringes the said fundamental right should stand the double test of reasonableness and public interest. The state also has the power to acquire the land of a citizen for a public purpose after paying compensation. It has the further power to impose taxation on a person for his property. All the laws made in exercise of the said powers are governed by the doctrine of equality, subject to the principle of classification.

The era of tussle between judiciary and legislature with respect to property rights in the Constitution began with the First Amendment Act, 1951 by which the Articles 31-A and 31-B were inserted into the Constitution. Article 31-A was introduced by the Constitution First Amendment Act, 1951. The Parliament defined 'Estate' and extended its meaning so as to comprehend practically the entire agricultural land in the rural area including waste lands, forest lands, lands for pasture or sites of buildings. Under the said amendment, no law providing for acquisition by the State of an estate so defined or any rights therein of the extinguishment or modification of such rights could be questioned on the ground that it was inconsistent with or took away or abridged any of the rights conferred by Articles 14, 19 or 31.

Article 31-B and Schedule Nine (introduced by the subsequent amendments) was another attempt to showcase legislative superiority in the matters of advancing the Directive Principles of State Policy. Article 31-B declared that none of the acts or regulations specified in either the Ninth Schedule or any of the provisions thereof shall be deemed to be void on the ground that they are inconsistent with Part III, notwithstanding any judgments, decree or order of any court or tribunal to the contrary.

The basic reason for assimilating such cynical attitude towards the rights discourse was to bring about land reforms easily. As stated earlier, since the right to property was a fundamental right under the Constitution and any law made by the state was amenable to challenge under Article 32 on the pretext of violating fundamental right, it was an attempt to cut down the litigation and peacefully bring about land reforms.

Article 31 deals with deprivation and acquisition of property. The Supreme Court, in series of decisions (*State of West Bengal v Bella Banerjee*, 1954, p.558; *State*

of *W. B. v Subodh Gopal*, 1954, p.587; and *State of Madras v Namasivaya Murlidar*, 1964, p.35) held that Article 31, clauses (1) and (2), provided for the doctrine of eminent domain and under clause (2) a person must be deemed to be deprived of his property if he was “substantially dispossessed” or his right to use and enjoy the property was “seriously impaired” by the impugned law. Under Article 31(1) the state could not make a law depriving a person of his property without complying with the provisions of Article 31(2). In the *Bella Banerjee’s* case (1954, p.558), the Apex court, through the landmark decision, had insisted on payment of compensation in every case of compulsory deprivation of property by the State. It was held that clause (1) and (2) of Article 31 deal with the same subject, that is, deprivation of private property. Further the court held that the word “compensation” meant “just compensation”, i.e. just equivalent of “what the owner had been deprived of.”

The result of the brief survey of the provisions of the Constitution and the case law thereon, as it stood then, can be stated as follows.

- a) Every citizen has a fundamental right to property, which includes the right to acquire, hold and dispose of the property.
- b) The state is empowered and competent to make a law imposing reasonable restrictions on the said right in public interest.
- c) Whether a restriction imposed by law on a fundamental right is reasonable and in public interest or not, is a justiciable issue.
- d) The state can by law, deprive a person of his/her property if the said law of deprivation amounts to reasonable restriction in public interest within the meaning of Article 19(5).
- e) The state can acquire or requisition the property of a person for a public purpose after paying compensation.
- f) If the compensation fixed by law is illusory or is contrary to the principles relevant to the fixation of compensation, it would be a fraud on power and therefore the validity of such a law becomes justiciable.

Removal of right to property from fundamental rights: The 44th Amendment removed the right to property from the Part III by deleting Articles 19(1)(f) and 31 and by inserting a new chapter, “Chapter IV — Right to Property” in Part XII, with an Article 300A: “Persons not to be deprived of property save by authority of law — no person shall be deprived of his property save by authority of law.”

Though Article 300A is not a Fundamental Right, nevertheless, it does not make much of a difference except that a writ petition is not maintainable under Art. 32. The constitutional right to property under Art. 300A is not a basic feature of the Constitution (*Jilubhai Nanbhai Khackar v State of Gujarat*, 1995, p.142). This article only limits the power of the state that no person shall be deprived of his/her property save by authority of law. There has to be no deprivation without any sanction of law. In simple words, if there is no law, there is no deprivation. State cannot deprive the person from his/her property by an executive power (*Bishambhar Dayal Chandra Mohan v State of U. P.*, 1982, p.33).

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) Briefly discuss the position of right to property as a Constitutional right.

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24.3 LAND REFORMS AND LAND HOLDING REGULATIONS: ROLE OF GOVERNMENT/ STATE AND CORPORATE RESPONSIBILITY

Land is the limited and the scarce natural resource. From times immemorial land has been subject to various ownership laws and property regimes. Notions of land are intrinsically related to the symbol of power and property or wealth. The concept of concentration of wealth owes a lot to the entity called ‘land’.

It is quite evident that there is a great economic divide over the world. Land forms major component of this cleavage in the society calling for social justice, equality and non-concentration of wealth. A great majority of poor families heavily rely on land for various purposes. For these families, land plays a crucial role in their economic and social life. Their relationship with land defines their access to income, opportunity, nutritional security, and social security within their community.

India’s modern history is closely and in different ways connected with the battle for ownership and utilization of agricultural land. This seems natural in a country, where the lives of overwhelming majority of the population depends on the land and farming and the whole internal and export economy is still largely dependent on this sector. It requires redistribution of land calling for reforms to promote effective utilisation of land for the larger benefit of the society. This has been a crucial issue in India since independence.

In this context, land reforms, landholding regulations as well as the State/ Government and corporate responsibility thereof assume a great significance.

24.3.1 Land Reforms

Here, we will focus on the concept, objectives and benefits of land reforms including the factors that propel land reforms.

a) **Concept of Land Reforms:** Land reforms is nothing but the quest to improve the relationship of land with the landless and the underprivileged. It includes the reforms, policies and schemes which are directed at redistributing the

property (land) or rights over it so as to promote its benefits to the landless, poor and underprivileged labourers as well. These reforms are intended to increase the ability of rural poor to gain access to land and secure rights in them.

b) Objectives of Land Reforms: There are two major objectives of land reforms (Theodor Bergmann, 1984).

- i) Political objectives:* Political objectives of land reforms are to reduce the dominance of powerful landlords and to pacify small land-holders, tenants, and landless farmers by giving them their share in the land-holding rights.
- ii) Economic objectives:* The primary economic objectives comprise of re-distribution of land, division of large-holdings, abolition of tenancy, protection of tenants, lowering of tenancy rates, mobilization of the production potential of the farming sector, streamlining of market channels and diversification of production.

c) Benefits of Land Reforms: As discussed earlier, land reforms are directed towards strengthening the relationship of labourer to land and their entitlement to various rights. Land reforms can be useful in various ways and can entail various benefits such as the following.

- Securing legal rights to land and thereby avoiding forced evictions of land by the powerful.
- Promotion of inclusive and sustained economic growth.
- Increasing crop production and raising nutrition for poor households.
- Reducing social unrest and instability.
- Creation of wealth for the deprived.
- Securing socio-economic justice for all.

The sum and substance of it underlines the fact that better land reforms will provide better and healthier conditions of living and development for all.

d) Factors which propel land reforms: Land reforms, no doubt, carry host of benefits and advantages under its belt. However, at times, it can be seen that lack of political will is the biggest obstacle in the way of these reforms. There are several factors such as the following which propel the land reform efforts.

- Threat of strong revolutionary movements led or supported by the landless farmers and agricultural labourers.
- Strong political will of central authority to bring about the required change.
- Payment of adequate compensation to the concerned *in lieu* of the land which is being redistributed.
- Grass-root level support for land reforms and the support of local parties and other organizations.

Enacting a law is one thing but providing for adequate implementation mechanism is another. The factors enumerated above can be vital factors for bringing in land

reforms legislation as well as in implementing the same. These factors are, however, only a few and illustrative in nature, since the notion of land reforms is subject to situation prevalent in the particular country where the reforms are to be carried out. In case of India, soon after independence, the government started the spree of land reforms across the nation. In almost every state, land reform legislations were enacted which spelled various rights to landless labourers. No doubt, there was a huge hue and cry about such reforms but still the strong political will is required to overcome such voices.

- **Role of Government:** The process of land reforms in its entirety revolves around the role of the government. Right from initiation to completion, the government plays an important and decisive role. In a very deep sense, land tenure problems are power problems of disparity in economic, social and political power (Parsons, 1956). Hence, land reforms programmes are distinctly public programmes undertaken by public or governmental agencies (Land Economics Institute, 1960, pp.300-301). Therefore, a basic and broad alteration of tenure structure cannot be brought about under private auspices. However, in case of India, humanitarian movement that attempted to seek land distribution was given a good reception by the people. Acharya Vinoba Bhave organized the *Bhoodan Yagna* (land gift movement). He travelled through many villages and appealed to land owners to donate one-sixth of their land holdings. He rejected the idea of acquiring land by compulsion and threats. He was indeed quite successful in his endeavour. This achievement was possible because the movement was nurtured under the image of Mahatma Gandhi.

In any case, the absence of role of government was visible. The real benefits of *Bhoodan Yagna* were less impressive. According to government, as of April 1961, the movement had obtained 4,352,866 acres of land, out of which only 833,466 acres were actually distributed, amounting to 0.27 percent of India's 320 million acres of cultivated land (Planning Commission, 1963, p.21). Much of the undistributed portion was a waste land unsuitable for agricultural use. This illustration categorically clarifies the assertion that private efforts are fruitless in cases of land reforms. Land reform is a public edict and it is best carried out and implemented by the active and positive intervention of the government. Therefore, it logically follows that any activity carried out by government has to keep in mind the interests of the people, rights of people affected, their rehabilitation and various other connected matters. The importance of rights of land holders is clearly visible in such cases.

- **Compulsive character of reforms:** At times, the nature of land reforms may appear to be arbitrary and fanciful. However, it must not be forgotten that these reforms are made by keeping an eye on the future. Their purpose lies in the broad interest of society. This element of arbitrariness is primarily because of two factors. *Firstly*, the defective land tenure system tends to freeze capital and retard agricultural productivity. This is so because large landowners are more interested in continuous purchase of land and not in favour of land improvement. They do not make productive use of the land and only concentrate on amassing wealth. In such cases, liberal measures can never bring about the change. Only compulsory character will show positive results. Thus, apart from the role of government, the compulsive

character must also be accorded to these land reforms measures. *Secondly*, large landowners and small peasants are unequal parties. It results in inevitable exploitation of the latter by the former. It calls for effective sanctions by the government to bring about both the parties on level playing field. The redistribution of land should be done through “amicable arrangements”, “voluntary transfer” or “negotiated sale” (United Nations, 1966). It helps in securing social justice as well as fills in the cleavage between the rich and the poor.

Therefore, though land reforms tend to be arbitrary at times, they cannot be totally discarded. Since they tend to be arbitrary to the landowners, they will take the plea that their rights are been taken away in a whimsical manner. The question is: how far this plea of land holders holds water in their rights regime? However, it goes without saying that the compulsory character of land reforms is a *sine qua non* of development, but a fine balance must be struck to reconcile the claims of the landowners as well as the benefits to the society at large, so that no one is left unsatisfied.

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 do you understand by land reforms? How are land reforms useful in securing social justice?

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24.3.2 Land Holding Regulations

Land reform in India over the past 50 years was founded on legislatively driven efforts to provide the rural poor with access to agricultural land. Since independence, most of the legislative energy to increase access to land was focused on three areas, viz. i) abolition of intermediaries, ii) tenancy reforms, and iii) enactment of ceilings on land holdings.

Let us discuss them, in brief, below.

24.3.2.1 Abolition of Intermediaries

The first stroke of land reform legislations after India’s independence primarily concentrated on the abolition of intermediary land-right holders between the tillers and the government. A brief overview of it will elucidate the concept ‘intermediary’ more fluently. Indian agricultural land, at the time of independence, was administered under the following three broad types of land tenure systems (Tim Hanstad, 2005):

- the *zamindari* system,
- *ryotwari* system, and
- *mahalwari* system

- i) **Zamindari system:** Under *zamindari* system, the British had declared feudal lords (*zaimdars*, *jagirdars*, *talukdars*, etc.) and other persons previously designated as land tax collectors to be proprietors of land. The British regime later conferred on them permanent rights and contracted with them for payment of land revenue (tax). Thus, the tillers of land became dependent on whims and fancies of *zamindars*. The zamindar's estates ranged in size from a few acres to tens of thousands of acres (Appu, 1966). Over time, the larger zamindars freed themselves from the burden of managing their estates and also collecting rents from cultivators by leasing out the rent-collecting rights. In some areas, several layers – in some areas as many as 50 – of *intermediary rights* separated the zamindar from the actual cultivator, with the zamindars seated at the top level, at the feet of the state. At all levels, intermediaries gleaned their principal income from the monetary difference between the amount of rent they collected from the layer below and the rent they were obligated to provide to the layer above. This system prevailed in Bengal, Uttar Pradesh, Bihar, Rajasthan, Bengal, and Orissa, and parts of Assam, Andhra Pradesh, and Madhya Pradesh (Tim Hanstad, 2005).
- ii) **Ryotwari system:** The *ryotwari* system recognized individual cultivators (*ryots* or *raiya*s) as proprietors of their land with generally recognized rights to sell, lease, mortgage, and otherwise transfer their land. The system did not legally recognize any kind of intermediary interest between the cultivator and the state; the proprietors paid land revenue directly to the colonial administration. The *ryotwari* system prevailed in much of southern India including present-day Maharashtra, Karnataka, Tamil Nadu, as well as most of Andhra Pradesh and Madhya Pradesh and parts of Assam, Bihar, and Rajasthan (Ibid).
- iii) **Mahalwari system:** Under *mahalwari* system, land revenue was assigned to and paid by entire village units known as *mahals*. Peasant farmers contributed shares of the total amount of land revenue owned by the village in proportion to their holdings. The *mahalwari* system existed in most of present-day Punjab and Haryana, as well as parts of Madhya Pradesh, Orissa, and Uttar Pradesh (Ibid).

Initially, the colonial administration gave the zamindars free rein to manage their tenants as they pleased. As the British authorities began to recognize that many zamindars were mistreating tenants through practices such as rack-renting and summary evictions, they introduced various limited pieces of legislation, starting with the Bengal Tenancy Act of 1885, that gave some protection to certain categories of tenants. These efforts were inadequate to curtail the abuses. In particular, the laws offered little or no protection to tenants under zamindar's self-managed or home farms and those under the *ryotwari* system (Ibid).

These intermediary interests created a foul play and adversely affected the interests of the tenants. The injustices practiced by zamindars coupled with their support of the British colonial administration, fuelled the political will

to undermine or eliminate intermediary rights to land. At the time of India's independence, land reforms were a burning issue, which needed urgent attention. There was an urge to eliminate the intermediary rights in the land after independence (Ibid).

The Indian Constitution grants states exclusive authority to enact land tenure legislation. It provided a starting point (See *Constitution of India*, Art. 246(3) and Seventh Schedule, List II (18) for more details). Despite the states' exclusive jurisdiction to enact land reform legislation, the central government does play and has played an important guiding and consultative role in land policy and legislation, which enabled in large part by the money it directs to the state for various rural development and poverty alleviation schemes. Soon after assuming power, several state governments initiated action to extinguish intermediary interests. By the end of the 1950s, almost all states had enacted legislation aimed at abolishing intermediary interests upon the payment of compensation.

24.3.2.2 Tenancy Reforms

Abolition of intermediary interests did not extinguish tenancy. Renting out of land was widespread in *ryotwari* and *mahalgari* areas even where no intermediaries existed. In *zamindari* areas, even the lowest level of legally recognized land-right holders relied on sub-leasing land. Tenancy became ubiquitous and circumstances had converged to create a perfect storm that favored already powerful landlords at the expense of their tenants. Since most tenancies were oral and terminable at will, laws provided virtually no protection or even legal recognition of the most vulnerable tenants, including sharecroppers and tenants-at-will on ex-intermediaries' home farms. The relationships were ripe for legislative intervention — *further reform*.

Between 1960s and 1970s, almost every Indian state passed tenancy reform legislation. Tenancy reforms are another major area to address the issues that arose after abolition of intermediaries. Unlike the legislation to abolish intermediaries, policy guidelines from the central government strongly directed state tenancy legislation. However, assessed against objectives, the results of tenancy reform laws too were, with some exceptions, weak or even counterproductive. While the laws allowed tenants to acquire ownership or owner-like rights to about five percent of India's land, the same laws led to the ejection of a much larger numbers of tenants (Behuria, 1997, mentioned in Tim Hanstad, 2005).

Key Legislative Provisions in State Tenancy Reforms Laws: As mentioned above, all Indian States adopted legislation concerning agricultural tenancies between 1960s and 1970s. Most of those laws were also amended from time to time, partially in response to policy guidance from the national government articulated in the Five Year Plans. The key aspects of these laws relate to the following (Tim Hanstad, 2005).

- Defining tenant.
- Landlord's right to resume tenanted land for personal cultivation.
- Conferment of ownership rights on tenants.
- Voluntary surrender of tenant's rights by the tenant.
- Prohibition of future agricultural tenancies.

- Regulation of rent levels for those tenancies that are allowed.
- Length of term for those tenancies that are allowed.
- Tenants' rights of pre-emptive purchase.
- Public recording of tenancies.

i) **Defining tenant:-** The persons who cultivated the land of others upon the payment of fixed rent, be it cash or in kind, are treated as tenant by most of the States.

ii) **Landlord's right to resume tenanted land for personal cultivation:** This is perhaps the biggest loophole in tenancy laws. It gave the unfettered power to landlord to resume cultivation on pretext of "personal cultivation". The landlord took full advantage of this provision, which resulted in tenant eviction. Two States distinguished themselves by limiting resumption rights. Uttar Pradesh and West Bengal, in their tenancy laws, prohibited landowners from resuming any tenanted land outside of their home-farms; the laws granted existing tenants on the non-home-farm lands permanent and heritable rights on that tenanted land. In all other States, tenancy reform laws permitted landowners to resume tenanted land for personal cultivation. States loosely defined "personal cultivation" to include cultivation through servants or labourers. In some States (Gujarat, Jammu & Kashmir, Kerala, Madhya Pradesh, Maharashtra, Karnataka, Orissa, and Rajasthan), the laws permitted landowners to exercise their right of resumption only within a specified time period after the legislation had been adopted.

iii) **Conferment of ownership rights on tenants:** Most State laws confer ownership on existing tenants who remained on non-resumable tenanted land. However, the following are the exceptions:

- a) Tenancy laws of Tamil Nadu, and of Andhra area of Andhra Pradesh include no provisions for conferring rights of ownership on tenants;
- b) Bihar, Punjab and Haryana — tenants of landlords who own land below the ceiling limit are not entitled to ownership rights on the tenanted lands;
- c) Rajasthan — tenants whose tenancy contracts started after 1961 are not entitled to ownership;
- d) Uttar Pradesh and West Bengal — where sharecroppers are not entitled to receive ownership rights.

All other State laws include provisions to confer ownership rights to tenants on non-resumable land. Approaches in conferment of ownership varied from State to State.

iv) **Voluntary surrender of tenancy rights by the tenants:** "Voluntary" surrenders of tenancy rights by tenants have frustrated the objectives of tenancy reform. Many landlords have repossessed even their non-resumable land by "persuading" their tenant(s) to give up their tenancy rights "voluntarily."

v) **Prohibition on future agricultural tenancies:** The provisions in the State laws prohibiting creation of future tenancies broadly fall into four categories (Haque, 2001).

- a) *Complete prohibition:* The laws in two states (Kerala and J & K) place a virtual or absolute ban on creation of agricultural tenancies.
 - b) *Limited leasing / general prohibition:* The laws in eight states — Andhra Pradesh (Telengana area), Karnataka, Madhya Pradesh, West Bengal, Bihar, Himachal Pradesh, Uttar Pradesh, and Orissa – are characterized by a general prohibition on future tenancies combined with an allowance of leasing by certain defined categories of landowners and/or under certain other conditions.
 - c) *Permissible leasing with ownership potential:* Leasing is permitted but with a stipulation that tenant acquires the right of ownership or a right to purchase ownership after some specified period. These states include Assam, Gujarat, Haryana, Maharashtra, and Punjab. The time period ranges from one year to six years.
 - d) *No prohibition on leasing:* Some States place virtually no prohibition on leasing. These include Rajasthan, Tamil Nadu and Andhra area of Andhra Pradesh.
- vi) *Regulation of rent levels:* Provisions designed to regulate rent payable by the tenants are contained in all state laws. These maximum rent levels are stated in terms of a multiple of land revenue (tax) or an amount equivalent to a portion of the gross produce. The maximum rent levels are typically well below prevailing market rents and have proven difficult, if not impossible, to enforce in nearly all states where they exist. Perhaps most importantly, since most agricultural tenants in India remain concealed and thus with little or no tenure security, any effort by them to enforce legal “maximum rent” provisions is likely to result in eviction.
- vii) *Length of term:* Certain states have prescribed minimum periods for allowable tenancies. Andhra Pradesh prescribes a five-year minimum for the Telangana area and a six-year minimum (renewable) for the Andhra area. Punjab established a three-year minimum.
- viii) *Tenants’ right of pre-emptive purchase:* A right of pre-emptive purchase means that before a landlord chooses to sell the tenanted land to a third party, he must give the tenant the opportunity to purchase the land. The laws in at least five states (Andhra area of Andhra Pradesh, Haryana, Maharashtra, Punjab, and West Bengal) give tenants a continuing right of pre-emptive purchase.
- ix) *Public recording of tenancies:* Accurate and current records of existing tenancies are a pre-requisite for the effective implementation of tenancy reform policies. Numerous state laws (including Gujarat, Haryana, Himachal Pradesh, Jammu & Kashmir, Madhya Pradesh, Maharashtra, Punjab, Rajasthan, Uttar Pradesh, and West Bengal) call for inclusion of the names of tenants in land revenue records. Except West Bengal, no State has effectively implemented such a provision. In other States, the names of tenants are seldom recorded, and in many cases the omission is a result of tenant insistence in the face of possible eviction. Even where tenants attempt to record their names, the revenue department functionaries often act in collusion with the landowners and refuse to make such entries.

24.3.2.3 Agricultural Land Ownership Ceilings

All Indian States have adopted legislation that placed ceilings on the amount of agricultural land a person or family can own. The primary objective of imposition of ceiling limits is redistribution of land in excess of the ceiling to the poor, landless and marginal farmers. The ceiling laws were enacted and enforced in the following two phases (Tim Hanstad, 2005).

- i) Period from 1960 to 1972, when no specific policy guidelines were present; and
- ii) Period since 1972, after the adoption of national policy guidelines.

The policy of imposing ceilings evolved very slowly after Independence. It was overshadowed by land reforms and tenancy policies. It enjoyed fewer consensuses than land tenancy reforms. The preponderance of small “uneconomic” holdings was considered, by the National Planning Commission, as the greatest handicap to increasing agricultural production. The draft outline of the First Five-Year Plan in 1951 rejected the idea of imposing ceilings on large holdings outrightly. In 1957, the Second Five-Year Plan recommended the imposition of a ceiling on agricultural holdings. In 1959, the Indian National Congress passed a resolution urging States to enact ceiling laws by the end of 1959. Following these policy directives, all States enacted an initial round of ceiling laws by 1961.

The legislative measures adopted in this first round were full of loopholes. Owing to this big landowners circumvented the provisions to their benefit. The major loopholes that existed in this initial round of ceiling laws were:

- a) the ceiling limits were set very high;
- b) the laws did not prohibit retrospective transfers (so large landowners, in anticipation of the law, conducted partitions and fictitious transfers);
- c) many types of land or land uses were declared exempt from ceilings; and
- d) ceiling limits were set on the basis of individual holders as the unit and not on a family basis (allowing partitions among family members to evade the ceiling legally).

By the close of 1970's these ceiling laws had resulted in vesting of approximately 2.4 million acres of land. Almost 50% of this had been distributed to rural poor, not necessarily landless farmers, as there was no clear eligibility criterion for it (Sukmar Das, 2000, mentioned in Tim Hanstad, 2005).

The perceived ineffectiveness of the ceiling laws during the first phase led to establishment of a Central Land Reforms Committee and several high-level policy meetings on land reforms. The Central Land Reforms Committee convened a Chief Minister's Conference in 1972. At this conference; the then Prime Minister Indira Gandhi was able to push through a set of National Guidelines for future State laws on land ceilings. Subsequent to the formulation of these National Guidelines, all States introduced legislative changes. While the new or newly amended laws on land ceiling followed a common pattern, variations existed on several key aspects. Some of these aspects, to sum up, include: i) the unit to which the ceiling applies; ii) the ceiling area; iii) exemptions from ceiling; iv) retrospective application; v) compensation; and vi) defining and prioritizing beneficiaries (Appu, 1996, pp.155-169, mentioned in Tim Hanstad, 2005).

- **Unit for application of ceiling:** A family of up to 5 members is the unit of application of ceiling in all the states. Most State-laws allow an increased ceiling area for each additional family member (beyond five) up to a certain maximum number. Exception occurs in only in two States (West Bengal and Tripura), they provide for decrease of the ceiling area with decrease for a family of less than five members.
- **Ceiling area:** The definition of ceiling area encompasses little commonality. Most of the State laws express the ceiling area in terms of a standard acre (or hectare). The definition of standard acre differs from State to State. All States reduced the ceiling limits after 1972 policy.
- **Exemption from ceiling:** Number of exemptions are allowed in ceiling laws. Most common categories of exemption include: a) land held by any government; b) land held by educational institutions; c) land held by industrial and commercial undertakings. Other minor exemptions are also included in various state laws.
- **Retroactive application:** It is quite obvious that *malafide* practices were introduced to circumvent these ceiling laws. Big landowners conducted *benami* transactions and other dubious methods to do away with ceiling restrictions. Some of the methods included converting agricultural land into non-agricultural land, partitioning land among friends. The National Guidelines urged States to ban *malafide* transactions or partitions retrospectively. Some of the State-laws impose a blanket ban on such transactions, rendering them null and void. In other States, transferors have to prove before a competent authority that the transfers were not *malafide*.

24.4 LAND ACQUISITION AND COMPENSATION

In this section, we devote our discussion to different aspects of land acquisition and compensation thereof to the land holders.

24.4.1 Eminent Domain

Eminent domain is the inherent power of the State to seize person's property by giving due monetary compensation. Governments across the world, including in India, possess and exercise this power. Land can either be acquired through the market route (that is, by negotiating with the land holders) or by the use of eminent domain powers of the government. In the market route, since the nature of transaction is voluntary, there is little or no social discontent. While in case of eminent domain the landowners have to part with their land for government determined compensation. This causes problems related to compensation aspects and public purpose aspects. The project proponents in India, however, are increasingly relying on the latter and States are cooperating, so much so that it has become the norm. This is not surprising given that State governments are competing with each other to attract industrial and infrastructure projects to their respective States. An incident of this power, however, is that the property cannot be taken without public purpose and without just compensation (*Chiranjit Lal Chowdhary v Union of India*, 1951, p.41).

In India, concept of eminent domain is found in entry 42 of List III, which says "acquisition or requisitioning of property". In *State of Bihar v Kameshwar Singh*

(1952, p.458), the Supreme Court emphasized that power to acquire property compulsorily meant power to take property for public purpose and for just compensation. The ideas of public purpose and compensation are inherent in entry 42 (*State of West Bengal v Union of India*, 1963, p.1241).

24.4.2 Public Purpose

The doctrine of eminent domain powers can only be invoked when the aim of the project is to serve a public purpose. The definition of 'public purpose' adopted in law is very dynamic and activity-specific (for example, provision of land for town or rural planning) and other times entity-specific (for example, provision of land for a corporation owned or controlled by the State). Entity-specific definitions can potentially create problems.

While the concept of 'public purpose' is contentious in legal and political discourses, there has to be some definite and clear sphere of what actually public purpose is. If something benefits all members of the public, it clearly serves the public purpose and if it excludes a vast majority, then it does not. Most of the projects, however, cannot be so clearly categorized. In such a situation, Courts have taken a view that public purpose cannot and should not be defined and what constitutes public purpose has to be decided primarily by the State. Ambiguity, indefiniteness, and vagueness of public purpose are usually the grounds on which notifications under Section 4(1) of the Land Acquisition Act are assailed. Public purpose cannot and should not be precisely defined and its scope and ambit be limited as far as acquisition of land for the public purpose is concerned. Public purpose is not static and changes with the passage of time, need, and requirements of the community. Broadly speaking, public purpose means the general interest of the community as opposed to the interest of an individual or a group of individuals. The power of compulsory acquisition as described by the term 'eminent domain' can be exercised only in the interest and for the welfare of the people. The concept of public purpose should include matters such as safety, security, health, welfare, and prosperity of the community or public at large. The concept of 'eminent domain' is an essential attribute of every State. This concept is based on the fundamental principle that the interest and claim of the whole community is always superior to the interest of an individual or a particular group (*Daulat Singh Surana v First Land Acquisition Officer*, 2007, p.471).

24.4.2.1 Justiciability of Public Purpose

The question, whether purported acquisition of land under the Land Acquisition Act, 1894 for public purpose by the State is genuinely for public purpose, is justiciable; it can be judicially reviewed. Power of judicial review cannot be taken away by any statute. The Supreme Court in *Sooraram Reddy v Collector, Ranga Reddy District* (2008, p.552) spelled out the grounds of review as follows.

- Malafide exercise of power.
- Only apparently public purpose, but in reality serves private purpose.
- Proper procedure of acquisition not followed.
- Acquisition is unreasonable or irrational.

24.4.3 Land Acquisition Process

As per the Land Acquisition Act 1894, land can be acquired under either Part II or Part VII of the Act. The procedures laid down under these parts have some difference. While the former is used when the acquiring body is the Central or State Government or companies that are either owned, partly owned or controlled by the State, the latter is used in case of non-government companies.

Land Acquisition under Part II: The process involved in this regard is as follows.

- 1) ***Notification:*** The process for land acquisition begins with the issuance of a preliminary notification under Section 4(1) of the Act. The notification must be published in the Official Gazette and two daily local newspapers. There must also be a public notice of the substance of the notification at convenient places in the locality. The notification lays down that 'land in one or more village(s) is needed in the foreseeable future for a public purpose (or for a company).
- 2) ***Filing objections:*** The people who have certain interests in the land are required to file their objections, if any, against this notice within 30 days. These objections have to be submitted to the collector and every 'objector' gets an opportunity of being heard by the Collector. Objections are typically made on the following grounds:
 - the purpose for which land is sought to be acquired is not a public purpose;
 - the land in question is not suitable for the stated purpose;
 - more land is being acquired than what is necessary for the proposed project;
 - an alternative piece of land could be acquired which would cause less (or no) inconvenience to people; and
 - the land contains historic monuments, places of public interest, religious buildings, tombs, graveyards, etc. and hence it should not be acquired.

After hearing all objections, the Collector submits a report to the appropriate government in respect of the notified land containing his/her recommendations on the objections and the records of the proceedings held by him/her. The government then takes a decision regarding the proposed acquisition based on the report submitted by the Collector.

- 3) ***Declaration:*** Based on the decision of the Government, a declaration is issued under Section 6(1), which becomes conclusive evidence that land is needed for public purpose (or for a company) and that the Government can go ahead with the acquisition process. The declaration must be given the same publicity as the preliminary notification. The Act requires that such declaration should be issued within a period of one year from the date of issuance of preliminary notification (The Amendment to the Act in 1984 reduced the time limit from three years to one year).
- 4) ***Notice to interested parties:*** After the declaration, the notified land is marked out, measured, and planned as per Sections 7 and 8 of the Act. The Collector informs the landowners about the government's intention to take possession

of their land and invites claims from all interested parties to compensation by sending them a notice under Section 9(1). Interested parties can submit their objections regarding measurements and value of land to the Collector.

- 5) **Enquiry and Award:** Under Section 11, an enquiry is conducted by the Collector regarding the objections submitted by the interested parties. On completion of this enquiry, an award is made, stating: i) area of the land, ii) compensation payable, and iii) its apportionment among all the interested persons. No award can be made by the Collector without prior approval by the appropriate Government. The award should be made within two years (The 1984 Amendment to the Act introduced a time limit of two years; there was no such time limit earlier) from the date of publication of the declaration (under Sec. 6), else the acquisition proceedings lapse.

A landowner can object to the award regarding the measurement of land, amount of compensation, the persons to whom it is payable and its apportionment by filing a written application to the Collector, who shall refer the matter to the court. The landowner cannot file a suit in the ordinary civil courts to establish his claim. The only course of option available to him is to seek a reference to the District Court from the Collector. To retain their rights to challenge the quantum of compensation in court, the landowners must receive the compensation money 'under protest'.

- 6) **Compensation:** The Act provides that the compensation should be based on the market value of land on the date of the preliminary notification. The payment of compensation can be delayed beyond the date on which possession of land is taken. As a protection against delay in compensation, an interest of 12 per cent per annum is also given.

- **Invoking emergency:** In case the land is required in emergency, Section 17 of the Act confers special powers to the acquiring authority. By virtue of which the Collector can take possession of the land without even giving away the award. The government has complete authority to define a situation as 'urgent' and invoke the urgency clause to acquire land. The process/procedure for such a scenario is same as the one described above, with the following exceptions:
 - a) the government can dispense with Section 5(A) which requires the Collector to hear objections of landowners against the notification published under Section 4(1);
 - b) upon expiry of 15 days from the notice under Section 9(1), the Collector can take possession of the land; and
 - c) before taking possession of land, the collector has to pay 80 per cent of the compensation for the land as estimated by him/her.

24.4.4 Corporate Social Responsibility

Corporate houses are big business houses which are instrumental in putting huge investments for developmental projects. In effect, they also get concessions from State in setting up industries. These concessions come in the form of mainly tax incentives. Hence, it becomes imperative that these corporate houses should assume certain degree of responsibility in policy of land reforms, acquisitions, rights of land holders and their miseries.

The onset of globalization has created more demands for resources. India's liberalization policy and open market reforms meant, on the one hand, a growth opportunity and, on the other, a cause for greater marginalization of the poor. The "development projects" in the nature of setting up of industries, mines, dams, and shopping malls have caused large scale displacement not only in India, but also all over the world. Thousands of acres of land have been taken away, in the name of "development" from people who are totally dependent on it for their livelihood (Gratian Vas, See http://www.wcfcg.net/gcsr_proceedings/Gratian%20Vas.pdf).

Policies are there to provide agricultural land or replace the livelihoods of those displaced by large projects. However, these policies are meant to ensure the large-scale transfer of lands to private companies and corporate bodies. The policies are the means to legitimize this resource alienation and to strengthen corporate control over land. While the policy grapples with and articulates these most germane issues of the displacement and rehabilitation process, it does not provide any appropriate mechanism or framework for either the assessment of the necessity of displacement, or the identification or compensation of the ousted with livelihoods (Ibid).

While establishing market and areas of operation, corporate houses should take care that they do not impinge on the rights of the people who are dependent on the land holdings in that area. In case of necessary displacement, the corporate should ensure that the community of people is consulted about the entire process. The incidents of forcible displacement should be avoided. Mutual respect and confidence need to be built between the community and the corporate to establish a base for future partnership. In understanding this, today corporates have started to move into playing a greater role in society. This may be attributed to external factors like mounting pressure from their own stakeholders, society and the government on responsible business practices or may also have arisen from an introspection of the returns that their business gives to those it takes from. Whatever the drivers, there is no denying the fact that there is a greater initiative in Corporate Social Responsibility than there was a few decades ago (Ibid).

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 three key areas on which the land reforms legislations focused in the post-independence period?

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4) Explain the concept of eminent domain and public purpose.

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5) What are the grounds for judicial review or justifiability of public purpose in land acquisition?

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6) What are the steps involved in land acquisition process?

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24.4.5 Compensation, Resettlement and Rehabilitation

Land is the major social and economic asset for any individual. In a country like India, where a large part of the population depends on agriculture, land is the primary source of livelihood for them. It is a critical resource — physical, commercial and financial — in a country's industrial, infrastructural and economic development. Nevertheless, it is needless to say that development requires acquisition of large areas of land, which would result in involuntary displacement of people. This would uproot them from their socio-cultural environment. It will also lead to depriving them of their land, livelihood, and shelter. It becomes imperative to not only provide appropriate monetary compensation for the acquired land, but also extend additional benefits to the displaced to protect their livelihood and mitigate their socio-cultural trauma. In this milieu, the policy makers are, thus, faced with the challenge of providing a comprehensive legal and policy framework for land acquisition and the Rehabilitation and Resettlement (R & R) of the displaced people.

Displaced persons are those who are forced to move out of their habitat — whether it is individually and formally owned, or a traditional, customarily, and collectively owned area. Common property resources (CPR) are the catch words here. India's laws, however, recognize so far only individually titled land ownership. Land for which there is no formal (either individual or group) title is considered State property. Customary tenures are neither compensated nor resettled in an organized manner, because the State does not recognize them as the owners of the areas they inhabit. Most tribes in India are CPR dependants and as such do not have an 'ownership' title to their customary lands. Some derive their livelihood from land owned by others, working as landless agricultural labourers or performing various service activities. They also sustain themselves by rendering services to the village as a community (Walter Fernandes, See <http://onlineministries.creighton.edu/CollaborativeMinistry/NESRC/Walter/chp-7.pdf>).

- **Resettlement and Rehabilitation:** Resettlement and Rehabilitation speak of all Project Affected Persons (PAPs) and Project Affected Families (PAFs). In reality, however, there are two distinct processes: The *first*, resettlement, is a one-time event of physical relocation. Only the displaced persons (DPs) usually go through it after displacement. The *second*, rehabilitation, is a long-time process that involves rebuilding people's physical and economic livelihood, their assets, infrastructure, their cultural and social links, and psychological acceptance of the changed situation. Rehabilitation is a process needed by the DPs, the PAPs, and PAFs, it must begin long before physical displacement or deprivation, because problems begin as soon as news spreads about the proposed project. Problems continue during the identification and assessment of the assets to be acquired, their physical acquisition, and people's relocation. As a result, rehabilitation continues for several years after relocation (op.cit).

24.4.5.1 National Rehabilitation and Resettlement Policy (NRRP), 2007

The content of any national policy for resettlement and rehabilitation has to be considered primarily from the perspective of those communities who suffer the brunt of displacement and face terrible risks of getting even poorer. Till now, India as a whole has not had a national rehabilitation law or policy. Several States and some public sector companies have adopted their own policies for displacement and resettlement. The Indian government began the policy drafting process only in 1985 when the National Commission for Scheduled Castes (former 'untouchables') and Scheduled Tribes indicated that about 40 per cent of the DPs/PAPs were tribals. Policy formulation took a new turn in 1993 when, in the wake of the World Bank withdrawal from the Sardar Sarovar project on the Narmada, the Ministry of Rural Development prepared a draft, revised it in 1994 and again in 1998. It was finalized in 2003 and published in 2004 (op.cit).

The NRRP-2007 was notified by the Government of India as an improvement over the NRRP-2003/2004. It provided for a more comprehensive and inclusive R & R Policy applicable to all projects that lead to involuntary displacement of people. The salient features of the new policy are as follows:

- 1) The amendments promote non-displacing or least-displacing alternatives.
- 2) It aims to ensure expeditious implementation of an adequate rehabilitation package while taking special care for protecting the rights of weaker sections of the society.

- 3) There are also provisions for providing a better standard of living after resettlement by integrating the rehabilitation concerns into the development planning and implementation process.
- 4) The principles of the Policy also apply to R & R of persons involuntarily displaced permanently due to any reason.
- 5) To make the policy more inclusive, the term 'Project' has been defined as 'any project involving involuntary displacement of people, irrespective of the number of persons affected'.
- 6) Certain provisions of the policy such as the Social Impact Assessment (SIA) and the Tribal Development Plan (TDP) are mandatory for only those projects that cause displacement beyond pre-defined thresholds.
- 7) Social Impact Assessment (SIA) provides a robust consultative mechanism to assess options in terms of location, size and/or technology, minimizing displacement and mitigating the adverse social, economic, demographic and cultural effects on the affected population. The NRRP-2007 introduced a new chapter on SIA for projects involving physical displacement of 400 or more families *en masse* in plain areas, or 200 or more families *en masse* in tribal or hilly areas, or areas mentioned in Schedule V or Schedule VI to the Constitution.
- 8) In comparison with the old policy, NRRP-2007 aims at providing better R & R benefits. It lays special emphasis on the vulnerable sections of the society such as the old, disabled, orphans, women, tribals, etc.

Shortcomings and issues of NRRP, 2007: NRRP-2007 constitutes a significant improvement over the R & R policies introduced by the government earlier. The current policy extensively covers the R & R issues arising out of involuntary displacement. However, there are shortcomings and issues with respect to practicalities of the R & R Policy. These include the following.

- a) Unless a project involves displacement of four hundred or more families *en masse* in plains or two hundred or more families *en masse* in tribal or hilly areas, any Social Impact Assessment (SIA) study is not required to be carried out.
- b) If the project involves displacement of fewer families than the defined threshold, the displaced persons will not be entitled to any R & R benefits. Until notification under Sec. 6 of Land Acquisition Act happens, which provides information on the affected persons, there is no way to know the number of persons that are going to be affected.
- c) Application of a cut-off date to determine the eligibility of R & R benefits would exclude the poorest and most vulnerable from these benefits, since such groups would not have any documentary evidence to prove their actual stay in the previous three years.
- d) NRRP-2007 is more emphatic on defining the minimum standards and benefits rather than providing broad guidelines and principles for project promoters to decide on entitlements.

Most of the rehabilitation policies and laws are prompted by the World Bank. It funds the policies and supervises its implementation. However, India's civil

society has also played an active role in the development of these policies. The National Working Group (1989) supported by the Narmada Bachao Andolan prepared a draft policy. When civil society leaders obtained the 1993 and 1994 drafts, they launched an eighteen-month process in which over 1,500 social activists/groups, legal practitioners, and social researchers joined thousands of DPs/PAPs in reflecting over the drafts, identifying the principles on which a policy or law should be based, and writing on their own alternatives to the policy and to the Land Acquisition Act, 1894 (LAA).

24.4.5.2 World Bank R & R Policies

The World Bank Policy on Involuntary Resettlement (September 2001) has the following objectives:

- a) involuntary resettlement should be avoided where feasible or minimized,
- b) where it is not feasible to avoid resettlement, activities related to resettlement should be conceived and executed as sustainable development programmes, providing sufficient investment resources to enable the persons displaced by the project to share in project benefits.
- c) displaced persons should be meaningfully consulted and should have opportunities to participate in planning and implementing resettlement programmes, and
- d) displaced persons should be assisted in their efforts to improve their livelihoods and standards of living or at least to restore them, in real terms, to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, whichever is higher.

24.4.6 Beyond Compensation

When one speaks of a life with dignity, one refers to the replacement values that the principle of compensation denotes. So this principle goes beyond monetary compensation to other aspects that can be defined less as compensation and more as rebuilding livelihood. Its first feature is the material assets lost, not merely individual land but also the CPRs and other community and individual assets owned according to the rural informal economy.

The basic criterion for their compensation should be the replacement of the livelihood lost, and not of just the market value of individual assets. This involves quantifying the loss suffered by the CPR dependants, of the non-timber forest produce like fodder, food, fertilizer, medicinal herbs, etc. and of community resources such as common and pasture land and places of worship. It also involves quantifying the livelihood lost by artisans, barbers, agricultural labourers, nomads, and others who make their livelihood from providing services, and depend on having customers. The cost of enabling them to begin life again must be recognized and covered.

Quantification of the social and cultural loss the DPs/PAPs suffer is very important. Land in general and CPRs in particular are not merely material assets of the rural poor, particularly tribal, communities. Around these lands they have built their culture, social relations, and their very identity. As a result, their loss results in the breakup of family and community institutions and changed lifestyles.

The law provides for *poena doloris* or compensation for the mental agony that a motor vehicle accident victim suffers. One sees no reason that the DPs/PAPs who experience the psychological and mental trauma of alienation from their livelihood should be denied a similar recognition and benefit.

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”.

- 7) What are the important aspects that require consideration in compensation, rehabilitation and resettlement of displaced persons?

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- 8) What are the areas of concern which go beyond the purview of compensation?

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24.5 LET US SUM UP

Utilisation of land for larger public purpose has been the growing concern of the governments across the globe. This is possible by striking balance in the interests of the existing landholders and those who do not have access to land with view to secure and promote social and economic justice to all. It is in this context, we attempted to provide you an understanding of the rights and entitlements of land holders as well as different ways and means in which the land holding is regulated by the state through suitable land reforms time and again. Further, we have highlighted the need, purpose and process or mechanism of land acquisition including payment of compensation, rehabilitation and resettlement as a part of the process of land acquisition. In this regard, we have also thrown light on the concept of beyond compensation to the displaced people.

24.6 ANSWERS TO 'CHECK YOUR PROGRESS' QUESTIONS

- 1) The right to property was given a special place in the Constitution of India. In the beginning, it was accorded the place in the Part III of the Constitution, i.e. Fundamental Rights. Article 19(1)(f) incorporated the right to property as one of the freedoms in the Constitution. Owing to its special place, Constitution also provided for the safeguards against expropriation without compensation and also against acquisition by the State for a non-public purpose. It was thus obvious that it created certain impediment in the land reforms policies of the government since the Constitution provided for right to remedy under Article 32 in case of the infringement of the right. However, the 44th Amendment removed the right to property from the Part III by deleting Articles 19(1)(f) and 31 and by inserting a new chapter, "Chapter IV— Right to Property" in Part XII with an Article "300A: Persons not to be deprived of property save by authority of law — no person shall be deprived of his property save by authority of law." Thus, though it is a constitutional right today, it ceased to be a fundamental right.
- 2) Land reforms are an attempt to improve the relationship of land with the landless and the underprivileged. It includes the reforms, policies and schemes which are directed at redistributing the property (land) or rights over it to promote its benefits to the landless, poor and underprivileged labourers as well. These reforms increase the ability of rural poor to gain access to land and secure rights in them.

Land reforms, thus, are directed towards strengthening the relationship of labourer to land and enhancing their entitlement to various rights and thus secure social justice. Land reforms can be useful in various ways and can entail various benefits such as the following.

- Securing legal rights of the disadvantaged to land and thereby avoiding forced evictions of land by the powerful.
- Promotion of inclusive and sustained economic growth.
- Increasing crop production and raising nutrition for poor households.
- Reducing social unrest and instability.
- Creation of wealth for the deprived.
- Securing socio-economic justice for all.

The sum and substance of it underlines the fact that better land reforms will provide better and healthier conditions of living and development for all.

- 3) Land-reforms in independent India was founded on legislatively-driven efforts to provide the rural poor with access to agricultural land. Most of the legislative efforts were focused on three areas, viz. i) abolition of intermediaries, ii) tenancy reforms, and iii) enactment of ceilings on agricultural land-holdings.
- 4) Eminent domain is the inherent power of the State to seize person's property by giving due monetary compensation. Governments across the world, including in India, possess and exercise this power. An incident of this power, however, is that the property cannot be taken without public purpose and

without just compensation. In eminent domain the landowners have to part with their land for government determined compensation. This causes problems related to compensation aspects and public purpose aspects. This is not surprising given that State Governments are competing with each other to attract industrial and infrastructure projects to their respective States. In India, concept of eminent domain is found in entry 42 of List III, which says about “acquisition or requisitioning of property”. The ideas of public purpose and compensation are inherent in entry 42.

The doctrine of eminent domain powers can only be invoked when the aim of the project is to serve a public purpose. The definition of ‘public purpose’ adopted in law is very dynamic and activity-specific (for example, provision of land for town or rural planning) and other times entity-specific (for example, provision of land for a corporation owned or controlled by the State). Entity-specific definitions can potentially create problems. The concept of ‘public purpose’ is based on the fundamental principle that the interest and claim of the whole community is always superior to the interest of an individual or a group of individuals.

- 5) The grounds for judicial review or justifiability of public purpose in land acquisition include the following.
 - Malafide exercise of power.
 - Only apparently public purpose, but in reality serves private purpose.
 - Proper procedure of acquisition not followed.
 - Acquisition is unreasonable or irrational.
- 6) Following are the steps involved in land acquisition process under Land Acquisition Act 1894.
 - a) *Issuance of a preliminary notification* published in the Official Gazette and two daily local newspapers specifying that the ‘land in one or more village(s) is needed in the foreseeable future for a public purpose (or for a company)’.
 - b) *Filing objections* by the people who have certain interests in the land and hearing by the Collector of the objectors on the specified grounds.
 - c) *Submission of a report* to the government by the Collector on the objections heard along with relevant recommendations.
 - d) *Issuance of declaration* by the government that land is needed for public purpose and it will go ahead with the acquisition process. The declaration must be given the same publicity as the preliminary notification.
 - e) *Notice to interested parties/landowners* about the government’s intention to take possession of their land and invites claims from all interested parties to compensation. Interested parties can submit their objections regarding measurements and value of land to the Collector.
 - f) *Conducting enquiry* regarding the objections submitted by the interested parties *and making an award*. No award can be made by the Collector without prior approval by the appropriate government. The award should be made within two years from the date of publication of the declaration or else the acquisition proceedings lapse.

A landowner can also object to the award regarding the measurement of land, amount of compensation, the persons to whom it is payable and its apportionment by filing a written application to the Collector, who shall refer the matter to the court. The landowner cannot file a suit in the ordinary civil courts to establish his claim. The only course of option available to him is to seek a reference to the District Court from the Collector. To retain their rights to challenge the quantum of compensation in court, the landowners must receive the compensation money 'under protest'.

- 7) *Compensation:* Land is the major social and economic asset for any individual. In a country like India, where a large part of the population depends on agriculture, land is their primary source of livelihood. It is a critical resource — physical, commercial and financial — in a country's industrial, infrastructural and economic development. Needless to say, that development requires acquisition of large areas of land, which would result in involuntary displacement of people. This would uproot them from their socio-cultural environment. It will also lead to depriving them of their land, livelihood, and shelter. It becomes imperative to not only provide appropriate monetary compensation for the acquired land, but also extend additional benefits to the displaced to protect their livelihood and mitigate their socio-cultural trauma. In this milieu, the policy makers are faced with the challenge of providing a comprehensive legal and policy framework for land acquisition and the Rehabilitation and Resettlement (R & R) of the displaced people.
- 8) There are many areas of concern which go beyond the purview of whatever the compensation that may be paid to the displaced for their resettlement and rehabilitation. When one speaks of a life with dignity, one refers to the replacement values that the principle of compensation denotes. So this principle goes beyond monetary compensation to other aspects that can be defined less as compensation and more as rebuilding livelihood. Its first feature is the material assets lost, not merely individual land but also the common property resources (CPRs) and other community and individual assets owned and shared according to the rural informal economy. The basic criterion for their compensation should be the replacement of the livelihood lost, and not of just the market value of individual assets. This involves quantifying the loss suffered by the CPR dependants, of the non-timber forest produce like fodder, food, fertilizer, medicinal herbs, etc. and of community resources such as common and pasture land and places of worship. It also involves quantifying the livelihood lost by artisans, barbers, agricultural labourers, nomads, and others who make their livelihood from providing services, and depend on having customers. The cost of enabling them to begin life again must be recognized and covered. Quantification of such social and cultural loss the DPs/PAPs suffer is very important, but difficult to quantify. Their loss results in the breakup of family and community institutions, psychological and mental trauma of alienation from their livelihood due to changed lifestyles. All these are never part of the compensation and nor can they be duly quantified and compensated.

24.7 REFERENCES

Appu, P. S. 1996. *Land Reform in India: A Survey of Policy, Legislation, and Implementation*. New Delhi: Vikas Publishing House.

Gratian Vas, See http://www.wcfcg.net/gcsr_proceedings/Gratian%20Vas.pdf.

Haque, T. 2001 *Impact of Tenancy Reforms on Productivity Improvement and Socio-economic Status of Poor Tenants*, NCAP Policy Paper.

http://www.legalblog.in/2011_09_01_archive.html.

Land Economics Institute. 1960. "The Place of Land Reform in a Developmental Agricultural Policy", in *Modern Land Policy*. Urbana: University of Illinois Press.

Parsons, Kenneth H. 1956. "Land Reform and Agricultural Development", in Parsons, *et al*, (Eds.). *Land Tenure*. Madison: University of Wisconsin Press.

Planning Commission. 1963. *Progress of Land Reforms*. Delhi: Government of India Press.

Sukmar Das. 2000. "A Critical Evaluation of Land Reforms in India (1950-1995)", in B. K Sinha and Pushpendra (Eds.). *Land Reforms in India: An Unfinished Agenda*. New Delhi: Sage.

Theodor Bergmann. 1984. *Agrarian Reforms in India*. New Delhi: Agricole Publishing Academy.

Tim Hanstad. 2005. "Improving Land Access for India's Rural Poor: A Review of Past Efforts and Recommendations for the Road Ahead", a paper prepared for the *National Seminar on Reforms in Land Policy for Accelerated Growth* to be held on January 5-6, 2006 at New Delhi — Retrieved from <http://siteresources.worldbank.org/INTINDIA/Resources/Hanstad.pdf>.

United Nations. 1966. *Progress in Land Reforms Fourth Report*. New York: United Nations.

Walter Fernandes. *India's Forced Displacement Policy and Practice: Is Compensation up to its Functions?* See, <http://onlineministries.creighton.edu/CollaborativeMinistry/NESRC/Walter/chp-7.pdf>.

Cases

Bishambhar Dayal Chandra Mohan v State of U. P. 1982. AIR SC 33.

Chiranjit Lal Chowdhary v Union of India. 1951 AIR SC 41.

Daulat Singh Surana v First Land Acquisition Officer. 2007. AIR SC 471.

Jilubhai Nanbhai Khackar v State of Gujarat. 1995. AIR SC 142.

S. M. Karim v Mst. Bibi Sakina. 1964. AIR SC 1254.

Sooraram Reddy v Collector, Ranga Reddy District. 2008. SCC (9) 552.

State of Bihar v Kameshwar Singh. 1952. AIR SC 458.

State of Haryana v Mukesh Kumar and Ors (See D Bhandari, J. 30 September, 2011, at <http://indiankanoon.org/doc/290532/>).

State of Madras v Namasivaya Murlidar. 1964. SCR (6) 35.

State of West Bengal v Bella Banerjee. 1954. SCR 558.

State of West Bengal v Subodh Gopal. 1954. SCR 587.

State of West Bengal v Union of India. 1963. AIR SC 1241.

UNIT 25 RIGHTS OF PERSONS WITH DISABILITIES

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25.0 INTRODUCTION

Persons with disabilities constitute the largest minority in the world encompassing over 600 million persons, of which majority live in developing countries (Helander, 1992). At least one quarter of these children suffer from physical, mental or sensory impairment. For a long time, the disabled people have experienced discrimination, prejudice, neglect and exclusion in every walk of life. In pre-modern societies, the disabled persons were eliminated through killing programmes and sterilization and were considered as non-persons and second-class citizens. The systematic exclusion and discrimination of people with disabilities has no rational basis but is precisely due to prejudice, thoughtlessness and indifference of the society as a whole.

There is no doubt that disability causes social stigma, because the condition of disability is considered as “undesired differentness” from socially defined norm of “normality.” The core aspect of stigma occurs when the prevailing social norms treat disability as universally discrediting. The society and its institutions are designed for the “normal” and not for the people with stigmatized traits. In the

context of employment, it is seen that the persons with disabilities are disfavoured because of stereotypes, discomfort or misconceptions and unfounded fears about increased costs and decreased productivity. In fact, the effects of disability are directly felt in the spheres of education, transport, physical access to market and recreational places, social and welfare services, income and wealth, housing, health services, and in employment.

However, it must be remembered that the disabled persons are also human beings and as such, they are entitled to enjoy all human rights. They have every right to be treated equally with others. They too are potentially able to perform a broad range of activities. They only need our support, encouragement and special protection and special rights to enable them to utilize their abilities to the maximum extent.

The Constitution of India ensures equality, freedom, justice and dignity of all individuals and implicitly mandates an inclusive society for all including persons with disabilities. In the recent years, there have been vast and positive changes in the perception of the society towards persons with disabilities. It has been realized that a majority of persons with disabilities can lead a better quality of life if they have equal opportunities and effective access to rehabilitation measures.

25.1 OBJECTIVES

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

- Analyze the problems faced by the persons with disabilities in their day to day life;
- Appreciate the rights of the persons with disabilities;
- Describe the international efforts for the protection of the rights of persons with disabilities; and
- Explain the significance of the national laws and policies for the protection and promotion of the rights of persons with disabilities.

25.2 RIGHTS OF PERSONS WITH DISABILITIES: INTERNATIONAL PERSPECTIVE

At international level, the United Nations Charter in its Preamble reaffirms faith in the fundamental human rights, in the dignity and worth of human persons and in the equal rights of men and women. One of the purposes of the UN is to promote and encourage respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

The Universal Declaration of Human Rights (UDHR), 1948, in its preamble, clearly states that recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. The Declaration emphasizes that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth in the Declaration without distinction of any kind (United Nations, 1948). The disabled are also human beings and entitled to full enjoyment of all the human rights set forth in the Declaration.

As a starting point in the direction of ameliorating the hardships of the disabled persons, the UN adopted a resolution in 1950 concerning rehabilitation of the physically handicapped and entrusted the responsibility on the Economic and Social Council.

In 1971, the UN General Assembly adopted the “Declaration on the Rights of Mentally Retarded Persons” which states that people with mental impairments are entitled to the same rights that their fellow men enjoy in medical care and economic security, and the right to live in family and in community. This remains the *magna carta* of the rights of mentally retarded persons even today.

An important first step in the global recognition of equal rights of the disabled persons was the “Declaration of the Rights of Disabled Persons” adopted by the UN General Assembly in 1975. The Declaration aims to assist the disabled persons to develop their abilities in most varied fields of activities and promoting in so far as possible their integration into normal life. It envisages the various rights of the disabled such as right to medical and psychological treatment, medical and social rehabilitation, education, counseling and other services to ensure their social integration. Entitlements to live with ones family, to participate in social and recreational activities and freedom from discrimination with respect to accommodation are also enumerated (United Nations, 1975).

Along with these developments, the UN had also proclaimed 1981 as the International Year of Disabled Persons, 1983-1992 as the Decade for Disabled Persons and every 3rd December as the International Day of Disabled Persons. The main objective was to encourage disabled persons to organize themselves, to enable them to express their views and to secure their rights to participate in the work of policy-making bodies and in the management of the society in general (www.aifo.it/english/.../manual_human_rights-disability-eng07).

The General Assembly, in its 37th session in December 1982, adopted the World Programme of Action concerning Disabled Persons (WPA). “Equalization of Opportunities” was the main theme of WPA which demands participation of the disabled persons in decision-making. A major event was the appointment of a special rapporteur on human rights and disability by the Sub-Commission on Prevention of Discrimination and Protection of Disability in 1984 (<http://www.unhchr.ch/html/menu3/b/72.htm>).

However, in spite of all these declarations, recommendations and resolutions, the member States were not legally obliged to take specific steps to protect and rehabilitate the disabled. This lacuna made it urgent to formulate a new and comprehensive convention to promote and protect the rights and dignity of the disabled. After a series of efforts, the UN General Assembly adopted the “UN Convention on the Rights of the Disabled Persons” on December 13, 2006. This Convention is highlighted, in brief, below.

India is a signatory to the Declaration on the Full Participation and Equality of People with Disabilities in the Asia Pacific Region. India is also a signatory to the Biwako Millennium Framework for Action towards an inclusive, barrier free and rights-based society. India signed the UN Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities on 30th March 2007, the day it opened for signature. India ratifies the UN Convention on 1st October 2008.

25.2.1 United Nations Convention on the Rights of the Disabled Persons

The main objective of the Convention is to guarantee effective protection of the disabled and to ensure that they can enjoy the full range of human rights — civil, political, economic, social and cultural. The Convention obligates the member-States to enact laws and take measures to protect and promote the rights of the disabled and abolish biased legislations, customs and practices which discriminate against the disabled persons.

25.2.1.1 Definition of Disability

The Convention adopts a social model of disability, and defines the disabled persons as those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

25.2.1.2 Prevention of Discrimination

The Convention stresses that persons with disabilities should be able to live independently and participate fully in all aspects of life. To this end, State parties should take appropriate measures to ensure that persons with disabilities have access to the physical environment, to transportation, to information and communications technology, and to other facilities and services open or provided to the public.

25.2.1.3 Right to Education

The Convention states that persons with disabilities should be guaranteed the right to inclusive education at all levels, regardless of age, without discrimination and on the basis of equal opportunity.

State parties should ensure that:

- children with disabilities are not excluded from free and compulsory primary education, or from secondary education;
- adults with disabilities have access to general tertiary education, vocational training, adult education and lifelong learning;
- persons with disabilities receive the necessary support, within the general education system, to facilitate their effective education; and
- effective individualized support measures are put in place to maximize academic and social development.

State Parties should take appropriate measures, such as:

- 1) endorsing the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication, and orientation and mobility skills, including facilitating peer support and mentoring;
- 2) supporting the learning of sign language and promoting the linguistic identity of the deaf community;

- 3) advocating that education of persons, particularly children, who are blind and/or deaf, is delivered in the most appropriate languages and means of communication for the individual; and
- 4) employing teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train education professionals and staff about disability awareness, use of augmentative and alternative modes and formats of communication, and educational techniques and materials to support persons with disabilities.

25.2.1.4 Right to Health

Article 17 of the Convention states that, every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others.

25.2.1.5 Participation Rights

The Convention recognised that “disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others” and that “persons with disabilities continue to face barriers in their participation as equal members of society.”

The Convention makes participation of the disabled one of its principles, stating “The principles of the present Convention shall be full and effective participation and inclusion in society”, subsequently enshrining the right of disabled to participate fully and equally in the community, education, and all aspects of life including political and public life, cultural life, leisure and sports.

State parties should take appropriate measures such as:

- 1) To enable persons with disabilities to have the opportunity to develop and utilize their creative, artistic and intellectual potential not only for their own benefit but also for the enrichment of society.
- 2) To ensure, in accordance with international law, that law protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials.
- 3) To ensure that persons with disabilities should be entitled, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity, including sign languages and deaf culture.

One of the fundamental obligations contained in the Convention is that national law should guarantee the enjoyment of the rights enumerated in the Convention. State parties should, thus, consider the best ways of giving effect to the rights guaranteed by the Convention in domestic law. Implementing legislation should include the terms of the Convention or a specific reference to them, in order to indicate clearly that the laws should be interpreted in accordance with the letter and spirit of the Convention. The first meeting of the Conference of State parties was held on 31 October and 3 November 2008 (United Nations, See www.un.org/disabilities/default.asp?id=1).

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) What are the important rights provided for in the International Convention on the Rights of Disabled Persons, 2006?

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25.3 RIGHTS OF PERSONS WITH DISABILITIES: NATIONAL PERSPECTIVE – CONSTITUTIONAL, LEGAL AND POLICY MEASURES

In India approximately 5 to 6% of the total populations are disabled (Evance Kalula, 2006). The Constitution of India expressly recognizes the duty of the State to protect the rights of the disabled. To ensure social justice is one of the prime objectives of the Constitution of India. The Constitution envisages the concept of Welfare State and it is the duty of the State to raise the level of nutrition and standard of living and to improve public health. The State is also duty-bound to make effective provisions for securing the right to work, education and public assistance in cases of unemployment, old age, sickness and disablement. Besides these, entry 9 of the List II to the Seventh Schedule of the Constitution is specifically titled “Relief of the Disabled and Unemployable.”

In furtherance of the constitutional provisions, the Indian parliament passed a number of legislations to protect and promote the rights of the persons with disabilities. These legislations are briefly discussed below.

25.3.1 Legislations for the Disabled Persons

The Constitution of India ensures equality, freedom, justice and dignity of all individuals and implicitly mandates an inclusive society for all including the persons with disabilities. The Constitution in the schedule of subjects lays direct responsibility of the empowerment of the persons with disabilities on the State Governments. Therefore, the primary responsibility to empower the persons with disabilities rests with the State Governments.

Under Article 253 of the Constitution read with item No.13 of the Union List of the Seventh Schedule, the Government of India enacted “The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995”, in the effort to ensure equal opportunities for persons with disabilities and their full participation in nation-building. The Act extends to whole of India except the State of Jammu and Kashmir (Note: The State of Jammu & Kashmir

has enacted its own Act — The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1998).

A multi-sectoral collaborative approach, involving all the appropriate Governments and authorities (i.e. Ministries of the Central Government, the State Governments/UTs as well as Central/State undertakings, local authorities and others), is being followed in implementation of various provisions of the Act.

Following are the Acts specially related to the disabled people, in addition to common laws equally applicable to them, in our country:

25.3.1.1 The Mental Health Act, 1987

This is an Act which consolidates and amends the law relating to the treatment and care of mentally-ill persons, and to make better provision with respect to their property and affairs and for matters connected therewith or incidental thereto.

25.3.1.2 The Rehabilitation Council of India Act, 1992

The Act was created to provide for the constitution of the Rehabilitation Council of India for regulating training of the Rehabilitation Professionals and maintaining of a Central Rehabilitation Register and for matters related to these issues.

The professionals who come under the purview of the Act include the following.

- Audiologists and speech therapists.
- Clinical psychologists.
- Hearing aid and ear mould technicians.
- Rehabilitation engineers and technicians.
- Special educators for teaching and training the handicapped.
- Vocational counsellors, employment officers, and placement officers.
- Multi-purpose rehabilitation therapists and technicians.
- Speech pathologists.
- Rehabilitation psychologists.
- Rehabilitation social workers.
- Rehabilitation practitioners in mental retardation.
- Orientation and mobility specialists.
- Community based rehabilitation professionals.
- Rehabilitation counsellors/administrators.
- Prosthetists and orthodontists.
- Rehabilitation workshop managers.

25.3.1.3 The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995

The Act is guided by the philosophy of empowering persons with disabilities and their associates. The Act requires the appropriate government to endeavor, ensure and promote equality for people with disabilities. The government is also required to frame schemes for the rehabilitation of the disabled people.

The Act defines disability as one or more of the following: blindness, low vision, leprosy cured, hearing impairment, locomotors disability, mental retardation and mental illness. It says that to be considered disabled, a person must suffer from not less than 40 per cent of any disability, as certified by a medical authority.

The Act also authorizes the appropriate government to take affirmative actions to protect the rights of the persons with disabilities. Important provisions of the Act are:

- Chapter V of the Act is titled “Education” and deals with various aspects relating to the right to education of the persons with disabilities;
- Chapter VI which deals with “Employment”. It provides that all government educational institutions and other educational institutions receiving aid from the government shall reserve not less than three percent seats for persons with disabilities. It specifically provides for non-discrimination in transport, on the road, in the built-environment and in the government employment.

25.3.1.4 The National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999

The National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 establishes a National Trust to support programmes promoting independence and protecting interests of the persons with autism, cerebral palsy, mental retardation and multiple disabilities.

25.3.2 National Policy for Persons with Disabilities

In addition to the legal framework, extensive infrastructure has been developed over time under national policy to protect and promote the rights of the disabled persons. The following national Institutes have been working for development of manpower in different areas.

- Institute for the Physically Handicapped, New Delhi.
- National Institute of Visually Handicapped, Dehradun.
- National Institute for Orthopaedically Handicapped, Kolkata.
- National Institute for Mentally Handicapped, Secunderabad.
- National Institute for Hearing Handicapped, Mumbai.
- National Institute of Rehabilitation Training & Research, Cuttack.
- National Institute for Empowerment of Persons with Multiple Disabilities, Chennai.

There are five Composite Rehabilitation Centres (CRCs), four Regional Rehabilitation Centres (RRCs) and 120 District Disability Rehabilitation Centres (DDRCs) providing various kinds of rehabilitation services to persons with disabilities. There are also several national institutions under the Ministry of Health and Family Welfare working in the field of rehabilitation, like National Institute of Mental Health and Neuro Sciences, Bangalore; All India Institute of Physical Medicine and Rehabilitation, Mumbai; All India Institute of Speech and Hearing, Mysore; Central Institute of Psychiatry, Ranchi, etc. In addition, certain State Government institutions also provide rehabilitation services. Besides,

250 private institutions conduct training courses for rehabilitation professionals (kodakkal.ning.com/forum/topics/2038808).

National Handicapped and Finance Development Corporation (NHFDC) has been providing loans on concessional terms for undertaking self-employment ventures by the persons with disabilities through State channelizing Agencies.

Panchayati Raj Institutions at village, intermediary and district levels have been entrusted with the welfare of persons with disabilities.

All the above mentioned developments are the outcome of the national policy.

25.3.2.1 National Policy Statement – Important Aspects

The National Policy recognizes that Persons with Disabilities are valuable human resource for the country and seeks to create an environment that provides them equal opportunities, protection of their rights and full participation in society. The policy laid the focus on the following.

- i) **Prevention of Disabilities:** Since disability, in a large number of cases, is preventable, there will be strong emphasis on prevention of disabilities. Programme for prevention of diseases which result in disability and for the creation of awareness regarding measures to be taken for prevention of disabilities during the period of pregnancy and thereafter will be intensified and their coverage expanded.
- ii) **Rehabilitation Measures:** Rehabilitation measures can be classified into three distinct groups: a) physical rehabilitation, which includes early detection and intervention, counseling and medical interventions and provision of aids and appliances. It will also include the development of rehabilitation professionals; b) educational rehabilitation including vocational education; and c) economic rehabilitation for a dignified life in society.
- iii) **Assistive Devices:** The Government of India has been assisting persons with disabilities in procuring durable and scientifically manufactured, modern aids and appliances of ISI standard that can promote their physical, social and psychological independence by reducing the effect of disabilities.
 - Every year through National Institutes, State Governments, DDRCs and NGOs, persons with disabilities are provided with devices such as prostheses and orthoses, tricycles, wheel chair, surgical footwear and devices for activities of daily living, learning equipments (Braille writing equipments, Dictaphone, CD player/tape recorder), low vision aids, special mobility aids like canes for blind, hearing aids, educational kits, communication aids, assistive and alerting devices and devices suitable for the persons with mental disabilities. The availability of devices will be expanded to cover uncovered and under-serviced areas.
 - Private, public and joint sector enterprises involved in the manufacture of high-tech assistive devices for persons with disabilities will be provided financial support by the public sector banks.
- iv) **Education (Inclusive Education):** Education is the most effective vehicle of social and economic empowerment. In keeping with the spirit of the

Article 21A of the Constitution guaranteeing education as a fundamental right and Section 26 of the Persons with Disabilities Act, 1995, free and compulsory education has to be provided to all children with disabilities up to the minimum age of 18 years. According to the Census, 2001, fifty-one percent persons with disabilities are illiterate. There is a need for mainstreaming of the persons with disabilities in the general education system through inclusive education.

- ***Sarva Shiksha Abhiyan (SSA)*** launched by the Government has the goal of eight years of elementary schooling for all children including children with disabilities in the age group of 6-14 years by 2010. Children with disabilities in the age group of 15-18 years are provided free education under Integrated Education for Disabled Children (IEDC) Scheme. IEDC Scheme implemented through the State Governments, Autonomous Bodies and Voluntary Organizations provides hundred percent financial assistance for various facilities like special teachers, books and stationery, uniform, transport, readers allowance for the visually handicapped, hostel allowance, equipment cost, removal/modification of architectural barriers, financial assistance for purchase/production of instructional material, training of general teachers and equipment for resource rooms.
- Under SSA, a continuum of educational options, learning aids and tools, mobility assistance, support services, etc., are being made available to students with disabilities. This includes education through an open learning system and open schools, alternative schooling, distance education, special schools, wherever necessary home-based education, itinerant teacher model, remedial teaching, part-time classes, Community Based Rehabilitation (CBR) and vocational education.
- Government of India is providing scholarships to students with disabilities for pursuing studies at post-school level. Government will continue to support the scholarships and expand its coverage.
- Persons with disabilities will be provided access to the universities, technical institutions and other institutions of higher learning to pursue higher and professional courses.

v) **Economic Rehabilitation:** Economic rehabilitation of persons with disabilities comprise of both wage employment in organized sector and self-employment. Supporting structure of services by way of vocational rehabilitation centres and vocational training centres will be developed to ensure that disabled persons in both urban and rural areas have increased opportunities for productive and gainful employment. Strategies for economic empowerment of persons with disabilities would be the following.

- ***Employment in Government Establishments:*** The PWD Act, 1995 provides for 3% reservation in employment in the establishments of Government of India and Public Sector Undertakings (PSUs) against identified posts. The status of reservation in various Ministries/Departments of the Government against identified posts in Group A, B, C and D is 3.07%, 4.41%, 3.76% and 3.18% respectively. In PSUs, the reservation status in Group A, B, C and D is 2.78%, 8.54%, 5.04% and

6.75% respectively. Government will ensure reservation in identified posts in the Government sector including public sector undertakings in accordance with the provisions of the PWD Act, 1995.

- **Wage employment in private sector:** Development of appropriate skills in persons with disabilities will be encouraged for their employability in private sector. Vocational rehabilitation and training centres engaged in developing appropriate skills amongst persons with disabilities, keeping in view their potential and abilities, will be encouraged to expand their services. Considering rapid growth of employment opportunities in service sector, persons with disabilities will be encouraged to undertake skill training suitable to the market requirement. Pro-active measures like incentives, awards, tax exemptions, etc., will be taken to encourage the employment of persons with disabilities in the private sector.
 - **Self-employment:** Considering slow pace of growth in employment opportunities in the organized sector, self-employment of persons with disabilities will be promoted. This will be done through vocational education and management training. Further, the existing system of providing loans at softer terms from the NHFDC will be improved to make it easily accessible with transparent and efficient procedures of processing. The Government will also encourage self-employment by providing incentives, tax concessions, exemptions from duties, preferential treatment for procurement of goods and services by the Government from the enterprises of persons with disabilities, etc. Priority in financial support will be given to Self Help Groups formed by the persons with disabilities (www.socialjustice.nic.in/hindi/nppde.php).
- vi) **Barrier-free Environment:** Barrier-free environment enables people with disabilities to move about safely and freely, and use the facilities within the built-environment. The goal of barrier-free design is to provide an environment that supports the independent functioning of individuals so that they can participate without assistance, in every day activities. Therefore, to the maximum extent possible, buildings/places/transportation systems for public use will be made barrier-free.
- vii) **Issue of Disability Certificates:** The Government of India has notified guidelines for evaluation of the disabilities and procedure for certification. The Government will ensure that the persons disabilities obtain the disability certificates without any difficulty in the shortest possible time by adoption of simple, transparent and client-friendly procedures.
- viii) **Social Security:** Disabled persons, their families and care-givers incur substantial additional expenditure for facilitating activities of daily living, medical care, transportation, assistive devices, etc. Therefore, there is a need to provide them social security by various means.
- Central Government has been providing tax relief to persons with disabilities and their guardians. The State Governments/U.T. administrations have been providing unemployment allowance or disability pension. The State Governments will be encouraged to develop a comprehensive social security policy for persons with disabilities.

- Parents of severely disabled persons with autism, cerebral palsy, mental retardation and multiple disabilities feel a sense of insecurity regarding the welfare of their wards after their death. The National Trust for persons with autism, cerebral palsy, mental retardation and multiple disabilities has been providing legal guardians through Local Level Committee. They are also implementing the Supported Guardianship Scheme to provide financial security to persons with the above mentioned severe disabilities who are destitute and abandoned by supporting the cost of guardianship.

25.3.2.2 Role of Non-Governmental Organisations (NGOs)

The National Policy for Persons with Disabilities recognizes the NGO sector as a very important institutional mechanism to provide affordable services to complement the endeavors of the Government. The NGO sector is a vibrant and growing one. It has played a significant role in the provisions of services for persons with disabilities.

Some of the NGOs are also undertaking human resource development and research activities. Government has been actively involving them in policy formulation, planning, implementation and monitoring, and has also been seeking their advice on various issues relating to persons with disabilities.

Interaction with NGOs will be enhanced on various disability issues regarding planning, policy formulation and implementation. Further, networking, collection and exchange of information and sharing of good practices amongst NGOs will be encouraged and facilitated.

- **Support for collection of regular information on persons with disabilities:** The National Sample Survey Organization has been collecting information on socio-economic conditions of persons with disabilities on regular basis once in ten years since 1981. The Census has also started collection of information on persons with disabilities from the Census-2001. There is a need for regular collection, compilation and analysis of data relating to socio-economic conditions of persons with disabilities.

A comprehensive website for persons with disability will be created under the Ministry of Social Justice and Empowerment. Organizations both in public and private sector will be encouraged to make their websites accessible to the visually impaired using Screen Reading Technologies.

- **Support for Research:** For improving the quality of life of persons with disabilities, research will be supported on their socio-economic and cultural context, causes of disabilities, early childhood education methodologies, development of user-friendly aids and appliances and all matters connected with disabilities which will significantly alter the quality of their life and civil society's ability to respond to their concerns.
- **Sports, Recreation and Cultural life:** The contribution of sports for its therapeutic and community spirit is undeniable. Persons with disabilities have right to access sports, recreation and cultural facilities. The Government will take necessary steps to provide them opportunity for participation in various sports, recreation and cultural activities.

25.3.2.3 Responsibility for Implementation

The responsibility for implementation of the Policy at different levels is dovetailed as follows.

- 1) The Ministry of Social Justice and Empowerment will be the nodal Ministry to coordinate all matters relating to the implementation of the Policy.
- 2) An inter-ministerial body to coordinate matters relating to implementation of National Policy will be formed. All stakeholders including prominent NGOs, Disabled Peoples' Organizations, advocacy groups and family associations of parents/guardians, experts and professionals will also be represented on this body. Similar arrangements will be encouraged at the State and Districts levels. Panchayati Raj Institutions and Urban Local Bodies will be associated in the functioning of the District Level Committees of District Disability Rehabilitation Centres (DDRCs) to coordinate the matters relating to the implementation of the policy.
- 3) The Ministries of Home Affairs, Health and Family Welfare, Rural Development, Urban Development, Youth Affairs and Sports, Railways, Science and Technology, Statistics and Programme Implementation, Labour, Panchayati Raj and Departments of Elementary Education and Literacy, Secondary and Higher Education, Road Transport and Highways, Public Enterprises, Revenue, Women and Child Development, Information Technology, and Personnel and Training will setup necessary mechanism for implementation of the policy.
- 4) The Chief Commissioner for Disabilities at Central level and State Commissioners at the State level shall play key role in implementation of National Policy, apart from their statutory responsibilities.
- 5) Panchayati Raj Institutions will play a crucial role in the implementation of the National Policy to address local level issues and draw up suitable programmes, which will be integrated with the district and State plans. These institutions will include disability related components in their projects.
- 6) Infrastructure created during the course of implementation will be required to be maintained and effectively used for a long period. The community should take a leading role in generating resources within themselves or through mobilization from private sector organizations to maintain the infrastructure and also to meet the running cost. This step will not only reduce the burden on state resources but also create a greater sense of responsibility among the community and private entrepreneurs.
- 7) Every five years a comprehensive review will be done on the implementation of the Policy. A document indicating status of implementation and a roadmap for five years shall be prepared based on the deliberations in a national level convention. State Governments and Union Territory administrations will be urged to take steps for drawing-up State Policy and develop action plan.

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) List out specific legislations which provide special rights and protection for the persons with disabilities.

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- 3) Mention the broad aspects focused by the National Policy for Persons with Disabilities.

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25.4 LET US SUM UP

While there is no universally agreed definition of disability, in India, the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995 defines disability as one or more of the following: blindness, low vision, leprosy cured, hearing impairment, locomotors disability, mental retardation and mental illness. It says that to be considered disabled, a person must suffer from not less than 40 per cent of any disability, as certified by a medical authority. The PWD Act was enacted in 1996, and is known to be one of the best and comprehensive among disability legislation in the countries of the region. However, the caveat in the PWD Act that reforms should only be undertaken within the limits of a State's economic capacity nullifies the Acts potential for change. Further, the Act has been criticized as it suffers from indistinct terminology and lacks teeth for its full implementation with lack of adequate and proper monitoring mechanism.

At the international level the definition in Article 1 of the UN Convention on the Rights of the Disabled Persons indicates the very first change that needs to be made to the definition. The PWD Act has strict specifications as to what counts as disability; however, the Convention includes all long-term physical, mental, intellectual or sensory impairments, which may hinder their full and effective participation in society. Another problem is with regards to Article 4(2), which

says that the maximum possible resources should be utilized for the upliftment of the disabled.

In this Unit, we have, therefore, presented you the international and national perspectives of the rights of the persons with disabilities. No doubt, much is being done for the welfare of the disabled persons in our country by the Governments, the legislature and the judiciary. One can hope that the time would come soon where all the problems of the disabled people would be addressed effectively at the national and international level.

25.5 ANSWERS TO 'CHECK YOUR PROGRESS' QUESTIONS

- 1) Important rights provided for in the UN Convention on the Rights of Disabled Persons, 2006 include the following.
 - Right to prevention of discrimination which ensures the living of disabled persons independently and their full participation in all aspects of life.
 - Right to education, at all levels, regardless of age, without discrimination and on the basis of equal opportunity.
 - Right to health, emphasizing the respect for physical and mental integrity on an equal basis with others for disabled persons.
 - Right to participate, fully and equally, in the community, education and all aspects of life including political and public life, cultural life, leisure and sports.
- 2) The specific legislations that provide for special protection of the rights of persons with disabilities include the following.
 - The Mental Health Act, 1987.
 - The Rehabilitation Council of India Act, 1992.
 - The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.
 - The National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999.

Along with these provisions, there is a National Policy for Persons with Disabilities which provides for implementation of these provisions.

- 3) The broad aspects on which the National Policy for Persons with Disabilities laid its focus include the following, among other things: i) prevention of disabilities, ii) rehabilitation measures, iii) provision of assistive devices, iv) education (inclusive education), v) economic rehabilitation, vi) barrier-free environment, vii) issue of disability certificate, and viii) social security.

25.6 REFERENCES

Evance Kalula. 2006. *Reflections on Disability: Perspectives on South Africa, India and the United States of America*. Cape Town: University of Cape Town.

Helander, E. 1992. *Prejudice and Dignity: An Introduction to Community-Based Rehabilitation*. UNDP.

National Policy for Persons with Disabilities, at www.socialjustice.nic.in/hindi/npdpde.php, and at kodakkal.ning.com/forum/topics/2038808.

Training Manual on the Human Rights of Persons with Disabilities, at www.aifo.it/english/.../manual_human_rights-disability-eng07.

United Nations. 1948. "Preamble", *Universal Declaration of Human Rights*.

United Nations. 1975. *Declaration on the Rights of Disabled Persons*. New York: Adopted by the General Assembly at its 30th session, 2433rd plenary meeting, 9 December 1975. Full text retrievable from <http://www.unhchr.ch/html/menu3/b/72.htm>.

UN. *Enable - International Day of Persons with Disabilities*, at www.un.org/disabilities/default.asp?id.

Verma, S. K., and Srivastava, S. C. 2002. *Rights of Persons with Disabilities*. New Delhi: ILI.

Suggested Readings

Baquer, Ali. 1994. *Disabled, Disablement, Disablism*. New Delhi: VHAJ.

Bhushan, Shashi, et al. 1988. *The Situation of the Handicapped in India*. New Delhi: Institute of Social Sciences.

Chattopadhyay, Anjana. 1986. *All India Directory of Educational and Vocational Training Institutes For the Handicapped*. New Delhi: Patriot Publishers.

Choudhary, A. K. 1995. Disability and Rehabilitation: An Overview. *Health for the Millions*. Vol.21, No.6.

Desai, Beena. 1995. Armed Forces and Disability. *Health for the Millions*. Vol.21, No.6.

Government of India. 1987. *The Gazette of India: The Mental Act, 1987*. New Delhi: Government of India.

Government of India. 1992. *National Plan of Action: International Year of Disabled Persons 1992*. New Delhi: Government of India.

Gupta, Shivani. 1995. *Overcoming Disability*. *Health for the Millions*. Vol. 21, No. 6.

Henderson, A. S. 1994. *Introduction to exceptional Children: Their Nature and Educational Provisions*. New Delhi: Sterling Publishers Pvt. Ltd.

Indian Council of Social Welfare. 1970. *Understanding the Handicapped Child*. Bombay: Popular Prakashan.

Mohan, Dinesh. 1988. *Aids for the Disabled: A Research Bibliography*. New Delhi: Centre For Biomedical Engineering.

National Council of Educational Research and Training. 1988. *Scheme of Integrated Education for the Disabled Children*. New Delhi: NCERT.

National Institute of Mental Health and Neurosciences. 1988. *Features of Mental Disorders*. Bangalore: NIMHN.

National Research and Demonstration Institute (USA). 1980. *Making Job Opportunities for Mentally Retarded People a Reality*. Texas: National Research and Demonstration Institute.

Oliver, Michael 1996. *Understanding Disability*. London: Macmillan Press Ltd.

Pandey, R.S. Advani. 1995. *Perspectives in Disability And Rehabilitation*. New Delhi: Vikas Publishing House Pvt. Ltd.

Prabhu, G.G. Ed. 1978. *The Mentally Retarded in the Changing Society*. New Delhi: Federation for the Welfare of the Mentally Retarded.

UNICEF. 1994. *Rights of Children with Disability*. Lucknow: UNICEF.

Webb, Jane. 1990. *Poliomyelitis: A Simple Guide for Parents, Teachers and Health Workers*. Calcutta: Rehabilitation Centre for Children.

Werner, David. 1987. *Disabled Village Children — A Guide for Community Health Workers, Rehabilitation Workers and Families*. USA: The Hesperian Foundation.

Werner, David. 1994. *Disabled Village Children: A Guide for Community Workers, Rehabilitation Workers and Families*. New Delhi: Voluntary Health Association of India.

World Health Organisation. 1980. *International Classification of Impairments, Disabilities and Handicaps*. Geneva: WHO.

World Health Organisation. 1984. *Strategies for the Prevention of Blindness in National Programmes*. Geneva: WHO.

World Health Organisation. 1990. *Is the Law Fair to the Disabled? A European Survey (Parts I & II)*. Geneva: WHO.

World Health Organisation. 1990. *Management of Cataract in Primary Health Care Services*. Geneva: WHO.

UNIT 26 RIGHTS OF PARENTS AND SENIOR CITIZENS

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26.0 INTRODUCTION

The persons above the age of 60 – the elderly and senior citizens or older persons – constitute an increasing proportion of the population across the globe. This is due to increase in life expectancy at birth. Many older persons retire from regular work and many others, even though working, do not have sufficient means or resources to meet their needs, and are thus largely dependent on their families for meeting their needs. Often, adequate family support is also not available to many senior citizens. They are not able to live their lives to the fullest extent and are also becoming isolated from mainstream society. These issues have been acknowledged at international forums including the United Nations which has taken several steps – adopted resolutions calling upon member-countries to take steps in this regard. The issues and problems facing senior citizens are thus a matter of concern both internationally and nationally, for governments of individual countries. Many countries have enacted laws or included provisions in existing laws to look after the interests and well-being of the senior citizens or older persons. In India also, in view of the changing scenario relating to population, society and families, issues of welfare of senior citizens have received due consideration and various laws and policies have accordingly been framed.

In this Unit, we will, therefore, discuss the various measures in the form of laws, policies, special schemes, among others, that have been taken at the international level as well as in India for the protection of the rights and interests of elder and older persons or senior citizens.

26.1 OBJECTIVES

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

- Analyse and appreciate the reasons that necessitated legal protection for parents and older persons;

- Discuss the steps taken for the welfare of older persons at the international level;
- Describe the developments with regard to the welfare of older persons in India;
- Elucidate the provisions in Indian laws enabling senior citizens to seek maintenance; and
- Highlight the rights and privileges of older persons including welfare provisions that exist to meet their needs such as shelter, health and security, among others.

26.2 INTERNATIONAL EFFORTS FOR PROTECTION OF THE ELDERLY PERSONS

Over the years, implications of the problems and issues related to older persons have received increasing recognition the world over. This has led to international efforts aimed at involving the national Governments in the process of taking suitable measures to ensure that the rights of the elderly are protected.

- The issue of ageing was first raised at the United Nations at the initiative of Argentina in 1948 and again by Malta in 1969 (Singh, 2007). This led to the incorporation of an article in the *Declaration on Social Progress and Development, 1969* which referred to the need to protect the rights and ensure the welfare of senior citizens, and to the adoption, in 1973, by the United Nations of a Resolution on 'Questions of the Elderly and the Aged (<http://www.unac.org/iyop/unquest.html>). In the year 1982, a World Assembly on Ageing was held, and in the same year, an *International Plan of Action on Ageing* was adopted by the United Nations General Assembly.
- The International Plan of Action on Ageing took note of the increased proportion of the population of ageing persons in the world which is the result of a change in the age structure and recognised that the issue of aging is one that will be of concern for all countries (United Nations, 1983). The Plan of Action is based on several principles, including the recognition that: the spiritual, cultural and socio-economic contributions of the aged are valuable to society; the family being the fundamental unit of society should be maintained, strengthened and protected in accordance with the traditions and customs of each country; an important objective of socio-economic development is age-integrated society in which age discrimination and involuntary segregation are eliminated; and the aged should be active participants in the formulation and implementation of policies especially those affecting them. It contains about 60 recommendations dealing with several aspects ranging from humanitarian issues incorporating the specific needs of the elderly to development issues relating to the socio-economic implications of ageing. It stresses that a fundamental principle in the care of the elderly must be to enable them to lead independent lives in the community as soon as possible (Ibid).
- Another important development at the international level took place in 1991, when the United Nations General Assembly adopted *Principles for Older Persons* to provide a broader framework for action on ageing, which included

principles of independence, participation, care, self-fulfilment and dignity (<http://www.unac.org/iyop/unquest.html>). The year 1999 was declared to be the *International Year of Older Persons*. This declaration was made by the United Nations General Assembly in “recognition of humanity’s demographic coming of age and the promise it holds for maturing attitudes and capabilities in social, economic, cultural, and spiritual undertakings, not least for global peace and development in the next century”. It focussed on the situation of older persons, individual lifelong development, interrelationships of generations, and the interrelationship of population ageing and development. Solidarity, exchanges and respect between generations was emphasized and the activities ranged from formal academic and policy development conferences to community and neighbourhood gatherings (<http://www.unac.org/iyop/more.html>).

- A further development in this regard took place in the year 2002 when the United Nations General Assembly adopted the Madrid Plan of Action on Ageing. The Plan of Action was formulated in view of the vast changes that had taken place in the world since the earlier Plan of Action framed in 1982, and of population ageing having become a concern for developing countries as well. The Plan of Action focussed on older persons and development, advancing health and well-being into old age and ensuring an enabling and supportive environment (United Nations, 2002). The declaration and Plan adopted “reinvigorated the political consensus on an agenda on ageing” and emphasized development, international cooperation and assistance in this area (<http://www.un.org/en/events/olderpersonsday/background.shtml>).
- The 1st October of each year has been designated as the *International Day of Older Persons*. The theme for the year 2011 was “Launch of Madrid plus 10” marking 10 years of the Madrid Plan of Action on Ageing. The UN Secretary General called for recommitment to the Madrid Plan of Action and provision by Governments and Communities of more opportunities for ageing populations (<http://social.un.org/index/Ageing/InternationalDayofOlderPersons/2011.aspx>). As a step in this direction, an *International Institute on Ageing* of the United Nations has been established in Malta.
- In 2007, at a High Level Meeting of the Regional Review of the Madrid International Plan of Action on Ageing held at Macao, 46 recommendations for action were made on the priority areas on the Madrid Plan of Action, which included mainstreaming ageing concerns, strengthening health systems for the prevention and management of chronic diseases, strengthening old persons associations and NGOs to address the needs of and to empower older persons, and promotion of regional cooperation on trans-boundary issues.

It is clear from the various developments with regard to the welfare of older persons which have taken place at the international level that while it is recognised that there is need for Governments to take steps to provide for the special needs of senior citizens, at the same time, the importance of senior citizens leading an independent life as far as possible and being active participants in policies to protect their rights and welfare. These policies also took note of the importance of strengthening traditional support mechanisms of the family as well as provision of alternative support systems for those in need.

26.3 CONSTITUTIONAL AND LEGAL RIGHTS OF PARENTS AND SENIOR CITIZEN/OLDER PERSONS IN INDIA

In this section, the focus of our discussion will be the maintenance and welfare of the elder/older persons in India.

26.3.1 Need for Legal Protection of Parents and Older Persons

With increase in life expectancy at global level, the population of older persons or the aged is increasing the world over including India. It has been noted that the number of senior citizens in India has increased from 24 million in 1951 to 57 million in 1991 and is expected to cross the 100 million mark by 2013 (Government of India, 1999). It has been pointed out that the implications of ageing are more serious in developing countries like India as there are problems of earning from assets in old age, credit and insurance markets are poorly developed and there is no tradition of extra-familial welfare institutions (Pal, 2004). Thus, though longevity has increased, older persons have to face a number of problems and share many concerns in such state of affairs. Changes in the structure of society, erosion of traditional values, changing lifestyles and family structures with increasing number of nuclear families coupled with breakdown of the traditional joint family system as well as more young people moving to other places for work, have left many elderly people with no meaningful roles within a family and community. As a result, the traditional support system is no longer available to the elderly (Minocha, 2003; and Ramesh, 2008). At times, even when family support is available, the families may not have adequate resources to provide for the needs of the elderly. Many older persons have also to deal with problems of lack of adequate financial resources and economic security (Packiam, 2003; and Ramesh, 2008). Some older persons also have to face numerous health problems and diseases, and as has been noted, diseases as well as hospitalisation rates are higher among older persons than that of the total population (GOI, 2011).

Srinivas and Vijayalakshmi (2001) had found verbal abuse to be the most frequently reported form of abuse. In another study conducted in eight cities in India in the year 2010 found that the elderly face many types of abuse — from the most common form of showing disrespect to neglect and verbal, economic and emotional abuses (HelpAge India, 2010).

Another issue faced by the elderly is lack of security, and even physical exploitation and abuse. Incidents of crimes against older persons are not uncommon, and we often come across such incidents reported in newspapers. It has been found in a study that four out of ten elders are victims of abuse; and in 47.3% of such cases the perpetrators are their adult offspring and 9% of all abuses are perpetrated by grandchildren (Rai, 2008).

The factors discussed above leads to a situation where many parents, other elderly persons and senior citizens are left without adequate support and care in and outside the families. All these make it difficult to lead their lives with dignity. Due to these reasons, it is essential that the law intervenes and makes provisions to ensure that elder persons and senior citizens are not neglected or abandoned

by their families, and where they are indigent and lack the requisite social and financial security for the later years of their lives, the State itself takes steps to ensure that their rights are protected and needs are met adequately.

26.3.2 Measures for Maintenance and Welfare of the Elder Persons/Senior Citizens

The Constitution of India guarantees all persons the right to life (Article 21), which means a right to life with dignity. Also, India being a welfare state, the Government has a duty to take steps for the welfare of all its citizens. Article 41 of the Constitution specifically directs the State to make provisions within the limits of its economic capacity and development for securing among other things, public assistance in the case of old age, sickness, disablement and other cases of undeserved want. This provision is a part of the Directive Principles of State Policy, in Part IV of the Constitution, which cannot be specifically enforced. However, the Directive Principles have been declared to be fundamental in the governance of the country and act as guidelines for the State, which is required to apply these principles in making laws (Constitution of India, Article 37).

Various steps have been taken by the Government from time to time, in the form of preparation of policies and plans of action with regard to the welfare of older persons, introduction of various schemes in the interest of older persons including those who are living below the poverty line or have insufficient resources to lead their lives, as well as enacting of laws or provisions in existing laws relating to issues of concern for senior citizens. As Sujaya (2001) points out, in the 1950s and 1960s, when the social welfare approach was followed and old age pension and shelter were introduced for older persons in India, they were perceived as natural recipients of welfare handouts, doles and institutionalised services and not as active participants in planning their own development and welfare. This approach has undergone a change now — policies relating to senior citizens in India, as in the international arena, treat older persons as active and equal participants in every aspect of life, including in formulating and implementing policies which are applicable to them. They seek to empower older persons so that they can have better control over their lives (GOI, 1999). While there were provisions in some laws enabling older persons who were unable to maintain themselves to be able to claim maintenance, certain other privileges and benefits were also available with regard to taxation, travel, etc, and a pension scheme for senior citizens who lacked sufficient means to maintain themselves. A comprehensive policy for older persons was formulated only in 1999.

National Policy on Older Persons – Action Plans and Programmes: The National Policy on Older Persons, 1999 sought to create the assurance that the concerns of older persons are national concerns and that they will not live unprotected, ignored or marginalised lives. It views the 60+ stage as a phase when the individual should have chances and opportunities to lead an active, creative, productive and satisfying life (GOI, 1999). However, “it is difficult to take these grand promises seriously, or envisage from where the funds for the new State interventions promised in the policy ... will be found, given the precarious financial position of the government in the area of reforms” (Sujaya, 2001).

In addition to this policy, Annual Plans of Action for the Welfare of Older Persons have been prepared from time to time, wherein the measures to be taken by

different Ministries and Departments of the Government for the welfare of older persons are detailed. The Annual Plan of Action for the year 2007-2008 contemplates various measures including universal and equal access to healthcare services; development of appropriate educational and training material relevant and useful for older persons; inculcation of traditional values in the educational system to remove prejudices against the elderly; involvement in primary education of voluntary educators among senior citizens; employment opportunities for those who want to work; free legal aid to senior citizens; and educating society on issues relating to senior citizens.

The Ministry of Social Justice and Welfare also prepared an *Integrated Programme for Older Persons* in 2008 which seeks to ensure improved quality of life for older persons through involvement of Government, Panchayati Raj Institutions, Local Bodies, NGOs and the community at large, in the capacity-building programmes:

- a) to cater to the basic needs including food, shelter and health older persons;
- b) to build and strengthen intergenerational relationships;
- c) to encourage active and productive ageing;
- d) to provide institutional and non-institutional care to older persons; and
- e) to promote research, advocacy and awareness building as regards ageing.

Other programmes encouraged the best interests of older persons. Assistance up to 90% is provided by the Government for the various schemes covered, while in case of schools, colleges, the Nehru Yuvak Kendra Sangathan and the National Service Scheme undertaking programmes and services for older persons, up to 100% assistance would be provided by the Government (<http://socialjustice.nic.in/ipop.php>).

In the year 2011, a new *Draft National Policy for Senior Citizens* was prepared which takes into account the subsequent international efforts that have made an impact on the national policy including the Madrid Plan of Action, the UN Principles for Senior Citizens, Shanghai Plan of Action, 2002 and the Macao Outcome Document, to which the Government of India is a signatory. The Policy takes note of the current demographic scenario pointing out that the population of senior citizens in the years 2000-2050 is expected to grow by 326% as compared to a 55% growth in the overall population. The 80+ group will be the largest growing group at a rate of nearly 700%. The policy highlights the need for all aspects of care including socio-economic, finance, health, and shelter for the oldest old or 80+ group as problems in these areas would have an impact on the quality of life in old age. The need for special attention for problems of elderly women, who are “exacerbated by a lifetime of gender-based discrimination, often stemming from deep-rooted cultural and social bias”, as well as that of the rural poor who are at the bottom of the income distribution in India, are also underscored. The policy focuses on mainstreaming senior citizens and bringing their concerns into the national development debate. It recognises the family as a partner with the community, government and private sector for the care of senior citizens with institutional care being the last resort. It acknowledges that senior citizens are a valuable resource for the country and that there is a need to create an environment providing them with equal opportunities, protecting their rights and enabling their full participation in society (GOI, 2011).

26.3.2.1 Provisions for Maintenance of the Parents and Senior Citizens

Maintenance of the elderly refers to means of subsistence or supply of necessities such as food, shelter, clothing, etc., or aid, support and assurance given by one person to another for his living (Aiyar, 2004). The expression 'maintenance' has been defined in the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 as "provisions for food, clothing, residence and medical attendance and treatment" [Section 2 (b)]. The expression is also defined in similar terms in the provisions of the Hindu Adoption and Maintenance Act, 1956 [Section 3 (b)]. A remedy for parents and senior citizens to claim maintenance from their children or relatives is available in Indian law under the following:

- the Code of Criminal Procedure,
 - the Maintenance and Welfare of Parents and Senior Citizens Act, and
 - the personal laws.
- i) ***Code of Criminal Procedure:*** The Code of Criminal Procedure provides a remedy for parents who are unable to maintain themselves, enabling them to seek maintenance from their children who neglect or refuse to maintain them despite having sufficient means to do so. Such parent(s) may seek a remedy before a Magistrate of first class, and if neglect or refusal to maintain is proved, the Magistrate may direct the person to make a monthly allowance at a rate which the Magistrate thinks fit and pay the same from time to time as directed [Section 125, Code of Criminal Procedure]. Such remedy is available only to parents. If a person, who has been directed to pay maintenance to his parent under this provision fails to do so without sufficient cause, the Magistrate may issue a warrant for recovering the whole or part of the allowance, the interim maintenance or expenses, and if any such amount remains unpaid after execution of the warrant, the person may be sentenced to imprisonment for one month or until payment of the amount, whichever is sooner [Section 125(3), Code of Criminal Procedure]. This provision was, however, found to be time-consuming, cumbersome and expensive which led to the enactment by the Parliament of a new legislation, the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (Standing Committee on Social Justice and Empowerment, 2007).
- ii) ***Maintenance and Welfare of Parents and Senior Citizens Act, 2007:*** The Maintenance and Welfare of Parents and Senior Citizens Act was enacted by the Parliament in 2007 which enables senior citizens including parents who are unable to maintain themselves from their earnings or property owned by them to make an application against their children or grandchildren above the age of eighteen or where they are childless, against such of their relatives as would be their legal heir and is or would inherit possession of their property after his/her death [Section 4(1), and Section 2(a) of Maintenance and Welfare of Parents and Senior Citizens Act]. Where a parent or senior citizen is incapable of making an application, the application may be made by any person or organisation authorised by him/her or cognizance may even be taken by the Tribunal suo motu. The obligation extends to meeting such needs of the parent or senior citizen that he or she may be able to lead a normal life. The maximum monthly allowance that can be permitted under this Act is Rs.10,000.

It may be mentioned here that under this Act maintenance can be claimed by a parent if he/she is unable to maintain himself/herself even if he/she is not a senior citizen. A parent may seek remedies under either of the two provisions, i.e. the Code of Criminal Procedure or Maintenance and Welfare of Parents and Senior Citizens Act, but not under both.

While Maintenance and Welfare of Parents and Senior Citizens Act does widen the protection available to senior citizens under the law, particularly with regard to maintenance by providing that maintenance can be claimed even by childless senior citizens from their legal heirs, one problem that has been pointed out in this regard is that in order for such claim, the senior citizen may have to reveal the contents of his/her will (Madhavan, 2007). Under this Act special Maintenance Tribunals have been constituted to hear and decide applications for maintenance [Section 7, Maintenance of Parents and Senior Citizens Act]. This Act also makes a provision for an amicable resolution of the dispute related to maintenance outside the Tribunal by reference of the matter by the Tribunal to a Conciliation Officer. Conciliation is a process under which a neutral third party assists the parties who are having a dispute to reach a peaceful settlement. If within one month such an amicable solution is reached, an order would accordingly be passed [Section 6(6), Maintenance and Welfare of Parents and Senior Citizens Act]. However, as the language of the provision shows, it is not necessary that each application filed before the tribunal will be referred for conciliation.

This Act also attempts to reduce the procedural difficulties that may be faced by the applicants in ordinary courts as Section 8 empowers the Tribunal to adopt a summary procedure, i.e. to say, by a brief or short method in conducting inquiries with regard to applications for maintenance. Also, under this Act [Section 5(4)], applications for maintenance have to be decided within a time limit of ninety days of the notice of the application being given to the person against whom it is made. In exceptional circumstances, this period may be extended by thirty days only once (Aiyer, 2004).

Another difference in the applications made under this Act as compared to the provisions of the Code of Civil Procedure and also the other Acts (which we will discuss later in this Unit) the parties are not permitted to have legal representation. In other words, the Tribunal would hear only the parents/senior citizens and children/relatives in person in order to decide whether an application would lie.

In case the person directed to pay maintenance under the provisions of the Act fails to do so, a remedy similar to the one contemplated under the Code of Criminal Procedure discussed above is available, i.e. warrant for the whole or part of the amount, and in case of non-payment after execution of the warrant, a sentence of imprisonment for a term of one month or until payment, whichever is sooner [Section 5(8)]. However, for such a warrant to be issued, an application would have to be made to the tribunal within three months of the amount having become due.

The provisions of this Act have been criticised on the ground that the State sidesteps its obligations under the Constitution by placing the mandatory obligation to maintain senior citizens on the children and relatives while many of the obligations on the part of the State are only to be provided at

the option of the State, for e.g. establishment of old-age homes (Madhavan, 2007).

iii) Personal laws: Besides the aforementioned legal provisions, there are provisions in the personal laws of some communities [personal laws are those laws which govern “certain aspects of a person’s relationships such as succession, marriage, etc, by virtue of their belonging to a particular community or group” (Aiyer, 2004)], which impose a duty on children to maintain their parents and in certain circumstances, other relatives as well. The provisions under personal laws would be applicable only to persons who are members of that community to which that personal law applies. The remedy of maintenance is also available to the aged and the infirm parents under the provisions of the Hindu Adoption and Maintenance Act (Section 20) so far as the parent is unable to maintain himself/herself out of his/her own earnings or other property. Similarly, the heirs of a deceased Hindu are bound to maintain the dependents of the deceased which includes the father and mother of the deceased (Section 22, Hindu Adoption and Maintenance Act). It may be mentioned here that the provisions of this Act are applicable only to Hindus. The Court would take into account various factors such as: the status of parties; reasonable wants of the claimant; whether the claimant is justified in living separately; the value of the claimant’s property including any income from the property or earnings from any other source; and the number of persons entitled to maintenance under the Act, in determining the amount of maintenance to be allowed (Section 23, Hindu Adoption and Maintenance Act). In case of maintenance to dependents, some further factors such as the net value of the estate of the deceased; the provision under the will of the deceased in respect of the dependent; and past relations between the dependent and the deceased may also be considered.

A duty to maintain the aged parents is also imposed on children in Muslim Law. According to the Hedaya, it is incumbent upon a man to provide maintenance for his father, mother, grandfathers and grandmothers if they should happen to be in necessitous circumstances (Rashid, 2004). Children’s obligation to maintain their poor parents is irrespective of sex or wealth; a person in easy circumstances is bound to maintain their poor parents, although the latter may be able to earn (Singh, 2007; and Fyzee, 2008). There is also an obligation on persons in easy circumstances to maintain their poor relations within the prohibited degrees in proportion to the shares in which they would inherit at the time of death of such poor relation (Rashid, 2004).

It has been pointed out by some commentators that legislation may not be actually very effective in ensuring that the elderly are cared for by their children. Fact is that, even though there is provision under Section 125 of the Cr. PC, only a few have utilised it as parents may hesitate to approach the courts seeking maintenance from their children due to social pressures, possibility of severance of emotional bonds as well as fear of repercussions (Ramamurthi and Jamuna, 2005; Madhavan, 2007; and Rai, 2008). Also, as a study conducted by HelpAge India on abuse of the elderly in some major cities of India noted, a large percentage of the elderly who had faced abuse did not register a complaint against the abuser (HelpAge India, 2010). Another reason cited for lack of recourse to legal measures for obtaining remedies is lack of mobility and financial resources of older persons (Ghosh and Hussain, 2010).

26.3.2.2 Provisions for Welfare of the Parents and Senior Citizens

In addition to the provisions for maintenance, the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 also contains certain provisions to protect the interests and promote the welfare of senior citizens, particularly those who lack sufficient means and social support in important areas like healthcare and shelter. There are also provisions for protection of the life and property of senior citizens including those senior citizens who have been abandoned by their families or deprived of their property under false promises of looking after their welfare. These measures are:

- a) ***Establishment of Old Age Homes:*** The Maintenance and Welfare of Parents and Senior Citizens Act envisages establishment and maintenance by the State Government of Old Age Homes at accessible places as it considers necessary to accommodate senior citizens who are indigent including such senior citizens who, in the State Government's opinion, do not have sufficient resources to maintain themselves, and also prescribing of a scheme for the management of such homes including the standard to be maintained and various services necessary for the medical care and entertainment of the inhabitants (Maintenance of Parents and Senior Citizens Act, Section 19). However, this Act does not make it mandatory for the State Government to establish such homes.
- b) ***Health and Medical Care:*** Health and medical care is another area in which facilities are required by senior citizens. In this regard, the Maintenance of Parents and Senior Citizens Act specifically imposes an obligation on the State Government to ensure that: i) beds are made available for senior citizens in hospitals funded wholly or partially from government funds and in Government hospitals; ii) separate queues for senior citizens are provided; iii) facilities for expanded treatment for chronic, terminal and degenerative diseases for senior citizens are provided; iv) research activities are expanded for chronic diseases of the elderly and ageing; and v) facilities are earmarked for geriatric patients in every district hospital duly headed by a medical officer with experience in geriatric care. (Maintenance of Parents and Senior Citizens Act, Section 20).
- c) ***Legal Provisions with respect to Protection of Life and Property:*** Another measure for protection and promotion of the welfare of senior citizens provided under the Maintenance of Parents and Senior Citizens Act is with regard to property transferred by gift or otherwise by senior citizens to persons under the condition that the transferee provides basic amenities and physical needs to such senior citizen. Where the person to whom property is transferred subject to such a condition fails to provide basic amenities and fulfil their needs, the transfer of property would be considered by law to be made by fraud, coercion or undue influence and may be declared to be void by the Tribunal at the option of the senior citizen (Maintenance of Parents and Senior Citizens Act, Section 23). In other words, the transfer of property which is done under such a false promise would be cancelled.

This Act also provides measures for punishment of persons who are responsible for the care of a senior citizen but leave such senior citizen in a place with the intention of abandoning the senior citizen. A person who intentionally abandons a senior citizen in his care can be punished with

simple or rigorous imprisonment for three months or fine of Rs.5,000 or both (Maintenance of Parents and Senior Citizens Act, Section 24).

- d) ***Sensitization of Authorities and Coordination between Departments:*** The officers of the Central and State Governments including police and judicial officers are required to be sensitised with regard to the issues relating to the Maintenance and Welfare of Parents and Senior Citizens Act. The State Government is also required to ensure effective coordination between its various Ministries and Departments including law, home affairs, health and welfare, etc to address issues relating to the welfare of senior citizens (Section 21). A further obligation imposed on the State Government under this Act is preparation of a comprehensive plan for providing protection to the life and property of senior citizens (Section 22).

Thus, while a number of provisions have been made by the Parliament and even by some State Legislatures for the protection of rights and welfare of senior citizens many have pointed out that legislation alone is not sufficient to address these issues adequately. Many commentators have emphasized that there must be positive family counselling to improve relations and interactions in the family, as well as promotion of eldercare as a value (Packiam, 2003; Ramamurthi and Jamuna, 2005; and Ghosh and Hussain, 2010).

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) What are the problems faced by the elderly/older persons in India due to which legal intervention for their protection becomes necessary?

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- 2) What are the major developments at international level for older persons?

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- 3) What do you understand by the expression 'maintenance'? What are the three main legal provisions in India that enable parents/senior citizens to claim maintenance? Explain the major differences among these provisions?

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- 4) Highlight the legal provisions available for welfare of the senior citizens in India.

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26.3.3 Rights and Privileges of Older Persons and Senior Citizens

As provided in the National Policy on Older Persons, 1999 and the National Policy on Senior Citizens, 2011, older persons have the right to participate equally in social and development activities. An important object of these policies has been to create an atmosphere in which such equal participation and equality of opportunities to senior citizens is possible, and the rights of senior citizens are protected.

The Indian Constitution guarantees to all its citizens various fundamental rights and freedoms including the right to life, liberty, non-discrimination in matters of employment, freedom of speech, movement, assembly, etc., subject to certain reasonable restrictions and these rights are to be enjoyed by all citizens/persons equally, irrespective of their age. The right to life which is enshrined in Article 21 of the Constitution has been widely interpreted by the Supreme Court in a number of landmark cases (e.g. *Francis Coralie Mullin v Administrator Union Territory of Delhi*, AIR 1981 SC 746; *Paschim Bang Kheth Mazdoor Samiti v State of West Bengal*, AIR 1996 SC 2005; and *Shantistar Builders v Narain Khimalal Totame*, AIR 1990 SC 549) to mean the right to a meaningful life with dignity and to include in it the right to shelter, food, and medical care, among other things. All these rights are equally available to all senior citizens.

As has been discussed in the preceding sub-section, senior citizens and parents who are unable to maintain themselves have a right under both personal laws as well as general laws to claim maintenance from their children, grandchildren or relatives, as the case may be, with regard to food, shelter, clothing and medical

assistance. It is significant to note that the National Policy on Senior Citizens (GOI, 2011), which recognises the need to create an environment in which the rights of senior citizens are protected, envisages the creation of National and State Commissions for Senior Citizens under Acts of Parliament which would deal with cases pertaining to rights of senior citizens. Such a measure if taken would ensure that specific forums are available to ensure speedy justice to senior citizens.

- **Pension:** Pension schemes such as the provident fund, gratuity and pensions schemes, providing lump-sum benefit or monthly annuity have been introduced by the Government to assist citizens in ensuring savings for old age. But, as has been noted, these cover only about 10% of the workforce which works in the organised sector, while 90% who work in the non-organised sector or informal sector have no access to old age security (Goswami, 1999, See <http://www.actuaries.org/EVENTS/Seminars/Brighton/presentations/goswami.pdf>). Central Government employees who have been in service for a minimum of 10 years are entitled to receive pension, which is calculated with reference to average of basic pay drawn during the last 10 months of service or last basic pay drawn, whichever is more beneficial. The pension amount payable has a minimum limit of Rs.3,500 per month and a maximum limit of 50% of the highest pay in the Government of India. A scheme for family pension for Central Government employees is also available, under which a widow is entitled to receive pension on the death of her spouse after one year of continuous government service. Gratuity is a onetime lump-sum benefit which is available to persons with at least 5 years service and is calculated at 1/4th of the Month's basic pay with dearness allowance last drawn before retirement for each completed six months of service (For details See, Department of Pensions and Pensioners Welfare, <http://pensionersportal.gov.in/retire-benefit.asp>; and HelpAge India, 2005). Also, a General Provident Fund is available to temporary employees of the Government, re-employed pensioners and all permanent Government servants under which subscribers must subscribe at a monthly payment until three months prior to retirement at a rate not less than 6% of the subscriber's emoluments. Some other schemes that have been introduced include Commutation of Pension, Service Gratuity (where the length of service is less than 10 years), Deposit-linked Insurance Revised Scheme, Contributory Provident Fund, Leave Encashment and Central Government Employees Group Insurance Scheme (<http://pensionersportal.gov.in/retire-benefit.asp>).

In order to provide economic security to indigent senior citizens, the National Old Age Pension Scheme, as a part of the National Social Assistance programme, has commenced in 1995. The National Old Age Pension Scheme as it stood earlier granted to indigent senior citizens above the age of 65, who were destitute, a pension of Rs.75 per month. From November 2007, a new pension scheme named the Indira Gandhi National Old Age Pension Scheme was launched which provides pension to senior citizens living below the poverty line and who are above the age of 60. The contribution of the Central Government is Rs.200 for persons until the age of 79 and Rs.500 for persons above the age of 79, and depending on the contributions of the State persons get between Rs.200 and Rs.1000 per month. The new scheme thus has a wider coverage than the scheme as it originally stood (http://nsap.nic.in/nsap/FAQ_ON_NSAP_NEW.pdf). Another scheme introduced by the

Government of India since the year 2000 is the Annapurna Scheme under which older persons who are entitled to old-age pension but not receiving the same are entitled to 10 kg of free food grains per month (HelpAge India, 2005).

- **Tax Rebates:** Rebates are also provided to senior citizens on income tax and various benefits are given to them under each Union Budget. In the Budget Proposals for the year 2011-12, the tax exemption limit for senior citizens above the age of 60 was raised to Rs.2.5 lakhs and a new tax slab was created for 'very senior citizens', i.e. 80 years and above, income up to Rs.5 lakhs is exempted from tax (PTI, 2011).
- **Travel Allowances:** In addition, travel allowances are also provided for senior citizens above the age of 65 (60 in the case of women) travelling in buses, separate entrance, rebates up to 30% in some cases by trains and rebate up to 50% by air in Indian Airlines, as well as concessions by some other service providers. There are different provisions in this regard for different airline service providers, and provisions for concessions in bus travel vary from State to State (For details, See HelpAge India, 2005).

26.4 LET US SUM UP

It is well recognised fact that protection of the rights and promotion of welfare of parents and senior citizens is very essential for several reasons including their changing familial and social circumstances, health considerations, and lack of adequate economic security and support to them. The problems and concerns relating to older persons are not confined to any particular country alone but are common the world over. Therefore, United Nations has taken significant initiatives/measures such as formulation of Plans of Action, Principles relating to Older Persons as well as commencement of an International Day for Older Persons. In India also, older persons constitute an increasing proportion of the population and the numbers are also increasing at a higher rate than that of the total population and adequate protection is not available for them. Various provisions have been made in laws and a number of policies and schemes including a National Policy on Older Persons to create an environment in which older persons' interests and rights are protected. Older persons who do not have sufficient resources to maintain themselves can seek maintenance from their children and in certain cases, their relatives who are their legal heirs under the provisions of the Code of Criminal Procedure, Maintenance and Welfare of Parents and Senior Citizens Act, 2007 or various personal laws. In addition, there are provisions made for shelter to incident senior citizens, for their healthcare, for protection of their life and property including punishment to persons who abandon senior citizens. The importance of sensitizing officials on issues relating to senior citizens has also been recognised and provisions made in that regard. The right to life, which includes the right to food, shelter, and medical care is available to all persons in the country under the Constitution and thus is available equally and without discrimination to senior citizens also. India being a welfare state, the Government has introduced various schemes and provided certain privileges to senior citizens including pension, provident fund and gratuity schemes for government employees, tax benefits and travel concessions, etc. We have, therefore, covered all these aspects in this Unit with

a view to provide comprehensive understanding of the problems and issues of the older persons – the parents and senior citizens – and different provisions and measures that exist for protecting and promoting their rights, interests and welfare at large.

26.5 ANSWERS TO ‘CHECK YOUR PROGRESS’ QUESTIONS

- 1) The older/elderly people face a number of problems, which prevent them from being able to live a life to the fullest as a part of mainstream society. Their major problems include the following: i) Social isolation of the elderly and lack of social support to them due to the changes in structure of society and families, including increasing numbers of nuclear families and non-availability of traditional support from families in many cases; ii) Even when they are living with their families, younger members may not have the time to cater to their needs or they are simply ignored by these young members; iii) Lack of resources and economic insecurity, as the older persons may no longer be engaged in active work and do not have adequate social security as well; iv) Many older persons face exploitation and abuse even at the hands of their own families, the most common forms of which are disrespect and verbal abuse; v) Older persons have to deal with numerous health problems and diseases, the prevalence of which is higher in them than in the total population in general. All these problems and issues call for effective legal protection to the older persons.
- 2) The issues and concerns of older persons have been taken note of at the international level by individual countries as well as the United Nations. It was in fact first raised by Argentina in 1948 and again by Malta in 1969. A provision in the Declaration on Social Progress and Development dealt with the need for protection of rights and welfare of older persons. The United Nations General Assembly adopted an International Plan of Action on Ageing in 1982 which recognised that the issue of ageing was one of concerns the world over and made about 60 recommendations dealing with humanitarian issues as well as development issues of ageing persons. A further important development was the adoption of UN Principles on Ageing in 1991 which dealt, among other things, with the issues of independence, dignity and self-fulfilment of older persons. In view of the changing demographic scenario and importance of issues of older persons among developing countries, a new International Plan of Action on Ageing was framed at the Second World Conference on Ageing in 2002 in Madrid, the focus of which was development, advancing health and well-being and creation of an enabling and supportive environment for older persons. A Regional Review of the Madrid Plan in 2007 held in Macao led to making of 45 recommendations on the focused areas. In addition to these, the year 1999 was designated as the International Year of Older Persons in which various issues including interrelationship of population-ageing and development and strengthening of intergenerational relationships was dealt with through various activities. Also, the 1st of October each year is celebrated as the International Day on Older Persons to promote awareness and action on various issues related to ageing and concerns of older persons.

- 3) The expression 'maintenance' can be defined as provisions for food, clothing, residence, medical attendance and treatment. In Indian law, there are mainly three legal provisions under which parents or senior citizens can claim maintenance.
 - i) *The Code of Criminal Procedure*: It provides a remedy to parents who are unable to maintain themselves, and whose children refuse or neglect to maintain them despite having sufficient means to do so.
 - ii) *The Maintenance and Welfare of Parents and Senior Citizens Act, 2007*: Under this Act, the parents who do not have sufficient resources to maintain themselves may claim maintenance from their children or grandchildren who are above the age of eighteen. Further, senior citizens do not have sufficient resources to maintain themselves can also seek maintenance from their relatives who would be their legal heir and are either is in possession of or would inherit their property after death of the senior citizen.
 - iii) Under the provisions of personal laws, persons who are Hindus may seek maintenance from their children under the Hindu Adoption and Maintenance Act. Also, under this Act, heirs of the deceased Hindu have a duty to maintain their dependents. Under Muslim law also, there is a duty on persons to maintain their parents. Further, persons in easy circumstances are also under an obligation to maintain their relations from whom they would inherit.

Differences among the above: There are certain differences in these three types of legal provisions for maintenance mentioned above. These differences include: i) The remedy under the Code of Criminal Procedure is available only to parents whereas under the Maintenance and Welfare of Parents and Senior Citizens Act, senior citizens other than parents can also seek maintenance; ii) Under the Maintenance and Welfare of Parents and Senior Citizens Act, for parents to claim maintenance it is not necessary that they should be senior citizens; iii) Under the personal laws, such as the Hindu Adoption and Maintenance Act and Muslim Law, dependents and some relatives other than parents may also be entitled to maintenance; iv) Under the Maintenance and Welfare of Parents and Senior Citizens Act, the procedures are shorter than under the Code of Criminal Procedure and personal laws, and also no legal representation is permitted; and v) the remedy under personal laws would be available only to members of particular communities, while that under the Code of Criminal Procedure and Maintenance and Welfare of Parents and Senior Citizens Act is available to all parents and senior citizens.

- 4) Some provisions for welfare of senior citizens have been made under the Maintenance and Welfare of Parents and Senior Citizens Act which address the issues of shelter, medical care, protection of life and property and sensitization of officials on problems relating to senior citizens. These include: a) the State Governments may establish old age homes for senior citizens who do not have sufficient means to maintain themselves; b) various steps are required to be taken by the State Government with regard to healthcare facilities ranging from provision of hospital beds and separate queues for senior citizens to expansion of research activities for chronic

diseases of elderly and ageing; c) where an elderly person transfers his/her property by gift or otherwise to his child or relative on the condition that such child or relatives look after his/her basic amenities and needs but such child or relative fails to do so, the transfer of property would be cancelled; d) punishment has been prescribed for persons who have the responsibility for the care of senior citizens but abandon them; e) provisions have been made to sensitise officials as well as increase coordination between various government departments on issues related to welfare of senior citizens.

26.6 REFERENCES

Aiyar, P. Ramanatha. 2004. *Advanced Law Lexicon*. New Delhi: LexisNexis ButterWorths.

Department of Pensions and Pensioners Welfare, at <http://pensionersportal.gov.in/retire-benefit.asp>.

Fyzee, Asaf, A. A. 2008. *Outline of Mohammaden Law* (Revised by Tahir Mahmood). New Delhi: Oxford University Press.

Ghosh, Saswata and Hussain, Zakir. 2010. "Economic Independence, Family Support and Perceived Health Status of the Elderly: Recent Evidence from India", *Asia-Pacific Population Journal*, Vol.25, No.1, p.47.

Goswami, R. 1999. *Indian Pension System: Problems and Prognosis*. Bangalore: Indian Institute of Management. (Also, See <http://www.actuaries.org/EVENTS/Seminars/Brighton/presentations/goswami.pdf>).

Government of India. 1999. *National Policy on Older Persons*, at <http://www.olderagesolutions.org/Facilities/PolProg.aspx>.

Government of India. 2011. *Draft National Policy on Senior Citizens*, at <http://ideas.repec.org/p/ess/wpaper/id4464.html>.

HelpAge India. 2005. *Senior Citizens Guide* (Revised Ed). New Delhi: HelpAge India.

HelpAge India. 2010. *Report on Elder Abuse in India*. New Delhi: HelpAge India.

http://nsap.nic.in/nsap/FAQ_ON_NSAP_NEW.pdf.

<http://pensionersportal.gov.in/retire-benefit.asp>.

<http://socialjustice.nic.in/ipop.php>.

<http://social.un.org/index/Ageing/InternationalDayofOlderPersons/2011.aspx>.

<http://www.un.org/en/events/olderpersonsday/background.shtml>.

<http://www.unac.org/iyop/more.html>.

<http://www.unac.org/iyop/unquest.html>.

Madhavan, M. R. 2007. "Good Idea, Bad Law", *Indian Express*, 8th May, at <http://www.indianexpress.com/story/30101.html>.

Ministry of Social Justice and Welfare. 2008. *An Integrated Program for Older Persons*, at <http://socialjustice.nic.in/ipop.php>.

- Minocha, Lalita. 2003. "Impact of Changing Family Institutions on the Care of Aged Women and Children", *IASSI Quarterly*, Vol.21, pp.226-338.
- Packiam, L. 2003. "Care of the Elderly in the Context of the Changing Family", *IASSI Quarterly*, Vol.21, Nos.3 & 4, pp.222.
- Pal, Sarmistha. 2004. "Do Children Act as Old Age Security in Rural India: Evidence from an Analysis of Elderly Living Arrangements", at <http://ideas.repec.org/p/wpa/wuwpla/0405002.html>.
- PTI. 2011. "Union Budget 2011: Pranab Gives some Relief to tax payers, Senior Citizens", *Times of India*, 28th February, at http://articles.economictimes.indiatimes.com/2011-02-28/news/28642335_1_tax-payers-exemption-limit-senior-citizens.
- Rai, Usha. 2008. "Law for Senior Citizens: Cracking the Whip for Care". *Tribune*, 5th February, at <http://www.tribuneindia.com/2008/20080205/edit.htm#4>.
- Ramamurthi, P. V. and D. Jamuna. 2005. "Will Legislation Help the Care of Older Persons", *BOLD*, Vol.16, No.1, pp.15-18.
- Ramesh. 2008. "Social Security for the Aged: Need for a Human Look", *Indian Bar Review*, Vol.35, pp.63-67.
- Rashid, Syed Khalid. 2004. *Muslim Law*. (Revised by Prof. V. P. Bhartiya), Lucknow: Eastern Book Company.
- Singh, Rakesh Kumar. 2007. "Rights of Senior Citizens: Need of the Hour", *Journal of Constitutional and Parliamentary Studies*, Vol.41, Nos.1 & 2, pp.114-127.
- Srinivas, S., and Vijayalakshmi, B. 2001. "Abuse and Neglect of the Elderly in Families", *Indian Journal of Social Work*, Vol.62, No.3, p.464.
- Sujaya, C. P. 2001. *National Policy on Older Persons*, at <http://www.india-seminar.com/2000/488/488%20sujaya.htm>.
- The Code of Criminal Procedure*, 1973. (Bare Act).
- The Hindu Adoption and Maintenance Act*, 1956. (Bare Act).
- The Maintenance and Welfare of Parents and Senior Citizens Act*, 2007. (Bare Act).
- United Nations. 1983. *Vienna International Plan of Action on Ageing*. New York: United Nations.
- United Nations. 2002. *Madrid International Plan of Action of Ageing*. New York: United Nations.

Cases

- Francis Coralie Mullin v Administrator Union Territory of Delhi*, 1981. AIR SC 746.
- Paschim Bang Kheth Mazdoor Samiti v State of West Bengal*. 1996. AIR SC 2005.
- Shantistar Builders v Narain Khimalal Totame*. 1990. AIR SC 549.