M.A. 2nd Semester

Public Administration

Course- MPUB 202

ADMINISTRATIVE & CONSTITUTIONAL LAW

Unit 1-20

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Unit-1

Administrative & Constitutional Law

Structure

1.0 Introduction

Administrative law is a subfield within public law, which governs the interactions between citizens and the state, focusing on the use of state power. It forms an essential component of the legal structure supporting public administration. Public administration refers to the execution of public policies and programs across various sectors such as immigration, social welfare, defense, and economic regulation, covering nearly all areas of public service.

This branch of law specifically regulates the actions of government agencies. These actions may include creating rules, making legal decisions, and enforcing specific regulations. Administrative law oversees the decision-making processes within government entities like tribunals, boards, or commissions, which operate within national regulatory systems governing areas such as police law, international trade, environmental protection, taxation, broadcasting, immigration, and transportation. The growth of administrative law in the 20th century corresponds to the increasing number of government agencies formed to regulate the social, economic, and political dimensions of society.

1.1 Learning Objectives

After studying this lesson, the learner will be able to

- Know the concept, definition, nature and scope of administrative law
- Know the sources from where the field of administrative law came out
- Know the principles on which administrative law is based

- Know the objectives of administrative law

1.2 Concept, nature and scope of administrative law

Administrative law is a branch of public law that is concerned with the procedures, rules, and regulations of a number of governmental agencies. Administrative law specifically deals with such administrative agencies' decision-making capabilities, as they carry out laws passed by state and federal legislatures. An example of administrative law is the regulation and operation of the Social Security Administration, and the administration of benefits to the people.

Administrative law is that body of law which applies for hearings before quasi-judicial bodies, boards, commissions or administrative tribunals supplement the rules of natural justice with their own detailed rules of procedure.

Through jurisprudence, common law or case law, these principles have each been expanded and refined beyond their original simplistic design to form distinct bodies of law forming together what the legal system refers to as administrative law.

Definition of Administrative Law

Administrative law governs the legal framework controlling government activities and the powers exercised by administrative bodies. It consists of rules, regulations, and decisions formed by these agencies to regulate various aspects of governance. Administrative law addresses complaints about government actions that negatively affect individuals, focusing on the legality of government conduct. This involves two primary considerations: the legality of the law itself and the legitimacy of specific actions conducted under that law.

Since governments cannot act on their own, officials perform actions within the boundaries set by laws. Their authority stems from legislation, and they must operate within the limits defined by these laws. If officials overstep these bounds, individuals impacted by such actions may seek judicial review and possible remedies under administrative law.

While defining administrative law precisely is challenging, various jurists have attempted to do so, yet no definition fully captures its nature, scope, and content. Some definitions are overly broad, including unnecessary aspects, while others are too narrow and fail to encompass essential elements.

Ivor Jennings' Definition

> Ivor Jennings, in his The Law and the Constitution (1959), defines administrative law as the body of law related to administrative authorities. This widely accepted definition, however, has two issues: it is too broad, as it may include legislation related to public health and urban planning, which aren't traditionally considered part of administrative law. Additionally, it does not distinguish administrative law from constitutional law.

K.C. Davis' Definition

K.C. Davis describes administrative law as governing the powers and procedures of administrative agencies, particularly emphasizing the laws regarding judicial review of administrative actions.

Prof. Wade's Definition

Prof. Wade (1967) argues that any attempt to define administrative law is fraught with difficulty. He classifies state powers into legislative, administrative, and judicial, and suggests administrative law concerns the actions of administrative bodies as distinct from legislative and judicial bodies. However, this definition also faces issues: it overlaps with constitutional law and is too broad, encompassing all areas outside legislative and judicial functions. Moreover, the separation of powers between these functions is not always clear, particularly when administrative authorities legislate under powers granted by the legislature.

Jain and Jain's Definition

Jain and Jain define administrative law as focusing on the structure, powers, and functions of administrative bodies, including the boundaries of their powers, procedures followed in exercising those powers, and legal remedies available when individuals' rights are violated. This definition highlights four core aspects:

1. The composition and powers of administrative bodies.
2. The limits of those powers.
3. The procedures these bodies follow in exercising their authority.
4. The methods of controlling these bodies, including legal remedies for affected individuals.

Griffith and Street's Definition

Griffith and Street (1963) assert that the main objective of administrative law is to regulate and control the powers of administrative bodies. They focus on three critical areas:

1. The limits of those powers.
2. The types of power exercised by the administration.
3. The mechanisms for ensuring these powers remain within legal bounds.

Improvement to Griffith and Street's Definition

The Indian Law Institute suggests that two additional aspects should be included to present a more comprehensive view of contemporary administrative law:

1. The procedures followed by administrative authorities.
2. The remedies available to individuals impacted by administrative actions.

Garner's Definition

According to Garner, administrative law consists of the rules recognized by courts that govern and regulate the administration of government. It can be viewed as the science of the powers held by administrative bodies, which can be categorized into three types:

1. Legislative or rule-making powers.
2. Executive powers.

3. Judicial or adjudicative powers.

Nature of Administrative Law:

Administrative law is a relatively recent field of law that focuses on the powers granted to administrative authorities, the processes by which these powers are exercised, and the legal remedies available to individuals when these powers are misused by such authorities.

The role of administrative processes is now firmly established and must be recognized as a necessary aspect of modern societies, especially in welfare states. In such states, governments create and manage various social welfare programs aimed at societal progress. However, the implementation of these programs can sometimes infringe upon the rights of citizens. The key challenge is balancing the pursuit of social welfare with the protection of individual rights. The primary objective of studying administrative law is to ensure that administrative authorities remain within their lawful boundaries, preventing the misuse of discretionary powers and ensuring they are not exercised arbitrarily.

Scope of Administrative Law:

Administrative law is a specialized branch of law that focuses on the powers and procedures of administrative agencies. It primarily deals with the adjudicative and rule-making powers of these authorities. The key areas it covers include:

- The creation, structure, and authority of administrative bodies
- Delegated legislation, or the rule-making powers granted to authorities
- The judicial roles of administrative agencies, such as tribunals
- Available remedies, including writs and injunctions
- Procedural safeguards, such as the application of natural justice principles
- Government liability in tort
- The functioning of public corporations

While administrative law is a relatively recent development in the legal field, political science recognizes various administrative organs with specific functions within the administrative machinery. Administrative law focuses on the organization, powers, and functions of these organs, as well as the processes and procedures they must follow. It also outlines the remedies available to individuals whose rights are impacted by the actions of these bodies.

The scope of administrative law can be described as follows:

- It examines the methods and procedures followed by administrative organs.
- It addresses the structure, powers, and functions of these organs.
- It ensures remedies are available for those whose rights are violated by these bodies.
- It investigates how and why administrative organs must be controlled.

As political science has evolved, especially with the concept of federal administration, administrative law has developed as a distinct legal field. It is important to note that this branch of law is specifically concerned with administrative organs and their operations. Delegated legislation plays a central role in administrative law, serving as a crucial foundation for its application.

Self Check Exercise-1

Q.1 The book "The law and the constitution, 1959" is written by?

Q.2 Administrative law and Legal law are entirely different from each other. True/false

Q.3 Administrative and legal law are same. True/false

1.3 Sources, Principles, and Objectives of Administrative Law

Sources

(i) **Constitution**
The Constitution serves as the foundation for establishing various administrative bodies and agencies. It outlines the framework and powers granted to these authorities, making it the supreme law of the land. Any law or action that contradicts the Constitution holds no validity. This means that all laws and administrative actions must align with the Constitution. It binds the executive branch of government across all areas of administration and sets up various agencies and structures to regulate the exercise of public authority.

(ii) **Acts and Statutes**
Legislative acts and statutes are crucial sources of administrative law as they provide detailed specifications on the powers, functions, and controls applicable to administrative bodies. These laws establish the legal framework within which these bodies operate.

(iii) **Ordinances, Notifications, and Circulars**
Ordinances are issued by the President (at the federal level) or the Governor (at the state level) and remain effective for a limited time. They grant additional powers to administrative bodies to address urgent matters. Notifications and circulars issued by higher authorities often delegate or control powers, shaping the authority and actions of lower administrative bodies.

(iv) **Judicial Decisions**
Court rulings play a vital role in shaping administrative law by establishing new principles that govern administrative actions. These decisions enhance the accountability of administrative authorities and ensure that the actions taken through ordinances, notifications, and circulars comply with constitutional and statutory standards.

Principles of Administrative Law

Judicial Review
Judicial review in administrative law refers to the power of the courts to oversee administrative actions to ensure that government decision-makers act within their legal boundaries. Administrative powers often involve discretion, where authorities must decide between different courses of action or even choose whether to act at all. However, discretion must stay within legal limits to avoid arbitrariness. Judicial review focuses on the legality of decisions made, rather than their content or merits, setting boundaries for the exercise of discretionary authority.

Principle of Legitimate Expectation
The principle of legitimate expectation was introduced to limit the right to be heard. It originated in English case law, where certain alien students had no legitimate expectation of an extension of their permits as a result of government policy. While policies can create legitimate expectations, they can also revoke them. Therefore,

governmental decisions that go against established expectations can be questioned, but the principles of public policy can override these expectations.

Principle of Reasonableness
Reasonableness is a key element of administrative discretion. It refers to the need for administrative decisions to be grounded in logical evaluation, weighing public and private interests. The principle of reasonableness ensures that decision-making is not arbitrary and that it strikes a balance between various factors that may be relevant to the case at hand.

Principle of Good Governance
Good governance emphasizes the processes by which decisions are made and implemented, rather than focusing on the outcome alone. It ensures that the decision-making process is transparent, inclusive, and accountable. Good governance includes principles such as:

- Participation
- Consensus-building
- Accountability
- Efficiency
- Equity
- Rule of law
- Transparency

Principle of Natural Justice
Natural justice is a procedural safeguard to ensure fairness in decision-making. Although not codified in law, it has evolved through judicial decisions. It requires that justice be done and be seen to be done, particularly in matters affecting individuals' rights and freedoms. It aims to prevent arbitrary decisions by ensuring that affected parties are given a fair opportunity to be heard.

The Principle of Rule of Law
The rule of law is a fundamental principle stating that no one is above the law, including government officials. It ensures that laws govern the land and that every individual, regardless of status, is subject to the law. Rooted in the works of philosophers like Aristotle, the rule of law underpins modern administrative law by limiting arbitrary powers and maintaining legal order.

The Principle of Accountability
Accountability in administrative law means that decision-makers must justify their actions in an appropriate forum, whether politically or legally. Politically, public officials, such as ministers, are accountable to Parliament. Legally, judicial review allows courts to assess whether administrative decisions are made in accordance with the law. This principle is crucial in distinguishing between legitimate government action and arbitrary decision-making.

Classification of Power
The separation of powers is a core principle in constitutional law, ensuring that the executive, legislative, and judicial branches each have distinct roles. This doctrine prevents the concentration of too much power in one branch and ensures checks and balances. The separation of powers has shaped constitutions worldwide, ensuring that the functions of government are clearly delineated, thus preventing the abuse of power.

Objectives of Administrative Law

In recent years, administrative law, which governs the actions of government administrative agencies, has faced challenges and limitations. This decline has led to ineffective operations within numerous governmental bodies, contributing to various economic and environmental crises, such as those involving British Petroleum, Enron, Wall Street, and the automobile industry. Most governmental agencies in the United States fall under the executive branch, with only a few under the judicial or legislative branches.

The primary objectives of administrative law include:

- **Regulating Governmental Powers**: Ensuring that government powers are exercised within legal boundaries.
- **Providing Remedies for Aggrieved Individuals**: Offering legal recourse to those affected by administrative decisions or actions.
- **Ensuring Equality between the State and the Public**: Upholding fairness and equality in administrative processes.
- **Promoting Efficient Use of Government Authority**: Ensuring that governmental power is used effectively and responsibly.
- **Public Welfare**: Ensuring the public benefit and utility through effective government programs and services.
- **Resolving Disputes between the Government and the Public**: Facilitating the resolution of conflicts involving government actions or policies.
- **Addressing Social Issues**: Helping to identify and resolve social challenges through administrative measures.
- **Improving Administrative Performance**: Enhancing the efficiency and effectiveness of the administrative processes.
- **Upholding the Rule of Law**: Ensuring that all actions are in accordance with established laws and principles of justice.

Constitutional and Administrative Law

Constitutional and administrative law deals with the distribution and exercise of governmental power within a state. It encompasses not just the authority to create legal rules but also the accountability of those responsible for enacting, applying, and enforcing these rules. While constitutional and administrative law both regulate the interaction between the state and individuals, they differ from private law areas such as contract or property law, which govern relationships between private persons. The distinction between constitutional law and administrative law is often blurred, as both branches are intertwined. However, one way to differentiate them is to view constitutional law as concerning the overall structure and governance of the state, whereas administrative law regulates the functioning of governmental powers, especially as influenced by the courts.

In the UK, Parliament holds supreme law-making power and exercises it through the passage of statutes, which are a primary source of constitutional law. If a government minister acts unreasonably or illegally, such actions may be subject to judicial review, which is a form of administrative law.

Studying Constitutional and Administrative Law

Unlike other legal subjects, constitutional law sources are not always clearly written in statutes or case law. Many of its principles are based on historical and political factors, often reflecting broader constitutional ideas that can be political in nature. To understand constitutional law, one must engage with current events and real-world issues, as they frequently influence constitutional debates. For instance, significant constitutional questions have arisen in recent years in the UK, such as debates over the repeal of the Human Rights Act 1998, Brexit, and elections

leading to a hung Parliament. Thus, studying these developments enhances one's understanding of constitutional law.

Constitutional and Administrative Law in India

In India, both constitutional and administrative law are parts of public law, and it is often difficult to distinguish between the two, as the boundaries are somewhat artificial. Historically, administrative law was included within constitutional law texts, and no separate, independent treatment was given to it. According to legal scholar Holland, constitutional law outlines the organization of governmental bodies, while administrative law focuses on how they function in practice.

While constitutional law deals with the overall structure of the state, including the powers of different branches and their interactions with individuals, administrative law provides more detailed regulations on the operation of government powers and duties. Constitutional law addresses fundamental principles, while administrative law focuses on specifics and public needs. In countries with written constitutions, like India, the distinction between these two branches is not as clear-cut as in places like England.

In such nations, constitutional law derives from the constitution, while administrative law is based on statutes, judicial precedents, and customs. India, with its written constitution, regulates the powers and roles of the legislature, executive, and judiciary, and its constitutional law sets the foundation for administrative law. As Maitland notes, constitutional law outlines the framework, while administrative law addresses the specific functions of those powers.

The Relationship between Constitutional and Administrative Law in India

Administrative law in India can be assessed based on several criteria:

- The actions must adhere to rules and regulations.
- These rules must comply with the relevant statute.
- Actions and rules should align with constitutional provisions.
- Constitutional amendments must conform to the fundamental structure of the constitution.

Although administrative law exists separately, its overlap with constitutional law is evident in certain areas. This intersection—referred to as the "watershed"—includes mechanisms in the Constitution that control administrative actions, such as Articles 32, 136, 226, 227, 300, and 311, and directives under Part IV. Administrative agencies created by the Constitution, such as those mentioned in Articles 261, 263, and 315, are also part of this overlapping zone. Additionally, constitutional limits on the delegation of powers and the protection of fundamental rights help shape the scope of administrative law.

The Doctrine of Watershed in Administrative Law

The "watershed" doctrine plays an important role in defining the relationship between constitutional and administrative law. It provides a framework for understanding how both branches interact and ensures a clear demarcation of their respective boundaries. English scholars like Dicey and Holland recognized that constitutional and administrative laws are interconnected and mutually dependent.

Evolution of Constitutional and Administrative Law in India

Administrative law has become a critical feature of modern governance and has ancient roots. Traces of administrative law can be found in the governance systems of ancient India, particularly during the Maurya and

Gupta periods, which were characterized by a centralized and organized administration. The rule of Dharma, which emphasized principles of justice and fairness, influenced early administrative practices.

In India, administrative law draws from various sources, including statutes, common law, and constitutional provisions. In countries like the US and UK, administrative law relies on statutes, precedents, and other legal mechanisms. In India, constitutional law serves as the primary source of administrative law, as it sets the framework for governance and the exercise of administrative powers.

Statutes also play a significant role in administrative law, with laws passed by the parliament forming part of the constitutional framework. Additionally, ordinances—issued by the President or state governors during legislative recesses—allow for emergency laws that can impact administrative functions. These ordinances, however, are subject to judicial review and must adhere to constitutional principles.

Notable Case Law

In the *Rustom Cavasjee Cooper v. Union of India* case, the Supreme Court ruled that ordinances made on improper grounds could be challenged. Similarly, in *S.R. Bommai v. Union of India*, the Court held that proclamations under Article 356 (President's Rule) could be subject to judicial review if deemed unconstitutional.

Self Check Exercise-2

Q.1 Constitutional and administrative law is concerned with the distribution and the exercise of power within the state. True/False

Q.2 The quote "Not only should justice be done, but it should be seen to be done" is not in written form but developed by courts in its judicial decisions. True/False

1.4 Summary:

Administrative law is the law governing the Executive, to regulate its functioning and protect the common citizenry from any abuse of power exercised by the Executive or any of its instrumentalities. It is a new branch of law which has evolved with time and shall continue to

evolve as per the changing needs of the society. The aim of administrative law is not to take away the discretionary powers of the Executive but to bring them in consonance with the 'Rule of law'.

1.5 Glossary

- **Rule of law** - the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power or wide discretionary power.
- **Separation of power** - the vesting of the legislative, executive, and judiciary powers of government in separate bodies.
- **Accountability** - accountability is the acknowledgment and assumption of responsibility for actions, products, decisions, and policies including the administration, governance, and implementation within the scope of the role or employment position and encompassing the obligation to report, explain and be answerable.

1.6 Answers to self check exercises

Self Check Exercise-1
Q.1 Ivor Jennings
Q.2 False
Q.3 False
Self Check Exercise-2
Q.1 True
Q.2 True

1.7 References/Suggested Readings

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1.8 Terminal questions

Q1 Discuss the sources of administrative law.

Q2 What are the objectives of administrative law.

Unit-2

Rule of Law

Structure

2.0 Introduction

Do you think the law should provide equal protection and punishment to all individuals, regardless of their caste, race, religion, or social status? Or should there be separate laws and procedures for different groups of people? These are some of the questions that arise when studying any legal system. Understanding the concept of the 'Rule of Law' can help approach these questions with a clear perspective.

Every country has a system of legal rules that apply to all or certain groups of people. In a democratic society, one of the core principles is that no one is above the law, a concept known as the Rule of Law. This principle ensures that every individual, regardless of their social standing, is subject to the law. Under the Rule of Law, laws are not influenced by a person's status, whether it be for protecting rights or administering justice.

The Rule of Law is essential to any democratic political structure. It denotes a system where government actions are bound by law, and the law holds supremacy over the arbitrary decisions of officials. Government officers, regardless of their rank, are equal under the law, which promotes fairness and prevents misuse of power. It ensures that no one, not even government officials or the ruling class, is above the law. This principle highlights the idea that everyone, irrespective of their role or authority, is equal before the law.

As stated in the UN Vienna Declaration of 1993, "Human rights are universal, indivisible, interdependent, and interrelated and should be protected and promoted in a fair and equitable manner through something as fundamental and pervasive as the rule of law." Recent incidents, such as the encounter of gangster Vikas Dubey, have reignited debates about the Rule of Law. Many critics, especially from the opposition, argue that such actions contradict the fundamental principles of law. In a time when encounters and mob lynching are becoming more visible, it is crucial to understand the importance of the Rule of Law in these situations. This article will explore the concept of Rule of Law and trace its evolution to address modern challenges.

2.1Learning Objectives

After studying this lesson, the learner will be able to

- Know the meaning, definition and origin of rule of law
- Know the A.V Dicey's concept of rule of law
- Know the exceptions to rule of law and its connect with Indian constitution
- Know the modern concept of rule of law

2.2 Meaning, Origin, Dicey's Concept and Exceptions to rule of law

The term "Rule of Law" signifies governance based on law rather than the whims of individuals. The phrase is rooted in the French concept *le principe de legalité*, meaning the principle of legality.

Prof. Wade defined the Rule of Law as the idea that "the government should be subject to the law, not the law subject to the government." Black's Law Dictionary further specifies it as the supremacy of law, where decisions are made based on established principles or laws, without the influence of personal discretion.

Various scholars have described the Rule of Law as the embodiment of ultimate authority, which no one, regardless of status or power, can bypass. As Lord Denning stated in *Gouriet v. Union of Post Office Workers*, every individual, regardless of their position, is subject to the law.

The Rule of Law is a foundational principle of constitutional governance, as expressed by Max Weber, who described it as "legal domination"—a government led by law, not by individuals. In practice, this means that everyone, from government officials to citizens, must act according to the law.

The doctrine of the Rule of Law emphasizes the supremacy of law, ensuring no person or entity is above it. Even the actions of the executive branch must be carried out within the boundaries of the law.

In a parliamentary democracy, the Rule of Law imposes a duty on citizens to follow the law. For this to be meaningful, the law itself must be just, not arbitrary or oppressive. One of the main goals of the Rule of Law, like other constitutional principles, is to protect individual freedoms and fundamental rights. It ensures that the government cannot misuse the law to suppress or infringe upon citizens' rights, as outlined in the Bill of Rights.

In the Indian context, the concept of the Rule of Law has evolved. The Supreme Court has clarified and expanded upon the principle through its rulings, in line with A.V. Dicey's foundational ideas. The Rule of Law is now considered a part of the Constitution's basic structure, and as such, it cannot be altered or removed by Parliament. The ideals of liberty, equality, and fraternity enshrined in the Preamble of the Indian Constitution also reflect the principles of the Rule of Law, ensuring no one faces inhumane, discriminatory, or unjust treatment, even in the pursuit of law and order.

Origin of the Rule of Law

The doctrine of the Rule of Law has ancient roots, with early proponents believed to include Greek philosophers such as Aristotle, Plato, and Cicero. In his work *Complete Works of Plato*, Plato argued that a state where the law is subordinate to the rulers is doomed to fail. In contrast, states where the law holds supreme are blessed and flourish throughout time.

The idea of the Rule of Law can be traced back to Aristotle, who conceptualized it as a set of rules that align with the natural order.

In England, the Rule of Law began to take shape around 1215 when King John signed the Magna Carta. This act symbolized the monarchy's agreement to be governed by law, acknowledging the supremacy of law over the monarchy. The development of the Rule of Law in England evolved further through the power struggle between the monarchy and Parliament. Eventually, Parliament prevailed, becoming the supreme authority, which led to the creation of laws that limited the monarchy's power. This marked the beginning of the Rule of Law in England, with the executive now being subject to the laws passed by Parliament.

In the United States, the Rule of Law was first articulated in 1776 by constitutional lawyer Thomas Paine. He emphasized that in a free country, law should be regarded as the ultimate authority, or the "king," and not any individual or ruler.

The concept of the Rule of Law was further refined by the influential English constitutional scholar Albert Venn Dicey. In his book *The Law of the Constitution*, Dicey outlined the Rule of Law as a principle where government powers must always be exercised in accordance with established law. This modern interpretation of the Rule of Law asserts that the functions and duties of government, including all its branches, must be carried out within the confines of the law.

Dicey’s Concept of Rule of Law

Albert Venn Dicey is widely recognized as the key proponent of the Rule of Law, although the origins of his doctrine can be traced back to Sir Edward Coke. Coke introduced the idea that "the King is under God and the Law," a concept that laid the foundation for Dicey's later elaboration. In 1885, Dicey advanced this concept in his book *Law and Constitution*, providing a detailed framework for the Rule of Law. According to Dicey, the Rule of Law rests on three essential principles:

1. **Supremacy of Law**
   The first principle of Dicey's Rule of Law is the supremacy of law, which asserts that law applies equally to all, including those who govern. Dicey believed that the law should be supreme, meaning that the government cannot wield arbitrary power. Punishment can only be meted out for a violation of law, and it must be in accordance with established legal procedures, not based on the whims of the ruling authority. Dicey also emphasized that discretion in governance is inherently linked to arbitrariness, and therefore, discretion should be avoided to prevent potential abuse of power.

2. **Equality Before the Law**
   The second pillar of Dicey’s Rule of Law is the principle of equality before the law. This means that all individuals, regardless of their social status or position, should be subject to the same laws and be judged by ordinary courts, rather than any special courts or laws designed for certain groups. Dicey argued that special laws or courts undermine the principle of equality and that all citizens should be treated equally under the law.

3. **Predominance of the Legal Spirit**
   The third pillar is the predominance of the legal spirit, which Dicey believed was essential for the effective implementation of the Rule of Law. He argued that the judiciary plays a crucial role in enforcing the law and that the courts should be independent and free from outside influence to ensure impartiality. For Dicey, the protection of individual rights and freedoms was the responsibility of the courts, not merely the written constitution. Judicial independence was, therefore, a fundamental aspect of the Rule of Law.

While Dicey's theory has faced criticism from various perspectives, his core argument—that power must be exercised in accordance with the law, free from arbitrariness, and with equality before the law—remains a vital principle in democratic societies today. Dicey’s emphasis on the protection of fundamental rights and the absence of discretionary power continues to resonate in modern legal and political discourse.

Exceptions to Rule of Law

To meet the practical needs of governance, modern democratic countries have introduced several exceptions to the principles of the Rule of Law outlined by Dicey. These exceptions include the expansion of discretionary powers for the administration, the creation of administrative tribunals, and the normalization of preventive detention. Despite these exceptions, the core principles of the Rule of Law continue to be upheld and promoted.

In India, Dicey's concept of the Rule of Law is not followed strictly, as certain exceptions exist within the Indian Constitution and other laws. Some examples include:

- **Discretionary Powers of the Executive**:
  The Indian Constitution grants significant discretionary powers to the President and the Governor of a state. For instance, under Articles 72 and 161, the President and the Governor have the authority to grant pardons, reprieves, or remission of punishment and to modify the sentences of convicted individuals. Article 85 provides the President with discretion regarding the prorogation of Parliament and the dissolution of the House of People. Additionally, the Governor has discretionary powers under Article 356 in relation to emergency provisions and can also reserve bills for presidential consideration under Article 200. Furthermore, police officers have broad authority to arrest individuals without a warrant in cases of cognizable offenses, and criminal courts have discretion in imposing sentences.
- **Immunities and Privileges**:
  The principle of equality before the law in India does not necessarily apply equally to private citizens and public officials. Public officials, such as ministers, local authorities, and public officers, enjoy certain privileges, immunities, and powers that ordinary citizens do not. For example:
    1. The President and Governor are not accountable to the courts for their executive functions.
    2. No criminal proceedings can be initiated against the President or Governor while they are in office.
    3. Civil suits against the President or Governor can only be filed after a two-month notice period.
    4. Under international law, visiting heads of state, government officials, and foreign diplomats are not subject to the jurisdiction of local courts while carrying out their official duties.

Self-Check Exercise-1

Q.1 Under Article 200 of the constitution, the Governor of a state can reserve a bill for the consideration of the President. True/False

Q.2 "The Law of the Constitutions" is written by?

2.3 Rule of law and Indian constitution & Modern concept of rule of law

The concept of the Rule of Law is not explicitly defined in the Indian Constitution, though it is referenced in numerous judgments by Indian courts. Unlike the principle "The King can do no wrong," which does not apply in India, all public authorities are subject to the jurisdiction of regular courts and the same laws. The Constitution of India stands as the supreme law of the land, overriding the Judiciary, Legislature, and Executive. These three branches of government are required to operate within the boundaries established by the Constitution.

The Rule of Law is integrated into several provisions of the Indian Constitution. For example, the aims of achieving equality, liberty, and justice are reflected in the Preamble. Article 14 guarantees equality before the law and the equal protection of laws. This ensures that no individual is denied equality or protection by the state. The

implication of Article 14 is that the law is supreme and there is no room for arbitrary decisions, as everyone is governed by the Rule of Law. This principle mandates that the law must treat all individuals equally, without bias, which is a key aspect of the Rule of Law. In the *Maneka Gandhi v. Union of India* case, the Supreme Court emphasized that Article 14 targets arbitrariness in government actions, ensuring fairness and equality in treatment. The Rule of Law, as a fundamental feature of the Constitution, excludes arbitrary behavior; where arbitrariness exists, the Rule of Law is compromised. Articles 15, 16, and 23 further strengthen the concept of equality by allowing for protective discrimination to ensure that equal opportunities are provided.

Article 13 of the Constitution further supports the Rule of Law, as it allows laws, including rules, regulations, and ordinances, to be struck down if they are inconsistent with the Constitution. In *Keshavananda Bharti v. State of Kerala*, the Supreme Court affirmed that the Rule of Law is a basic feature of the Constitution. In this case, while the Court upheld Parliament's power to amend the Constitution, it ruled that this power cannot extend to altering the Constitution's core principles.

Fundamental rights, which are inalienable and universal, can only be protected by a state that respects the Rule of Law. These rights are enshrined in Part III of the Indian Constitution and cannot be revoked. They can be enforced through Articles 32 and 226 of the Constitution. The Constitution stands as the supreme legal authority, and any law that contradicts its provisions, especially those concerning fundamental rights, will be invalid. A central principle of the Rule of Law, alongside justice and equality, is liberty. Article 21 guarantees the right to life and personal liberty, stipulating that no person can be deprived of these rights except through a procedure established by law, ensuring the supremacy of the law. This provision also guarantees that individuals cannot be convicted for actions that were not classified as offenses at the time they occurred. The Indian Constitution also recognizes the principles of double jeopardy and protection from self-incrimination.

Article 19, which provides various freedoms to individuals, aligns with the Rule of Law, as these freedoms can only be restricted on reasonable grounds. These restrictions must satisfy the criteria set out in Articles 14, 19, and 21. These three Articles are considered crucial to the Indian Constitution, often referred to as the "Golden Triangle" of the Constitution. In the *E.P. Royappa v. State of Tamil Nadu & Another* case, the Supreme Court ruled that the state must fulfill all the requirements under Articles 14, 19, and 21 to justify any limitation of a fundamental right.

An essential extension of the Rule of Law is judicial review. Judicial review is a critical component of the Rule of Law as it not only safeguards constitutional principles but also examines the legality of administrative actions. All actions by state authorities and bureaucrats are subject to judicial review and must be accountable to the courts for their reasonableness.

These principles of the Rule of Law, not of arbitrary authority, form the foundation of civilized nations. The Indian Constitution also ensures the independence of the judiciary, which serves as the guardian of the Constitution and the fundamental rights of citizens. Judicial review is regarded as one of the Constitution's basic features, and as such, the Rule of Law is deeply embedded in the structure of the Indian Constitution.

Indian Case Laws

As mentioned earlier, while the Indian Constitution does not explicitly provide for the rule of law, the Supreme Court has affirmed its importance as an essential element of the Constitution through various judgments. Some of the significant cases include:

A.K. Gopalan v. State
This case, also known as the Habeas Corpus case, involved a challenge to the detention orders issued during an emergency, arguing that they violated the principles of the rule of law, which is a fundamental feature of the Indian Constitution. The Supreme Court was asked to decide whether the rule of law exists in India beyond the provisions of Article 21. The majority of the bench answered in the negative, but Justice Khanna, in his dissenting opinion, argued that the rule of law is a cornerstone of any civilized society and a symbol of a free society. He emphasized

that the rule of law is the only way to balance individual liberty and public order. He concluded that even without a specific provision like Article 21, the state cannot deprive a person of their life and liberty without legal authority.

A.K. Kraipak v. Union of India
In this case, the Supreme Court addressed whether the principle of natural justice should apply in administrative functions. The Court held that all state instruments must adhere to the rule of law and discharge their duties in a fair, just, and reasonable manner, forming the fundamental principle of the rule of law. This principle applies universally to all areas of administration, as every branch of the state is governed by the rule of law.

Indira Nehru Gandhi v. Raj Narayan
This case involved a challenge to the 39th Amendment, which placed the election of the President, Prime Minister, Vice-President, and Speaker of the Lok Sabha beyond judicial review. The Supreme Court ruled the amendment unconstitutional, holding that it violated the basic structure of the Constitution, specifically the rule of law. The Court argued that the rule of law, which opposes arbitrariness, does not allow Parliament to pass retrospective laws validating an invalid election.

Bachan Singh v. State of Punjab
This landmark case addressed the imposition of the death penalty under Section 302 of the Indian Penal Code. While the majority of judges held that the death penalty could be imposed in the "rarest of rare" cases, Justice Bhagwati dissented, stating that the death penalty was unconstitutional as it violated Articles 14 and 21 of the Constitution. Justice Bhagwati emphasized that the rule of law prohibits arbitrariness and unreasonableness and argued that the legislative and executive powers must be checked by the independent judiciary to protect citizens' rights.

Sambamurthy v. State of Andhra Pradesh
In this case, the Supreme Court upheld the rule of law as a basic feature of the Constitution. The case involved a challenge to Clause 5 of Article 371-D, which granted the government the power to modify or annul decisions made by an administrative tribunal. Chief Justice Bhagwati ruled that Clause 5 was unconstitutional as it violated the principle of the rule of law. He affirmed that judicial review is an essential aspect of the rule of law, allowing courts to ensure that laws are followed and enforced by the executive and other authorities.

Yusuf Khan v. Manohar Joshi
The Supreme Court in this case reaffirmed that the state has a duty to maintain law and order, ensuring that no act of violence exceeds the limits set by the rule of law.

These cases collectively highlight the growing significance of the rule of law in India, with the judiciary actively working to strengthen and uphold its principles.

Modern Concept of Rule of Law

As observed earlier, the understanding of the Rule of Law has undergone significant modifications to meet contemporary needs. Professor Baxi highlights the evolution of Indian judicial thought on this concept, especially in landmark cases such as Keshavananda, Indira Gandhi, and Habeas Corpus. Over a period of more than 25 years, these cases reflect the changes in how the judiciary has interpreted the Rule of Law. The Supreme Court of India has offered a more liberal and expansive interpretation, broadening the scope of the Rule of Law to emphasize controlled power rather than arbitrary authority.

The modern conception of the Rule of Law has evolved to provide a framework for governments to aspire to, with much development stemming from international discussions. One such key development is the **Delhi Declaration of 1959**, which was later reaffirmed in Lagos in 1961 by the International Commission of Jurists. This formulation emphasizes the importance of human dignity as a core value, with the Rule of Law ensuring conditions that respect and promote individual dignity. This dignity extends beyond civil and political rights to include social, economic, educational, cultural, and developmental rights. In essence, for the Rule of Law to be truly effective, it must be

accompanied by strong human rights protections, particularly in developing countries like India, where these mechanisms are vital.

Additionally, moderating the original ideas of Dicey in today's context, Professor Wade has expanded the concept of Rule of Law. He includes a necessary focus on the effective control of delegated legislation, particularly when such legislation imposes penalties. Wade emphasizes that laws should be as clearly defined as possible, and that all individuals, whether private citizens or public officials, must be subject to the same ordinary laws. Importantly, he underscores the need for impartial and independent tribunals to determine individuals' rights, ensuring that fundamental rights are safeguarded by ordinary legal systems.

Self-Check Exercise-2

Q.1 Principle of rule of law is the basic structure of the constitution. True/False

Q.2 Judicial Review is not the essential part of rule of law. True/False

2.4 Summary

The judgment mentioned above illustrates the evolving nature of the Rule of Law in India. While the core principles of the Rule of Law are not always followed strictly in India, the application of these principles has been adjusted over time to address the needs of specific situations.

The Rule of Law is a cornerstone of governance in any civilized democracy, serving as a direct counter to arbitrariness. In a democratic country like India, the Rule of Law is a point of pride. In criminal cases, a prescribed legal process is followed: when a crime is committed, the perpetrator is apprehended, subject to judicial approval. Suspects are questioned, evidence is gathered, and interrogations are held. A case is developed, and the court reviews the evidence and testimonies. The accused has the right to defend themselves legally.

After careful examination of the case based on the law, the judiciary delivers a verdict, which can be appealed. This entire process is a standard in all civilized societies, not only because criminal law presumes innocence until proven guilty, but also because it ensures the legitimacy of the system and prevents the arbitrary exercise of power. The essential principle of the Rule of Law is that all individuals, even those accused of crimes, are entitled to basic human rights and due process. Practices like encounter killings directly contradict this principle, undermining due process. Adherence to the Rule of Law is fundamental to the functioning of a democratic society, as without it, democracy becomes a hollow concept.

2.5 Glossary

- **Judicial Review** - power of the courts of a country to examine the actions of the legislative, executive, and administrative arms of the government and to determine whether such actions are consistent with the constitution. Actions judged inconsistent are declared unconstitutional and, therefore, null and void.
- **The Union executive** - consists of the President, the Vice-President, and the Council of Ministers with the Prime Minister as the head to aid and advise the President.
- **Fundamental Rights** - Fundamental rights are a group of rights that have been recognized by a high degree of protection from encroachment. These rights are specifically identified in a constitution, or have been found under due process of law.

2.6 Answers to self-check exercises

Self-Check Exercise-1

Q.1 True

Q.2 A.V. Dicey

Self-Check Exercise-2

Q.1 True

Q.2 False

2.7 References/Suggested Readings

- https://indiankanoon.org
- http://www.legalserviceindia.com/

2.8 Terminal questions

Q1 Discuss the A.V. Dicey's concept of rule of law.
Q2 Bring out some case laws which upheld the concept of rule of law in India.

Unit-3

Natural Justice and its Judicial Interpretation

Structure

3.0 Introduction

The principle of Natural Justice originates from the Roman law term 'Jus Natural' and is linked to common law and moral concepts, although it is not explicitly codified. It is an inherent law of nature that does not stem from any specific statute or constitution. The principle of natural justice holds immense significance in civilized societies, where it is respected by all citizens. In earlier times, when industries were governed by strict and inflexible rules regarding employment, the Supreme Court intervened, ensuring the protection of workers' rights through social justice, economic reforms, and statutory protections.

At its core, natural justice refers to a fair and reasonable decision-making process on any given issue. The focus is not necessarily on the outcome of the decision but on the fairness of the process and the parties involved in making that decision. Natural justice extends beyond the idea of fairness and can take different forms depending on the context.

The principle of natural justice is typically based on three main rules:

1. **The Right to be Heard:** This rule ensures that anyone affected by a decision has the opportunity to present their side of the story and defend themselves before a decision is made.
2. **The Rule Against Bias:** This principle emphasizes that the decision-making body should be impartial. The decision must be made in a fair and unbiased manner to meet the standards of natural justice.
3. **The Rule of Reasoned Decisions:** This rule requires that decisions or judgments made by authorities be based on valid, logical, and justifiable grounds. The reasoning behind the decision should be clearly provided.

3.1Learning Objectives

After studying this lesson, the learner will be able to

- Know the meaning and origin of natural justice
- Know the situations in which natural justice can be claimed
- Know the rules and components of natural justice
- Know the components of natural justice

3.2 Origin & rules of justice

The principle of natural justice is an ancient concept with roots dating back to early civilizations. The Greeks and Romans were aware of this idea, and it was acknowledged during the time of Kautilya and in his work *Arthashastra*. The concept also appears in biblical stories, such as the case of Adam and Eve. In the Bible, when

Eve and Adam ate the forbidden fruit, they were given a chance to explain themselves before receiving any punishment, which reflects the principle of natural justice, allowing them an opportunity to defend themselves.

The notion of natural justice was later adopted by English jurists, who derived the term from the Roman phrases *jus naturale* and *lex naturale*, which established the foundation for natural law and equity.

In essence, natural justice can be defined as the understanding of what is morally right and wrong. In India, this concept was incorporated early on. For example, in the case of *Mohinder Singh Gill v. Chief Election Commissioner*, the court affirmed that fairness should be an integral part of all actions, whether judicial, quasi-judicial, administrative, or quasi-administrative.

Purpose of the Principle:

- To ensure equal opportunities for being heard.
- To uphold fairness.
- To address gaps and shortcomings in the law.
- To protect fundamental rights.
- To safeguard the basic features of the Constitution.
- To prevent the miscarriage of justice.

The principles of natural justice require that actions be free from bias, and all parties involved should have a fair chance to present their case. Additionally, the reasons behind decisions must be communicated to the relevant parties.

The Supreme Court has emphasized that judicial and administrative bodies must aim to arrive at reasonable and justifiable decisions. The primary objective of natural justice is to avoid miscarriages of justice.

A committee, known as the "Ministers Power," outlined three essential procedural elements related to natural justice:

1. A person should not be a judge in their own case.
2. No one should be condemned without being heard.
3. A party is entitled to know the reasons for decisions made by the authority.

When it can be claimed?

Natural justice applies in situations involving judicial or quasi-judicial actions, such as those carried out by panchayats, tribunals, and similar bodies. This principle encompasses fairness, fundamental moral guidelines, and the identification of various biases. It addresses the necessity of upholding natural justice and identifies specific scenarios where these principles might not be applicable.

In the case of *Province of Bombay v. Khushaldas Advani*, the court ruled that natural justice must be applied in statutory matters, as it is a fundamental principle that ensures fairness and justice.

Effects on Functions:

- Administrative actions
- Civil consequences
- Doctrine of legitimate expectation
- Fairness in action
- Disciplinary proceedings

For example, in the case of *Board of High School v. Ghanshyam*, a student who was caught cheating during an examination was barred from continuing. The Supreme Court ruled that the student could not file a Public Interest Litigation against the examination board in this situation.

A key case illustrating the importance of natural justice is *Eurasian Equipment & Co. Ltd. v. State of West Bengal*. In this case, several executive engineers were blacklisted. The Supreme Court ruled that a person cannot be blacklisted without providing a valid, reasonable justification, and that the individual must be given a fair opportunity to be heard before such a decision is made.

Rules of Natural Justice

- NEMO JUDEX IN CAUSA SUA
- AUDI ALTERAM PARTEM
- REASONED DECISION

Nemo Judex In Causa Sua

The principle "Nemo Judex In Causa Sua" translates to "No one should be a judge in their own case," emphasizing the importance of impartiality in legal proceedings. This rule seeks to prevent biases, which may arise consciously or unconsciously, from affecting the fairness of a decision. The purpose of this principle is to ensure that judges make decisions based solely on the evidence presented and the facts of the case, without any personal interest or prejudice.

Types of Bias:

1. **Personal Bias**
   Personal bias arises when a decision-maker has a personal relationship with one of the parties involved, which may lead to an unfair decision. This could be due to family, friendship, or other personal ties that affect the impartiality of the judgment. To successfully challenge a decision based on personal bias, the challenger must provide reasonable grounds for the bias.
   Example: In *Ramanand Prasad Singh v. UOI*, the court held that the selection procedure was not invalidated even though one panel member's brother was a candidate. However, to ensure fairness, the biased member could have been excluded from the panel.

2. **Pecuniary Bias**
   Pecuniary bias arises when the decision-maker stands to gain or lose financially from the outcome of a case. Even a small financial interest can create the appearance of bias and affect the fairness of the decision.

3. **Subject Matter Bias**
   This type of bias occurs when the decision-maker is directly or indirectly involved with the subject matter of the case. For instance, if a judge has a vested interest in the case's outcome, it may compromise their ability to make an impartial decision.

4. **Departmental Bias**
   Departmental bias happens when the administrative body has an internal interest in the outcome. If not properly checked, such bias can affect the fairness of the proceedings and lead to unjust decisions.

5. **Policy Notion Bias**
   This bias arises from preconceived ideas or policy decisions held by the decision-maker. It may influence their judgment, even when the facts of the case do not align with the preconceived notions.

6. **Bias Due to Obstinacy**
   In certain cases, bias can arise from obstinacy, where a judge refuses to reconsider or correct their own decisions. A notable example is when a judge of the Calcutta High Court upheld his own judgment on appeal, which violates the principle that no judge should sit in judgment over their own decisions.

Audi Alteram Partem

The principle *Audi Alteram Partem*, meaning "hear the other side," is a fundamental rule of natural justice. It ensures that no one can be condemned or punished without having the opportunity to be heard. This rule requires that both parties in a dispute be given a fair chance to present their case before any decision is made.

In practice, this principle mandates that a person should be notified of the charges against them and allowed to respond before any penalties are imposed. The components of a fair hearing may vary depending on the case and the authority involved, but the core idea remains that individuals should not be penalized without a valid, reasonable basis. This rule is essential to ensuring fairness in judicial and administrative processes.

Self-Check Exercise-1

Q.1 What is the meaning of Audi Alteram Partem? means that no person can be condemned or punished by the court without having a fair opportunity of being heard

Q.2 *"No one should be a judge in his own case"* . True/False

3.3 Components of Fair Hearing

1. **Issuance of Notice**
   A proper and valid notice must be provided to the concerned parties involved in a case, ensuring they are aware of the proceeding and the charges against them. Even if the law does not explicitly require a notice, one must be issued before decisions are made. The case of *Fazalbhai v. Custodian* emphasizes this requirement. Additionally, in *Kanda v. Government of Malaya*, the court ruled that notices should clearly specify the facts and circumstances surrounding the issue, allowing the individual to prepare a defense.

   The notice should outline the specific charges against the individual, and any punishment should only relate to the charges listed in the notice, not any others.

2. **Right to Present the Case and Evidence**
   Once the notice is received, the individual must be given a reasonable amount of time to prepare and present their case effectively. The refusal to allow this preparation must not be arbitrary or unreasonable.

3. **Right to Cross-Examine**
   A fair hearing includes the right to cross-examine the evidence or statements presented by the other party. If this right is denied, it violates the principles of natural justice. Necessary documents and copies should be provided to the accused, and failing to do so can encroach upon natural justice principles. The Indian Evidence Act, 1872 (as amended), defines cross-examination under Section 137.

   There are exceptional cases where cross-examination might be denied, such as in the case of *Hari Nath Mishra v. Rajendra Medical College*, where a male student accused of inappropriate behavior was not

allowed to cross-examine a female student, to prevent embarrassment. Similarly, in *Gurubachan Singh v. State of Bombay*, keeping a party's identity confidential may be necessary due to threats to their safety.

4. **Right to Legal Representation**
   Every party involved in an inquiry has the right to be represented by a legal practitioner. This right applies equally to both the party and the department, allowing for fair representation during proceedings, as shown in the case of *Sanghi Textile Processor v. Commissioner*.

Exceptions to Natural Justice

1. During periods of emergency.
2. When public interest is at stake.
3. When there is an express statutory provision.
4. In cases where the issue is not of a serious nature.
5. If the decision does not significantly affect the individual's status.

Applicability of Natural Justice

Natural justice applies in the following contexts:

1. **Courts**, except in ex-parte cases.
2. **Tribunals**.
3. **Authorities** granted discretionary powers, within the bounds of legal limitations.

Reasoned Decision

A reasoned decision is fundamental to ensuring fairness and transparency. It is based on three key grounds:

1. The aggrieved party should have the opportunity to demonstrate to appellate or revisional courts why their case was rejected.
2. A reasoned decision provides clarity and satisfaction to the party who is affected by the ruling.
3. The requirement for reasoned decisions serves as a safeguard against arbitrary actions by the judiciary or executive authorities.

Self-Check Exercise-2

Q.1 Right to Cross Examination is one of the important components of natural justice. True/False

Q.2 Natural Justice is not applicable in tribunals. True/False

3.4 Summary

The principles of natural justice have been embraced by the judiciary as a safeguard for public rights, ensuring that administrative decisions are not made arbitrarily. These principles focus on fairness and play a vital role in upholding just practices throughout legal proceedings. They are crucial in ensuring that fairness is maintained at every stage, particularly when judicial functions are delegated to other authorities.

The central objective of natural justice is to prevent any miscarriage of justice. It is important to recognize that any decision or order that contradicts the principles of natural justice will be considered null and void. Therefore, these principles are fundamental to ensuring the validity of administrative decisions.

The application of natural justice is not confined to specific cases; instead, it varies depending on the nature of the jurisdiction granted to administrative bodies and the rights of individuals involved.

3.5 Glossary

- **Legal** - connected with the law
- **Tribunal** - a type of court with the authority to decide who is right in particular types of dispute or disagreement.

3.6 Answers to self check exercises

Self-Check Exercise-1

Q.1 It means that no person can be condemned or punished by the court without having a fair opportunity of being heard.

Q.2 *True*

Self-Check Exercise-2

Q.1 True

Q.2 False

3.7 References/Suggested Readings

- https://www.academia.edu/23092337/Title_PRINCIPLES_OF_NATURAL_JUSTICE_IN_THE_LIGHT_OF_ADMINISTRATIVE_LAW_An_Analytical_and_comprehensive_study_of_Principle_of_natural_justice_especially_in_the_field_Of_administrative_law
- https://www.nacenkanpur.gov.in/download3.inc.php?rid=164
- *Mohinder Singh Gill vs. Chief Election Commissioner AIR 1978 SC 851*
- *Province of Bombay vs. Khushaldas Advani AIR 1950 SC 222*
- *Board of high school vs. Ghanshyam AIR 1962 SC 1110*
- *High water mark case- Eurasian equipment and company limited vs. State of West Bengal AIR 1975 SC 266*
- *Ramanand Prasad Singh vs. UOI, AIR 1996 SCC 64*

- *Muralidhar vs. Kadam Singh AIR 1954 MP*
- *Fazalbhai vs. custodian, AIR 1961 SC 284*
- *Kanda vs. Government of Malaya, 1962 A.C. 322*
- *Hari Nath Mishra vs. Rajendra Medical College, A.I.R. 1973 S.C. 1260*
- *Gurubachan Singh vs. State of Bombay, A.I.R. 1952 S.C. 221*
- *Ludhiana food product, 1990 (47) ELT 294*
- A.K.Roy, AIR 1982 SC 710
- Sanghi textile processor vs. Commissioner, 1991 (55) ELT 151 A.P.

3.8 Terminal questions

Q1 Discuss the various situations in which natural justice can be claimed.
Q2 Enumerate the rules of natural justice.

Unit-4

Administrative Discretion & Judicial Control

Structure

4.0 Introduction

Administrative law refers to the branch of law that governs the powers, functions, and responsibilities of various state organs. There is no universally accepted definition of administrative law, as its meaning varies among different scholars and legal theorists.

Ivor Jennings described administrative law as the set of rules concerning administration, which outlines the organization, powers, and duties of administrative authorities. However, this definition is overly broad and does not distinguish between administrative and constitutional law, nor does it address the manner in which powers and duties are exercised.

The development of administrative law is closely linked to the expanding roles of governments. Historically, states were focused primarily on maintaining order and safeguarding from external threats. While these remain essential functions, a state limited to this traditional role risks losing its legitimacy. With rising political awareness, citizens now demand more from their governments. As a result, modern states are working toward becoming welfare states, focusing on enhancing the social and economic well-being of their populations. This shift has led to the government taking on numerous complex tasks, including addressing issues in health, education, pollution, and social inequality.

As society evolves, so do the challenges it faces, and these challenges often require increased administrative involvement. Governments have taken over functions once handled by private enterprises, further driving the growth of administrative law to address these new responsibilities.

4.1 Learning Objectives

After studying this lesson, the learner will be able to

- Know the need and sources of administrative law
- Acquaint with the modes of Judicial control
- Know the abuse of discretion
- Know the principles of natural justice and their exceptions

4.2 Need & Sources of Administrative Law

A state typically has three main branches: the legislature, the executive, and the judiciary. The legislature's role is to create laws, the executive is responsible for enforcing those laws, and the judiciary oversees the application of laws, ensuring justice is served and resolving disputes.

However, there are instances when the legislature cannot produce the necessary quantity or quality of legislation due to constraints such as time, the technical complexity of the issues, or the inflexibility of laws. Similarly, the judicial process can be slow, costly, and overly complex. To address these limitations, the executive branch has been granted certain powers to fill the gap between the legislature and judiciary.

The ambit of administration is wide and embraces following elements:-

1. It makes policies,
2. It executes, administers and adjudicates the law
3. It exercises legislative powers and issues rules, bye- laws and orders of a general nature.

Sources of Administrative Law

1. **Constitution of India**: The Constitution serves as the primary foundation for administrative law in India. Article 73 grants the executive power of the Union over matters for which Parliament has legislative authority. Similarly, Article 162 provides similar powers to the States. While the Constitution does not enforce a strict separation of powers, it lays the framework for administrative functions, including the establishment of tribunals, public sector responsibilities, and government accountability.

2. **Acts/Statutes**: Legislative bodies at both the central and state levels pass Acts to maintain order, collect taxes, and promote social and economic development. These laws empower administrative bodies to carry out various functions. They outline the administration's duties, limit their powers in certain areas, and establish systems for addressing grievances from individuals affected by administrative decisions.

3. **Ordinances, Administrative Directions, Notifications, and Circulars**: Ordinances are temporary laws enacted by the executive when the legislature is not in session, allowing the government to respond to urgent situations. Administrative directions, notifications, and circulars are issued by the executive under the authority of various Acts to ensure the effective implementation of the law.

4. **Judicial Decisions**: The judiciary plays a crucial role in shaping administrative law. Courts serve as the ultimate decision-makers in disputes involving the government and its citizens. Through their rulings, courts establish legal principles that guide future administrative actions, including the proper use of government power and liability for breaches of duty or tortious acts by government officials.

❖ Administrative Discretion

It is practically unavoidable for the government to function without granting some level of discretion to its officials, given the variety of situations and circumstances that arise. However, because this discretion can potentially be misused, it is crucial to establish mechanisms that ensure it is exercised fairly and responsibly.

Administrative discretion refers to the authority granted to administrative bodies to make decisions from a range of alternatives, but within the confines of reason, justice, and established rules, rather than personal preferences. The use of discretion must be grounded in legality and consistency, avoiding arbitrariness or vague and unpredictable actions.

❖ Judicial Control over Administrative Actions

Public administration holds significant authority in addressing the needs of citizens within a modern democratic welfare state. This substantial power creates opportunities for arbitrary actions. Therefore, it is essential to regulate this authority through judicial oversight.

The primary goal of judicial control is to prevent the abuse or misuse of power by administrative authorities, ensuring that individuals are treated fairly and justly.

Modes of Judicial Control

(A) **Constitutional**: The Indian Constitution stands as the supreme law, with all state organs deriving their authority from it. The Constitution explicitly enables judicial review, allowing the judiciary to examine laws to ensure they comply with constitutional principles. If any law is found to violate the Constitution, the court has the power to declare it invalid and void.

Judicial Review: One of the most significant checks on administrative actions is judicial review. This refers to the power of the courts to invalidate legislative and executive actions if they are deemed unconstitutional. Judicial review allows higher courts to assess and nullify actions taken by government bodies that conflict with constitutional standards. It does not involve revisiting the outcome of decisions but instead focuses on reviewing how those decisions were made. Judicial review ensures that the process of decision-making aligns with constitutional mandates.

Concerns during Judicial Review

Judicial review by the court focuses on the following aspects:

1. Whether the decision-making authority has exceeded its granted powers.
2. Whether an error of law has been made.
3. Whether there has been a violation of the principles of natural justice.
4. Whether the decision made is one that no reasonable tribunal would have arrived at.
5. Whether there has been an abuse of power.

Judicial review occurs at two key stages: (i) During the delegation of discretionary power, and (ii) When the administrative discretion is exercised.

(i) **Judicial Review at the Stage of Delegation of Discretion**
The court oversees the delegation of discretionary powers to administrative authorities by assessing the constitutionality of the law under which these powers are granted, particularly with regard to the fundamental rights outlined in Part III of the Indian Constitution. If the law grants broad and ambiguous discretionary powers, it can be declared ultra vires under Articles 14, 19, and other provisions of the Constitution.

- **Administrative Discretion and Article 14:** The principle of equality under Article 14 does not demand that everyone be treated identically, disregarding their differences. In fact, treating unequals equally would violate the right to equality. Therefore, reasonable classification is permitted, provided there is a rational connection between the classification and its objective, and it is not applied arbitrarily. The courts ensure that administrative bodies do not engage in unjustified classifications.
- **Administrative Discretion and Article 19:** Article 19 guarantees specific freedoms to Indian citizens, but these freedoms are not absolute. Restrictions can be imposed, but they must be reasonable and are subject to judicial review. Administrative discretion may affect these freedoms, and the court ensures that such restrictions do not exceed the limits set by the Constitution. The general rule is that executive power should not be exercised arbitrarily, and there must be appropriate oversight to prevent unchecked authority.

(ii) **Judicial Review at the Stage of Exercise of Discretion**
In India, courts have developed various approaches to regulate the exercise of administrative discretion, generally falling into two categories:

1. **Abuse of Discretion:** This occurs when an authority fails to exercise its discretion in a fair or appropriate manner.
2. **Non-application of Mind:** This refers to a situation where the authority is deemed not to have properly considered the relevant factors in making a decision.

Self-Check Exercise-1

Q.1 Administrative law determines the organization, powers and duties of administrative authorities. True/False

Q.2 Judicial Review is the biggest check over administrative discretion. True/False

4.3 MODES OF JUDICIAL CONTROL & ABUSE OF DISCRETION

ABUSE OF DISCRETION

Malafides	If discretionary power is used by an authority with dishonest intentions or in bad faith, the court can annul the action. Malafide, or bad faith, refers to actions taken with corrupt motives or dishonest intentions. When applied to the exercise of statutory powers, it may involve dishonesty (or fraud) and malice. A power is considered exercised fraudulently if the individual using it seeks to achieve a goal that is different from the one for which the power was originally granted.

	Irrelevant considerations	When a statute grants power for a specific purpose, using it for a different objective is not considered a legitimate use of that power and may be invalidated by the courts. If an administrative authority considers factors or circumstances that are irrelevant or unrelated to the purpose outlined in the statute, the administrative action can be deemed invalid.
	Leaving out relevant considerations	The administrative authority exercising the discretionary power is required to take into account all the relevant facts. If it leaves out relevant consideration, its action will be invalid.
	Arbitrary orders	The order made should be based on facts and cogent reasoning and not on the whims and fancies of the adjudicatory authority.
	Improper purpose	The discretionary power is required to be used for the purpose for which it has been given. If it is given for one purpose and used for another purpose it will amount to abuse of power.
	Colourable exercise of power	When discretionary power is used by an authority for the intended purpose but, in reality, is exercised for a different reason, it is considered a misuse of discretion. This is referred to as a "colourable exercise" of power and can lead to the action being deemed invalid.
	Non-compliance with procedural requirements and principles of natural justice	If a statute specifies mandatory procedural requirements and they are not followed, the exercise of power will be deemed invalid. The court determines whether the procedural requirements are mandatory or merely directive. Additionally, the principles of natural justice must be adhered to in such cases.
	Exceeding jurisdiction:	The authority is required to exercise the power within the limits or the statute. Consequently, if the authority exceeds this limit, its action will be held to be *ultra vires* and, therefore, void.

(b) **Non Application of Mind**

- **Acting under Influence:** When an authority exercises its discretionary powers based on instructions or pressure from a superior, rather than making an independent decision, it is considered as failing to exercise its own discretion. In such cases, the decision or action taken is invalid because the authority is not genuinely applying its own judgment.

Case Law: *Commissioner of Police v. Gordhandas Bhanji, 1952*
Facts: The Police Commissioner, responsible for issuing licenses for cinema theatre construction, granted a license but later revoked it under the government's direction.
Judgment: The cancellation was deemed invalid as the Commissioner did not independently apply his judgment and instead acted based on the government's instructions.

- **Self-Imposed Restrictions:** When an authority limits its discretion by adhering strictly to predetermined policies or rules, it undermines the individual assessment of each case. Discretionary power must be exercised based on the specifics of each case, and fixed rules should not unduly restrict the authority's ability to make decisions.
- **Mechanical and Careless Decision-Making:** When an authority fails to carefully consider a matter requiring discretion, and acts in a mechanical or negligent manner, the decision is considered legally invalid due to the lack of genuine deliberation.

(A) Statutory: The method of statutory review can be divided into two parts:

(i) *Statutory appeals:* There are some Acts, which provide for an appeal from statutory tribunal to the High Court on point of law. e.g. Section 30 Workmen's Compensation Act, 1923.

(ii) *Reference to the High Court or statement of case:* There are several statutes, which provide for a reference or statement of case by an administrative tribunal to the High Court

(B) Ordinary or Equitable

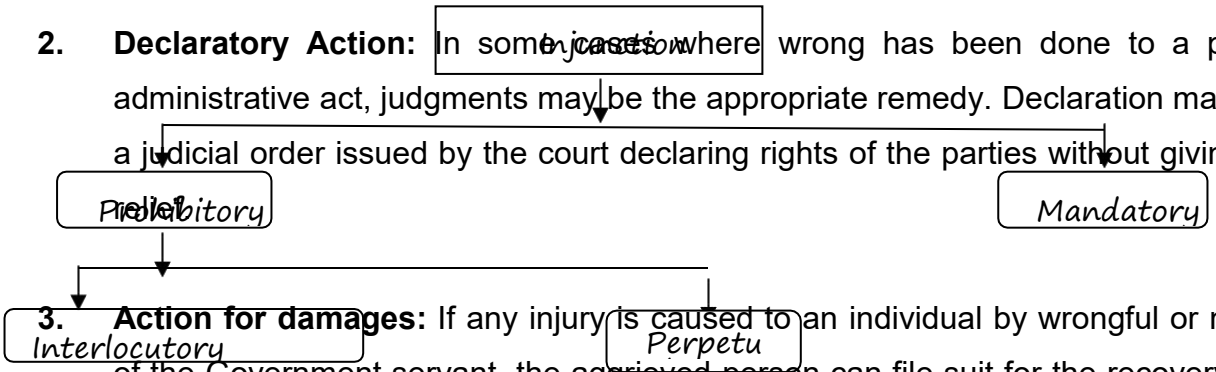
In addition to the remedies previously discussed, there are other common remedies available to individuals challenging administrative actions. These remedies are provided by ordinary courts under regular laws and are also referred to as equitable remedies. They include the following:

1. **Injunction**: An injunction is a preventative legal remedy where a court orders an individual or entity to stop performing a specific action or to refrain from a wrongful act that is either already happening or is about to happen. In India, injunctions are governed by the *Specific Relief Act, 1963*. This remedy can be issued against both administrative and quasi-judicial bodies to prevent them from acting beyond their legal powers or in violation of the law. It is particularly useful in cases where an administrative body is engaging in acts beyond its authority (ultra vires).

(a) **Prohibitory Injunction**: A prohibitory injunction prevents the defendant from engaging in an act that would infringe upon the plaintiff's legal rights. It can take the following forms:

1. **Interlocutory or Temporary Injunction**: A temporary injunction is a provisional remedy granted to maintain the current situation until the court hears the case and delivers a final decision. It can be granted at any stage of a lawsuit and is regulated by the Civil Procedure Code.
2. **Perpetual Injunction**: A perpetual injunction is issued after the full proceedings and is intended to provide a final resolution on the rights of the parties. While it may not always be expressed as having an indefinite duration, it could be granted for a specific period or contingent on certain conditions. The court may also suspend its operation temporarily to allow the defendant to comply with imposed conditions, after which the plaintiff has the opportunity to respond.

(a) **Mandatory Injunction**: A mandatory injunction is granted when it is necessary to compel the performance of specific actions to prevent the violation of a legal duty. This type of injunction requires the defendant to take corrective measures or to fulfill an obligation that the court deems necessary. It may require the defendant to restore a situation to its original state or undo any actions that have already been taken. Essentially, it not only prevents the defendant from continuing wrongful conduct but also imposes a positive duty to act in a specific way.



2. **Declaratory Action:** In some cases where wrong has been done to a person by an administrative act, judgments may be the appropriate remedy. Declaration may be taken as a judicial order issued by the court declaring rights of the parties without giving any further relief.

3. **Action for damages:** If any injury is caused to an individual by wrongful or negligent acts of the Government servant, the aggrieved person can file suit for the recovery of damages from the Government concerned.

Self-Check Exercise-2

Q.1 What do you understand by injunction? It is a judicial process by which one who has invaded or is threatening to invade the rights of another is restrained from continuing or commencing such wrongful act.

Q.2 Malafides and Irrelevant considerations comes under abuse of discretion.True/False

4.4 SUMMARY:

In Summary, the Unit on Judicial Control provides a comprehensive exploration of the mechanisms through which courts ensure accountability and fairness in administrative actions. By delving into principles such as judicial review, jurisdictional competence, and procedural propriety, students gain a nuanced understanding of how the judiciary upholds the rule of law. This Unit

underscores the vital role of judicial control in balancing governmental powers, protecting individual rights, and maintaining the integrity of the legal system. As future leaders in law and governance, postgraduate students are encouraged to critically engage with these concepts to contribute meaningfully to the evolution of administrative justice.

Moreover, the Unit elucidates the dynamic relationship between administrative discretion and judicial oversight, emphasizing the importance of robust legal frameworks in democratic societies. By analyzing landmark cases and theoretical perspectives, students are equipped to navigate complex legal scenarios and advocate for equitable outcomes. This exploration not only enhances their theoretical understanding but also cultivates practical skills essential for effective legal practice. Ultimately, the study of judicial control inspires a commitment to upholding constitutional principles and ensuring accountability in public administration, thereby reinforcing the foundational pillars of justice and governance in contemporary society.

4.5 Glossary

- **Discretion** - the freedom and power to make decisions by yourself.
- **Statutory** - decided or controlled by law.
- **Ordinance** - an order or rule made by a government or somebody in a position of authority

4.6 Answers to self check exercises

Self-Check Exercise-1

Q.1 True

Q.2 True

Self-Check Exercise-2

Q.1 It is a judicial process by which one who has invaded or is threatening to invade the rights of another is restrained from continuing or commencing such wrongful act.

Q.2 True

4.7 References/Suggested Readings

- https://www.academia.edu/23092337/Title_PRINCIPLES_OF_NATURAL_JUSTICE_IN_THE_LIGHT_OF_ADMINISTRATIVE_LAW_An_Analytical_and_comprehensive_study_of_Principle_of_natural_justice_especially_in_the_field_Of_administrative_law
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- *Mohinder Singh Gill vs. Chief Election Commissioner AIR 1978 SC 851*
- *Province of Bombay vs. Khushaldas Advani AIR 1950 SC 222*
- *Board of high school vs. Ghanshyam AIR 1962 SC 1110*
- *High water mark case- Eurasian equipment and company limited vs. State of West Bengal AIR 1975 SC 266*
- *Ramanand Prasad Singh vs. UOI, AIR 1996 SCC 64*
- *Muralidhar vs. Kadam Singh AIR 1954 MP*

4.8 Terminal questions

Q1 Discuss the various various modes of judicial control on administration.
Q2 Bring out the various points to elucidate the abuse of administrative discretion.
Q3 What are the various sources of administrative law.

UNIT-5

PRINCIPLES OF NATURAL JUSTICE

Structure

5.0 Introduction: A fundamental principle in the administration of justice is that justice must not only be executed but also perceived to be executed. This is essential for fostering public trust in the judicial system. The concept of natural justice, rooted in Common Law, outlines procedural principles established by judges.

While the principles of natural justice do not consist of fixed, unchanging rules, their application can vary based on the situation. Nonetheless, these principles form the core upon which judicial oversight of administrative actions is built. In India, the principles of natural justice are derived from Articles 14 and 21 of the Constitution. Courts have consistently emphasized the necessity for administrative bodies to adhere to basic fair procedures, including these natural justice principles.

Learning Objectives

After studying this lesson, the learner will be able to

- Know the principles of natural justice
- Acquaint with exception of natural justice
- Know effect of failure of natural justice

5.2 Principles of Natural Justice:-

The concept of natural justice encompasses several principles, one of which is the *Rule Against Bias* (nemojudex in causa sua). This rule asserts that an individual should not act as a judge in their own

case. Bias refers to any prejudice, whether conscious or unconscious, that affects a person's judgment regarding a party or issue. Bias can be categorized into three types:

- **Pecuniary Bias**: The prevailing judicial opinion is that any financial interest, however minimal, that an adjudicator may have in the matter at hand can invalidate the process. A financial interest, no matter how small, disqualifies a person from serving as a judge.

- **Personal Bias**: Various situations may lead to personal bias, such as if a judge has a close personal relationship with one of the parties involved—whether through friendship, family ties, or professional connections. Hostility toward a party may also create a bias. In such cases, the judge must recuse themselves as the bias would undermine the fairness of the decision.

- **Subject Matter Bias**: This occurs when a judge has a personal stake in the issue being decided or a direct connection with the case. To justify disqualification on these grounds, the link between the judge and the matter in dispute must be both close and direct.

Subject matter bias can be further divided into the following categories: a) Partiality or direct involvement with the issue at hand b) Departmental bias c) Prior public statements or preconceptions about the matter d) Acting under external influence

Another core principle of natural justice is the *Rule of Fair Hearing* (audi alteram partem), which ensures that no individual is judged without having the opportunity to be heard. This rule mandates that both parties be allowed to present their case before a decision is made. Key components of this principle include:

- **Right to Notice**: A fair hearing begins with notice from the relevant authority, informing the affected individual of the charges or claims against them. Without proper notice, an individual cannot adequately prepare a defense. The notice should be clear, unambiguous, and allow sufficient time for preparation.

- **Right to Present a Case and Evidence**: The individual facing proceedings must be given a full opportunity to present their defense, which typically includes submitting written statements and, where applicable, presenting oral arguments.

- **Right to Rebut Adverse Evidence**: To ensure fairness, the adjudicator must disclose any evidence that may be used against a party, giving them the chance to challenge or rebut it.

    - **Cross-Examination**: Cross-examination is the process by which a party can question a witness brought by the opposing side. Its purpose is to expose inconsistencies or falsehoods in the witness's testimony.

    - **Legal Representation**: While legal representation is not mandatory in all administrative proceedings, its denial in complex, technical, or serious matters can violate the principles of natural justice. In such cases, access to legal counsel ensures that the individual can effectively present their defense.

- **Disclosure of Evidence**: For a hearing to be fair, all material evidence that will be used against a party must be made available to them. This allows the affected party to challenge or respond to the evidence adequately.

- **Reasoned Orders**: A reasoned decision, or a "speaking order," is an essential part of natural justice. It ensures transparency by providing the reasoning behind the decision. Parties have the right to understand the rationale for any decision made against them, which is why many authorities are legally obligated to explain their decisions in detail.

By ensuring these principles are adhered to, the process of adjudication is made fair and just, preserving the integrity of the legal system.

Self-Check Exercise-1

Q.1 What is subject matter bias? A judge may have a bias in the subject matter, which means that he himself is a party, or has some direct connection with the litigation. To disqualify on the ground of bias there must be intimate and direct connection between adjudicator and the issues in dispute

Q.2 Judicial Review is the biggest check over administrative discretion. True/False

5.3 Exceptions to Natural Justice

Statutory Exclusion: The principles of natural justice may be excluded if a statute explicitly or implicitly provides for such exclusion. In these cases, courts will uphold the statutory provisions. However, in India, since Parliament is not above the Constitution, any statutory exclusion must align with constitutional principles and can be challenged if it contradicts constitutional provisions.

Emergency Situations: In certain urgent or emergency situations where immediate action is necessary, the full application of natural justice may be waived. For instance, when swift action is required to protect public safety or morality, the usual requirement for a pre-decision hearing can be bypassed to prevent delay that could harm public interest.

Temporary Disciplinary Action: The rules of natural justice do not necessarily apply to interim disciplinary actions. For example, if an employee is suspended pending an investigation, this suspension is a temporary measure, and the application of natural justice does not usually extend to such interim orders.

Academic Decisions: In cases where a student is expelled from an educational institution due to poor academic performance, the principles of natural justice may not be applicable.

Practical Limitations: When an authority has to deal with a large number of individuals, it may be impractical to offer each person an opportunity to be heard. In such circumstances, courts may not insist on strict adherence to the rules of natural justice.

Effect of Failure of Natural Justice

Government Accountability

The Indian Constitution permits both central and state governments to engage in contracts.

Key Elements for a Valid Government Contract:
For a contract with the government to be valid and enforceable, the following criteria must be met:

1. The contract must be made in the name of the President or Governor of the respective state.
2. The contract must be executed in writing.
3. The execution should be carried out by an individual authorized by the President or Governor.

If a government contract complies with these requirements, the President or Governor becomes personally accountable. The Supreme Court has clarified that these conditions are mandatory, and contracts made without adherence to them are void. Such contracts cannot be ratified or enforced.

Quasi-Contractual Accountability

Under Section 70 of the Indian Contract Act, 1872, when an individual performs a service or delivers something for another person who benefits from it, the beneficiary is obliged to compensate the individual or restore what was delivered. If the criteria in Section 70 are met, even the government may be required to compensate for services rendered or work done by an individual on its behalf.

Tort Liability

A tort is a civil wrong resulting from the breach of a legal duty or a non-contractual obligation, with the primary remedy being damages. The breach of a duty owed to the public distinguishes torts from civil wrongs arising from contractual violations. Not all civil wrongs are classified as torts, as torts arise from a duty owed to the general public, whereas contract breaches are specific to the parties involved.

Vicarious Liability: When one person is held accountable for the actions of another, it is referred to as vicarious liability. For instance, if a servant causes harm through negligence, both the servant and their employer can be held liable. Similarly, the state may be vicariously liable for torts committed by its employees in the course of their duties.

Compensation: If a public servant acts negligently, it may be difficult to obtain compensation directly from the individual, especially if the act was unintentional. In such cases, the focus should be on providing compensation to the affected party rather than punishing the public servant. Therefore, like any employer, the state should be held vicariously liable for the wrongful actions of its employees.

Indian courts are increasingly recognizing cases of administrative negligence and excesses, leading to decisions where the government is held liable for damages, even when the defense of sovereign immunity might have otherwise absolved it.

Responsibility of Public Servants

The state's liability must be differentiated from the accountability of individual state officers. If public servants exceed their authority or act unlawfully, they are personally liable. However, public servants who act in good faith and within the scope of their duties, without bias or malice, cannot be held personally liable for damages.

Liability of Public Corporations

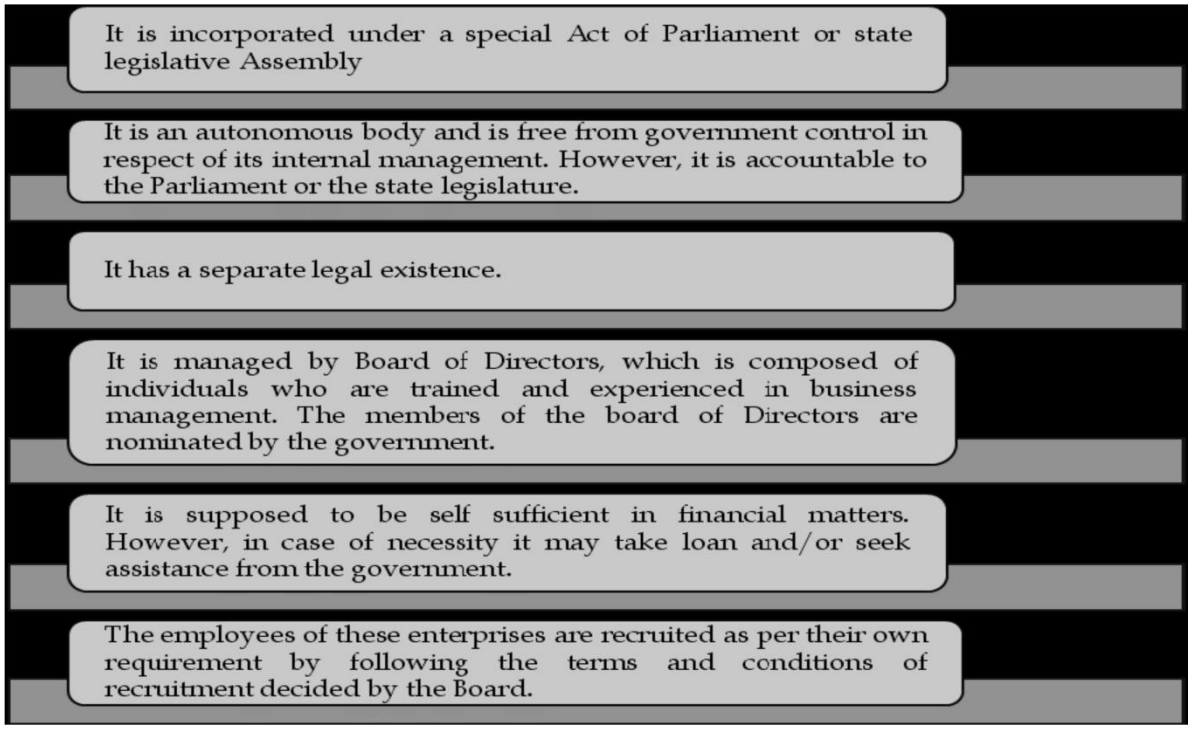
A Statutory Corporation (or Public Corporation) is an entity created under specific legislative acts, either by Parliament or state legislatures. These corporations have defined management structures, powers, and operational areas as stipulated by the governing Act. Multiple corporations can be established under the same Act, such as State Electricity Boards or State Financial Corporations.

Public corporations operate independently from the government, and their employees are not considered government employees. As a result, the government is not liable for the actions of public corporation employees. However, based on the principle of vicarious liability, the corporation itself is responsible for compensating any wrongs committed by its employees or officers.

Examples of Public Corporation

Life Insurance Corporation, Food Corporation of India (FCI), Oil and Natural Gas Corporation (ONGC), Air India, State Bank of India, Reserve Bank of India, Employees State Insurance Corporation, Central Warehousing Corporation, Damodar Valley Corporation, National Textile Corporation, Industrial Finance Corporation of India (IFCI), Tourism Corporation of India, Minerals and Metals Trading Corporation (MMTC) etc are some of the examples of Public Corporations.

The main features of Statutory Corporations are as follows:



A public corporation, also known as a statutory corporation, is an entity distinct and separate from the Government. It does not function as a department or arm of the Government. As a result, its employees are not considered government employees and do not have the protections afforded by Article 311 of the Constitution. However, it is important to note that a public corporation is classified as a "State" under Article 12 of the Constitution, meaning that fundamental rights can be enforced against it. Public corporations are also included under the term "other authorities" and are thus subject to judicial review through writ petitions, either in the Supreme Court under Article 32 or in the High Courts under Article 226 of the Constitution.

Self-Check Exercise-2

Q.1 What is tortuous liability? A tort is a civil wrong arising out of breach of a civil duty or breach of non-contractual obligation and the only remedy for which is damages

Q.2 Judicial Review is the biggest check over administrative discretion. True/False

5.4 Summary: In Summary, the Unit on Judicial Control provides a comprehensive exploration of the mechanisms through which courts ensure accountability and fairness in administrative actions. By delving into principles such as judicial review, jurisdictional competence, and procedural propriety, students gain a nuanced understanding of how the judiciary upholds the rule of law. This Unit underscores the vital role of judicial control in balancing governmental powers, protecting individual rights, and maintaining the integrity of the legal system. As future leaders in law and governance, postgraduate students are encouraged to critically engage with these concepts to contribute meaningfully to the evolution of administrative justice.

Moreover, the Unit elucidates the dynamic relationship between administrative discretion and judicial oversight, emphasizing the importance of robust legal frameworks in democratic societies. By analyzing landmark cases and theoretical perspectives, students are equipped to navigate complex legal scenarios and advocate for equitable outcomes. This exploration not only enhances their theoretical understanding but also cultivates practical skills essential for effective legal practice. Ultimately, the study of judicial control inspires a commitment to upholding constitutional principles and ensuring accountability in public administration, thereby reinforcing the foundational pillars of justice and governance in contemporary society.

5.5 Glossary

- **Discretion** - the freedom and power to make decisions by yourself.
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5.6 Answers to self check exercises

Self-Check Exercise-1

Q.1 A judge may have a bias in the subject matter, which means that he himself is a party, or has some direct connection with the litigation. To disqualify on the ground of bias there must be intimate and direct connection between adjudicator and the issues in dispute

Q.2 True

Self-Check Exercise-2

Q.1 A tort is a civil wrong arising out of breach of a civil duty or breach of non-contractual obligation and the only remedy for which is damages.

Q.2 True

5.7 References/Suggested Readings

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- *Ramanand Prasad Singh vs. UOI, AIR 1996 SCC 64*
- *Muralidhar vs. Kadam Singh AIR 1954 MP*

5.8 Terminal questions

Q1 Discuss the various modes of judicial control on administration.
Q2 Bring out the various points to elucidate the abuse of administrative discretion.
Q3 What are the various sources of administrative law.

UNIT-II

UNIT-6

JUDICIAL REVIEW

Structure

6.0 Learning Objectives

After studying this lesson, the learner will be able to

- Know the need , history, importance and scope of judicial review
- Acquaint with the features of judicial control

6.1 Introduction

Law plays a crucial role in modern society. In exchange for protection against wrongdoing, individuals relinquish certain rights and enter into a social contract with the government. This idea is outlined in the Social Contract Theory, proposed by Hobbes. Within the framework of the Rule of Law, laws without justice can become arbitrary and subject to misuse. To maintain checks and balances on the power of government institutions, Judicial Review has been established. Judicial Review is a process by which the judiciary declares any law that contradicts the Constitution as invalid. This principle was borrowed from the United States Constitution and took several years to be incorporated into India's legal framework. The judiciary has been instrumental in this process. Judicial Review can apply to Constitutional Amendments, legislative actions, and laws enacted by the legislature. This paper explores the history, development, characteristics, and types of Judicial Review, along with relevant Indian case laws.

In India, the government is divided into three branches: the Legislature, the Executive, and the Judiciary. The Legislature is responsible for making laws, the Executive enforces them, and the Judiciary ensures that both branches operate within constitutional boundaries. To maintain the proper functioning of these branches, the Indian Constitution provides for the Separation of Powers, as outlined in Article 50.

Unlike the strict separation of powers seen in the United States, India follows a more flexible approach. Judicial Review, derived from the American model, grants the judiciary the authority to invalidate any law that conflicts with the Indian Constitution. Under Article 13(2), any law enacted by Parliament that violates the rights granted in Part 3 of the Constitution is considered void from the outset. The judiciary holds the responsibility for interpreting the Constitution comprehensively, acting as its protector. Judicial Review is explicitly provided for in various constitutional provisions, including Articles 13, 32, 131-136, 143, 226, 145, 246, 251, 254, and 372.

Article 372(1) allows for Judicial Review of pre-constitutional laws that were in effect before the Constitution's adoption. Article 13(2) further asserts that any post-constitutional law passed by Parliament that violates constitutional rights is void. The Supreme Court and High Courts are tasked with safeguarding the fundamental rights granted by the Constitution. If an individual's fundamental rights are infringed upon, they can approach the courts under Articles 32 or 226. Articles 251 and 254 establish that, in case of conflict between Union and State laws, Union law prevails, and State law is deemed void.

6.2 Need, History, Importance, and Scope of Judicial Review

The concept of judicial review arises from the principle of the separation of powers. This principle, also known as checks and balances, is a constitutional doctrine that ensures the three branches of government—the executive, the legislature, and the judiciary—remain distinct from one another. Each branch has its own set of powers and is generally prohibited from exercising the functions of another branch. Therefore, the judiciary cannot replace or interfere with the roles of the executive or the legislature.

Judicial review has been a vital component of the Indian legal system, as evidenced by landmark cases such as L. Chandra Kumar v. Union of India (1997), Indira Nehru Gandhi v. Shri Raj Narain (1975), Golakhnath v. State of Punjab (1967), and Minerva Mills Ltd. v. Union of India (1980). These cases reflect the judiciary's role in upholding the Constitution, particularly when legislative actions conflict with constitutional principles.

Judicial review has recently been in the spotlight, notably in the case where the Supreme Court of India permitted a floor test in the Maharashtra Assembly. A key issue raised in this case was whether the court had the authority to review the Governor's decision. Senior advocate Dr. A.M. Singhvi argued that the court indeed had the authority to use judicial review to assess the Governor's satisfaction in calling for a floor test.

An example of judicial review also emerged from the United States, in the Dobbs v. Jackson Women's Health case, where the U.S. Supreme Court overturned Roe v. Wade (1973), reshaping abortion laws.

History of Judicial Review

The concept of judicial review can be traced back to the Dr. Bonham Case, where Dr. Bonham was prohibited from practicing medicine in London by the Royal College of Physicians due to lacking a license. The case is notable for violating the principles of natural justice, as there was pecuniary bias—since the fine was to be shared between the King and the College.

However, the concept of judicial review was firmly established in the famous Marbury v. Madison case in 1803. When President John Adams, of the Federalist Party, appointed judges on his last day in office, his successor, Thomas Jefferson of the Anti-Federalist Party, refused to deliver the appointment letters. Marbury, one of the appointees, filed a writ of mandamus with the Supreme Court, which ultimately refused to hear the case, thereby asserting the Court's power to review legislative actions. This marked the development of judicial review in the United States.

Importance of Judicial Review

Judicial review holds significant value for several reasons:

It prevents the executive from becoming tyrannical.

It protects citizens' fundamental rights.

It is essential for preserving the independence of the judiciary.

It is vital for maintaining the supremacy of the Constitution.

It helps curb the misuse of power by both the legislature and the executive.

It ensures the balance of power between the central and state governments in a federal system.

Scope of Judicial Review

While judicial review is a crucial aspect of the legal system, it is not unlimited. Courts can only question a law under specific circumstances:

If the law violates fundamental rights as guaranteed by the Constitution.

If the law contravenes provisions within the Constitution.

If the law exceeds the power or authority granted to the official(s) who enacted it.

Self-Check Exercise-1

Q.1 Judicial Review averts the tyranny of executives. True/False

Q.2 Judicial Review helps in intercepting the misuse of power by the legislature and the executive. True/False

6.3 Features, Functions & Grounds of Judicial Review

Article 226 of the Indian Constitution allows individuals to approach the High Court if they believe a fundamental or legal right has been violated. Similarly, Article 32 grants the right to move the Supreme Court for violations of fundamental rights or legal questions. However, the ultimate authority for interpreting the Constitution rests with the Supreme Court, whose decisions are binding across the country.

Judicial Review of Laws from Both the State and Central Governments:

Laws enacted by both the central and state governments are subject to judicial review. This includes all laws, orders, ordinances, by-laws, constitutional amendments, and other notifications, as outlined in Article 13(3) of the Constitution of India.

Judicial Review Is Not Automatically Applied:

Judicial review does not automatically come into effect. It must be invoked when a legal question or rule is challenged in court. The Supreme Court does not initiate judicial review on its own; it can only exercise this power when a relevant case is presented before it.

Judicial Review Is Not Suo Motu:

Neither the Supreme Court nor the High Court exercises judicial review on its own initiative (suo motu). Instead, judicial review is invoked when a legal issue is raised before the courts or when a case arises during proceedings where the legality of a law is questioned.

Principle of Procedure Established by Law:

Judicial review operates under the principle of "Procedure established by law," as enshrined in Article 21 of the Indian Constitution. Laws must pass constitutional scrutiny to be valid. If a law does not meet the constitutional standards, the court has the authority to declare it null and void.

Functions of judicial review

Judicial review has two vital functions, namely:

1. Of making the actions of the government legitimate, and
2. To secure the Constitution from any undue encroachment by the government.

Judicial review can be done by whom?

Judicial review is the principle that allows the judiciary to evaluate and assess the actions of the executive and legislative branches of government. While the Indian Constitution follows the principle of separation of powers, where the executive, legislature, and judiciary function independently, the judiciary has been granted the responsibility of overseeing the actions of the other two branches.

In India, both the High Courts and the Supreme Court hold the authority to conduct judicial review. The High Courts derive their power to review from Article 226 and Article 227 of the Constitution, while the Supreme Court's powers for judicial review are outlined in Articles 32 and 136.

Grounds for Judicial Review

Constitutional Amendments

Judicial review applies to constitutional amendments, specifically when they conflict with Fundamental Rights. Amendments found to violate these rights are deemed unconstitutional and void. The history of judicial review in this area is marked by numerous cases, such as Shankari Prasad v. Union of India, Sajjan Singh v. State of Rajasthan, I.C. Golaknath v. State of Punjab, Kesavananda Bharti v. State of Kerala, and I.R. Coelho v. State of Tamil Nadu, where amendments challenging constitutional validity were reviewed and declared unconstitutional if found in conflict with the Constitution.

Illegality and Lack of Jurisdiction

An administrative action without proper jurisdiction is considered void. For example, if an authority lacks the power to carry out a specific act, any action taken by that authority is deemed non-existent in the eyes of the law. In R. v. Minister of Transport (1934), a minister's order to revoke a license, though lacking proper authority, was deemed ultra vires (beyond their power). Similarly,

in Rafiq Khan v. State of U.P. (1954), the Allahabad High Court found that the Sub-Divisional Magistrate did not have the jurisdiction to modify a Panchayat Adalat's conviction order. The court used certiorari to annul the actions.

- Administrative actions can be reviewed on the following grounds:
- The rules under which the authority operates are unconstitutional.
- The authority was not properly constituted according to law.
- The authority made decisions based on jurisdictional facts it did not have.
- Essential conditions for the exercise of jurisdiction were ignored.
- The authority was incompetent to act in relation to the subject matter or the parties involved.

Excess of Jurisdiction

An administrative body must act within its defined powers. If it exceeds its jurisdiction, its actions will be considered ultra vires (beyond its legal authority) and void. In County Council v. Attorney General (1902), a local authority permitted to operate tramways began operating buses, a service outside its authorized scope. The court declared the action ultra vires and void.

Abuse of Jurisdiction

Authorities must exercise their powers in good faith and for their designated purpose. Any misuse of power for improper reasons (mala fide) constitutes abuse of jurisdiction. In Pratap Singh v. State of Punjab (1964), a civil surgeon's suspension and dismissal, seemingly done to settle personal scores with the Chief Minister, was ruled mala fide. The Supreme Court quashed the dismissal, as the actions were not conducted in good faith.

Abuse of jurisdiction may, inter alia, occur in some of the instances as under-

Malfeasance in office/improper purpose

Administrative powers must only be used for their intended purpose. In the case of *Attorney-General v. Fulham Corporation*, the administration was legally authorized to establish warehouses for non-commercial use by local residents. However, the corporation proceeded to open a commercial laundry, which was deemed an overstep of their legal authority, and the action was ruled to be ultra vires.

A mistake apparent on the face of the record

A mistake is considered apparent when it can be identified directly from the record without the need for additional information. In the case of Syed Yakoob v. K.S. Radhakrishnan (1963), the Supreme Court recognized an obvious legal error in the record when the decision made by a lower tribunal was based on the following issues:

1. A clear misinterpretation of the relevant legal provisions,
2. Ignorance of the correct law,

3. Disregard for the proper legal framework,
4. Conclusions based on incorrect legal reasoning.

Consideration of extraneous material

When exercising authority, the decision-maker must consider all relevant factors and disregard those that are trivial. In the case of *R v. Somerset County Council, ex p Fewings* (1955), the local authority imposed a ban on stag hunting on council-owned land designated for recreational use. The Court of Appeal acknowledged that, in certain circumstances, it is justifiable to ban activities such as stag hunting. In this instance, factors like animal welfare and social considerations were deemed relevant in making the decision.

Mala fide management of power

When a decision is made with dishonest intentions or an ulterior motive, it can be considered as having been made in bad faith. In the case of *R v. Derbyshire County Council, ex p Times Supplements* (1991), the local education authorities were tasked with notifying qualified individuals to fill certain job vacancies. The Times newspaper had already published articles that were seen by many potential applicants. However, despite this, the Council chose to stop advertising the vacancies in the paper. This decision was challenged in court, and the Derbyshire County Council was found to have made the decision not on educational grounds, but due to a malicious intent to retaliate, thus acting in bad faith.

Fettering discretion

An authority may act beyond its legal power, or *ultra vires*, if it exercises a particular power, such as implementing a policy, without giving it proper consideration, effectively failing to use its discretion. This principle was demonstrated in the case of *H. Lavender & Sons v. Minister of Housing & Local Government* (1970). In this case, the local planning authority denied permission to Lavender to extract additional sand and gravel from high-quality agricultural land. Lavender appealed to the Minister of Housing and Local Government, but the appeal was rejected because the Minister of Housing and Local Government was influenced by the Minister of Agriculture, who argued that the land should be preserved for agricultural use. The court overturned the decision, noting that the Minister of Housing and Local Government had failed to exercise independent judgment and instead relied solely on the views of another minister, thus restricting his discretion.

Failure to exercise jurisdiction

When an administrative authority is granted discretionary power by law, it is expected to be used appropriately. Failure to exercise such discretion can occur under several conditions, including:

1. Unauthorized delegation of authority,
2. Imposing limitations on the exercise of discretion,
3. Acting based on the instructions of a superior,
4. Failure to properly consider relevant factors,
5. A situation where power is linked with a duty but is not exercised accordingly.

Types of Judicial Review

Justice Syed Shah Mohamed Quadri identified three primary categories of judicial review, which are as follows:

1. Review of Legislative Actions

This form of judicial review assesses whether the laws passed by the legislature comply with constitutional provisions. Several important Supreme Court cases have addressed this, including:

- **Shankari Prasad Case**: In *Shankari Prasad vs. Union of India* (1951), a challenge was raised regarding the First Amendment of 1951, specifically concerning the restriction of the 'Right to Property'. The Court ruled that fundamental rights under Article 13 could not be restricted by constitutional amendments.
- **Sajjan Singh Case**: In *Sajjan Singh vs. State of Rajasthan* (1965), the Court upheld the 17th Amendment of 1964, rejecting the position in *Shankari Prasad* and ruling that constitutional amendments under Article 368 are not subject to judicial review.
- **Golaknath Case**: In *I.C. Golaknath vs. State of Punjab* (1967), challenges were made against three constitutional amendments. The Court ruled that Parliament could not amend the Constitution or limit fundamental rights under Article 368.
- **Kesavananda Bharati Case**: In *Kesavananda Bharati vs. State of Kerala* (1973), the Court concluded that Parliament cannot alter the basic structure of the Constitution, while acknowledging that changes to the Constitution can be made under Article 368.
- **Indira Gandhi Case**: In *Indira Gandhi vs. Shri Raj Narain* (1975), the Supreme Court found Prime Minister Indira Gandhi guilty of electoral malpractice.
- **Minerva Mills Case**: In *Minerva Mills Ltd. vs. Union of India* (1980), the Court struck down clauses (4) and (5) of Article 368 inserted by the 42nd Amendment (1976), stating that these clauses violated the basic structure of the Constitution.

2. Review of Administrative Actions

Judicial review in this category ensures that administrative actions comply with constitutional principles. The actions of both Union and State governments, along with their officials, fall under the purview of this review.

3. Review of Judicial Decisions

This type of review is used to correct or revise earlier judicial decisions. Notable instances include:

- **Golaknath and Minerva Mills Cases**: Both cases are significant in shaping judicial review related to constitutional amendments and fundamental rights.
- **Bank Nationalisation Case**: In *Rustom Cavasjee Cooper vs. Union of India* (1970), the Court affirmed that individuals whose property was acquired by force are entitled to compensation. This case is famously known as the Bank Nationalisation case.

Self-Check Exercise-2

Q.1 Article 368 of the Constitution provides the President with the power to bring about changes in the Constitution. True/False

Q.2 The core structure of the Constitution can be toppled with or amended by the Parliament. True/False

6.4 Summary

In India, the principle of the separation of powers is central, which means that judicial review cannot be exercised in an absolute or unchecked manner. If courts were to wield unlimited and arbitrary power of judicial review, it could lead to inefficiency and disruption in the functioning of all branches of government. To ensure that each branch performs its duties effectively, it is essential that each operates within its designated sphere. Judicial review, as a concept, is an integral part of the Indian Constitution, designed to maintain a system of checks and balances among the government's three branches.

The role of judicial review in India is significant. It serves as a mechanism to uphold the Constitution and protect fundamental rights guaranteed to citizens. Additionally, it ensures that power is appropriately distributed between the central and state governments, clearly outlining the responsibilities of each branch. The concept of judicial review was further solidified as part of the basic structure doctrine, particularly in the *Minerva Mills v. Union of India* case. Overall, judicial review in India has evolved as a vital safeguard to protect individual rights, curb arbitrary authority, and prevent injustice.

6.5 Glossary

- **Writ** - a legal order to do or not to do something, given by a court of law.
- **Verdict** - the decision that is made by a specially chosen group of people (the jury) in a court of law, which states if a person is guilty of a crime or not.
- **Suo-moto** - relating to an action taken by a court of its own accord, without any request by the parties involved.

6.6 Answers to self-check exercises

Self-Check Exercise-1

Q.1 True

Q.2 True

Self-Check Exercise-2

Q.1 True

Q.2 False

6.7 References/Suggested Readings

6.8 Terminal questions

Q1 What are the various cases in which judicial review can be illegal? Discuss.
Q2 Bring out the various limitations of Judicial Review.
Q3 What are the various provisions of judicial review in Indian Constitution?

UNIT-7

Principles of Judicial Review

Structure

7.0 Introduction: In India, the government is divided into three branches: the Legislature, the Executive, and the Judiciary. The Legislature is responsible for creating laws, the Executive implements them, and the Judiciary oversees both the Legislature and Executive to ensure that the laws are in line with the Constitution. To maintain the proper functioning of these branches within their defined roles, the Constitution of India incorporates the principle of Separation of Powers, as outlined in Article 50.

However, this principle is not as rigidly followed in India as it is in the United States, from which it has been derived. Judicial Review, a concept taken from the U.S. Constitution, grants the Judiciary the authority to annul any law passed by Parliament if it is found to be in violation of the Constitution. According to Article 13(2) of the Indian Constitution, any law that infringes upon the rights guaranteed under Part 3 of the Constitution is considered void from the outset. The Judiciary holds the power to interpret the Constitution fully and acts as its guardian. Judicial Review is further supported by several provisions of the Constitution, including Articles 13, 32, 131-136, 143, 226, 145, 246, 251, 254, and 372.

7.1 Learning Objectives: After studying this lesson, the learner will be able to

- Know the principles and procedure of judicial review
- Acquaint with constitutional provisions and limitations of judicial review

7.2 Principles & Constitutional provisions of Judicial Review

Comity Principle
The principle of comity suggests that different branches of government should work together and respect each other's roles to ensure that all authorities can effectively carry out their duties in accordance with the Constitution's values and rules.

Principle of Subsidiarity
This principle asserts that public functions and powers should be exercised at the most appropriate level, where they can be managed most effectively and responsibly. For example, political issues are best addressed by political authorities, policy decisions by the legislature, and judicial matters by the judiciary.

Principle of Contextuality
According to the principle of contextuality, laws should consider the context in which they are applied. This ensures that the law fulfills its purpose as a tool for societal development and social engineering.

Principle of Proportionality
Under the principle of proportionality, courts use judicial review to assess whether restrictions on rights are balanced against the legitimate objectives they seek to achieve. This principle involves three key aspects:

1. **Assessing the Means**
   The courts examine the methods used by administrative bodies to ensure that the means are within their legal authority, not overly burdensome, and reasonably aligned with the intended goal.
2. **Assessing the End**
   Next, the courts evaluate whether the objectives pursued by the administrative authority are legitimate and within their capacity to accomplish.
3. **Balancing the Means and Ends**
   Finally, the courts check whether there is a reasonable balance between the methods used and the goals sought, ensuring that no excessive harm is caused in pursuit of the objective.

Constitutional provisions for judicial review

Articles	Provisions
Article 13	Declares that laws that are unstable with or in derogation of Fundamental Rights shall be null and void.
Article 32	Ensures the right to move the Supreme Court for the enforcement of fundamental rights and entrusts the Apex Court with the power to issue directions or orders, or writs.
Article 131	Provides for the original jurisdiction of the Apex Court in conflicts related to

	centre-state and inter-state.
Article 132	Provides for the appellate jurisdiction of the Supreme Court in constitutional cases.
Article 133	Provides for the appellate jurisdiction of the Supreme Court in civil cases.
Article 134	Provides for the appellate jurisdiction of the Supreme Court in criminal cases.
Article 134-A	Deals with the certificate for an appeal to the Supreme Court from the high courts.
Article 135	Authorises the Apex Court to exercise the jurisdiction and powers of the federal court under any pre-constitution law.
Article 136	Empowers the Apex Court to bestow special leave to appeal from any court or tribunal (except military tribunals and court-martial).
Article 143	Provides an authority to the President to seek the opinion of the Apex Court on any question of law or fact and on any pre-constitutional legal matters.
Article 226	Certifies the high courts with the power of judicial review and to issue directions or orders or writs for the enforcement of fundamental rights or other objectives.
Article 227	Entrusts the high courts with the authority of superintendence over all courts within their respective territorial jurisdiction (except military courts and tribunals).
Article 245	Deals with the territorial extent set by Parliament and the Legislature of the states.
Article 246	Discusses the subject matter upon which laws can be made by Parliament and by the Legislatures of States (i.e., the Union List, State List, and

	Concurrent List).
Article 251 and Article 254	Deduces the hegemony of the central laws in situations where there is a dispute between the central and state laws. Thus, the central law shall prevail over the state law, and the state law will be considered void.
Article 372	Deals with the continuance in force of the pre-constitutional laws.

Self-Check Exercise-1

Q.1 Article 131 Provides for the original jurisdiction of the Apex Court in conflicts related to centre-state and inter-state. True/False

Q.2 Article 372 deals with the continuance in force of the pre-constitutional laws. True/False

Q.3 Article 245 provides an authority to the President to seek the opinion of the Apex Court on any question of law or fact and on any pre-constitutional legal matters.True/False

7.4 Procedure & limitations of Judicial Review in India

Procedure for judicial review in India

Judicial review in India refers to the power of courts to examine the actions of the legislative, executive, and administrative bodies to ensure that they comply with the Constitution of India. This procedure follows certain steps and principles to assess the validity of laws, executive actions, and decisions made by authorities.

1. **Filing of Petition**
   Judicial review can be initiated by filing a petition in the appropriate court. The aggrieved party, who believes that a law or administrative action is unconstitutional, may approach the High Court or the Supreme Court, depending on the matter. The most common remedies for judicial review in India are:
   - Writ petitions under Article 32 (in the Supreme Court) and Article 226 (in the High Courts).
   - Public Interest Litigations (PILs) are also a common form of petition in judicial review, where individuals or groups can approach the courts to address issues affecting the public at large.
2. **Jurisdiction of Courts**
   - Supreme Court: The Supreme Court, under Article 32, has the authority to review laws or executive actions that violate the Constitution, especially when fundamental rights are at stake.

- High Courts: High Courts have jurisdiction under Article 226 to review administrative actions or laws within their territorial jurisdiction. They may issue writs to enforce rights, quash unconstitutional laws, or direct government bodies to take action.

3. **Grounds for Judicial Review**
   The grounds for judicial review in India include:
   - Violation of the Constitution: A law or action that contravenes the provisions of the Constitution is subject to judicial review.
   - Fundamental Rights: Any action that infringes upon the fundamental rights of individuals, as guaranteed by Part III of the Constitution, is subject to scrutiny.
   - Excess or Abuse of Power: Any law or executive action taken without proper authority or in violation of delegated powers can be struck down.
   - Arbitrary or Discriminatory Action: Laws or decisions that are arbitrary, unreasonable, or discriminatory may be challenged on the grounds of fairness and justice.
4. **Examination of Legislative Actions**
   - Judicial review of legislative actions focuses on determining whether a law is constitutional. This includes reviewing whether the law falls within the legislative competence of the concerned legislature, as defined by the Constitution.
   - The Court assesses whether the law violates any fundamental rights or the basic structure of the Constitution.
5. **Examination of Administrative Actions**
   The courts examine whether administrative bodies or officials have exceeded their jurisdiction, acted beyond their powers, or made decisions that are unreasonable, arbitrary, or illegal.
   - Writs such as mandamus (to compel a duty), prohibition (to prevent an action), certiorari (to quash an unlawful decision), and quashing orders are frequently used in these cases.
6. **Scope of Review**
   Judicial review in India is generally based on constitutional supremacy, where courts ensure that the actions of the legislature, executive, and administrative authorities do not violate the Constitution. The review is not concerned with the merits of the law or action but focuses on its constitutionality and whether it adheres to the constitutional framework.
7. **Judicial Precedents**
   In the process of judicial review, courts rely heavily on precedents and past decisions. For instance, landmark cases like Kesavananda Bharati (1973), which established the "Basic Structure Doctrine," or Minerva Mills (1980), have helped define the scope and limits of judicial review.
8. **Role of the Court**
   The role of the court in judicial review is not to make laws but to ensure that the laws and actions taken by other organs of the state are constitutional. Courts may:
   - Strike down laws or executive actions that violate the Constitution.
   - Interpret provisions of the Constitution and ensure they are followed.
   - Protect fundamental rights and enforce the rule of law.
9. **Remedies Available**
   - If a law, order, or action is found to be unconstitutional, the court may issue directions to strike it down, declare it void, or direct the authorities to take corrective actions.
   - The court may also award compensation or issue an injunction depending on the circumstances of the case.

Limitations of judicial review

- There are several limitations that govern the exercise of judicial review by both the High Courts and the Supreme Court of India. When the judiciary exceeds its role and involves itself in matters typically within the domain of the executive, it is referred to as judicial

activism. If this exceeds acceptable boundaries, it may lead to judicial overreach. Below are some of the key limitations on judicial review:

- General Limitations
- **Limits on Government Functioning**
  Judicial review has a restricted scope in terms of both its availability and function. The judiciary's role is confined to reviewing the process by which a decision was made, assessing whether the procedures followed were correct. It does not reassess the merits of the decision or make a fresh judgment. The judiciary evaluates whether the proper procedures were followed rather than providing a ruling on the substance of the decision.
- **Violation of Constitutional Limits**
  If the judiciary goes beyond the powers defined in the Constitution and overrides established laws, it can violate constitutional limits. In such cases, the exercise of legislative powers as outlined by the Constitution may be deemed incorrect.
- **Separation of Powers**
  While the principle of separation of functions is observed, the strict separation of powers is not always maintained. The judiciary has the authority to review and annul laws passed by the legislature that are found unconstitutional. However, this system of checks and balances does not fully adhere to a strict separation of powers.
- **Creation of Precedents**
  Judicial decisions often serve as precedents for future cases, meaning that the rulings made by judges influence the decisions in subsequent cases. This practice ensures consistency but also means that judicial opinions shape future legal interpretations.
- **Influence of Personal Bias**
  Judicial review can sometimes be impacted by personal or selfish motives of the judges involved, leading to decisions that may not be in the best interest of the public. This can have adverse consequences on society as a whole.
- **Negative Impact of Frequent Court Interference**
  Continuous intervention by the judiciary may erode public confidence in the government’s functioning, affecting the trust people have in the integrity, quality, and efficiency of government operations.
- **Limitations on Overruling Administrative Decisions**
  The judiciary does not possess the power to directly overrule decisions made by administrative bodies. In cases where administrative decisions are reviewed, the court’s judgment may substitute the administrative ruling, which could be considered a shortcoming due to the court’s lack of specialized knowledge in certain areas.
- **Judicial Activism vs. Judicial Restraint**
  There is ongoing debate regarding whether a balance should be maintained between judicial activism, where judges take a more proactive role in shaping the law, and judicial self-restraint, where judges limit their intervention to necessary constitutional matters only.
- **Doctrine of Strict Necessity**
  The Doctrine of Strict Necessity holds that the court should only rule on constitutional issues if it is absolutely necessary. This ensures that constitutional questions are addressed only to the extent required, avoiding unnecessary overreach.
- These limitations underscore the importance of the judiciary adhering to its defined role and avoiding excessive interference in matters that are best left to the other branches of government.

Current scenario of judicial review in India

Recently, the Supreme Court of India rejected the idea that the Central Vista project required an exceptional level of judicial review. The Court clarified that the government has the discretion to design policies and make mistakes in the process, provided that constitutional principles are followed.

With the removal of the locus standi rule, the judiciary has been empowered to intervene in matters affecting the public interest, even when no individual party has brought forward a complaint, through mechanisms like suo moto cases and Public Interest Litigations (PILs).

Way Forward

Judges in India hold significant judicial authority, with one of their most important powers being judicial review. This makes it essential for the judiciary to prevent the abuse and misuse of its power, as well as to stop any exploitation or unjust actions.

Additionally, there must be careful consideration when it comes to judicial activism and the appropriate use of Public Interest Litigations (PILs). These mechanisms should not be hijacked for political agendas. It is important for the judiciary to examine the reasoning behind the filing of a PIL or writ petition, especially when a constitutional remedy is being sought. For example, challenges to the Citizenship Amendment Act (CAA) or the revocation of Article 370 were seen by some as politically motivated. Hence, such cases should be thoroughly examined to determine if they have an ulterior motive or if they truly serve the public interest.

Furthermore, there are instances where NGOs, often linked to political parties or foreign entities, may have agendas that undermine the nation's sovereignty. Therefore, it is critical for the courts to carefully assess the motivations of parties involved in seeking judicial remedies.

Another significant constitutional issue arose when the Supreme Court took away the President's power to appoint the Chief Justice of India (CJI). Such actions must be subjected to thorough judicial scrutiny.

- With the power of judicial review, courts serve as guardians of fundamental rights.
- As the role of the modern state grows, the judiciary's involvement in overseeing administrative decisions and actions has also expanded.
- When judicial activism oversteps its boundaries, it risks infringing upon the principle of separation of powers outlined in the Constitution.
- The legislature is responsible for making laws, while the executive's duty is to implement them. The judiciary’s primary function should be interpretation. A delicate balance between these organs of government is crucial to uphold constitutional values.

Self-Check Exercise-2

Q.1 With the power of judicial review, the courts act as a custodian of the fundamental rights. True/False

Q.2 Article 246 (3) ensures the state legislature’s exclusive powers on matters pertaining to the State List. True/False

Q.3 Article 245 states that the powers of both Parliament and State legislatures are subject to the provisions of the constitution.True/False

7.5 Summary

In India, the principle of the separation of powers has been adopted, which means that judicial review cannot be assumed to have unlimited authority. If the courts were to exercise judicial review in an unchecked and arbitrary manner, it could undermine the functioning of all branches of government. To ensure proper functioning, each branch must operate within its defined limits. Judicial review is an integral part of the Indian Constitution's basic structure, and its role is to maintain a system of checks and balances between the legislative, executive, and judicial branches, ensuring that no organ misuses its power and that actions comply with constitutional norms.

Judicial review serves as a vital safeguard, protecting the Constitution and upholding the fundamental rights enshrined within it. It plays a crucial role in dividing power between the union and the states while clearly defining the roles and responsibilities of each branch of government. This concept of judicial review was solidified in the landmark case of *Minerva Mills v. Union of India*, where the court reaffirmed its essential role in maintaining the integrity of the Constitution. Ultimately, judicial review serves to protect individual rights, prevent the misuse of power, and avoid the miscarriage of justice.

7.6 Glossary

- **Writ** - a legal order to do or not to do something, given by a court of law.
- **Verdict** - the decision that is made by a specially chosen group of people (the jury) in a court of law, which states if a person is guilty of a crime or not.
- **Suo-moto** - relating to an action taken by a court of its own accord, without any request by the parties involved.

7.7 Answers to self check exercises

Self-Check Exercise-1

Q.1 True

Q.2 True

Q.3 True

Self-Check Exercise-2

Q.1 True

Q.2 True

Q.3 True

7.8 References/Suggested Readings

7.9 Terminal questions

Q1 What are the various cases in which judicial review can be illegal? Discuss.
Q2 Bring out the various limitations of Judicial Review.
Q3 What are the various provisions of judicial review in Indian Constitution?

UNIT-8

CONSTITUTION AND INDEPENDENCE OF JUDICIARY

Structure

8.0 Introduction: The three branches of government in India are the judiciary, legislature, and executive. The judiciary is independent, meaning that it operates separately from the other branches, which are prohibited from interfering with its functions. The judiciary is responsible for interpreting the law, resolving disputes, and ensuring justice is served to all citizens. It is often referred to as the protector of democracy and the guardian of the Constitution. To ensure the smooth functioning of democracy, it is crucial that the judiciary remains impartial and independent.

8.1 Learning Objectives

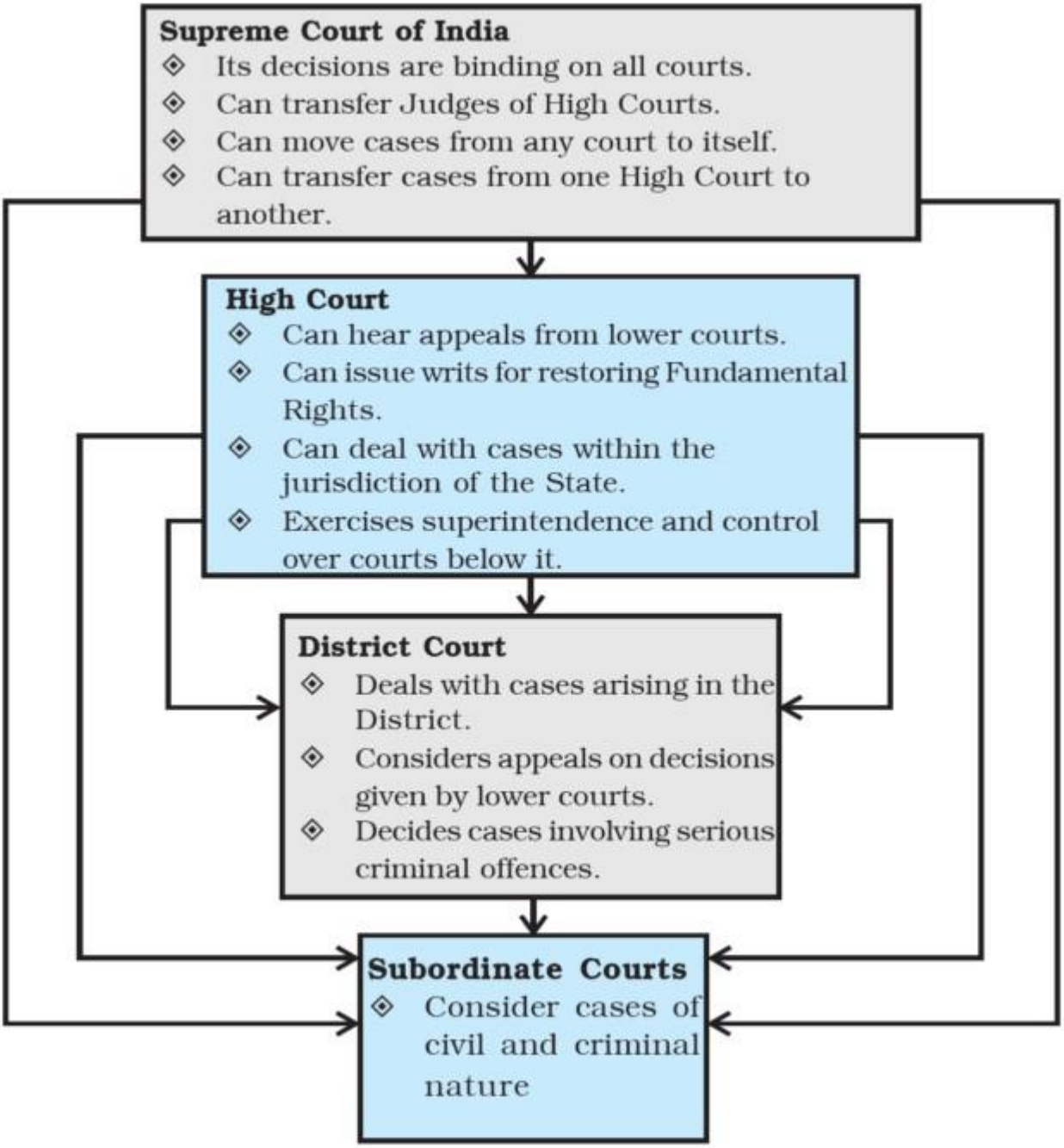
After studying this lesson, the learner will be able to

- Know the structure and functions of Judiciary
- Analyze the Independence of Judiciary
- Know the International provisions on Judiciary
- Know the provisions to ensure the Independence of judiciary and affecting factors

8.2 Structure of Judiciary:

India operates under a unified judicial system with a hierarchical structure. At the apex is the Supreme Court (SC), followed by the High Courts, and then the district and subordinate courts at the base. The lower courts are directly overseen by the higher courts to ensure consistency and proper functioning.

The following diagram illustrates the organization and structure of the judicial system in India.



Apart from the above structure, there are also two branches of the legal system, which are:

1. **Criminal Law:** These deal with the committing of a crime by any citizen/entity. A criminal case starts when the local police files a crime report. The court finally decides on the matter.
2. **Civil Law:** These deal with disputes over the violation of the Fundamental Rights of a citizen.

The SC has three types of jurisdictions. They are original, appellate and advisory. The jurisdiction of the Supreme Court are mentioned in Articles 131, 133, 136 and 143 of the Constitution.

Self-Check Exercise-1

Q.1 Civil Law deal with disputes over the violation of the Fundamental Rights of a citizen. True/False

Q.2 India has a single integrated judicial system. True/False

8.3 Functions of Judiciary

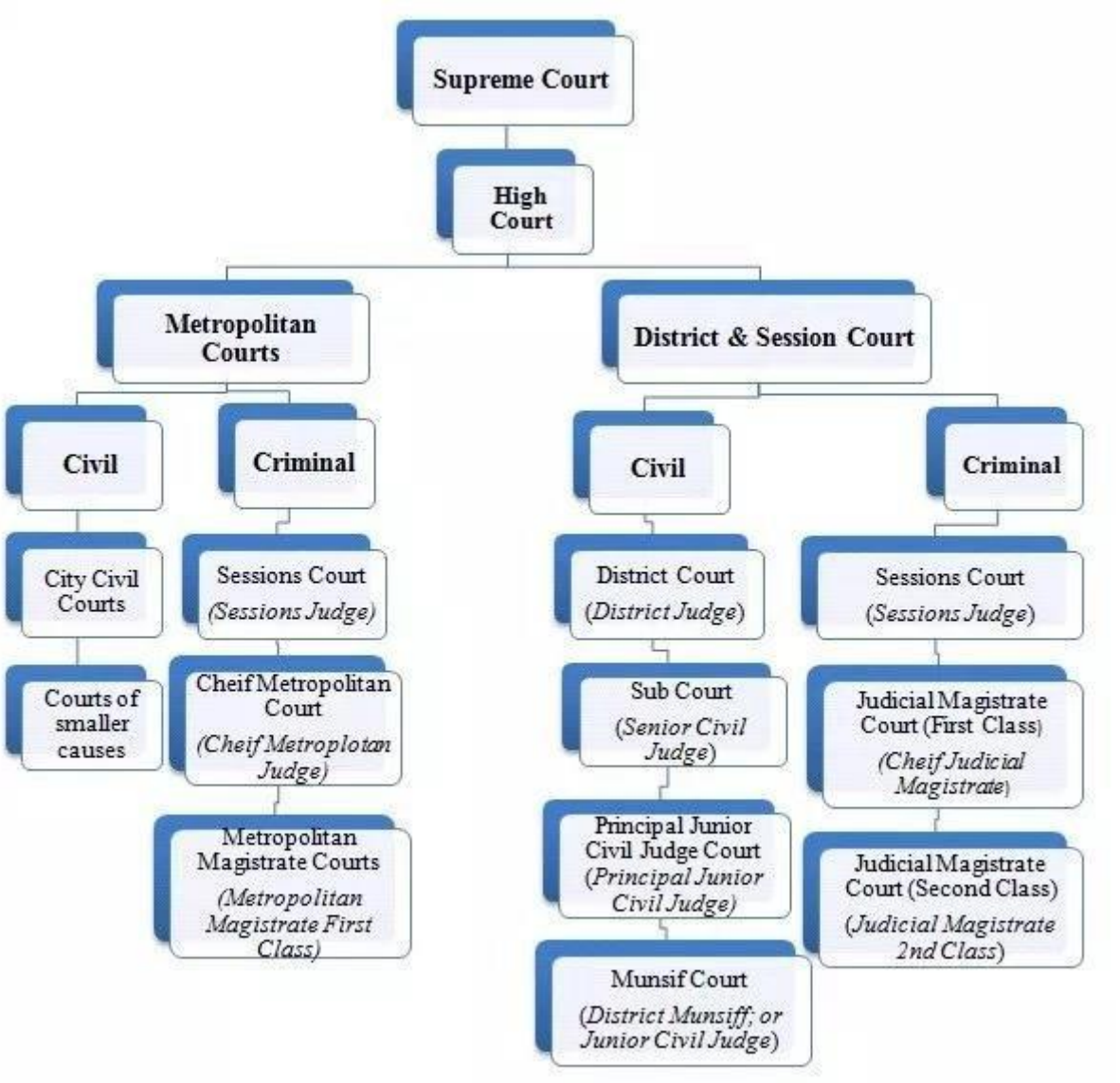
The judiciary in India performs various important functions:

1. **Administration of Justice**: The primary role of the judiciary is to apply laws in specific cases and resolve disputes. When a case is brought before the court, it assesses the facts presented through evidence. Based on this, the court applies the relevant laws and imposes penalties when someone is found guilty of breaching the law.
2. **Development of Case Law**: Sometimes, judges may face difficulties in applying existing laws to particular cases. In such instances, they use their judgment and experience to establish appropriate legal principles, thereby creating case law. Under the doctrine of 'stare decisis,' past judicial decisions generally serve as precedents for future cases.
3. **Guardian of the Constitution**: The Supreme Court of India safeguards the Constitution by resolving disputes regarding jurisdiction between the central and state governments or between the legislature and executive. It has the authority to declare laws or executive actions unconstitutional if they violate constitutional provisions, a process known as judicial review. This ensures the protection of fundamental rights and maintains the federal balance.
4. **Protector of Fundamental Rights**: The judiciary plays a key role in protecting the fundamental rights of citizens by ensuring that these rights are not infringed upon by the state or other authorities. It enforces these rights by issuing writs when necessary.
5. **Supervisory Role**: Higher courts oversee the functioning of subordinate courts, ensuring that judicial processes are carried out properly.
6. **Advisory Role**: The Supreme Court can offer advisory opinions on constitutional matters, particularly when there is no dispute, and the executive requests such an opinion.
7. **Administrative Functions**: The judiciary also performs administrative duties, including granting licenses, managing the estates of deceased individuals, and appointing guardians for minors and individuals deemed mentally incapable. Additionally, courts oversee the registration of marriages and other similar matters.
8. **Special Role in a Federation**: In India’s federal system, the judiciary resolves disputes between the central and state governments and also arbitrates conflicts between states.
9. **Conducting Judicial Inquiries**: Judges are often called upon to lead inquiries into errors or omissions committed by public officials, providing oversight and ensuring accountability.

Civil Courts

Civil courts handle disputes that involve non-criminal matters, typically related to individuals or entities seeking resolution over personal, property, or financial issues. These are known as civil cases, distinct from criminal cases that deal with violations of criminal law like theft, murder, or arson.

- Civil law is applied in situations where one party sues another. Common civil cases include issues like divorce, eviction, consumer rights, debt disputes, and bankruptcy.
- Judges in civil courts and criminal courts have different roles. In criminal courts, a judge can impose a sentence, such as jail time, on a convicted individual. In contrast, a judge in a civil court can order the guilty party to pay fines or other forms of compensation.
- At the lower end of India's judicial hierarchy, we find District Judges in District Courts, along with Second Class Magistrates and Civil Judges (Junior Division). These positions are responsible for handling less complex cases.



- The court of the district judges is the highest civil court in a district.
- It has both administrative and judicial powers.
- The court of the District Judge is in the district HQ.
- It can try criminal and civil cases and hence, the judge is called District and Sessions Judge.
- Under the district courts, there are courts of the Sub-Judge, Additional Sub-Judge and Munsif Courts.
- Most civil cases are filed in the Munsif's court.

Civil courts in India operate under four types of jurisdiction:

1. **Subject Matter Jurisdiction**: This refers to the court's authority to hear cases related to specific topics or legal matters. A court can only try cases that fall within its defined subject scope.
2. **Territorial Jurisdiction**: A court has the power to hear cases that arise within its designated geographical area or territory. It cannot hear cases outside of its territorial boundaries.
3. **Pecuniary Jurisdiction**: This relates to the court's authority over cases involving monetary claims or disputes with a specific value. It determines the types of cases based on the financial amount involved.
4. **Appellate Jurisdiction**: Courts with appellate jurisdiction have the authority to hear appeals. They review decisions made by lower courts. The Supreme Court and High Courts in India are examples of courts that hold appellate jurisdiction.

Self-Check Exercise-2

Q.1 Pecuniary Jurisdiction cases related to money matters, suits of monetary value. True/False

Q.2 Territorial Jurisdiction can try cases even outside its geographical limit. True/False

8.4 Summary

The independence of the judiciary occupies a significant role in the structure of the judiciary. Historically, judicial independence has faced numerous challenges, particularly regarding the appointment and transfer of judges. Courts have consistently upheld judicial independence, recognizing it as a fundamental aspect of the Constitution. This independence is essential for the effective functioning of the Constitution and for realizing a democratic society governed by the rule of law.

As noted in the Judges' Cases, the decision to prioritize executive control over judicial appointments has led to the appointment of some judges against the opinion of the Chief Justice of India. Such a decision was likely not the intention of the Constitution's framers, who aimed to maintain the judiciary's autonomy from the executive branch. The decisions in the Second and Third Judges' Cases, however, marked a positive step toward protecting this independence.

Lord Acton's quote, "Power tends to corrupt, and absolute power corrupts absolutely," highlights the importance of maintaining a balance between judicial independence and accountability. To address this,

the Law Commission has proposed a whistleblower provision in a draft bill concerning the removal of Supreme Court and High Court judges. This is a significant development, as it aims to reform the cumbersome process for removing judges while ensuring judicial accountability.

An essential component of judicial independence is the permanence of judicial appointments until retirement. Protection against involuntary transfers, along with adequate remuneration, are critical elements that ensure judges can serve without fear of external influence or pressure.

Additionally, it is vital to find a balance between judges' accountability and their independence in decision-making. Disciplinary actions should not interfere with the content of their rulings or judicial errors. Moreover, the process for initiating judicial discipline should be separate from the adjudicating body, ensuring transparency and fairness in hearings.

A judge should make decisions based solely on the law and facts, without external influence or instruction. A hierarchical structure that places judges under the authority of higher court officials would undermine this principle. To safeguard independence, legal measures should be in place to prevent any attempts to influence judges.

In conclusion, the importance of judicial independence was recognized early by the framers of the Constitution and has been upheld by the courts as a fundamental feature. However, judicial independence must evolve with societal changes. Judicial accountability and independence must work together to fulfill the intended purpose of the judiciary.

8.5 Glossary

- **Contempt of Court**- Contempt of court, often referred to simply as "contempt", is the crime of being disobedient to or disrespectful toward a court of law and its officers in the form of behavior that opposes or defies the authority, justice, and dignity of the court.
- **Criminal Law** - a system of law concerned with the punishment of offenders.
- **Civil Law** - the system of law concerned with private relations between members of a community rather than criminal, military, or religious affairs.

8.6 Answers to self check exercises

a. see 6.2 b. see 6.3 c. see 6.4

8.7 Terminal questions

Q1 Discuss the various provisions to ensure independence of judiciary in India.
Q2 What is the need to ensure independence of Judiciary?
Q3 What are the various factors to affect independence of judiciary?

8.8 References/Suggested Readings

- V.N. Shukla's *Constitution of India* (10th Edn 2001), revised by M. P. Singh.
- M.P. Jain, *Indian Constitutional Law.*(6th Edn 2013)
- Prof. Kailash Rai, *Constitutional Law of India.*(4th Edn 2013)

- *Independence of Judiciary in India: A Critical Analysis* available on http://mulnivasiorganiser.bamcef.org/?p=482 accessed on 28/07/2014.
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Unit-9

Independence of Judiciary

Structure

Introduction: The importance of judicial independence is a crucial aspect of any democratic system, including India. This independence is achieved by preventing interference from government branches such as the legislature and the executive. In a democracy, only an impartial and independent judiciary can safeguard individual rights and deliver justice fairly, without any bias or external influence. For this reason, it is vital that all levels of the judiciary, including the Supreme Court, High Courts, and lower courts, function without undue pressure. In India, the judiciary plays the role of protecting citizens' rights, and ensuring its independence is essential for maintaining democracy.

The framers of the Indian Constitution were acutely aware of the need for an independent judiciary when drafting the Constitution. Dr. B.R. Ambedkar responded to the concerns of the Constituent Assembly by stating:
“There can be no difference of opinion in the House that our judiciary must be both independent of the executive and must also be competent in it. And the question is how these two objects can be secured.”

This statement reflects the framers' understanding that to secure a stable and prosperous society, fundamental rights must be guaranteed, and an independent judiciary is essential for safeguarding and enforcing these rights. In a diverse and complex country like India, the judiciary must be independent to uphold democratic principles and maintain a free society.

The independence of the judiciary is widely recognized as vital for ensuring a just society under the rule of law. The rule of law, which is central to good governance, can only be achieved through an unbiased judiciary. The principle of separation of powers, which delineates the roles of the

legislature, executive, and judiciary, assigns the judiciary the responsibility of ensuring that the other branches remain within constitutional limits and do not interfere with each other's functions. This supervisory role can only be effectively carried out if the judiciary remains independent. Therefore, an independent judiciary is essential to upholding the separation of powers and maintaining the structure of governance.

While the Constitution of India provides provisions to ensure judicial independence, these provisions only serve as the starting point. The real challenge lies in creating an environment where the judiciary can function effectively and independently, with cooperation from other state organs. The judiciary's independence must be protected against evolving political, economic, and social changes.

Discussions on judicial independence also often bring up the need for certain restrictions on both the judiciary as an institution and individual judges. Striking the right balance between ensuring judicial independence and imposing necessary constraints is essential for the effective functioning of the judicial system.

Meaning – The Independence of the Judiciary

The concept of judicial independence remains somewhat unclear despite its long-standing presence. While the Indian Constitution emphasizes the importance of judicial independence through various provisions, it does not explicitly define what constitutes the independence of the judiciary.

Discussions on judicial independence primarily stem from the doctrine of separation of powers, which has been a longstanding principle. This doctrine asserts that the judiciary should remain independent from both the executive and the legislature.

An alternative perspective on judicial independence can be found through the work of scholars who have analyzed the issue in-depth. Many scholars focus on the "constituent mechanism," or the components that make up the judiciary, to explain judicial independence. These scholars argue that judicial independence primarily involves the freedom of judges to perform their duties impartially, without external influence. Therefore, judicial independence is not only about the institution itself but also about the autonomy of the individual judges who serve within it.

Shetreet, in his research, provides a detailed explanation of the terms "independence" and "judiciary." He defines the judiciary as "the organ of the government not forming a part of the executive or legislative, which is not subject to personal, substantive, and collective control, and which performs the primary function of adjudication."

The key takeaway from Shetreet's analysis is that both the independence of the judiciary as an institution and the independence of individual judges are interconnected. The judiciary as an institution cannot be independent if its individual judges are not free to carry out their functions without interference. Conversely, the independence of individual judges is meaningless if the institution as a whole lacks autonomy.

9.2 Need, international provisions and independence of judiciary in India

The necessity for judicial independence is based on several key factors:

1. **Oversight of Government Actions**: The judiciary serves as a safeguard by ensuring that all branches of the government operate within their defined roles and in accordance with the constitutional framework. It acts as a protector of the Constitution and supports the separation of powers.

2. **Constitutional Interpretation**: The framers of the Constitution foresaw that ambiguities could arise in its interpretation over time. They emphasized the need for an independent and competent judiciary capable of addressing such issues impartially. Without judicial independence, there is a risk that the executive or legislative branches may exert pressure on the judiciary to interpret the Constitution in their favor. It is the judiciary's responsibility to interpret constitutional provisions based on their intended principles and values, free from external influence.

3. **Resolving Disputes Impartially**: The judiciary must ensure that justice is administered fairly, without favoritism or bias. This means that judges must consider all aspects of a case and deliver decisions based on the law, not on personal biases or external pressures. The judiciary must always strive to uphold impartiality in its decision-making.

International Standards for Judicial Independence

The independence of the judiciary is a universally recognized principle, as highlighted in various international documents. Some key provisions include:

- **United Nations Guidelines**: The *Basic Principles on the Independence of the Judiciary* were adopted at the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Milan in 1985, and were later endorsed by the General Assembly in resolutions 40/32 (November 1985) and 40/146 (December 1985).

- **Human Rights Instruments**: International human rights documents, such as the *Universal Declaration of Human Rights* (Article 10) and the *International Covenant on Civil and Political Rights* (Article 14), emphasize judicial independence. Additionally, the *Basic Principles on the Independence of the Judiciary* and the *Bangalore Principles of Judicial Conduct* (2002) provide more specific guidelines on maintaining an independent judiciary.

- **European Convention on Human Rights**: Article 6 of the *European Convention on Human Rights* guarantees the right to an independent and impartial tribunal. Further, the *Council of Europe Recommendation on Judges: Independence, Efficiency, and Responsibilities* (2010) offers additional standards for judicial independence within the European context.

- **OSCE Commitments**: The *OSCE Copenhagen Document* (1990), *Moscow Document* (1991), and *Istanbul Document* (1999) outline commitments made by participating states to uphold judicial independence. The *Kyiv Recommendations on Judicial Independence* (2010) provide detailed guidance for Eastern Europe, the South Caucasus, and Central Asia.

The United Nations, through its various documents and declarations, has established key principles aimed at safeguarding judicial independence:

1. **Constitutional Guarantee**: Judicial independence must be guaranteed by the state and reflected in the constitution or national law. Governments and institutions must respect and uphold this independence.
2. **Impartial Decision-Making**: Judges must decide cases impartially, based on facts and law, free from any improper influence, threats, or interference.
3. **Exclusive Jurisdiction**: The judiciary holds the exclusive authority to determine its jurisdiction and to decide on matters within its legal competence.
4. **Protection from Interference**: Judicial decisions should not be subject to inappropriate interference or revision, except as allowed by law or through judicial review.
5. **Right to Fair Trial**: Every individual has the right to be tried by established courts that follow proper legal procedures. Tribunals that bypass these procedures should not be created.
6. **Fair Proceedings**: The judiciary must ensure that all legal proceedings are conducted fairly, with respect for the rights of all parties involved.
7. **Adequate Resources**: Member states must provide the necessary resources for the judiciary to effectively carry out its functions.

These provisions, reflected in international law, are fundamental in preserving the independence of the judiciary on a global scale.

The Independence of the Judiciary in India

The framework for ensuring judicial independence in India is embedded in various constitutional provisions. These principles are designed to safeguard the judiciary from undue influence and interference, maintaining its impartiality and autonomy. The following constitutional provisions serve as mechanisms to uphold judicial independence:

Separation of the Judiciary from the Executive: Article 50, part of the Directive Principles of State Policy, directs the state to separate the judiciary from the executive in public services. This separation aims to ensure judicial independence by preventing any undue control or influence from the executive branch.

Appointment of Judges: Article 124(2) of the Indian Constitution specifies that the appointment of judges is a consultative process and not an exclusive executive power. The President, while making appointments to the Supreme Court and High Courts, must consult the Chief Justice of India (CJI). For appointing the CJI, the President consults with the judges of the Supreme Court and High Courts as deemed necessary. Likewise, appointments to the High Courts require the consultation of the CJI, the Governor of the respective state, and other relevant judicial authorities. This ensures that the executive does not have absolute discretion in judicial appointments, thereby maintaining the judiciary's independence.

Security of Tenure: Judges of both the Supreme Court and High Courts enjoy security of tenure. They remain in office until they reach the age of retirement—65 years for Supreme Court judges and 62 years for High Court judges. Removal of a judge can only occur through a formal procedure involving the President, and only for proven misbehavior or incapacity. The procedure requires the approval of both Houses of Parliament by a two-thirds majority of members present and voting, making it extremely difficult to remove a judge.

Salaries and Allowances: Judges' salaries and allowances are constitutionally protected and are not subject to the legislative process. These are drawn from the Consolidated Fund of India for Supreme Court judges and from the state's Consolidated Fund for High Court judges. Their compensation cannot be altered to their disadvantage, except during a financial emergency, as outlined in Article 125(2).

Powers and Jurisdiction of the Supreme Court: Parliament can only expand, not reduce, the powers and jurisdiction of the Supreme Court. While Parliament has the authority to modify the pecuniary limits on appeals or enhance appellate jurisdiction, it cannot curtail the Court's authority. Furthermore, the Supreme Court can be granted additional powers to function more effectively, such as issuing writs or directives for various purposes.

Prohibition of Discussions on Judges' Conduct in Legislatures: Articles 121 and 211 prohibit any discussion in Parliament or state legislatures regarding the conduct of judges in performing their judicial duties. The only exception is when a motion is brought forward for the removal of a judge, which must then be addressed by the President.

Power to Punish for Contempt: Both the Supreme Court and High Courts have the authority to punish individuals for contempt of court. Article 129 grants the Supreme Court the power to punish for contempt of its own authority, while Article 215 extends this power to the High Courts.

Prohibition on Retired Judges Practicing in India: Article 124(7) of the Constitution bars retired Supreme Court judges from practicing law or appearing before any court or judicial authority in India, ensuring that their previous roles do not influence future legal proceedings.

These provisions collectively work to secure the judiciary's independence, ensuring that it can function without undue interference and maintain its critical role in upholding the rule of law in India.

Self-Check Exercise-1

Q.1 Only the Supreme Court and not the High Court have the power to punish any person for their contempt. True/False

Q.2 Article 124 (7) of the Constitution prohibits a retired Judge of the Supreme Court to plead or appear before any Court or Judicial Authority in India. True/False

9.4 Factors affecting the Independence of Judiciary in India

Although the Indian Constitution guarantees the independence of the judiciary, recent developments have raised concerns about the appointment of judges. In particular, former Supreme Court judge, Justice Markandey Katju, has highlighted instances where political pressure

influenced judicial appointments. He claimed that three former Chief Justices of India made "improper compromises" by approving the appointment of a judge who was allegedly corrupt, under political influence.

Justice Katju alleged that, under pressure from a Congress Minister, Justice Lahoti extended a judge's term despite concerns about the judge's integrity. Further, Justice Katju stated that this same judge was later granted another extension by Justice Lahoti's successor, Justice Y.K. Sabharwal, and ultimately made a permanent judge by Justice K.G. Balakrishnan. This raises serious concerns about the independence of the judiciary in such matters.

The process of appointing judges, which involves the executive branch in consultation with legal experts, has also been a subject of debate. In the landmark case of *S. P. Gupta v. Union of India* (1981), the Supreme Court ruled that "consultation" under Article 124(2) of the Constitution did not mean "concurrence." This decision emphasized that the executive was not bound by judicial advice when appointing judges or transferring them. As a result, the executive's dominance in judicial appointments and transfers was reaffirmed, which could undermine the judiciary's independence. In response to this, Justice P. N. Bhagwati proposed the creation of a Judicial Commission to oversee the appointment and transfer of judges, though this idea has not been implemented.

However, in the landmark *S.C. Advocates on Record Association v. Union of India* (1993), the Supreme Court ruled that the opinion of the Chief Justice of India (CJI) must carry significant weight in the selection and transfer of judges, thereby reducing the executive's influence. The Court emphasized that no appointment to the Supreme Court or High Courts should be made without the CJI's consent. This ruling marked a crucial step in ensuring the judiciary's independence, limiting political influence in the appointment process. The decision reinforced that seniority should be the primary criterion for the appointment of the CJI, a principle that remains vital for upholding the integrity of the judiciary.

Nonetheless, the trend of appointing retired judges to various government positions has raised concerns about the judiciary's autonomy. The 14th Law Commission Report noted that the expectation of post-retirement government appointments could compromise the impartiality of judges. It argued that such a practice may lead to doubts about the fairness of a judge who might seek future government employment. The Law Commission emphasized that this practice should be discontinued to protect judicial independence.

These issues highlight the importance of maintaining a truly independent judiciary. Judicial independence safeguards fundamental rights and prevents the state from infringing on citizens' constitutional rights. The Indian Constitution provides a clear framework for an independent judiciary, ensuring that citizens can directly approach the Supreme Court to protect their rights without the interference of the executive.

Self-Check Exercise-2

Q.1 Independence and impartial Judiciary protects the Fundamental Rights including other Constitutional Rights of the citizen from being violated or infringed by the State as well. True/False

Q.2 Who said that "*Power tends to corrupt, and absolute power corrupts absolutely*"?

9.5 Summary

The independence of the judiciary, as discussed above, is a cornerstone of the judicial system. Historically, judicial independence has faced several challenges, particularly concerning the appointment and transfer of judges. However, the judiciary has consistently worked to safeguard its independence, reinforcing the notion that it is a fundamental aspect of the Constitution. This principle is crucial for the effective operation of the Constitution and the realization of a democratic society governed by the rule of law.

The interpretation in the Judges Case, which prioritized the executive's role, led to instances where judges were appointed against the Chief Justice of India's advice. This outcome was not in line with the intentions of the framers of the Constitution, who envisioned a judiciary free from executive interference and self-sufficient in its functioning. The decisions in the Second and Third Judges Cases, however, represent significant steps toward protecting judicial independence and upholding the spirit of the Constitution.

Lord Acton say's that, "*Power tends to corrupt, and absolute power corrupts absolutely*".

Whenever there is a mention of the independence of the judiciary, there is always a concern about the latent dangers of the judicial independence and there arises the importance of "Judicial Accountability". The recent development in this regard is the recommendation of the Law Commission for the inclusion of a whistleblower provision, aimed at protecting those making complaints against judges, in a draft bill dealing with the removal of judges of the Supreme Court and High Courts. Introduction of such a bill by the Law Commission is a major step in the direction of making changes to the rigid procedure in our constitution for the removing of the judges of the Supreme Court and the High Courts.

One of the most important standards underpinning the autonomy of the judiciary is irrevocability. That is, for ordinary judges to be appointed permanently until retirement. The irrevocability of judges, including protection from involuntary transfers, as well as adequate remuneration in conformity with the dignity of the office are other factors that constitute the backbone of genuine independence.

Furthermore, it is important to strike the appropriate balance between judges' accountability and their independence in adjudication. Disciplinary responsibility of judges shall not extend to the content of their verdicts or to judicial mistakes. Also, the body that initiates cases of judicial

discipline should not be the one that adjudicates them. Judges facing these bodies should enjoy procedural safeguards and disciplinary hearings must be fully transparent.

It is axiomatic that a judge deciding a case should not act on any order or instruction of any third party, inside or outside the judiciary. A hierarchical organization of the judiciary which would amount to subordination of the judges to the court chairpersons or to higher instances in their judicial decision-making activities would be a clear infringement of this principle. In order for freedom from external influence to be ensured, the law should provide sanctions against outside actors seeking to influence judges in any manner.

The final outcome of the above discussion is that the importance of the independence of the judiciary was long ago realized by the framers of the constitution which has been accepted by the courts by marking it as the basic feature of the constitution. It is well known law has to change so as to meet to the needs of the changing society. Similarly judicial independence has to be seen with the changing dimension of the society. Judicial Accountability and Judicial Independence have to work hand in hand to ensure the real purpose of setting up of the institution of judiciary.

9.6 Glossary

- **Contempt of Court**- Contempt of court, often referred to simply as "contempt", is the crime of being disobedient to or disrespectful toward a court of law and its officers in the form of behavior that opposes or defies the authority, justice, and dignity of the court.
- **Criminal Law** - a system of law concerned with the punishment of offenders.
- **Civil Law** - the system of law concerned with private relations between members of a community rather than criminal, military, or religious affairs.

9.7 Answers to self check exercises

Self-Check Exercise-1

Q.1 False

Q.2 True

Self-Check Exercise-2

Q.1 True

Q.2 Lord Acton

9.8 References/Suggested Readings

- V.N. Shukla's *Constitution of India* (10th Edn 2001), revised by M. P. Singh.
- M.P. Jain, *Indian Constitutional Law.*(6th Edn 2013)
- Prof. Kailash Rai, *Constitutional Law of India*.(4th Edn 2013)
- *Independence of Judiciary in India: A Critical Analysis* available on http://mulnivasiorganiser.bamcef.org/?p=482 accessed on 28/07/2014.
- *Independence of Judiciary in Indian Constitution*, available on
- <http://www.importantindia.com/2146/independence-of-judiciary-in-indian-constitution/> accessed on 28/07/2014.

9.9 Terminal questions

Q1 Discuss the various provisions to ensure independence of judiary in India.
Q2 What is the need to ensure independence of Judiciary?
Q3 What are the various factors to affect independence of judiciary?

UNIT-10

PUBLIC INTEREST LITIGATION (PIL)

Structure

10.0 Introduction

In Indian law, Public Interest Litigation (PIL) refers to legal action taken to safeguard public interest. This type of litigation is initiated not by the directly aggrieved party, but rather by the court itself or any concerned individual. It is not mandatory for the affected person to personally approach the court for justice. PIL empowers the public through judicial activism, allowing the courts to act in matters where individuals may lack the resources to pursue a case or their ability to seek legal recourse is restricted. In such situations, the court can take cognizance of the issue on its own or a petition can be filed by any public-spirited individual.

Public Interest Litigation (PIL) refers to legal action taken in a court of law to protect the public interest, addressing issues such as pollution, terrorism, road safety, and construction-related hazards. While PIL is not defined by statute, it has been interpreted by the judiciary to reflect the broader public concern. Although the primary focus of PIL is public interest, it can cover various issues, such as:

- Violations of basic human rights, particularly for marginalized groups
- Government policies or their execution
- Compelling municipal authorities to fulfill public duties
- Violations of religious freedoms or other fundamental rights

According to Black's Law Dictionary (Sixth Edition), public interest is defined as something that affects the legal rights or liabilities of the community, rather than the interests of a specific locality or group. It pertains to issues that concern citizens at the local, state, or national levels.

Examples of PIL Cases: On August 31, 2006, the Bombay High Court directed broadcasters to ensure their compliance with the Cable Television Network Act of 1995 and its orders, considering the larger public interest. The PIL, filed by Professor Pratibha Nathani from St. Xavier's College, raised concerns about unregulated films being shown on cable channels without proper certification from the Censor Board for Film Certification (CBFC), which were potentially harmful to children. The court had earlier allowed only 'U' and 'U/A' certified films to be aired.

In response, police action was taken against multi-system operators, who had their decoders seized, preventing them from broadcasting certain channels. Zee Television and Star Television networks were asked to confirm in writing their compliance with the court's directives. The court also required seven channels, including Star Movies, Star One, Star Gold, HBO, ZEE Movies, AXN, and Sony Max, to submit a list of films they planned to air to the police.

Meaning

Public Interest Litigation (PIL), as defined in Black's Law Dictionary, refers to legal action initiated in a court of law aimed at protecting the general or public interest, especially when the legal rights or liabilities of the public or a specific community are impacted. The focus of PIL is often on the welfare of the public, rather than individual claims.

In the case of *People's Union for Democratic Rights v. Union of India*, the court emphasized that PIL is a strategic extension of the legal aid movement designed to bring justice closer to the disadvantaged segments of society. Unlike traditional litigation, which typically involves disputes between two parties, PIL aims to address and correct systemic injustices affecting large groups of people, particularly those who are poor, marginalized, or otherwise disenfranchised. The purpose of PIL is not to enforce the rights of one individual against another but to protect the broader public interest, ensuring that violations of constitutional or legal rights of vulnerable groups are acknowledged and remedied.

The court further stated that ignoring the rights of the poor would undermine the rule of law, which is a cornerstone of any democratic government. The rule of law is not meant to protect only the privileged few but should ensure that civil and political rights are accessible to everyone, including the marginalized, whose rights often remain unprotected despite being enshrined in law.

Concept of PIL

Article 32 of the Indian Constitution guarantees individuals the right to approach the Supreme Court for the enforcement of the rights granted under this part of the Constitution. Typically, only the person directly aggrieved by the violation of their rights can seek redress under Article 32.

In the landmark case of *S.P. Gupta v. Union of India* (1981), Justice P. N. Bhagwati expanded the scope of Public Interest Litigation (PIL). He explained that if a legal wrong or injury occurs

to an individual or a group due to the violation of their constitutional or legal rights, or if an unlawful burden is imposed on them, and if these individuals are unable to approach the court due to poverty, helplessness, or other social or economic disadvantages, then any concerned member of the public can initiate legal proceedings. Such proceedings can be filed in the High Court under Article 226, or in the Supreme Court under Article 32, to seek appropriate remedies for the affected individuals or groups.

The traditional rule of *locus standi* (the right to bring a case) has been relaxed in PIL cases. Now, anyone with a genuine interest in the matter, who is acting in good faith and not for personal or political gain, can approach the court to address violations of fundamental rights or infringements of legal provisions. This ensures that public interest is protected, especially when the affected parties are unable to advocate for themselves.

10.2 Learning Objectives

After studying this lesson, the learner will be able to

- Know the origin and meaning of PIL
- Analyse the laws governing the PIL
- Know the factors abusing PIL and to find out their remedies
- Know the Procedure of filing PIL and its aspects

10.3 Laws governing PIL in India, Abuse and Remedies

Over time, Indian courts have developed several principles regarding Public Interest Litigation (PIL):

- **Relaxed Rule of Locus Standi**: PILs can be initiated by any individual on behalf of disadvantaged groups who are unable to approach the courts themselves. This relaxes the usual requirement of *locus standi* to protect the rights and interests of vulnerable communities.

- **Relaxed Procedural Rules**: Courts have allowed unconventional methods, such as letters or telegrams, to serve as PILs, as seen in the *Rural Litigation & Entitlement Kendra, Dehradun v. State of Uttar Pradesh* case. The formal rules for pleadings have also been relaxed in PIL cases.

- **Judicial Intervention**: Courts emphasize the need for intervention when injustices occur, citing the protections offered by Articles 14 and 21 of the Indian Constitution, as well as international human rights conventions, to ensure fair trials and justice for many.

- **Maintainability**: If a PIL is based on the violation of constitutional rights affecting marginalized individuals, the government may not challenge its maintainability if the court finds a prima facie case.

Principle of Res Judicata: The applicability of *res judicata* or similar principles depends on the specifics of the case and the nature of the PIL.

Appointment of a Commission: In certain situations, the court may appoint a commission or other body to investigate a matter. If the commission takes over management of a public institution, the court may direct its operation.

Constitutionality of Statutes: Courts generally do not entertain PILs concerning the constitutionality or validity of laws or statutory rules, especially in the High Courts.

Complete Justice: Under Article 142, the Supreme Court has the power to issue orders necessary for achieving complete justice. While High Courts can also issue such orders, they do not have the same powers as the Supreme Court in this regard.

Misuse of PILs: Courts are vigilant against the misuse of PILs, as it undermines their purpose—helping the marginalized. However, even if a PIL stems from personal grievances, courts may still investigate the matter if it serves the public interest, as seen in *Kushum Lata v. Union of India*.

Development of Legal Concepts: In environmental law, the courts have introduced principles like the Polluter Pays Principle, the Precautionary Principle, the Public Trust Doctrine, and Sustainable Development, helping shape the evolution of environmental jurisprudence.

PIL: A Blessing

1. **Affordable Legal Remedy**: PIL offers a cost-effective legal solution, allowing citizens to raise issues of public concern without the financial burden associated with traditional legal proceedings, as the court fee is minimal.

2. **Addressing Public Issues**: PIL enables citizens to spotlight and resolve large-scale issues in society, especially in areas such as human rights, environmental protection, and consumer welfare.

Abuse of PIL

While PIL has been a beneficial tool for many, its misuse has also been a growing concern. The Supreme Court has found it necessary to establish guidelines to manage and address this abuse. Unfortunately, the rise in PIL filings for improper reasons has led to its extended misuse.

In recent years, some PIL activists have used the process to harass others, as it requires only a nominal fee, unlike traditional litigation. This has led to negotiation opportunities for those seeking to benefit from stay orders, further muddying the intended purpose of PIL.

Just as a tool intended for defense can be misused for offense, the relaxation of the *locus standi* requirement has allowed individuals with private agendas to present their causes as matters of public concern.

Increasing Abuse and Its Impact

The abuse of PILs has overshadowed its original intent, leading to genuine cases being questioned or dismissed due to the growing number of spurious petitions driven by personal interests masked as public concerns.

Measures for Regulation

To curb the misuse of PIL, the Supreme Court has outlined guidelines to ensure that only bona fide cases are heard. The court must remain cautious and ensure that the petitioner's motives are not

self-serving or politically motivated. The legal process should not be exploited for political agendas or to delay administrative actions that would otherwise be lawful.

In cases where PIL affects individuals who are not directly involved in the litigation, the court should be particularly careful and consider the wider impact of its decisions. This necessitates ensuring adequate notice is provided to all affected parties, fostering a more balanced and fair process.

Though the court allows letters from aggrieved individuals, public-spirited citizens, or social action groups to serve as writ petitions, it does so only under specific conditions. These include situations where the parties involved face hardships such as poverty, disability, or socio-economic disadvantages that make it difficult for them to approach the court.

While regulating PIL is essential to prevent misuse, proposals for stricter control often lead to protests, especially from those who believe that such regulations would infringe upon their fundamental rights. In this context, the Supreme Court must ensure that safeguards provided by the Civil Procedure Code, particularly in relation to stay orders and injunctions, are applied to PIL cases.

In the landmark case *Raunaq International Limited v. IVR Construction Ltd.*, Justice Sujata V Manohar highlighted the need for accountability in cases involving stay orders. If a stay halts a project, the party initiating the PIL must bear the costs of the delay, including any escalated costs, should the litigation ultimately fail. This ensures that the public does not bear the financial burden of prolonged delays caused by meritless claims.

Remedies - Public Interest Litigation (PIL)

In a previous project focused on the essential knowledge of law for public servants, we provided an overview of Public Interest Litigation (PIL). For your reference, here is a summary:

Public Interest Litigation (PIL) can be filed in either a High Court or directly in the Supreme Court. It is not a requirement for the petitioner to have suffered personal harm or grievances to pursue such litigation. PIL allows socially conscious individuals or NGOs to advocate for a public cause, seeking judicial intervention to address a public injury. This injury may stem from the failure to perform a public duty or from a violation of constitutional provisions. PIL serves as a mechanism for ensuring public involvement in judicial review of administrative actions, making the judicial process more accessible and democratic.

As per the guidelines set by the Supreme Court, any individual who has a sufficient interest in a matter may file a Public Interest Litigation (PIL), provided the following conditions are met:

- There must be a personal injury or harm to a vulnerable group of people who find it difficult to access the legal justice system.
- The individual filing the petition must have a legitimate interest in pursuing a case related to public harm.

- The injury must have resulted from a breach of public duty or the violation of constitutional or legal provisions.
- The petition should aim to enforce public duties and ensure compliance with constitutional or legal requirements.

These provisions serve as a powerful safeguard, offering significant social benefits when the government fails to address the issues faced by marginalized citizens.

Several factors have played a key role in the expansion of PIL in India, including:

- **The Indian Constitution:** Unlike the British system, India's written Constitution, particularly through Part III (Fundamental Rights) and Part IV (Directive Principles of State Policy), provides a framework for regulating relations between the state and its citizens, as well as among citizens.
- **Progressive Social Legislation:** India has some of the most progressive social laws in the world, covering areas like bonded labor, minimum wages, land ceiling, and environmental protection. These laws help the courts hold the executive accountable for failing to protect the rights of the poor.
- **Liberal Interpretation of Locus Standi:** The relaxation of locus standi, allowing anyone to approach the court on behalf of those unable to represent themselves, has contributed to the rise of PILs. Judges have also initiated actions based on media reports or letters received from citizens.
- **Creative Judicial Interpretation:** Even though social and economic rights in Part IV of the Indian Constitution are not directly enforceable, the courts have interpreted these rights as part of the fundamental rights framework, making them judicially enforceable. For example, the right to life under Article 21 has been expanded to include the right to legal aid, the right to live with dignity, the right to education, and freedom from torture.
- **Proactive Judiciary:** Sensitive judges have been innovative in addressing the needs of the poor. For instance, in the *Bandhua Mukti Morcha* case of 1983, the Supreme Court reversed the burden of proof, stating that any instance of forced labor should be treated as bonded labor unless proven otherwise by the employer. In another case, *Asiad Workers*, Justice P.N. Bhagwati allowed individuals receiving less than the minimum wage to directly approach the Supreme Court.
- **Appointment of Commissions:** In cases where the petitioner cannot present all necessary evidence, such as in cases involving marginalized individuals or complex issues, courts have appointed commissions to gather facts and report back to the bench.

Self-Check Exercise-1

Q.1 Under Article 142 of the Constitution of India, the Hon'ble Supreme Court of India has the discretionary power to pass a decree or order as may be necessary to do complete justice. True/False

Q.2 Public Interest Litigation means a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or class of the community

have pecuniary interest or some interest by which their legal rights or liabilities are affected..

True/False

10.4 Procedure for Filing a Public Interest Litigation (PIL)

1. Make an Informed Decision: Consider the necessity of filing the case carefully.
2. Consult Relevant Stakeholders: Speak with interest groups and communities that may be impacted or could be allies in the matter.
3. Careful Considerations Before Filing:
    - Litigation can be costly.
    - It may be time-consuming.
    - Legal proceedings may shift decision-making power away from communities.
    - A negative outcome may weaken the strength of the movement.
    - Involvement in litigation might distract from addressing the core issues.
4. Steps to Take Once You Decide to Proceed:
    - Gather all relevant information for the case.
    - Collect detailed evidence and documents. If you plan to include photos, keep the original negatives and obtain affidavits from photographers. Retain receipts and other supporting documents.
    - Contact the relevant authorities and clearly state your demands.
    - Organize and maintain records in an efficient manner.
    - Seek legal consultation to determine the appropriate forum for your case.
    - Hire a qualified lawyer, or, if you are representing yourself, ensure you get sound legal advice on how to prepare and file the petition.
    - Ensure that the PIL is filed by a registered organization. If your organization is not registered, the PIL can be filed in the name of an office bearer or member in their personal capacity.
    - You may need to issue a legal notice to the concerned parties or authorities before filing. For cases against the government, a notice must typically be issued at least two months prior to the filing of the PIL.

Expanding Existing Rights and Creating New Ones

- There is a pressing need to both expand existing rights and establish new ones. Legal advocacy should not only be measured by the outcome of cases but also by the broader impact on social change. For example, despite their failure to have the Armed Forces Special Powers Act repealed after years of efforts, activists like Haksar and others have achieved success in advocating for changes in the criminal procedure code. Specifically, they secured a provision requiring that women be searched only by women, a measure that has been extended to the military.
- Similarly, it is important to think about creating new rights with an eye on future needs. For instance, Article 14 of the Indian Constitution offers equal treatment to multinational corporations (MNCs) and individual citizens, even though the disparity between them is vast. In light of the growing influence of MNCs, there is a need to critically reassess the concept of equality within the context of liberal theory, and to

develop innovative ideas about how equality can be defined and applied. One way to generate these new ideas is through the filing of strategic test cases.

- This is also true when it comes to the balance between individual rights and collective rights. The current legal framework largely recognizes only individual ownership of private property and state-controlled public property. However, before the British legal system was imposed, there existed a strong tradition of collective property rights, which has largely been excluded from modern legal discourse. As a result, forms of collective or shared resources—whether they pertain to rights, relationships, practices, or knowledge—have little recognition within contemporary legal structures. These collective rights are not part of the standard legal conversation, and when they are mentioned, such as in the context of "collective human rights," they are often met with skepticism and disbelief. Pradeep Prabhu of Khastakari Sanghatana, a trained advocate, has, however, achieved some success by convincing the Supreme Court to accept the testimonies of poor tribal people as valid legal evidence.

Sensitizing Lawyers

In the current context, one of the most significant challenges faced by social activists is identifying lawyers who possess a broad vision and are willing to fight for a cause on a larger scale. This requires continuous efforts to educate and engage lawyers, ensuring that their involvement goes beyond just the details of a specific case. It is also essential to raise awareness among law students to cultivate a future generation of public interest lawyers in the country.

One of the main reasons for the scarcity of public interest lawyers in India is the lack of financial incentives. In contrast, public interest lawyers in the United States are more readily available, often working on a "no-win, no-fee" basis due to the substantial damages awarded in US courts, which are then shared between the client and the lawyer. In India, however, even when free legal aid is available for marginalized groups like SCs, STs, industrial workers, and women, public-spirited lawyers often end up covering the costs out of their own pockets, as the fees reimbursed for basic services such as photocopying do not adequately cover the expenses, as pointed out by Ravi Rebba Pragada from the NGO Samata, which serves tribal communities in the Vishakapatnam district of Andhra Pradesh.

In the UK, although courts do not award significant damages like in India, there have been creative approaches to legal aid, with wealthy benefactors supporting legal costs. For instance, a property developer funded the legal expenses for numerous arthritis patients who filed lawsuits over side effects from the drug Opren. Similarly, Sir James Goldsmith, a billionaire financier, established the Goldsmith Libel Fund to support various libel defendants. However, it remains uncertain whether such private initiatives would be available or welcomed to support PIL cases for the disadvantaged. Activists must, therefore, consider ways to encourage more public-spirited lawyers to engage in these causes.

Public Interest Litigation (PIL) can be filed against government bodies such as the Central or State Governments, Municipal Authorities, but not against private individuals or entities. The term

"State," as defined in Article 12 of the Constitution, includes the Government of India, the Parliament of India, State Governments, State Legislatures, and all local or other authorities within the territory of India or under the control of the Government of India.

The entities and bodies classified under Article 12 are:

- The Government and Parliament of India
- The Government and Legislature of each State
- All local authorities
- Other authorities within the territory of India or under the control of the Government of India.

In the case of Electricity Board, Rajasthan v. Mohan Lal, the Supreme Court clarified that "other authorities" includes all entities established by the Constitution or statutes, on whom powers are conferred by law.

However, while PILs cannot be filed directly against private individuals, a private entity can be included as a respondent in the case, provided the relevant government or state authority is made a party. For example, if a private factory in Delhi is causing pollution, a PIL could be filed against the Delhi Government, the Pollution Control Board, and the factory. But the PIL cannot be filed solely against the private entity.

Aspects of Public Interest Litigation

(a) **Remedial Nature**: The remedial nature of PIL represents a shift from traditional standing rules. It incorporates principles from Part IV of the Indian Constitution (Directive Principles of State Policy) into Part III (Fundamental Rights), transforming the procedural aspects of Indian law into a more dynamic welfare-oriented system. Cases such as *Bandhua Mukti Morcha v. Union of India* and *Unnikrishnan v. State of A.P.* illustrate this change in judicial approach.

(b) **Representative Standing**: Representative standing is an innovative extension of the standing exception, allowing a third party to file petitions on behalf of individuals unable to approach the court themselves. The Indian PIL concept is broader than its American counterpart and functions as a modified form of class action.

(c) **Citizen Standing**: The concept of citizen standing significantly broadens the traditional rule, enabling the court to act not only as a protector of individual rights but also as a guardian of the rule of law, especially when threatened by governmental lawlessness.

(d) **Non-Adversarial Litigation**: According to the Supreme Court in *People's Union for Democratic Rights v. Union of India*, PIL represents a departure from traditional adversarial litigation, where two parties contest claims. In PIL, the focus is on addressing public interest issues rather than individual disputes, making it a non-adversarial form of legal action.

Non-Adversarial Litigation has two key aspects:

1. **Collaborative Litigation**: This form of litigation involves cooperation between the claimant, the court, and public officials to ensure that fundamental human rights are accessible to a

large section of the population. PIL plays an essential role in assisting the executive branch to fulfill its constitutional responsibilities. The court takes on roles beyond its traditional function of making judgments. These roles include:
(i) **Ombudsman**: The court listens to citizen complaints and highlights significant issues for government attention.
(ii) **Forum**: The court provides a platform to discuss public concerns and offers emergency relief through interim orders.
(iii) **Mediator**: The court also suggests possible solutions and compromises to resolve disputes.

2. **Investigative Litigation**: This type of litigation involves gathering information from various sources, such as reports from the Registrar, District Magistrates, expert opinions, and media reports, to investigate and address public issues.

(e) **Crucial Aspects**: The flexibility in adhering to procedural laws is a key feature of PIL. In the *Rural Litigation and Entitlement Kendra v. State of U.P.* case, the Supreme Court rejected the defense of res judicata and allowed compensation. Similarly, in *Sheela Barse v. State of Maharashtra*, the court issued guidelines to curb custodial violence. The Supreme Court has also significantly expanded the interpretation of the right to live with dignity under Article 21 of the Indian Constitution.

(f) **Relaxation of Locus Standi**: The strict requirement of locus standi has been relaxed through the concepts of representative and citizen standing. In the case of *D.C. Wadhwa v. State of Bihar*, the Supreme Court allowed a petition from a political science professor, who had conducted substantial research, to challenge the state's practice of repromulgating ordinances without legislative approval. The court determined that the petitioner had sufficient interest in the case. A person with genuine interest, acting in good faith, can approach the court to challenge violations of fundamental rights or statutory provisions, as long as it is not for personal, political, or profit-driven motives. The court seeks to balance two conflicting interests: preventing baseless allegations and ensuring public interest is protected.

(g) **Epistolary Jurisdiction**: This form of judicial activism allows the court to address grievances brought to its attention through letters, demonstrating its commitment to the needs of marginalized communities. PIL cells have been established across India to provide a platform for individuals in need of legal assistance. This approach exemplifies the court's active role in safeguarding the rights of the underserved and ensuring that their voices are heard.

Factors that have contributed to growth of PIL

Several key factors have contributed to the rise of Public Interest Litigation (PIL) in India, including:

1. **The Structure of the Indian Constitution**: Unlike the United Kingdom, India has a written Constitution, which through Part III (Fundamental Rights) and Part IV (Directive Principles of State Policy), outlines a framework to govern the relationship between the state and its citizens, as well as the interactions between citizens themselves.

2. **Progressive Social Legislation**: India has enacted some of the most forward-thinking social laws globally, including those related to bonded labor, minimum wages, land reforms, and environmental protection. These laws have facilitated the courts' ability to hold the

government accountable when it fails to safeguard the rights of disadvantaged groups as mandated by law.

3. **Expanded Locus Standi**: The more liberal interpretation of locus standi has allowed any individual to approach the court on behalf of those who are unable to do so due to economic or physical constraints. In some cases, judges have taken suo motu actions based on media reports or letters submitted by the public.

4. **Judicial Enforcement of Socio-Economic Rights**: While the social and economic rights outlined in Part IV of the Constitution are not directly enforceable, the judiciary has creatively interpreted these rights as part of the fundamental rights under Part III, making them justiciable. For example, the right to life under Article 21 has been expanded to include the right to free legal aid, dignity, education, work, protection from torture, and humane treatment in prisons.

5. **Innovative Judicial Approach**: Judges have been proactive in advocating for the disadvantaged. In the *Bandhua Mukti Morcha* case (1983), the Supreme Court shifted the burden of proof to the employer, treating every case of forced labor as bonded labor unless proven otherwise. Similarly, in the *Asiad Workers* case, Justice P.N. Bhagwati ruled that workers receiving below minimum wage could directly approach the Supreme Court, bypassing lower courts and labor commissioners.

6. **Commissioned Investigations**: In cases where petitioners lack the resources to provide adequate evidence, particularly when it is voluminous or where the parties are socially or economically marginalized, courts have appointed commissions to gather and present factual information to aid in the judicial process.

Mechanism for Protecting Human Rights through PIL

The protection of human rights through Public Interest Litigation (PIL) is achieved in several ways:

1. **Expanding the Scope of Fundamental Rights**: PIL has played a significant role in broadening the definition of fundamental rights such as equality, life, and personal liberty. Through PIL, rights like access to a speedy trial, free legal assistance, dignity, education, healthcare, a clean environment, and freedom from exploitation and torture have been recognized. These newly defined rights offer legal avenues for enforcement through PIL.

2. **Democratization of Access to Justice**: By relaxing the traditional rules of locus standi, PIL has made it easier for any citizen or social action group to approach the court on behalf of the marginalized. Courts can also be alerted to human rights violations through letters or telegrams, a process referred to as *epistolary jurisdiction*.

3. **Innovative Forms of Relief**: The courts, through PIL, can provide new kinds of remedies, such as interim compensation to victims of government negligence. This is different from the traditional legal approach, where interim relief is limited to preserving the status quo until a final ruling. Additionally, PIL does not preclude a person from filing a civil suit for damages in the future, enabling the court to fashion reliefs suited to the specific situation.

4. **Judicial Monitoring of State Institutions**: PIL also allows courts to monitor and oversee the functioning of state-run institutions like prisons, juvenile homes, and mental hospitals,

ensuring improvements in their management. This kind of oversight is referred to as *creeping jurisdiction*, where the judiciary intervenes to protect human rights within these institutions.

5. **Fact-Finding and Investigative Measures**: In many cases, the courts appoint their own commissions or officials to investigate human rights violations. They may also collaborate with bodies like the National Human Rights Commission (NHRC) or the Central Bureau of Investigation (CBI) to gather evidence and examine violations, a process known as *investigative litigation*.

Who Can File a PIL and Against Whom?

- **Eligibility to File**:
  Any citizen has the right to file a Public Interest Litigation (PIL) by submitting a petition:
  - Under Article 32 of the Indian Constitution, in the Supreme Court.
  - Under Article 226 of the Indian Constitution, in the High Court.
  - Under Section 133 of the Criminal Procedure Code, in the Court of a Magistrate.
- **Requirements for Filing:**
  For a PIL to be accepted, the court must ensure that the petition meets certain criteria. It must be filed by an aggrieved individual, a socially-conscious citizen, or a group advocating for social causes, and must address violations of legal or constitutional rights on behalf of individuals who are unable to approach the court themselves.
- Parties Against Whom PIL Can Be Filed:
  PIL can be filed against public entities, such as:
  - Central or State Governments
  - Municipal Authorities

  It cannot be filed against private individuals or parties. The term "State" as defined under Article 12 of the Constitution includes the Government and Parliament of India, as well as the governments and legislatures of the individual states, along with local authorities or any bodies controlled by the government.

Significance of PIL

- Access to Justice: The primary goal of PIL is to enable common citizens to approach the courts for legal remedies, ensuring wider access to justice.
- Social Change: PIL serves as a crucial tool for social transformation, promoting the Rule of Law and ensuring justice is balanced with the law.
- Empowerment of the Marginalized: Initially, PIL was designed to make justice accessible to the underprivileged and marginalized sections of society.
- Protection of Human Rights: PIL helps in safeguarding human rights by providing a mechanism for addressing violations and ensuring that rights reach those who have been denied them.

- Democratization of Justice: PIL broadens access to justice, allowing any citizen or organization with the capacity to represent those who cannot afford or are unable to seek legal redress.
- Judicial Oversight: It aids in the judicial monitoring of state-run institutions, such as prisons, mental health facilities, and protective homes, ensuring better management and accountability.
- Judicial Review: PIL plays a significant role in reinforcing judicial review, allowing courts to assess and evaluate administrative actions that impact public welfare.
- Public Participation: PIL encourages active public involvement in holding the administration accountable by facilitating the judicial review of governmental actions.

Weaknesses of PIL

- Competing Interests: PIL may sometimes create conflicts between competing rights. For instance, when industries are ordered to shut down due to pollution, the livelihood of workers and their families may not be adequately considered.
- Court Overload: The increase in frivolous PILs filed by individuals with vested interests can overwhelm the court system. PILs, which were originally intended for the oppressed, have increasingly been used for corporate, political, or personal agendas.
- Judicial Overreach: In some cases, PILs could lead to judicial overreach, where the judiciary intervenes in matters that are better addressed by the executive or legislature, particularly when dealing with socio-economic or environmental issues.
- Delay in Justice: The delay in the resolution of PIL cases, particularly those concerning disadvantaged groups, can result in important cases becoming irrelevant, rendering judicial rulings of little practical value.

Self-Check Exercise-2

Q.1 The original purpose of PILs have been to make justice accessible to the poor and the marginalized. True/False

Q.2 A Public Interest Litigation can be filed against a State/ Central Govt., Municipal Authorities, and any private party. True/False

10.5 Summary

Public Interest Litigation (PIL) has emerged as a significant tool for fostering social change, benefiting all segments of society. It serves as a means for people to access justice, and its introduction has proved advantageous for developing countries like India. PIL has played a crucial role in addressing societal injustices and promoting the welfare of disadvantaged groups. For example, in *Bandhua Mukti Morcha v. Union of India*, the Supreme Court ordered the release of bonded laborers, while in *Murli S. Dogra v. Union of India*, it imposed a ban on smoking in public

places. In the case of *Delhi Domestic Working Women's Forum v. Union of India*, the Court issued guidelines for the rehabilitation and compensation of working women who were victims of sexual violence. Similarly, in *Vishaka v. State of Rajasthan*, the Supreme Court established comprehensive guidelines to prevent workplace sexual harassment of women.

In conclusion, it is apt to recall Cunningham's statement that Indian PIL may be likened to a "Phoenix"—a fresh, creative force rising from the ashes of outdated systems.

PIL represents a bold step taken by a developing common law nation to challenge centuries of legal imperialism. It contests the idea that western legal frameworks are always the most effective for economic and social progress, highlighting the shortcomings of such legal models in developing countries like India, which often resulted in the oppression of marginalized groups.

The transition from a rigid legal system to one that embraces legal pluralism stems from dissatisfaction with traditional legal structures. In India, rather than simply overhauling the justice system, PIL sought to bring justice closer to the people by directly engaging with the courts. This shift has not only redefined the judicial role but has also made it possible for courts to make justice more accessible to the common man.

Though PIL is still in its formative stages, challenges in handling such cases are inevitable. However, these challenges can be addressed through innovative solutions. Ultimately, PIL fosters a new approach to state accountability for constitutional and legal violations that harm marginalized communities. To close, we reflect on the words of Justice Krishna Iyer: “Judicial activism achieves its highest reward when its decisions bring relief to those in need.”

10.6 Glossary

- **Locus standi**- the right or ability to bring a legal action to a court of law, or to appear in a court.
- **Litigation** - the process of taking an argument between people or groups to a court of law.
- **Cognizance** - Cognizance literally means knowledge or notice, and taking cognizance of offence means taking notice, or. becoming aware of the alleged commission of an offence.

10.7 Answers to self-check exercises

Self-Check Exercise-1

Q.1 True

Q.2 True

Self-Check Exercise-2

Q.1 True

Q.2 False

10.8 Terminal questions

Q1 Discuss the laws governing the PIL in India.
Q2 How the PIL is being misused? Discuss various ways.
Q3 What are remedies to make PIL effective?

UNIT-11

LIABILITY OF ADMINISTRATION IN CONTRACTS AND TORTS

Structure

11.0 Introduction

Section 2(h) of the Indian Contract Act, 1872 defines a contract as "an agreement enforceable by law." Meanwhile, Section 2(e) of the same Act explains that an "agreement" means every promise or set of promises that are mutually supported by consideration.

When either the central government or a state government enters into a contract, it is referred to as a government contract.

Liability of Public Servants

It is important to distinguish between the liability of the State and the liability of individual officers. Regarding individual officers, if they act beyond their official powers or engage in unlawful conduct, they can be held accountable in the same manner as any private citizen. Their liability is governed by general laws, such as those pertaining to contracts, torts, or

criminal law. Public servants who perform their duties impartially, without bias or malicious intent, are not personally liable for losses caused to others, provided their actions are within the scope of their official duties. However, if an officer acts outside the authority granted to them, they may be held liable under civil law just as a private person would be. In certain instances, statutory protections are in place to shield public servants from liability while acting in the course of their duties.

Public Accountability

Recent developments in the area of public accountability highlight its critical role in reducing corruption. Without effective accountability mechanisms, corruption becomes a low-risk and high-reward activity. The Supreme Court's ruling in *D.D.A v. Skipper Constructions* underscores the importance of addressing these issues.

Contractual Liability of the Administration in Britain

Prior to 1947, under common law, the Crown could not be sued in a court of law for matters involving contracts. This immunity originated in feudal times, when a subject could not sue a lord in his own courts. A subject could, however, present a claim through a petition, and if the monarch granted the royal fiat, the claim could be tried in court. If the royal fiat was denied, the individual had no other recourse. This rule was overturned by the Crown Proceedings Act, 1947, which allowed legal actions to be brought against the Crown to enforce contractual obligations.

11.1 Learning Objectives

After studying this lesson, the learner will be able to

- Know the contractual liability of administration in India
- Know the quasi-contractual liability
- Know the pre and post constitution decisions by the state
- Know the compensation to be given by the state

11.2 Contractual liability of administration in India & Liability of State in Contracts and Torts

A. Formation of Government Contracts

Article 299(1) of the Indian Constitution outlines specific requirements for contracts made under the executive authority of the central or state government to be considered valid. These requirements are as follows:

1. The contract must explicitly state that it is made by the President or Governor, depending on the situation.
2. The contract must be executed on behalf of the President or Governor.
3. The manner of execution and the execution itself must be authorized or directed by the President or Governor.

4. The term "executed" in Article 299(1) indicates that a contract with the government must be in writing. An oral agreement is not sufficient under this provision.

In the case of K.P. Chowdhary v. State of Madhya Pradesh, the Supreme Court ruled that a contract between the government and another party must fully comply with Article 299(1) to be enforceable. If it does not, the contract is void and unenforceable by either party.

The judiciary has sought to balance two considerations regarding Article 299:

1. Protecting the government from unauthorized contracts.
2. Ensuring that individuals or parties entering into contracts with government officials are not unfairly impacted when proper procedures are not followed.

For a contract with the government to be legally binding, it must be expressed in the name of the President or Governor. Even if a person authorized by the President or Governor makes the contract, it remains unenforceable unless it is explicitly stated as being made on their behalf.

The Supreme Court has held that when the government enters into contracts or issues licenses, it must do so transparently and in accordance with established laws and policies. The government cannot act arbitrarily, and its actions must be based on clear, well-defined policies communicated to the public.

B. Ratification of Government Contracts

Before 1968, a common judicial view was that although the government could not normally be sued for informal contracts, it could assume responsibility for them by ratifying such contracts.

In the case of State of West Bengal v. B.K. Mondal, the Supreme Court clarified that a contract that does not conform to Article 299(1) is not "void" in the strict legal sense and may be ratified by the government. This suggests that even if a contract fails to meet the formal requirements of Article 299(1), the government can still validate it through subsequent ratification.

Liability of the State in Contracts and Torts

Article 298 of the Indian Constitution grants the executive powers of both the Union and each State the authority to engage in trade or business, acquire, hold, and dispose of property, and enter into contracts for any purpose. Article 299(1) specifies the process for creating such contracts. According to this provision, all contracts made by the Union or State in the exercise of executive power must be expressed as made by the President or Governor, depending on the case. Additionally, such contracts and property assurances must be executed on behalf of the President or Governor by individuals authorized by them and in the manner they specify.

Article 299(2) clarifies that neither the President nor the Governor will be personally liable for any contract or assurance made under the Constitution or by law, even if executed by someone on their behalf.

Under these provisions, the general laws of contract still apply to government contracts, provided they are consistent with Article 299(1).

For a contract with the Union or State to be valid and enforceable, the following conditions must be met:

1. The contract must explicitly state it is made in the name of the President or the Governor.
2. The contract must be executed on behalf of the President or Governor, and must be in writing.
3. The contract must be executed by a person who is duly authorized by the President or the Governor.

If these conditions are not met, the contract is considered void and unenforceable.

The Supreme Court has emphasized that when a government contract is challenged, courts should not intervene unless there is a significant public interest or evidence of mala fide actions. When a writ petition is filed in the High Court challenging the award of a government contract, the court must ensure that public interest is involved before considering the petition.

Effect of a valid contract with the government

As per Article 299(2) of the Indian Constitution, neither the President nor the Governor can be held personally liable for any contract or assurance executed for the purposes of the Constitution or related to the Government of India. Once a contract is entered into with the government in compliance with Article 299, the Indian Contract Act becomes applicable, bringing the standard laws of contract into play. However, the application of private contract law to public contracts may sometimes lead to injustices.

Government service contracts, which are not covered by Article 299, function differently. After being employed by the government, a person’s rights and duties are regulated by statutory rules established by the government, not by the initial contract between the parties. Such contracts are subject to the government's discretion, and can be terminated at will, even if there are express conditions to the contrary.

In India, when there is a breach of a government contract, the only legal remedy is typically a lawsuit for damages. Traditionally, a writ of mandamus could not be used to enforce government contractual obligations. However, the Supreme Court in *Gujarat State Financial Corporation v. Lotus Hotels* took a different stance, allowing the issuance of a writ of mandamus to enforce these obligations. The Court held that it was no longer acceptable for the government to break a solemn contract and then argue that the aggrieved party could only seek damages instead of specific performance.

The doctrine of judicial review has extended to government contracts and those made by its instrumentalities. Prior to the landmark case *Ramana Dayaram Shetty v. International Airport Authority*, courts held that the government had the right to choose whom it contracted with, and such decisions were not subject to judicial scrutiny under Article 14 of the Constitution. However, after this case, the Court adopted a new approach, holding that the government cannot exercise absolute discretion in awarding contracts. It must act reasonably, fairly, and without discrimination.

In *Kasturi Lal v. State of J&K*, Justice Bhagwati observed that every government action carries a public element and must be based on reason and guided by public interest. Arbitrary actions by the

government, lacking reason, are subject to being invalidated. Fairness and transparency are crucial for legitimate state action. In *Tata Cellular v. Union of India*, the Court reaffirmed that while the government has the right to reject tenders, the principles of fairness and equality under Article 14 must still be upheld.

Ratification

Under the current legal framework, a contract made in violation of Article 299(1) is deemed void and cannot be ratified. The Supreme Court has clarified that any contract not in compliance with Article 299(1) is void from the outset, and cannot be enforced, even by invoking the doctrine of estoppel. In such cases, estoppel does not apply, and the parties cannot be prevented from challenging the contract's validity based on non-compliance with the mandatory requirements of Article 299.

Government actions, including in contractual matters, cannot be arbitrary, capricious, or lacking in principle. As Justice Bhagwati noted, all government activities must be informed by reason and guided by public interest. If a government exercises its powers arbitrarily, that action will be invalid. The government must act reasonably and fairly, keeping in mind the legitimate expectations of affected parties. In the case of *Shrilekha Vidyarathi v. State of U.P.*, the Supreme Court reiterated that the state's actions, even in the contractual realm, must adhere to the principles of fairness and reasonableness under Article 14 of the Constitution.

Moreover, the provisions of Sections 73, 74, and 75 of the Indian Contract Act, which deal with the assessment of damages in breach of contract cases, apply equally to government contracts. This ensures that the government is held accountable in case of a breach of its contractual obligations.

Quasi-Contractual Liability

Under Section 70 of the Indian Contract Act, if a person lawfully performs a service or provides goods to another, and the recipient benefits from these actions, the beneficiary is obligated to compensate the person who provided the goods or services. This applies even if the person providing the goods or services did not intend to offer them free of charge. Consequently, if Section 70's conditions are met, the government may also be held accountable for compensation if it benefits from work done or services provided by someone else.

Section 70 is grounded in the concept of quasi-contract or restitution rather than a formal contract between the parties. This provision allows a person who has supplied goods or provided services, without the expectation of payment, to claim compensation from the person who has benefited from those goods or services. Essentially, it establishes a liability based on fairness and equity, even in the absence of a written agreement or formal contract.

Section 65 of the Indian Contract Act, 1872

Section 65 comes into play when an agreement with the government is found to be void, typically due to non-compliance with the requirements of Article 299(1). In such cases, the party who benefits from the agreement is required to either restore the advantage received or compensate the government. For example, if a contractor enters into an agreement with the government to build a warehouse and receives payment, but the agreement is later deemed void due to non-compliance with Article 299(1), the government can reclaim any amount paid to the contractor. Section 65 mandates that if an agreement or contract is deemed void, any party who has received

an advantage under such a contract must either return the benefit or provide compensation to the other party from whom it was received.

Self-Check Exercise-1

Q.1 A person duly authorized by the President or the Governor of the State, as the case may be, must execute the contract. True/False

Q.2 The contract with the Government will not be binding if it is not expressed to be made in the name of the President or the Governor, as the case may be. True/False

11.4 Liability of Administration in Tort & Compensation by the State

Tortious liability arises when there is a violation of a legal obligation that is owed to the public, and such violations can be addressed through unliquidated damages. The principle "Ubi Jus Ibi Remedium" played a significant role in the development of Tort law, which addresses wrongs committed between individuals under common law. In Roman law, the state was considered sovereign and was not held liable for torts committed against its citizens. This was seen as a characteristic of sovereignty, meaning that the state could not be sued in its own courts without its consent.

Similarly, in England, the Crown enjoyed immunity from tortious liability. However, with the rise of the welfare state, the role of the state evolved. The logic of the welfare state led to an increase in state intervention, which blurred the lines between the public and private roles of the state. The state began to be recognized as a legal entity acting through its officials and agents, who were accountable under the law. Immunity from liability remained restricted to traditional state functions such as legislation, judicial administration, defense, diplomacy, and crime prevention.

The issue of state liability in tort has gained significant attention in modern legal discourse. The welfare state has strengthened the connection between individual rights and state duties, with the expansion of state functions leading to increased accountability. As state actions grow, so too does its responsibility to its citizens, making state liability a critical issue in contemporary legal discussions.

Liability of Administration in Tort
State liability refers to the responsibility of the government for the wrongful acts (whether by omission or commission) committed by its officials or servants. This liability is governed by both statutory and common law, and it is not a fixed or unchanging concept. The concept of state liability for tortious acts of its servants allows the government to be held accountable, either voluntarily or involuntarily, for these acts and to face claims for unliquidated damages in a court of law. This area of law is an extension of the broader field of tort law. Like many other legal doctrines, the law of torts was brought to India by the British, though it has since been adapted to the local legal system and constitutional framework.

English Law
In England, the Crown traditionally enjoyed complete immunity from tort liability under common law, based on the maxim "the King can do no wrong." In 1863, in the case of *Tobin v. R.*, the court remarked that if the Crown were liable in tort, it would undermine the established legal order. However, in 1947, the Crown Proceedings Act was passed, which placed the government in a position similar to that of a private individual with respect to tort liability.

Indian Law
India did not adopt the maxim "the King can do no wrong," and the government was not granted absolute immunity from tort liability. Before the Constitution, the government was held accountable for the actions of its employees in certain cases. According to Article 294(4) of the Indian Constitution, the government's liability may arise from a variety of contracts or other legal engagements. Article 12 defines "State," and Article 300(1) outlines the scope of its liability, establishing that the liability of the Union and State governments is equivalent to that of the Dominion of India under prior legal provisions.

The concept of public responsibility is of significant importance in the Indian legal system. It is settled law that all discretionary powers must be exercised reasonably and in the public interest. For example, in *Arvind Dattatreya v. Maharashtra State*, the Supreme Court ruled that the transfer of a police officer was an arbitrary exercise of power intended to undermine honest officers, which was deemed an abuse of authority.

Vicarious Liability of the State
The state may be vicariously liable for the torts committed by its employees in the course of their official duties. However, the state will not be held liable if the act was necessary to protect life or property, or if the action was judicial or quasi-judicial and performed in good faith. The state's immunity is limited to specific statutory protections, but malicious or wrongful acts are not shielded. In such cases, the burden of proving the malicious intent lies with the party challenging the administrative action.

Doctrine of Respondeat Superior
The doctrine of *Respondeat Superior* (Let the master answer) holds that an employer or master is liable for the negligent actions of their employees or servants during the course of their employment. This principle is rooted in public policy, as it seeks to assign responsibility for the risks inherent in an employer-employee relationship to the business or organization. For this doctrine to apply, there must be a genuine master-servant or employer-employee relationship, and the employee's tortious act must fall within the scope of their duties. In *Automobiles Transport v. Dewalal*, the Rajasthan High Court held that there is a presumption that a vehicle is operated by the driver under the employer's authorization, and the burden of disproving this rests with the employer.

Maxim of Qui-Facit Per Alium Facit Per Se
The legal maxim *Qui facit per alium facit per se* (He who acts through another acts himself) is central to agency law and vicarious liability. It asserts that an employer is responsible for the actions of their employees, as if the employer were performing the act themselves. This maxim applies to any situation where a principal authorizes an agent to act on their behalf. The principal is legally accountable for the actions of the agent within the scope of their authority, unless the act is of a personal nature. In *H.E. Nasser Abdulla Hussain v. Dy. City*, the court affirmed this principle, holding that a master is responsible for the actions of their servant. Similarly, in *Ballavdas*

Agarwala v. Shri J. C. Chakravarty, the court confirmed that vicarious liability applies to the actions of employees within the scope of their duties. However, the Indian Income-tax Act, in cases like *K.T.M.S. Mohd. v. Union of India*, demonstrated exceptions to this general rule, suggesting that certain statutory codes may limit the application of this maxim.

Compensation by State

The term "tort" refers to a civil wrong or injury that does not stem from a contractual obligation but can be remedied through compensation or damages. According to Chambers Dictionary, "Tort is any wrong or injury not arising out of contract for which there is a remedy by compensation or damages." Essentially, a tort occurs when a legal duty, unrelated to a contract, is violated. A tort is a civil wrong for which the only legal remedy is damages. The violation of duties owed to the general public forms the basis for a tort, though not every civil mistake constitutes a tort.

Section 70 of the Indian Contract Act establishes that when a person lawfully performs an act or delivers something for another, and the recipient benefits from it, the recipient must compensate the person who rendered the service or restore the thing delivered. If the conditions of Section 70 are met, even the government may be required to compensate for work or services rendered by the state. This section is based on the principles of quasi-contract or restitution rather than on an existing contract between the parties. It allows an individual who provides goods or services with the expectation of compensation, rather than as a gift, to claim remuneration from the party benefiting from the services or goods.

According to Article 299(1) of the Constitution, if an agreement with the government is found to be void, the party benefiting from it must restore the benefits or compensate the party from whom they were received. If, for example, a contractor receives a payment from the government for constructing a building, and the agreement is later deemed void due to non-compliance with Article 299(1), the government can recover the payment made to the contractor under Section 65 of the Indian Contract Act. Section 65 provides that if an agreement or contract is void, any person who has received an advantage under such a contract must return it or compensate the person from whom it was obtained.

When a public servant fails to perform their duties competently, obtaining compensation from them can be challenging. For the aggrieved person, the need for compensation may be more pressing than punishment. The State, therefore, must be held vicariously liable for the wrongful actions of its employees. For example, in *Bhim Singh v. State of J&K*, the petitioner, a Legislative Assembly member, was unlawfully arrested while traveling to attend a session in violation of his constitutional rights under Articles 21 and 22(2) of the Constitution. The court awarded the petitioner Rs. 50,000 as exemplary damages. In *Lucknow Development Authority v. M.K. Gupta*, the Supreme Court ruled that when public servants cause harm and injustice to citizens through malice or arbitrary acts during the discharge of their duties, the State must compensate the affected individual from public funds. The State can then recover the compensation amount from the negligent public servant.

Relevant Case Laws
The first judicial definition of State Liability in India was established under the East India Company in *John Stuart, 1775*. It was the first time that the Governor-General in Council was held

accountable in court for the dismissal of government servants, with no immunity from jurisdiction. In *Moodaly v. The East India Company*, the Privy Council expressed that the common law doctrine of sovereign immunity did not apply in India, reinforcing the principle that the government could be held accountable for wrongful actions.

Pre-Constitution Judicial Decisions

- **Peninsular and Oriental Steam Navigation Company v. Secretary**: This case established that the East India Company (or the State) is not liable for risks arising from actions performed as part of its sovereign functions. The ruling made a clear distinction between the sovereign and non-sovereign activities of the state.
- **Secretary of State v. Hari Bhanji**: The Madras High Court ruled that the State's immunity applies solely to its actions in its sovereign capacity. The decision clarified the limitations of this immunity, offering examples of situations where immunity could be invoked.

Post-Constitution Judicial Decisions

- **State of Haryana v. Santra**: The Court ruled that when the state's actions are negligent, it loses the defense of sovereign immunity. The ruling emphasized that negligence in professional duties, where there is a clear obligation, does not permit the state to claim immunity under the guise of sovereign capacity.
- **State of Rajasthan v. Vidyawati**: This case focused on whether the state could be held liable for a tort committed by one of its employees. The Court concluded that the state is liable for the tortious acts of its employees if they act within the scope of their employment, similar to the liability of any other employer.
- **Kasturi Lal v. State of UP**: The decision in this case reaffirmed the principle that actions performed by state employees in the exercise of their sovereign powers do not create state liability. This case involved a situation where the employee's actions were deemed to fall within the scope of sovereign functions, thus excluding state liability.
- **Kesoram Poddar v. Secretary of State for India**: The Supreme Court decision in this case clarified that the state could claim immunity in tort cases when actions are conducted in the course of sovereign duties. The Court highlighted the necessity of distinguishing between sovereign and non-sovereign actions when determining liability.
- **Union of India v. Harbans Singh**: This case held that no damages could be recovered when a person was killed by a military driver's reckless driving because it was an act performed under the state's sovereign function. Similarly, in **Secretary of State v. Cockcraft**, the Court ruled that a claim for injuries caused by the reckless removal of rocks from a military road was not valid because the maintenance of the road fell within the state's sovereign duties.

Constitutional Provisions

- **Article 294**: This article ensures that all properties and assets that were previously under the dominion of the Government of India and the Governors of the provinces will now vest in the Union and respective State Governments. Additionally, all rights, obligations, and liabilities arising from contracts made by the Government of the Dominion of India and the provincial governors will be transferred to the Union and corresponding State Governments.
- **Article 298**: This provision grants both the Union and the State the authority to engage in trade or business. For this purpose, they are empowered to acquire, dispose of, or hold property and enter into contracts as required.
- **Article 299**: Contracts made by the Union or State in exercise of their executive powers must be executed by the President of India or the Governor of a State. These contracts are made on behalf of the President or the Governor, and neither the President nor the Governor can be personally liable for such contracts. Additionally, individuals who execute these contracts on behalf of the President or Governor are not personally liable.
- **Article 300**: This article establishes that the Government of India and State Governments may be sued in accordance with provisions outlined by acts of Parliament or State legislatures, or by powers granted under the Constitution.

Self-Check Exercise-2

Q.1 As per Article 298 of the constitution, the union and state shall carry out any trade or business and for that purpose, it can acquire, dispose or hold any property and can enter into contract. True/False

Q.2 Tort is any wrong or injury not arising out of contract for which there is a remedy by compensation or damages. True/False

11.5 Summary

A government contract is fundamentally similar to any ordinary contract, with the key difference being that the parties involved are the central or state government, i.e., the President of India and the Governor of the State. Such contracts must adhere to the requirements outlined in Article 299 of the Constitution of India and Section 10 of the Indian Contract Act, 1872. The judiciary plays a vital role in ensuring that these contracts are free from fraud and arbitrariness, exercising judicial review to maintain fairness in the contracting process.

In modern times, government contracts have gained significant importance. The state acts as a major source of wealth and, within a welfare state, its economic activities are expanding. The government increasingly assumes the role of distributing a wide array of benefits. As a result, the number of individuals with wealth, including new forms of property, has risen. These forms of

wealth—such as government contracts, licenses, and quotas—are often considered 'privileges,' although some may be viewed as having the nature of legal rights.

The issue of the contractual liability of the administration is a topic of great interest in India, especially as the government takes on the responsibilities of a welfare state. The state operates under the rule of law and cannot act in contravention of it. A key question that arises is whether an individual who has suffered harm or injury due to an act of the state is entitled to compensation or other remedies from the government. The primary objective is to regulate and structure the discretionary powers of the government, ensuring that the benefits it confers are exercised in a lawful and disciplined manner.

11.6 Glossary

- **Arbitrary**- not seeming to be based on any reason or plan and sometimes seeming unfair.
- **Crown** - the state as represented by a king or queen.
- **Void** - completely lacking something

11.7 Answers to self-check exercises

Self-Check Exercise-1

Q.1 True

Q.2 True

Self-Check Exercise-2

Q.1 True

Q.2 True

11.8 References/Suggested Readings

- *http://www.legalservicesindia.com/article/2000/Liability-of-State-In-Contract-And-In-Torts.html#:~:text=The%20first%20important%20case%20involving,Secretary%20of%20*

State%20for%20India.&text=Hari%20Bhanji%2C%20In%20this%20case,civil%20Courts%20could%20entertain%20them.

- https://acadpubl.eu/hub/2018-120-5/2/179.pdf
- https://shodhganga.inflibnet.ac.in/bitstream/10603/126943/13/13_Unit%205.pdf

11.9 Terminal questions

Q1 Discuss the effect of valid contract with the government.
Q2 What compensation to be paid by government in case of non-adherence to the contract?

Q3 Discuss pre and post constitution judicial decision relating contracts and torts.

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UNIT-12

LOKPAL AND LOKAYUKTA - AN INDIAN OMBUDSMAN

Structure

12.0 Introduction

Maladministration can be compared to a termite that gradually weakens the foundation of a nation. It obstructs the effective functioning of the administration. At the heart of this issue lies corruption, a significant challenge faced by our country. Although there are several anti-corruption bodies in India, many of these organizations lack true independence. The Central Bureau of Investigation (CBI) has even been described by the Supreme Court of India as a "caged parrot," serving as a mere tool for those in power.

A number of these agencies function only as advisory bodies, without the authority to take strong action against corruption, and their suggestions are seldom acted upon. There is also the issue of insufficient transparency and accountability within these bodies. Additionally, there is no separate and efficient system to oversee and hold these agencies accountable for their actions.

In this scenario, the establishment of the Lokpal and Lokayukta institutions marks a significant milestone in Indian governance. This development aims to provide a robust and effective mechanism to combat corruption at all levels of the government.

12.1 Learning Objectives

After studying this lesson, the learner will be able to

- Know the origin, history, term and appointment of Lokpal
- Know the Need of Lokayukta and Lokpal
- Know the Lokpal and Lokayukta amendment Act 2016

- Know the structure, jurisdiction, powers and limitations of Lokpal

Meaning

The term "Ombudsman" refers to an official designated to investigate complaints from individuals regarding poor administration, particularly by public authorities. Essentially, an Ombudsman acts as a grievance officer. This public officer's role is to look into complaints raised by citizens about the misconduct or inefficiency of public administration. In other words, when there are significant failures in how public institutions operate, citizens have the right to file complaints against the responsible authorities. The Ombudsman is typically a representative of Parliament.

The Lokpal and Lokayukta Act of 2013 led to the creation of the Lokpal at the national level and Lokayukta at the state level. These bodies are statutory, meaning they are established by law but do not carry constitutional recognition. Their functions are similar to that of an Ombudsman, as they investigate complaints related to corruption within public institutions and address other connected issues.

12.2 Origin, term, appointment, need of Lokpal and Lokayukta

The history of the Lokpal and Lokayukta has deep roots, with the concept not originating in India. The idea of an ombudsman began in Sweden in 1809 with the establishment of the first ombudsman institution. It gained more prominence in the 20th century, particularly after World War II, with countries like New Zealand and Norway adopting the system in 1962. This period marked the spread of the ombudsman institution to other parts of the world.

In 1967, Great Britain introduced the ombudsman institution following the recommendations of the Whyatt Report of 1961, making it the first major democratic country to adopt an anti-corruption body of this nature. Guyana became the first developing nation to establish the ombudsman system in 1966, followed by Mauritius, Singapore, Malaysia, and eventually India.

In India, Ashok Kumar Sen, the former law minister, was the first to propose the idea of a constitutional ombudsman in Parliament in the early 1960s. Later, Dr. L.M. Singhvi coined the terms "Lokpal" and "Lokayukta." In 1966, the First Administrative Reforms Commission recommended the establishment of two independent bodies at both the central and state levels to address complaints against public officials, including members of Parliament.

The Lokpal Bill was first introduced in Lok Sabha in 1968 but lapsed due to the dissolution of the House. Despite numerous attempts, the Bill failed to pass, with as many as eight unsuccessful efforts by 2011. In 2002, a commission led by M.N. Venkatachaliah was formed to review the Constitution, and it recommended the creation of the Lokpal and Lokayuktas, suggesting that the Prime Minister should be excluded from the scope of the Lokpal. In 2005, the Second Administrative Reforms Commission, chaired by Veerappa Moily, also called for the prompt establishment of the Lokpal.

Although these recommendations faced delays, in 2011, the government set up a Group of Ministers, led by then-President Pranab Mukherjee, to examine the proposal and devise solutions

for addressing corruption. Public pressure, particularly through the "India Against Corruption" movement led by Anna Hazare, led to widespread protests advocating for the establishment of the Lokpal system.

This public outcry resulted in the passing of the Lokpal and Lokayukta Bill in 2013. It was signed into law by the President on January 1, 2014, and came into effect on January 16, 2014, under the name "The Lokpal and Lokayukta Act 2013."

Commission and Movements which Recommended for Establisment of Lokpal and Lokayuktas

• In 1966, the First Administrative Reforms Commission, led by Morarji Desai, recommended the creation of two independent bodies—one at the central level and one at the state level—to investigate complaints against public officials, including members of Parliament.
• In 2002, the Commission to Review the Working of the Constitution, under the leadership of Shri M.N. Venkatachaliah, recommended that the Prime Minister be excluded from the jurisdiction of these authorities.
• In 2005, the Second Administrative Reforms Commission, chaired by Shri Veerappa Moily, urged the immediate establishment of the Lokpal office.
• In 2011, the prominent "Anna Hazare Movement" for the creation of Lokpal was initiated, gaining widespread attention.

Term and appointment to the office of Lokpal

The Chairman and members of the Lokpal serve a term of five years or until they reach the age of 70, whichever comes first. They are appointed by the President of India based on the recommendations of a selection committee.

The selection committee is made up of the following members: • The Prime Minister of India
• The Speaker of the Lok Sabha
• The Leader of the Opposition in the Lok Sabha
• The Chief Justice of India or a judge nominated by the Chief Justice
• An eminent jurist

The Prime Minister serves as the Chairperson of the selection committee. A search panel, consisting of at least eight individuals, is formed by the selection committee to carry out the process of selecting the Chairperson and members of the Lokpal.

Lokpal search committee

According to the Lokpal Act of 2013, the Department of Personnel and Training is responsible for compiling a list of candidates interested in becoming the chairperson or members of the Lokpal. This list is then submitted to the eight-member search committee, which shortlists candidates and forwards their names to the selection panel, chaired by the Prime Minister.

The selection panel has the authority to choose from the list provided by the search committee. In September 2018, the government formed a search committee led by former Supreme Court judge

Justice Ranjana Prakash Desai. The Lokpal and Lokayukta Act of 2013 also stipulates that all states must establish a Lokayukta office within one year of the Act's implementation.

Salary and allowances

• The salary, allowances, and working conditions of the Chairperson are on par with those of the Chief Justice of India.
• The salary, allowances, and working conditions of the members are comparable to those of a Supreme Court Judge.

Lokayuktas in State

- • States are required to establish Lokayuktas.
  • Purpose: To address allegations made against state officials.
  • Jurisdiction of Lokayuktas: Covers all state government employees, including those in religious organizations, as well as the governor, ministers, and members of the legislative assembly (MLAs).
  • Prior to the enactment of the Lokpal and Lokayukta Act of 2013, most states had already set up Lokayuktas as statutory bodies with fixed terms.
  • The public can directly approach the Lokayukta with complaints of corruption, favoritism, or any other form of administrative misconduct.
  • Note: Following the revocation of Jammu and Kashmir's special status and statehood on August 5, 2019, the Government of India disbanded eight state commissions, including the J&K Accountability Commission.
  • States were obligated to appoint a Lokayukta within a year of the Lokpal Act's implementation, but so far, only 16 states have established Lokayuktas.

Branches of Lokpal

• The Lokpal will operate through two main branches to fulfill its functions.
• Administrative Branch: This branch will be headed by a Secretary to the Government of India and will consist of various departments.
• The inquiry and investigation branch will be led by an officer with a rank no lower than Additional Secretary to the Government of India. The prosecution wing will also be overseen by an officer holding the rank of Additional Secretary.
• Judicial Branch: This branch will be headed by a judge of suitable rank to assist the Lokpal in carrying out its judicial responsibilities.

Need of Lokpal and Lokayuktas

• **Maladministration:** This gradually weakens the foundation of a nation, much like termites,

and hampers the effective functioning of the administration. Corruption is the root cause of this problem.

• **Lack of Independence in Organizations:** Many anti-corruption bodies hardly function with true independence. The Supreme Court has even described the CBI as "a caged parrot" and "its master's voice."

• **Advisory Role:** Many such bodies merely provide recommendations, without real authority, and their advice is seldom implemented.

• **Issues with Accountability and Transparency:** There is a lack of internal accountability and transparency in these institutions, and no effective mechanism exists to hold them accountable.

• **Combating Corruption:** The establishment of the independent Lokpal and Lokayukta institutions marked a turning point in Indian political history, offering a solution to the persistent issue of corruption.

Self-Check Exercise-1

Q.1 The Supreme Court has referred to the CBI as "its master's voice" and a "caged parrot." True/False

Q.2 The Chairperson's salary, allowances, and other working conditions are similar to those of the Chief Justice of a state. True/False

12.3 Lokpal and Lokayukta Amendment Act, 2016

Following the enactment of the Lokpal and Lokayukta Act in 2013, Parliament passed an amendment to the Act in July 2016. This amendment allowed the leader of the largest opposition party in the Lok Sabha to join the selection committee when there was no officially recognized Leader of the Opposition.

The amendment also made changes to Section 44 of the original Act, which focused on the requirement for public servants to declare their assets and liabilities within 30 days of joining government service. The revision removed the 30-day time frame and instead stipulated that public

servants must disclose their assets and liabilities according to the format and procedure set by the government.

Additionally, the bill introduced a provision that required trustees and board members of non-governmental organizations receiving more than Rs. 1 crore in government funding or over Rs. 10 lakh in foreign donations to disclose their assets to the Lokpal. The bill also extended the deadline for trustees and board members to declare their assets, including those of their spouses.

Structure of the Lokpal

The Lokpal is structured as a multi-member body, comprising one chairperson and a maximum of eight members.

To be eligible for the position of chairperson, the individual must be one of the following:

1. A former Chief Justice of India;
2. A former Judge of the Supreme Court; or
3. A distinguished person with exceptional integrity and expertise, who has at least 25 years of experience in areas such as:
    - Anti-corruption policies,
    - Public administration,
    - Vigilance,
    - Finance (including insurance and banking),
    - Law and management.

The total number of members cannot exceed eight. The composition of the members must be as follows: • At least half of the members must be judicial. • At least 50% of the members should represent SC/ST/OBC communities, minorities, and women.

The judicial members of the Lokpal must be: • A former Judge of the Supreme Court; or • A former Chief Justice of a High Court.

Non-judicial members must be distinguished individuals with impeccable integrity and exceptional ability. They must have at least 25 years of experience in areas such as: • Anti-corruption policies, • Public administration, • Vigilance, • Finance (including insurance and banking), • Law and management.

Jurisdiction and powers of Lokpal

The Lokpal's jurisdiction covers:

• The Prime Minister and Ministers,
• Members of Parliament,
• Officers in Groups A, B, C, and D,
• Officials of the Central Government.

However, the Lokpal's jurisdiction over the Prime Minister is limited in cases involving allegations of corruption related to:
• International relations,
• National security,
• Public order,
• Atomic energy and space.

The jurisdiction of the Lokpal does not extend to ministers or members of Parliament regarding:
• Speeches made in Parliament, or
• Votes cast in Parliament.

Additionally, the Lokpal's jurisdiction includes:
• Individuals in charge of bodies or societies established by Central Government legislation,
• Societies or organizations funded or controlled by the Central Government,
• Individuals involved in abetting, giving or receiving bribes.

Under the Lokpal and Lokayukta Act, all public officials must declare their assets, liabilities, and those of their dependents. The Lokpal also has supervisory authority over the CBI and can issue directions to the agency. When a case is referred to the CBI by the Lokpal, the investigating officer cannot be transferred without the Lokpal's prior approval. The Inquiry Wing of the Lokpal is vested with civil court powers.

Furthermore, the Lokpal has the authority to seize assets, proceeds, and benefits gained through corrupt means under specific circumstances. It can also recommend the suspension or transfer of public servants involved in corruption-related matters. The Lokpal has the power to direct actions to prevent the destruction of evidence during preliminary inquiries.

Limitations

The establishment of the Lokpal was a crucial step in the fight against corruption, serving as a tool to tackle the widespread corruption within India's administrative framework. However, there are several shortcomings that need attention. One major issue is that the committee responsible for appointing the Lokpal includes members from political parties, which exposes the process to political influence.

There are no clear criteria for determining who qualifies as an "eminent jurist" or a "person of integrity," which can lead to manipulation in the appointment process. Furthermore, the Lokpal and Lokayukta Act of 2013 does not offer sufficient protection to whistleblowers. The provision allowing inquiries to be initiated against complainants if the accused is found innocent can deter people from filing complaints. Another significant gap is the exclusion of the judiciary from the jurisdiction of the Lokpal.

Additionally, the Lokpal lacks constitutional backing, and there are no sufficient provisions for appealing its decisions. States also have the discretion to determine specific details regarding the appointment of the Lokayukta. Although the Lokpal and Lokayukta Act has made some progress in

ensuring the independence of the CBI, particularly through changes in the selection process for the CBI Director, there is still room for improvement.

The Act also imposes a seven-year limit for filing complaints related to corruption, which restricts the time frame for bringing allegations against public officials.

Prime Minister under Lokpal

Under the Lokpal and Lokayukta Act of 2013, the Prime Minister is generally within the jurisdiction of the Lokpal. However, the Lokpal is not authorized to investigate allegations involving matters such as international relations, national security, public order, atomic energy, or space. Additionally, investigations into the Prime Minister can only proceed under specific conditions:

The full bench of the Lokpal, which includes the Chairperson and all Members, must agree to initiate the investigation.

A minimum of two-thirds of the members must approve the investigation.

Any investigation involving the Prime Minister must be conducted in secrecy, with records kept confidential. If the Lokpal determines the allegation is unfounded, the investigation will be terminated, and no details will be made public.

WHAT SHOULD BE DONE?

• To effectively tackle corruption, the institution of the ombudsman must be reinforced, ensuring both functional independence and adequate staffing.
• There must be greater transparency, improved access to information, and stronger empowerment of citizens and civic groups, alongside responsible leadership that is committed to public accountability.
• Simply appointing a Lokpal is not enough. The government must address the root causes that prompted the demand for a Lokpal in the first place. Expanding the government by enhancing investigative bodies will increase its size, but it may not necessarily lead to better governance.
• The government should genuinely adhere to the principle of "less government, more governance" in both letter and spirit.
• Moreover, the Lokpal and Lokayukta should be financially, administratively, and legally independent from the entities they are responsible for investigating and prosecuting.
• The appointment process for the Lokpal and Lokayukta must be transparent to ensure that capable and trustworthy individuals are chosen.
• To prevent excessive concentration of power in a single institution, it is important to have a variety of decentralized institutions with appropriate checks and balances.

Specific steps to be taken to reduce the corruption

1. The enforcement of laws should be reevaluated to improve effectiveness, and citizens' understanding of these laws must be enhanced to ensure transparency.
2. Broader societal issues like moral decline and the rise in consumerism should be addressed as part of a comprehensive approach.
3. For sectors involving large public enterprises, complex delivery systems, advanced technology, and foreign investment, market forces should be accompanied by effective regulatory frameworks.
4. A decentralized approach to monitoring and vigilance should be established to increase accountability.
5. Efforts should be made to prevent any shortages in essential services.
6. Priority should be given to areas impacting society's most vulnerable groups. Citizen-centric services should be prioritized, and the use of outsourcing should be supported. Education, healthcare, and other service delivery systems must be re-engineered for better efficiency.
7. Ministries dealing with high-risk areas should have internal review procedures in place to ensure continuous improvement.
8. Public access to village records should be ensured for transparency and accountability.
9. The primary responsibility of department heads should be internal oversight and ensuring proper functioning within their teams.
10. Instead of concentrating on financial audits, a focus on auditing transactions and processes should take precedence.
11. Auditors currently lack accountability. The entire structure of the Comptroller and Auditor General (CAG) needs to be thoroughly reformed to ensure better governance and accountability.

Measures to make anti-corruption institutions be more effective

12. State Vigilance Commissions or Lokayuktas should be empowered to oversee the prosecution of corruption-related cases.
13. Investigative agencies need to enhance their expertise by fostering a multidisciplinary approach and ensuring they are knowledgeable about the functioning of various government departments. This should include representatives from multiple departments.
14. The use of advanced investigative methods, such as electronic surveillance, audio and video recordings during surprise inspections, and the execution of traps, searches, and seizures, should be implemented.
15. Investigative bodies should be assigned specific time limits within which to complete investigations for different types of cases.
16. Efforts should be made to continually increase the number of corruption cases that are detected and investigated, with a focus on high-profile corruption cases.
17. Corruption cases should be handled by a team of lawyers selected by the Attorney General or Advocate General, in coordination with the Lokpal or Lokayukta, as appropriate.
18. Anti-corruption agencies should conduct regular assessments of government departments, focusing on those with a high risk of corruption, to gather intelligence and identify officers who may lack integrity.

19. The Lokpal should be granted adequate authority to effectively manage and resolve corruption cases.

Citizens' initiatives:

A. Citizens' Charters should be strengthened by setting clear service standards and outlining the consequences for failing to meet them.
B. Citizens should be encouraged to participate in monitoring and maintaining ethical standards within government offices and institutions.
C. Incentive programs should be introduced to motivate citizen involvement and active participation in governance.
D. Educational programs in schools should focus on raising awareness about ethics and corruption prevention.

Role of media:

A. Norms and practises must be developed that require proper media screening of all allegations/complaints and action to put them in the public domain.

B. In order to adhere to a Code of Conduct as a safeguard against malafide action, the electronic media should develop a Code of Conduct and a self-regulating mechanism.

C. By regularly disclosing details about corruption cases, government agencies can aid the media in the fight against corruption.

Social audit:

All developmental schemes and citizen-centric programmes should include a social audit mechanism in their operational guidelines.

Using Information Technology:

1. Each government ministry, department, or organisation should develop a plan for using technology to improve governance. Use of Information Technology should be made only after existing procedures have been thoroughly re-engineered in any government process.

2. Offices with a lot of public interaction should have a complaint tracking system online. If at all possible, the task of tracking complaints should be outsourced.

3. In offices with a lot of public interaction, there should be an external, periodic mechanism for 'auditing' complaints.

Self-Check Exercise-2

Q.1 According to the Lokpal and Lokayukta Act 2013, the PM is subject to Lokpal's jurisdiction, but if the allegation of corruption is related to international relations, external and internal security, public order, atomic energy, or space, Lokpal will not investigate the PM. True/False

Q.2 The Lokpal and Lokayukta Act states that all public officials need to furnish their assets and liabilities as well as their respective dependents. True/False

12.4 Summary

To effectively address corruption, the ombudsman institution must be enhanced in terms of both its operational independence and the availability of adequate resources. Simply appointing a Lokpal is not a sufficient solution. The government must address the root causes that have led to public demand for the establishment of a Lokpal. Expanding investigative agencies may increase government size, but it won't necessarily result in better governance. The government's principle of "less government, more governance" should be adhered to in both intent and execution.

Additionally, the Lokpal and Lokayukta must operate independently in financial, administrative, and legal matters from the entities they investigate and prosecute. The selection process for Lokpal and Lokayukta should be transparent to prevent the appointment of unsuitable candidates. It is also important to establish multiple decentralized institutions with robust accountability systems to prevent the concentration of excessive power within a single entity.

12.5 Glossary

- **Decentralization**- the transfer of control of an activity or organization to several local offices or authorities rather than one single one.
- **Prosecution** - the process of officially charging somebody with a crime and of trying to show that he/she is guilty, in a court of law.
- **Whistleblowers** - a person who informs on someone engaged in illegal activities

12.6 Answers to self-check exercises

Self-Check Exercise-1

Q.1 True

Q.2 False

Self-Check Exercise-2

Q.1 True

Q.2 True

12.7 References/Suggested Readings

12.7 Terminal questions

Q1 Discuss the effect need of Lokpal and Lokayuktas in the states.
Q2 bring out the features of Lokpal and Lokayukta Amendment Act 2016.

Q3 Discuss the measures needed to be taken to reduce corruption and to make Lokpal.

and lokayuktas effective.

UNIT-13

CONSTITUTIONAL PROTECTION FOR CIVIL SERVICES IN INDIA

Structure

13.0 Introduction

The Civil Services play a central role in a country's development and progress. The efficiency, democratic values, and overall development of a nation are largely influenced by the administrative body and civil machinery in place.

The Constitution, along with various laws and acts, upholds the independence of the judiciary and the principle of the separation of powers, which aim to minimize or eliminate political interference in the executive branch. This separation ensures that peace, efficiency, and justice are maintained in the governance and legal system, as seen in countries like the United States. The independence of the judiciary is closely linked to judicial review and the concept of checks and balances, which allows for scrutiny of legislative and administrative actions to ensure their constitutionality.

However, it is evident that the executive machinery in many countries, including ours, is increasingly influenced by political agendas, which hampers national growth and development. It is common to hear in the media that political interests often overshadow the capabilities and qualifications of administrative officers when it comes to their transfers and postings. This creates situations where inept and unqualified individuals are appointed to significant positions, while capable officials are sidelined to serve the personal interests of political leaders.

Such practices often result in inefficiency, with competent and honest officers bearing the brunt of this system. The Constitution provides legal safeguards for civil servants to protect them from political manipulation and undue interference. Articles 309, 310, and 311 of the Indian Constitution specifically outline provisions regarding the appointment, dismissal, and removal of civil servants, offering a form of legal protection to ensure their positions are secure from unjust political influences.

13.1 Learning Objectives

After studying this lesson, the learner will be able to

- Know the recruitment and regulations in the conditions of service of Civil Servants
- Know the doctrine of pleasure and its exceptions
- Know the Constitutional Remedies and Protection ensured to Civil Servants in India
- Know the Exceptions of Article 311 of the Indian Constitution

13.2 Recruitment and Regulations In The Conditions Of Service Of Civil Servants:

Article 309 of the Indian Constitution grants the Parliament of India and the respective State Legislatures the authority to create laws and rules concerning the appointment and regulation of civil servants in both the Union and State Governments.

This provision further specifies that if such laws have not been enacted by Parliament or any State Legislature, the President or the Governor of a State has the power to issue temporary laws to regulate these appointments. This ensures that the country is protected from maladministration and dysfunction.

Article 309:

The provisions of the Constitution make it clear that the rules and laws governing the appointments and postings of civil servants, as well as the rule-making powers of the executive and administrative officials, must not violate any part of the Indian Constitution, especially the Fundamental Rights of individuals.

A common question that arises concerns the constitutional validity of the right to strike for civil servants. While some government employees or professional groups may form trade unions, the Indian Constitution does not recognize the right to strike as a fundamental or constitutional right.

This issue was addressed by the Supreme Court of India in the landmark case of T.R. Rangarajan v. Govt. Of India. In this case, the two-judge bench held that government employees have no legal or moral right to strike. If they are aggrieved by government actions, they must seek redress through the appropriate tribunals or courts.

In 2002, the Tamil Nadu state government suspended over 200,000 government employees under the provisions of the Tamil Nadu Essential Services Maintenance Act, 2002, and the Tamil Nadu Ordinance, 2003, following their participation in a strike for their demands. The petitioners challenged the constitutional validity of these actions. The court affirmed that government employees do not have the right to strike, as strikes often lead to maladministration, chaos, and disruption in society. The proper course of action for employees is to pursue legal remedies for their grievances.

The court further emphasized that such a large-scale strike severely disrupts government operations, putting society and the state in a difficult situation. The state government justified its actions by highlighting that over 90% of its revenue, generated through direct taxes, was allocated to maintaining the salaries of over 1.2 million government employees. While the court acknowledged that trade unions have the right to collectively bargain on behalf of their members, it reiterated that they have no right to strike, and no organization or political party should be allowed to disrupt the functioning of the state or harm citizens in the process.

As a result, the right to strike remains neither a fundamental, legal, nor constitutional right for government employees in India.

Doctrine Of Pleasure

The Doctrine of Pleasure is a significant principle that influences the career and tenure of a civil servant. In countries like England, a civil servant appointed by the Crown can be removed from their position without needing to provide any justification. This concept, known as "Absolute Pleasure," means that the civil servant’s position is entirely at the discretion of the Crown. However, in practice, public policy is generally considered before taking any action against a civil servant, and dismissal typically occurs only if it aligns with the interests of justice.

In India, the principle of the Doctrine of Pleasure is outlined in Article 310 of the Indian Constitution, which grants the President of India the authority to appoint and remove civil servants at their discretion, subject to the provisions of the Constitution.

Certain individuals, such as members of the Defence Services, the Union Public Service Commission, State Public Service Commissions, and the All India Services, hold their positions at the pleasure of the President of India or, in the case of state employees, the Governor of the respective state. However, it is important to note that this "pleasure" is not an absolute authority, as seen in the British system. It is subject to constitutional limitations and procedural safeguards.

In the case of *State of Bihar v. Abdul Majid*, it was established that a civil servant has the right to claim their entitled salary, a fundamental and legal right that cannot be taken away. Article 310 of the Indian Constitution outlines that civil servants can only be removed in accordance with constitutional provisions and the statutes in force. Furthermore, Article 311 restricts arbitrary dismissal and mandates that specific procedures must be followed before any action is taken against a civil servant, ensuring protection against unreasonable or unjust actions by the state.

Under the Fundamental Rules 56(b) and Rule 48 of the Central Civil Services Pension Rules, 1972, the government has the authority to grant compulsory retirement to a civil servant. This action, however, is not intended as punishment but as part of constitutionally enabled provisions, dependent on public policy and integrity. Civil servants also have the right to voluntarily retire with a three-month notice, as per Fundamental Rule 56(c). Additionally, Article 310 gives the government the power to abolish positions within the Central or State governments, but such actions are subject to judicial review.

Exceptions of Doctrine of Pleasure

As previously mentioned, in India, the power to exercise the Doctrine of Pleasure by the President, Governor, or the Government—whether at the Union or State level—is not absolute. The Constitution of India imposes several restrictions on this power. These restrictions are as follows:

1. Article 311 provides the primary limitation on the dismissal or removal of a civil servant, ensuring that civil servants cannot be arbitrarily removed from their position. It grants them immunity and allows them to challenge their dismissal or removal through legal action if they believe it to be unjust. The article mandates that before a civil servant is dismissed or demoted, a proper inquiry must be conducted and due procedure must be followed. This protects civil servants from arbitrary actions.
2. Specific Positions Exempt from the Doctrine of Pleasure
   Article 311 also outlines certain positions that are not subject to the Doctrine of Pleasure, including:
   - Judges of the Supreme Court of India (Article 124)
   - Judges of the High Courts of the States (Article 218)
   - The Auditor General of India (Article 148(2))
   - The Chief Election Commissioner of India (Article 324)
   - Chairman and Members of the Public Service Commission (Article 317)

These positions are protected from arbitrary removal and dismissal, as they are critical to the functioning of India's judicial, electoral, and auditing systems.

Self-Check Exercise-1

Q.1 Article 124 concerned with the Judges of Supreme Court of India. True/False

Q.2 Article 218 concerned with the Judges of High Courts of India. True/False

13.3 Constitutional Remedies And Protection Ensured To Civil Servants In India:

Before delving into the constitutional protections granted to civil servants in India, it is important to first understand the concept of a civil post and who qualifies as a civil servant.

Who are Civil Servants?
As mentioned earlier, Article 311 applies specifically to civil servants in India, and it does not extend to other government employees or individuals, even if they are employed by the Union, State, or a corporation.

The term "civil post" is not explicitly defined in Articles 310 or 311 or in any specific legislation. Instead, its meaning has been clarified through judicial interpretations. One important distinction is that defence employees are not covered under this definition.

In the landmark case **V.K. Nambudri v. Union of India**, the Kerala High Court ruled that the legal protections afforded to civil servants do not apply to defence personnel or those associated with them. This is because defence personnel are governed by the **Army Act, 1951**, among other military regulations, and are not entitled to the same safeguards as civil servants. Their dismissal can occur without cause, especially in the interest of national security, and the courts typically do not intervene in matters related to the armed forces.

One of the key cases that defined who qualifies as a civil servant in India is **State of U.P. v A.N. Singh**, where the Supreme Court outlined three critical criteria to determine whether an individual is a civil servant:

1. **Master-Servant Relationship**: There must be a clear master-servant relationship between the individual and the State. If the person is employed under the authority of the State, then they may be considered a civil servant based on this relationship, along with other contextual factors.

2. **State as the Appointing Authority**: The State must be the authority responsible for selecting and appointing the individual. If the State has the power to freely make this decision, then the person is more likely to be classified as a civil servant. If the state lacks discretion in the appointment process, the individual may not be regarded as a civil servant.

3. **Payment from State Treasury**: The individual’s salary or wages must be paid from the State’s treasury or public funds. This establishes a direct link between the individual’s role and the authority of the State, confirming their position as a civil servant.

When an individual satisfies these criteria, they are considered a civil servant and are entitled to the constitutional protections available to civil servants under the Indian Constitution.

Constitutional Remedies available to Civil Servants under the Statutory Provisions of Article 311

Reasonable Opportunity to be Heard

The principle of a reasonable opportunity to be heard is a cornerstone of the Indian legal system, ensuring fairness and justice in the treatment of individuals, particularly civil servants. This principle is reflected in the Indian Evidence Act, 1872, the Code of Criminal Procedure, 1973, and the broader framework of natural justice, which guarantees that an accused individual, including civil servants, must be given an opportunity to defend themselves against charges or allegations.

Article 311(2) of the Indian Constitution mandates that a civil servant cannot be dismissed or demoted without a fair inquiry and a proper investigation. Furthermore, the civil servant must be given a reasonable opportunity to present a defense before the disciplinary authority or the relevant court of law.

What Constitutes a Reasonable Opportunity?

The concept of a "reasonable opportunity" is broad and flexible, and its exact scope depends on the specific circumstances of each case. This was addressed in the landmark case Khem Chand v. Union of India, where the Supreme Court ruled that a government servant who had been dismissed based on an inquiry officer’s report must be given a copy of the report. The dismissal was declared invalid because the accused was not made aware of the findings or the charges against him, violating the provisions of Article 311. This case emphasized the importance of providing a reasonable opportunity for the individual to defend themselves.

Similarly, in the case of Managing Director, ECIL v. B. Karunakar, the Supreme Court ruled that a copy of the inquiry officer's report must be provided to the accused, even if it conflicts with the provisions of the law, as failing to do so violates natural justice and renders the action unconstitutional.

Punishment and Article 311

Article 311 provides safeguards against arbitrary dismissal or reduction in rank, but these protections apply only if the action is punitive in nature. If the termination or reduction in rank is part of regular administrative procedures, public interest, or due to inefficiency or misconduct, the remedy under Article 311 does not apply.

In the case Parshottam Lal Dhingra v. Union of India, the appellant was reverted to a previous position due to dissatisfaction with his performance, without affecting his salary or rank. The Supreme Court ruled that to invoke Article 311, the action must amount to punishment. Since the appellant was not entitled to the higher post and the change did not affect his rank, the case did not qualify for the remedy under Article 311.

Additionally, the Court has clarified that suspension is not considered a form of punishment. Suspension is a temporary measure, and while a civil servant is entitled to a minimum subsistence allowance during this time, they cannot claim a right to a reasonable opportunity unless the suspension leads to a formal dismissal.

Compulsory Retirement as Punishment

Compulsory retirement, as per Article 310 of the Indian Constitution, can be invoked by the government as a means to maintain efficiency in the civil service. However, in cases where compulsory retirement is used as a form of punishment, the civil servant is entitled to the protections under Article 311.

In the case State of Gujarat v. Umedbhai M. Patel, the Supreme Court laid down several key principles regarding compulsory retirement:

1. A civil servant may be retired if they are no longer effective in their role or if it is in the public interest.
2. The decision to retire an individual must follow procedural requirements, including departmental inquiries or review committee recommendations if applicable.
3. Compulsory retirement is not considered punishment and does not invoke the provisions of Article 311, unless it is explicitly punitive.
4. Adverse entries in the civil servant's confidential report or ongoing inquiries may influence the decision, but these must be carefully scrutinized.
5. Compulsory retirement should not deprive the civil servant of benefits such as pensions, gratuities, or other entitlements.

In essence, compulsory retirement must be exercised with due regard for fairness, procedure, and the civil servant's rights under the law. When done in accordance with these guidelines, it is not seen as a punitive action, and thus, it does not invoke the provisions of Article 311.

Exceptions to Article 311 of the Indian Constitution

Article 311(2) offers protection to civil servants against arbitrary punishment; however, there are certain exceptions where the provisions of this article do not apply. In these cases, civil servants are not entitled to the remedies or protections provided under this article. These exceptions include:

1. **Conviction on Criminal Charges:** If a civil servant is dismissed, demoted, or terminated due to a conviction in a criminal case, they cannot invoke the remedy of a reasonable opportunity to be heard as guaranteed by Article 311. The principle of "clean hands" in law means that a person seeking redress should not be involved in any wrongful conduct. In cases where a civil servant is convicted of a criminal charge, the disciplinary proceedings may proceed regardless of their acquittal, as long as the acquittal is not honorable. This was upheld in the case of K. Venkateshwarlu v. State of A.P., where the Supreme Court stated that even if the civil servant is acquitted, a departmental inquiry can still be conducted if the acquittal was not honorable.

2. **Where Inquiry is Not Practicable**: In situations where it is not possible or feasible to hold an inquiry due to national security concerns or public interest, the relevant authority may decide to remove or dismiss the civil servant without conducting an inquiry. However, such decisions must be documented in writing. In Jaswant Singh v. State of Punjab, the Supreme Court ruled that making unsupported claims about potential harm to witnesses or difficulties in conducting an inquiry without concrete evidence was unjustified. The dismissal of the appellant was overturned, and he was reinstated with back pay and allowances.

   Article 311 also acknowledges exceptions where the principles of natural justice, like the Doctrine of Audi Alteram Partem, may not apply. For example, if a civil servant is convicted of causing harm to a superior, the misdeed may be so clear that holding an inquiry or giving the civil servant an opportunity to be heard would not be practicable. In such cases, although Article 311 protections are unavailable, two remedies remain:

   - The civil servant can appeal to a superior or principal secretary within their department, who has the authority to grant relief.
   - Judicial review is available under Article 32 or Article 226, allowing the courts to assess whether the punishment was arbitrary or disproportionate, or if the procedure was flawed.
3. **Reasonable Doubt Standard Does Not Apply in Disciplinary Proceedings**: In disciplinary proceedings against civil servants, the standard of proof "beyond reasonable doubt" does not apply. Instead, the proceedings must be based on reasonableness and sound evidence. The investigation should not rely on hypothetical scenarios or remote possibilities but on concrete and active evidence. The principle is that the facts and circumstances of the case should guide the conclusions, and the outcome must be justifiable. Disciplinary proceedings should be fair, and decisions should reflect what a reasonable person would conclude based on the evidence.
4. **Reasonableness of Punishment:** While the disciplinary authority has the discretion to decide the punishment for misconduct, the judiciary has emphasized that the punishment must be proportionate to the offense. The punishment should not be excessive or unreasonable, and if it is, it can be challenged in court. If the punishment imposed is disproportionate or unjust, the concerned civil servant has the right to challenge it under the appropriate legal provisions.

In summary, while Article 311 provides essential protections to civil servants, these exceptions highlight specific circumstances where such protections do not apply, including in cases of criminal conviction, national security concerns, or where a reasonable opportunity for defense may not be feasible.

Self-Check Exercise-2

Q.1 All India Services of India holds their offices during the Pleasure of the President of India, and in the State concerned on the whims and pleasure of the Governor of the State. True/False

Q.2 Article 32 or Article 226 Judicial Review can be taken. True/False

13.4 Summary

From all of the above exceptions, the remedy stated under this Article is available to the concerned civil servant, on the condition that his dis-missal or reduction in rank must lead to punishment.

13.5 Glossary

- **Termination**- to come to an end in time or effect.
- **Appellant** - a person who applies to a higher court for a reversal of the decision of a lower court.
- **Mal-administration** - a situation in which the people who manage a company or organization behave in a careless or dishonest way and cause serious problems

13.6 Answers to self check exercises

Self-Check Exercise-1

Q.1 True

Q.2 True

Self-Check Exercise-2

Q.1 True

Q.2 True

13.7 References/Suggested Readings

13.8 Terminal questions

Q1 Delineate recruitment and regulations in the conditions of service of civil servants.
Q2 Explain doctrine of pleasure and its exceptions.

Q3 Discuss Constitutional Remedies and Protection ensured to Civil Servants in India.

UNIT-14

FUNDAMENTALS OF DEPARTMENTAL PROCEEDINGS

Structure

14.0 Introduction

Disciplinary proceedings are often regarded as one of the most complex and frequently litigated areas of law in India, particularly within the realm of service matters. This branch of law is governed by a vast body of statutes, rules, regulations, and commentaries. What piqued my interest in this topic is the fact that disciplinary proceedings involve multiple stages, where the accused government servant challenges the allegations, asserting that they are unfounded and that the treatment they received was unjust, unreasonable, and arbitrary. Legal action, typically in the form of a case filed with the Public Services Tribunal, generally occurs only after an unfavorable decision has been made against the government servant. This article will explore how disciplinary proceedings are carried out within the Public Service Tribunal, the steps involved in filing a case, and the process through which it is pursued. Additionally, the article will cover the procedural aspects followed in courts and tribunals, along with the legal terms associated with them.

14.1 Learning Objectives

After studying this lesson, the learner will be able to

- Know steps to be followed in disciplinary proceedings of civil servants
- Know the servants under Article 311 of the Indian Constitution

14.2 Disciplinary Proceedings against a Civil Servant

As Lord Acton famously stated, "Power tends to corrupt, and absolute power corrupts absolutely." Often, government employees begin to abuse their authority and position. This can lead to neglecting duties, failing to follow regulations, and engaging in various forms of misconduct. To

maintain discipline and ensure accountability, service rules include provisions for departmental proceedings to manage such behavior.

Steps of Disciplinary Proceedings

Government employees play a crucial role in the administration of the country. They form a key part of the nation's administrative framework, shouldering the responsibility of executing government policies. These employees offer public services at the grassroots level and also serve as a bridge, forwarding the concerns, requests, and issues of citizens to higher authorities for resolution. It was due to the dedication and loyalty of government servants that the British were able to maintain control over India for an extended period. Unlike their counterparts in the private sector, government employees have a unique work culture and set of responsibilities. They are compensated well and enjoy certain privileges and facilities, but they are also entrusted with significant duties toward the government and the public. With rising education levels, advancements in information technology, growing public awareness of fundamental rights, and laws like the Right to Information Act, 2005, the expectations placed on government employees have increased and become more time-sensitive. To ensure that they perform their duties effectively, various constitutional safeguards have been put in place.

Self-Check Exercise-1

Q.1 Lord Acton said that power corrupts and absolute power corrupts absolutely. True/False

Q.2 Charge-sheet is an important step in departmental enquiry. True/False

14.3 Servants under Article 311 of the Constitution of India

Article 311 of the Indian Constitution provides two important procedural safeguards for civil servants regarding their tenure of office. These safeguards are as follows:

1. A civil servant cannot be removed or dismissed by an authority that is subordinate to the authority that appointed them.
2. A civil servant cannot be removed, dismissed, or have their rank reduced unless an inquiry is conducted, providing them with a reasonable opportunity to defend themselves.

As Lord Acton famously stated, "Power tends to corrupt, and absolute power corrupts absolutely." This suggests that, at times, government servants may abuse their authority, neglect their duties, or engage in misconduct. To maintain discipline and regulate such behavior, departmental proceedings are established within service rules to hold employees accountable.

Departmental proceedings against a public servant typically involve the following steps:

1. Filing a complaint or allegation of misconduct against the government servant.
2. Conducting a preliminary inquiry.
3. Reviewing the preliminary inquiry report by the disciplinary authority.
4. Issuing a show-cause notice to the government servant if the inquiry suggests they are at fault.
5. The government servant responds to the show-cause notice.
6. If the response is unsatisfactory, a charge-sheet is issued.
7. The government servant responds to the charge-sheet.
8. The disciplinary authority reviews the response.
9. An Inquiry Officer is appointed, and a formal inquiry begins with the nomination of a Presenting Officer.
10. The accused employee may receive legal assistance for their defense.
11. Witnesses are called to testify.
12. The Inquiry Officer submits a report.
13. A show-cause notice is issued based on the inquiry findings.
14. The employee submits their response, and their past records are considered.
15. A proposed penalty is issued.
16. A final decision is made.
17. The employee may appeal the decision if applicable.

The procedural framework for disciplinary actions is generally outlined in Service Rules and Standing Orders. However, these rules must be consistent with the provisions of the Constitution of India. For example, no rule can override constitutional provisions, such as those found in Articles 310 and 311. While the Indian Evidence Act of 1872 does not directly apply to departmental proceedings, the principles of natural justice must be followed. This means that the individual under investigation must be given a reasonable chance to defend themselves.

Moreover, an acquittal in criminal court on the same charges does not prevent the continuation of departmental proceedings. This was established by the Supreme Court in the case of C.M.D.U.C.O. v. P.C. Kakkar (AIR 2003 SC 1571). Similarly, departmental proceedings may proceed even after the employee has retired, as noted in U.P.S.S. Corp. Ltd. v. K.S. Tandon (AIR 2008 SC 1235).

The detailed analysis of various steps of the departmental proceedings is provided as under:-

(1)**Lodging of a complaint:** Departmental proceedings against a government servant begin when a complaint is submitted to the disciplinary authority. Upon receiving the complaint, the disciplinary authority has the option to conduct a preliminary inquiry to determine whether there is enough initial evidence to support the allegations. The complaint can be filed by either a member of the public or a superior officer of the employee.

(2) Holding of Preliminary Enquiry:-

The primary objective of a preliminary inquiry is to assess whether there is sufficient evidence to proceed with formal disciplinary action against the government servant. It is conducted by an officer superior to the individual under investigation, following instructions from the disciplinary authority. This inquiry helps the authority determine whether a full departmental inquiry is warranted. However, depending on the service rules, a preliminary inquiry may not always be required before initiating a regular inquiry.

A preliminary inquiry is essentially a fact-finding process, aimed at gathering evidence for issuing a charge-sheet, rather than determining the guilt of the employee. In some cases, this inquiry may be conducted ex parte, meaning the employee is not necessarily involved. Despite this, in the interest of natural justice and to avoid legal challenges, the employee is often given an opportunity to respond to the allegations.

There may be instances where the employee's defense, presented during the preliminary inquiry, could clear them of the accusations. While a preliminary inquiry is not mandatory before starting a regular inquiry, it is advisable in certain situations, such as:

1. When the person responsible for a particular act or loss is unclear.
2. When there is a need to gather prima facie evidence before proceeding with formal departmental actions.
3. When the allegations are unclear or vague, requiring further investigation to clarify the details before formal charges can be established.

(3) Report of the Preliminary inquiry:

Once the preliminary inquiry is completed, a written record of the proceedings should be prepared. This report should summarize the findings, indicating whether there is merit in the allegations and specifying the extent of the employee's involvement. Based on the report, the disciplinary authority will decide whether there is sufficient evidence to proceed with a regular departmental inquiry.

It is important to note that when directing a preliminary inquiry, the disciplinary authority should avoid specifying the name of the employee under investigation, as this could negatively impact their defense. In the case *State of U.P. v. C.S. Sharma* (AIR 1968 SC 158), the disciplinary authority instructed the inquiry officer to conduct an investigation while expressing a belief in the employee's guilt. The Supreme Court ruled that such an expression of opinion by the disciplinary authority compromised the fairness of the inquiry process and rendered the proceedings invalid.

(4) Show Cause Notice

When a Govt. official is held prima facie responsible for misconduct in the preliminary inquiry report, then show cause notice is issued by the disciplinary authority asking him to submit his reply as to why further proceedings be not initiated against him. In the show cause notice the delinquent is

required to be informed that he is prima facie held responsible for the professional misconduct/lapse.

(5) Reply to the Show cause notice

Thereafter the delinquent held prima facie responsible for misconduct, is required to submit his reply to the show cause notice within stipulated period prescribed in the show cause notice. If the delinquent failed to submit his reply within the prescribed period, then the disciplinary authority is empowered to move further into the matter ex-parte or reminder may be issued to the delinquent to submit his reply.

(6) Charge-Sheet

A charge-sheet is a crucial document in disciplinary proceedings and must be prepared carefully and competently. An improper charge-sheet can invalidate the entire inquiry process.

1. **Clarity of Charges**: The charges must be specific and clear. If the charges are vague, it undermines the inquiry process. Vagueness occurs when the allegations are not sufficiently detailed or understandable, preventing the accused from knowing exactly what they are being accused of and hindering their ability to mount a defense.
2. **Simple and Impartial Language**: The charge-sheet should be written in clear and simple language that the employee can easily understand.
3. **Detailed Description of the Incident**: The charge-sheet must include all relevant details about the incident. The employee must be provided with all materials related to the charges, allowing them a reasonable opportunity to prepare their defense, examine, and cross-examine witnesses.
4. **Statement of Allegations**: Each charge should be supported by a clear statement of the allegations on which it is based.
5. **Basis of Charges**: The charges should be grounded in a breach of conduct rules or other valid reasons, such as incompetence, inefficiency, insubordination, neglect of duty, or conduct unbecoming of a public servant. The disciplinary authority determines what constitutes sufficient grounds for these charges.
6. **Impartiality**: The charge-sheet should not suggest that the disciplinary authority has already formed a judgment of guilt. If the charge-sheet appears biased or shows an intent to punish the employee without proper inquiry, it is considered malafide and can be quashed. The charge-sheet is merely a description of the alleged misconduct and requires proper evidence and investigation.
7. **Sufficient Time for Defense**: The employee must be given adequate time to respond to the charges and provide an explanation.

8. **Provision of Information**: To ensure a fair opportunity for defense, the disciplinary authority must provide the employee not only with the charge-sheet but also with the grounds for the charges and the circumstances leading to the proposed action. In cases where the preliminary inquiry report is referenced, a copy of the report must be provided to the employee, unless it is not being relied upon. Failing to do so may prejudice the employee's ability to defend themselves, as noted in *Capt. I.S. Bawa v. State of Punjab* (1996(5) SLR (P&H) 387).

(j) Service of charge-sheet

The charge-sheet must be delivered within a reasonable time frame. However, a delay in serving the charge-sheet does not automatically invalidate the inquiry proceedings unless it has caused prejudice to the accused. If the charge-sheet is issued after the expiration of the prescribed time limit, it may be subject to cancellation. The charge-sheet can be delivered personally, by mail, or through public notice, but the most common method in departmental inquiries is personal service. It should be directly handed to the employee, and a receipt should be obtained. If the employee refuses to acknowledge receipt, an endorsement should be made on the charge-sheet in the presence of at least two witnesses.

If the employee can prove that the charge-sheet was never served, it may render the entire disciplinary process invalid. Therefore, it is crucial to have adequate evidence on record showing that the charge-sheet was properly delivered to the employee. To enable the employee to respond, the disciplinary authority must allow them to inspect the relevant official records, documents, and take copies of them. Upon request, the employee should also be provided with copies of witness statements recorded during the preliminary inquiry, especially if those witnesses will be called to testify during the departmental proceedings (*State of U.P. v. Shatrughan Lal*, AIR 1998 SC 3038).

If the preliminary inquiry report is being relied upon, the employee must be given a copy of the report. Failing to provide it could prejudice the employee's ability to defend themselves. However, providing a copy of the preliminary inquiry report is not always required, particularly if it is not being used as the basis for the inquiry (*V.K. Nigam v. State of M.P.*, AIR 1997 SC 1358). The disciplinary authority has the discretion to deny access to records or extracts that are irrelevant to the inquiry or will not be used against the employee. It is important to note that the provisions of the Indian Evidence Act, 1872, do not apply to departmental inquiries.

(7) Reply of the delinquent to the Charge-sheet:

The delinquent has to submit his written reply to the charge-sheet within the time specified, unless it is extended by the competent authority.Failure of the delinquent to submit his explanation would enable the authority to proceed exparte.The authority is, therefore, not required to wait for the reply indefinitely.

(8) Scrutiny of the reply of the delinquent by the disciplinary authority:

The disciplinary authority must carefully review the delinquent's response. If the delinquent admits to all or some of the charges and seeks leniency, no further inquiry is required for those admitted charges. If the explanation provided by the delinquent is found to be satisfactory, and the authority

decides not to impose a penalty, the proceedings should be concluded, and the relevant charges should be dismissed.

If the explanation is satisfactory for some charges but not all, and if the disciplinary authority believes that a major penalty is unnecessary, it may impose a minor penalty instead, without the need for further inquiry or a show-cause notice. However, if the authority determines that a major penalty is justified after reviewing the explanation, a formal inquiry should be initiated, and an inquiry officer will be appointed to conduct a regular departmental inquiry.

(9) Appointment of Inquiry Officer and nomination of Presenting Officer:

If the delinquent's response is deemed unsatisfactory by the disciplinary authority, an Inquiry Officer will be appointed to conduct a formal departmental inquiry. When selecting the Inquiry Officer, the following factors should be considered:

(a) The disciplinary authority should consider the seriousness of the alleged offense as well as the rank or position of the delinquent.

(b) The Inquiry Officer should hold a position senior to the delinquent official.

(c) It is essential to avoid any appearance of bias. The Inquiry Officer must be impartial, with an open mind, and capable of making objective decisions without any bias (*S. Parthasarathy v. State of A.P.*, AIR 1973 SC 2701).

(d) The Inquiry Officer should not be the same person who conducted the preliminary inquiry.

(e) In most cases, the disciplinary authority should avoid acting as the Inquiry Officer. This is because the findings and recommendations made by the Inquiry Officer are intended to inform the disciplinary authority's final decision. It is also possible to appoint retired officers, boards, or courts as Inquiry Authorities. The disciplinary authority may appoint a Presenting Officer from the department to represent the case before the Inquiry Officer. The role of the Presenting Officer is to assist in presenting the department's evidence, not to prove the department's case. If no Presenting Officer is appointed, the inquiry can still proceed.

The disciplinary authority is required to provide the Inquiry Officer with the charge-sheet and any relevant documents. Since the inquiry is a quasi-judicial process, it must adhere to the principles of natural justice. The Inquiry Officer will issue a notice to the delinquent, specifying the time, date, and location of the inquiry. If the delinquent fails to attend, the inquiry may proceed in their absence (ex parte). During the inquiry, the Inquiry Officer must ensure that the delinquent is given a fair opportunity to examine relevant documents, cross-examine witnesses, and present their own evidence.

(10) Legal Assistance for Defence:

The delinquent employee has the right to defend themselves, either personally or through a representative from the same department. In some cases, a retired employee of the same department may also be allowed to represent the delinquent. Regarding legal representation, there is no inherent right under common law for a party to be represented by a lawyer in departmental proceedings. It has been established that a delinquent employee does not have the right to be

represented by an advocate, and the proceedings will not be invalid simply because legal representation was not provided (*F.C.I. v. Bant Singh*, AIR 1997 SC 2982).

However, in certain cases where the facts of the case are complex or technical, the need for legal assistance may be considered part of the "reasonable opportunity" to defend oneself. In such instances, denying legal representation could violate Article 311(2) and the principles of natural justice. No strict rule applies universally in this regard. On the other hand, if the disciplinary authority has engaged a lawyer, denying the delinquent the opportunity to have their own legal representation would amount to denying a reasonable opportunity to defend themselves (*K.B. Rai v. State of Punjab*, 1996(1) SLR (P&H) 353). Conversely, if the charges are straightforward and the officer handling the proceedings is not legally trained, refusing the delinquent's request for a lawyer would not necessarily constitute a violation of natural justice.

(11) Attendance and Examination of witnesses

In departmental proceedings, the provisions of the Indian Evidence Act, 1872 do not apply. Instead, the proceedings are governed by principles of equity and natural justice. During the inquiry, the department is responsible for presenting evidence against the delinquent first. The delinquent is then given the opportunity to cross-examine the witnesses presented. The Inquiry Officer has the authority to summon witnesses. If the delinquent believes that any departmental witness should be recalled for further cross-examination, and if the Inquiry Officer deems it necessary for the sake of justice, the witness may be recalled. However, if the Inquiry Officer finds that recalling a witness would be unnecessary or merely intended to harass the witness, the request may be denied.

The Inquiry Officer also has the discretion to call additional evidence or re-examine witnesses as needed. Beyond cross-examining the department’s witnesses, the delinquent must also be given a fair chance to present their own witnesses and any documentary evidence in their defense. Although the Inquiry Officer is not a court and cannot compel witnesses to attend, natural justice dictates that reasonable efforts must be made to ensure their attendance.

(12) Findings and Report of the Inquiry Officer

After completing the inquiry, the Inquiry Officer must prepare a report that typically includes the following components:

(a) An introduction outlining the reasons for the inquiry, the appointment of the Inquiry Officer, and the dates of the hearings.

(b) A detailed statement of the charges and allegations made against the delinquent.

(c) The delinquent's explanation or defense.

(d) The oral and documentary evidence presented in support of the charges.

(e) The evidence provided by the delinquent and their representatives.

(f) The reasoning behind the Inquiry Officer’s acceptance or rejection of the evidence presented by either party.

(g) A summary of conclusions for each of the charges.

The Inquiry Officer must provide clear findings on each charge, ensuring the delinquent understands the basis for any guilty verdict. These findings serve as a report to the disciplinary authority, assisting them in making the final decision. However, these findings are not binding on the authority, and the Inquiry Officer should not propose or recommend any penalties.

(13) Findings of the disciplinary Authority and issuance of Show Cause Notice to delinquent

The Inquiry Officer's report serves as a helpful document for the disciplinary authority, assisting them in forming an opinion regarding the delinquent's guilt. If the disciplinary authority determines that the charges against the delinquent are unproven and that the individual should be cleared of all accusations, it will issue an order of exoneration and inform the concerned employee. However, if the charges are found to be substantiated, the disciplinary authority will issue a Show Cause Notice to the delinquent, proposing the penalty in accordance with the rules. The purpose of this notice is to provide the delinquent with a fair opportunity to respond to the proposed penalty. It must clearly outline the charges and the reasons for the disciplinary authority's findings. The Show Cause Notice regarding the proposed penalty can only be issued after the conclusion of the regular departmental proceedings and the review of the Inquiry Officer's report.

(14) Submission of reply to the Show Cause Notice and consideration of his past records

The delinquent is required to submit his reply to the Show Cause Notice within stipulated period. Where the delinquent makes a request for a personal hearing, it must be given to him.Its denial might vitiate any action taken against him. Further, The disciplinary authority is free to consider the past service record of the delinquent while imposing penalty.

(15) Penalty Proposed

The disciplinary authority must determine the appropriate penalty based on the severity of the employee's misconduct.

The rules outline two categories of penalties:

(a) **Minor Penalties**:
(i) Censure
(ii) Withholding of promotion
(iii) Recovery from pay
(iv) Withholding of pay increments, without cumulative effect

(b) **Major Penalties**:
(i) Reduction to a lower stage in the pay scale for a specified period, which typically does not prevent promotion

(ii) Reduction to a lower pay scale, grade, post, or service, which usually serves as a barrier to promotion
(iii) Compulsory retirement
(iv) Removal from service
(v) Dismissal from service

Censure and Warning Distinguished
A "censure" differs from a "warning" in that the former is a formal penalty, while the latter is an administrative action. A warning serves as a tool for superior officers to caution subordinate employees, with the goal of improving efficiency and maintaining discipline. In some cases, a warning may be recorded in the employee's Confidential Roll. However, simply recording a warning does not convert it into a formal censure. If a warning is noted in the Confidential Roll, it is treated as an adverse entry, and the employee has the right to challenge it in accordance with the relevant rules. The process for imposing minor penalties should be followed in such situations. Although mentioning a warning in the Confidential Roll may indicate the employee's fault and could influence assessments for promotion, it does not constitute a censure, as no formal punishment is intended. Refusing to consider an employee for promotion solely on this basis has been ruled as unlawful.

(16) Final order:

After completing the necessary procedures, the disciplinary authority issues the final order imposing a penalty. Since disciplinary proceedings under the Service Rules are quasi-judicial, the order issued by the disciplinary authority must have the characteristics of a judicial order. It should be a comprehensive and reasoned decision that meets legal standards. Therefore, the final order must clearly present the points considered, the conclusions reached, and the reasons behind those conclusions. These reasons must establish a logical connection between the facts and the conclusions drawn. Additionally, providing reasons for the decision allows the employee to challenge the order by appealing or seeking revision before a higher authority or even approaching the High Court if necessary.

(17) Remedies against Imposition of Penalties

A government employee who is dissatisfied with the decision of the disciplinary authority has several avenues for remedying the situation:

(A) Constitutional Remedies:
As a citizen of India, a government employee is entitled to protection under the Constitution. If any action taken against him infringes on his constitutional rights, he may invoke the writ jurisdiction of the Supreme Court under Article 32 or that of the High Courts under Article 226 of the Constitution.

(B) Administrative Remedies:

1. Appeal:
   The right to appeal is a fundamental defense for a government employee. An employee may file an appeal to the designated appellate authority under the service rules. Typically, the appeal must be submitted within 45 days from the date the order is received by the employee. However, the appellate authority may accept a late appeal if the employee can demonstrate valid reasons for the delay. The appeal must be comprehensive, containing all

relevant statements and supporting evidence, and should not include disrespectful language. A copy of the appeal is forwarded to the authority that issued the original order. This authority must send the appeal, along with its comments and relevant records, to the appellate authority promptly. The appellate authority, typically the one immediately superior to the original authority, must issue a reasoned order. The appellate authority has the discretion to confirm, reduce, increase, or annul the penalty. It may also return the case to the original authority with further instructions. If the appellate authority finds that the original decision violated constitutional or legal provisions, or was arbitrary, it can revise or modify the decision.

2. Revision:
   If an employee is unsatisfied with the decision of the appellate authority, they may file for revision with the designated revisional authority as per the service rules. A revision cannot be initiated until after the appeal process is concluded. The revision power is invoked only under specific circumstances:
   - If there was a material irregularity in the inquiry or appellate proceedings that the employee could not have discovered or presented during the earlier stages, or
   - If there is an obvious mistake or error in the record. The revision should be treated similarly to an appeal under the rules.
3. Review:
   The right of review is distinct from the right of appeal, as it does not allow for a complete re-evaluation of the case. In the absence of a specific provision authorizing a review of the disciplinary decision, it is not permissible. However, if the authority is granted such a power, it must exercise it within the prescribed time limit.

Self-Check Exercise-2

Q.1 Under Article 311, an appeal shall generally be preferred within a period of 45 days from the date of delivery of the order to the government employee. True/False

Q.2 The Censure and warning are same thing. True/False

14.4 Summary

The process for initiating disciplinary action against a government employee is comprehensive and detailed. Government servants are expected to carry out their duties with the highest standards of diligence, efficiency, and accountability. The thoroughness of the procedure is designed to guarantee that employees can fulfill their responsibilities free from undue influence or corruption. At the same time, it serves to maintain discipline within the workforce, removing those who fail to meet the expectations of both the public and their respective departments.

14.5 Glossary

- **Ultra-vires**- acting or done beyond one's legal power or authority.
- **Show cause notice** - produce satisfactory grounds for application of (or exemption from) a procedure or penalty.
- **Grievances** - something that you think is unfair and that you want to complain or

protest about

14.6 Answers to self check exercises

Self-Check Exercise-1

Q.1 True

Q.2 True

Self-Check Exercise-2

Q.1 True

Q.2 False

14.7 References/Suggested Readings

14.8 Terminal questions

Q1 Enumerate the various steps during departmental proceedings of civil servants.
Q2 Explain the step of findings and report of the Inquiry Officer.

Q3 What remedies are available with the civil servants against penalties imposed?

UNIT-15

AMENDMENT OF THE INDIAN CONSTITUTION

Structure

15.0 Learning Objectives

After studying this lesson, the learner will be able to

- Know the necessity of amending various provisions of the constitution
- Know the essential features of basic structure of Indian Constitution
- Know the Scope of amending the basic structure of Indian Constitution
- Know the procedure of amendment of the Indian Constitution

15.1 Introduction

The Indian Constitution stands out as one of the most remarkable documents in the world, being the longest and most detailed constitution. Despite its length and complexity, what makes it truly fascinating is its flexibility. The framers of the Constitution designed it to evolve alongside the country's growth. This adaptability ensures that the government can amend the Constitution to address various emerging issues, as outlined in Article 368. However, a pertinent question arises: if the Constitution itself grants power to the government, how can the government possess the authority to modify the very document that defines its power?

15.2 The necessity of Amending provisions in the Constitution

The framers of our Constitution intentionally designed it to be flexible, allowing it to adapt and evolve with the changing needs of the nation. Article 368 grants Parliament broad authority to amend the Constitution, with no restrictions on which sections can be changed. However, granting Parliament such unrestricted power could pose a threat to democracy. If left unchecked, the Constitution could become a tool to further the government's control, rather than serving as the foundational document that protects democratic principles. There are concerns that Parliament could amend provisions to expand its own powers. While this may seem like a distant possibility, it has already occurred in the past, as seen in the 39th and 25th Amendments, where efforts were made to enhance the supremacy of the legislature. This concern led the judiciary to establish the Basic Structure Doctrine in several key cases, ensuring that certain core principles of the Constitution cannot be altered.

Doctrine of Basic Structure

The Basic Structure Doctrine asserts that there are fundamental principles embedded in the Constitution that form its core foundation. These principles are crucial for the Constitution's survival and include ideas like free and fair elections, the federal nature of the country, judicial review, and the separation of powers. The government is prohibited from altering these core elements through amendments.

While the Supreme Court has not provided an explicit list of these principles, it is up to the judiciary to interpret and identify them when legal challenges arise. These principles are so vital that their violation could lead to either anarchy or authoritarian rule, undermining the democratic fabric of the nation. It is due to these safeguards that India remains one of the largest democracies in the world. Therefore, while Parliament holds the power to amend the Constitution, it cannot modify, abolish, or introduce provisions that would disturb its basic structure.

The first step towards understanding constitutional law is acknowledging that the Constitution established a self-governing republic, acting as a natural law. Edmund Burke, the father of conservatism, once said, "A Constitution is an ever-developing thing, continuously ongoing as it embodies the spirit of the nation. The impact of the past enriches it now and makes the future richer than the present."

Article 368, found in Part XX of the Constitution, outlines three types of amendments: by a simple majority, by a special majority, and by a special majority with ratification by the States. Given the dynamic nature of society, the Constitution must be amendable to adapt to political, economic, and social changes. A rigid Constitution would hinder the nation's progress. The amendment provisions exist to address future challenges, allowing the document to remain relevant as circumstances evolve.

Without the ability to amend the Constitution, citizens may resort to extra-constitutional means, such as rebellion, to achieve necessary changes. The framers of the Constitution foresaw the importance of preserving India's unity and integrity, establishing mechanisms that ensure justice and accountability, including the right to challenge the government in court for even small claims.

Although the judiciary and Parliament have not provided a comprehensive or exclusive definition of the "basic structure," the judiciary has developed the doctrine through case-by-case rulings. This doctrine emerged as a response to issues that arose from the balance between fundamental rights

and the power of Parliament to amend the Constitution, as addressed in landmark cases such as *Kesavananda Bharati v. State of Kerala* (1973) and *Minerva Mills* (1980).

The Constitution, crafted with great care by the framers, is a cultural heritage. Its integrity and identity must remain safeguarded against challenges that could undermine its foundational principles.

Self-Check Exercise-1

Q.1 Article 368 falls under Part XIX of the Constitution. True/False

Q.2 The constitution can be amended as per provision of Article 368. True/False

15.3 Essential features of basic structure of Indian Constitution

Over the years, through several landmark cases, the judiciary has progressively broadened the interpretation of what constitutes the basic structure of the Constitution. Here are some key features identified in various rulings:

1. Kesavananda Bharati Case (1973): In this landmark case, several essential principles were declared as part of the Constitution's basic structure:
    - Chief Justice Sikri recognized the supremacy of the Constitution, a republican and democratic government, the secular nature of the state, the separation of powers among the legislative, executive, and judicial branches, and the federal character of the Constitution as fundamental elements.
    - Justices Shelat and Grover added that the directive principles of state policy, aimed at establishing a welfare state, and the unity and integrity of the nation were also key aspects.
    - Justices Hegde and Mukherjea identified the sovereignty of India, the democratic nature of the polity, national unity, the core individual freedoms, and the welfare state mandate as basic features.
    - Justice Jaganmohan Reddy emphasized the significance of the Preamble and its embodiment in constitutional provisions such as a sovereign democratic republic, parliamentary democracy, and the three branches of government.
2. Indira Gandhi v. Raj Narain (1975): In this case, Justice K.K. Thomas highlighted that the ability for judicial review is an essential element of the basic structure. Justice Y.V. Chandrachud also noted four fundamental principles that could not be altered:
    - Sovereign democratic republic status,
    - Equality of status and opportunity for all,
    - Secularism and freedom of conscience and religion,
    - The rule of law, which was also implied in the Golak Nath case (1967) by Justice Mudholkar.
3. Minerva Mills Judgment (1980): The court in this case concluded that limiting the amending power of the Constitution itself forms a part of the basic structure.

4. Central Coal Fields Case (1980): This case recognized that the right to access justice effectively is a core element of the basic structure.
5. Kihoto Hollohon v. Zachillhu (1992): The court suggested that democracy, along with a fair electoral process, is an integral part of the Constitution's basic structure.
6. S. R. Bommai v. Union of India (1994): This ruling confirmed that democracy, federalism, and secularism are essential features of the Constitution’s basic structure.
7. M. Nagaraj v. Union of India (2006): The court acknowledged the doctrine of equality as a fundamental component of the Constitution’s basic structure.

These rulings collectively underscore the judiciary's role in ensuring that the core principles of the Constitution are protected from any amendments that may undermine its foundational values.

Scope of amending the basic structure of Indian Constitution

Fundamental rights are undeniably essential to the foundation of any civil society, and as such, they form a core part of the legal framework. However, as society evolves, so too must these rights. The scope and interpretation of fundamental rights may need to adapt to changing social, economic, and political realities. This is why many constitutions include provisions for amendment, allowing legal relationships to be adjusted as necessary. A prime example of this flexibility is the British Constitution, which has a straightforward process for making changes, including constitutional ones. Broad amending powers do not diminish fundamental rights; rather, they provide a mechanism for ensuring these rights remain aligned with the times.

Article 368 of the Indian Constitution lays out the process for amendments, granting Parliament the authority to alter the Constitution. The amending procedure itself requires a special majority in both Houses of Parliament, and certain amendments also need to be ratified by the legislatures of at least half the states if they affect matters related to the states. For years, legal scholars in India have debated whether there are any express or implicit limitations on Parliament’s power to amend fundamental rights, beyond following the procedure laid out in Article 368. This debate was first addressed in the **Shankari Prasad** case of 1951, which examined the constitutionality of the First Amendment. The challenge argued that the amendment violated fundamental rights, but the Supreme Court upheld its validity, stating that the term "law" in Article 13(2) referred to common law, not constitutional amendments.

This issue resurfaced in **Sajjan Singh v. State of Punjab (1963)**, where the Court once again ruled that Parliament had broad powers under Article 368 to amend fundamental rights, and that Article 13 did not apply to such amendments. However, in the **Golak Nath case (1967)**, the Supreme Court overturned this stance, ruling that constitutional amendments could not alter or limit fundamental rights, as the term "law" in Article 13(2) included constitutional law.

The **Kesavananda Bharati case (1973)** brought this debate to its peak. In this case, the Court addressed whether Parliament could amend fundamental rights in a way that would diminish or eliminate them. The petitioners argued that such amendments violated the Constitution’s basic structure. The Court ruled that the power to amend the Constitution was contained within Article 368, and that amendments made under this provision were not subject to the limitations of Article 13. However, the Court also introduced the **basic structure doctrine**, ruling that while Parliament could amend the Constitution, it could not alter its fundamental principles or structure.

While the Court's interpretation of what constitutes the "basic structure" is subjective, it asserts that these essential elements cannot be altered by Parliament through the amending power. This doctrine ensures that certain principles, though not explicitly outlined in the Constitution, remain inviolable and form the bedrock of India’s democratic framework. Thus, while the Constitution is designed to be flexible, allowing for necessary changes, it also includes safeguards to preserve its core values.

Kesavananda Bharati case

On April 24, 1973, the Supreme Court delivered its pivotal judgment in the **Kesavananda Bharati** case, often referred to as the "Essential Features Case." The judgment, which spanned over 700 pages, is considered a landmark decision in Indian constitutional law. Rather than focusing directly on the specific issues raised by the petitioners, the case extensively explored the constitutional principles surrounding amendments in India. The ruling came from a thirteen-judge Constitutional Bench, which issued eleven separate judgments. Only two of these were joint opinions: one written by Justices Shelat and Mukerjea, and the other by Justices Hegde and Grover.

In an intriguing turn, the case saw a split decision, with six judges ruling in favor of the petitioners and six against them. The thirteenth judge, Justice Khanna, took a middle path, offering a unique perspective. His opinion, which was not entirely shared by any of the other judges, eventually became the guiding legal principle. Justice Khanna concluded that the power to amend the Constitution is not unlimited and that Parliament cannot alter its fundamental framework, or "basic structure." He further upheld the substantive part of Article 31-C, which repealed certain fundamental rights, as constitutional, since it did not impact the Constitution’s basic structure. However, he declared the portion of the article that removed judicial review as invalid. On the broader issue of amending power under Article 368, Justice Khanna reinforced that Parliament's power to amend is indeed limited.

Twenty-fourth Amendment issue

To assess the constitutionality of the Twenty-fourth Amendment, the principles established in the **Kesavananda Bharati** case were immediately referenced. Opponents of unlimited amending power raised concerns that granting such authority could endanger Fundamental Rights and other crucial aspects of the Constitution. However, as noted by legal scholar **Seervai**, this argument was dismissed by emphasizing that, although misuse of power could be challenged, "the fear of abuse of power does not justify denying its existence." In the Kesavananda case, the government argued that despite having unlimited power to amend the Constitution, including the ability to curtail human freedoms under Article 31-C, it would not misuse this authority. The Bench expressed apprehension about this argument, suggesting that if such a fear were to dictate constitutional interpretation, it could lead to the conclusion that many essential parts of the Constitution should be considered unamendable.

Ultimately, the Court's reasoning leaned toward the position of the **Privy Council**, rather than the earlier reflections in the poet's writings. The **Twenty-fourth Amendment** was upheld as valid, but with a crucial limitation. The Court affirmed that Parliament's power to amend the Constitution was subject to the constraint that the **"basic structure"** of the Constitution could not be altered. Furthermore, it was believed that overturning the **Golak Nath** ruling restored the legal situation that

existed before it, making the Twenty-fourth Amendment less significant. In this way, the **Kesavananda** judgment achieved the same objective the government sought to accomplish through the Twenty-fourth Amendment.

Twenty-fifth Amendment

The following points were upheld regarding the **Twenty-fifth Amendment**, with certain qualifications:

1. **Court's jurisdiction on 'amount'**: Courts could not assess the adequacy of the 'amount' payable for property acquisition or requisition, even though 'amount' was distinct from 'compensation.' However, it was required that the 'amount' had a reasonable connection to the original value of the property and could not be arbitrary or illogical.
2. **Restoration of legal status prior to Golak Nath ruling**: The Amendment restored the legal position that existed before the **Golak Nath case**, where it was ruled that **Article 19(1)(f)** and **Article 31(2)** were mutually exclusive. This meant **Article 19(1)(f)** was not applicable to statutes passed under **Article 31(2)**.
3. **Article 31-C - Protection of specific laws**: The first clause of **Article 31-C**, which sought to protect certain laws from being challenged under **Articles 14, 19, and 31**, was upheld. This protection applied to legislation aimed at fulfilling the directives under **Articles 39(b)** and **(c)**, and it was not necessary to delegate amendment authority for this purpose.
4. **Article 31-C - Invalidating second clause**: The second clause of **Article 31-C** was deemed invalid. The Court ruled that while laws meant to implement **Articles 39(b)** and **(c)** were immune from challenges under **Articles 14, 19, and 31**, the judiciary still retained the authority to review whether such laws genuinely achieved the objectives of those Articles. If the second clause had remained intact, it would have allowed laws to be shielded from judicial scrutiny, which the Court ruled against, emphasizing that no legislature could create laws immune from legal challenge solely through its own declaration.

Twenty-ninth Amendment

The petitioners' main argument defending the legality of the Twenty-ninth Amendment centered on the relationship between Articles 31A and 31B. They contended that Article 31B was directly linked to Article 31A and that only laws covered by Article 31A should be included in the Ninth Schedule under Article 31B.

The Court considered previous cases, including *State of Bihar v. Maharajadhiraja Sir Kameshwar Singh of Darbhanga* (1952), *Visweshwar Rao v. The State of Madhya Pradesh* (1952), and *N.B. Jeejeebhoy v. Assistant Collector, Thana Prant, Thana* (1964), which had already addressed similar issues. In those cases, it was concluded that Article 31B operated independently of Article 31A. Reopening a settled matter was challenging. Nevertheless, the Court still needed to examine whether the laws added to the Ninth Schedule by the Twenty-ninth Amendment, or any of their provisions, violated core constitutional principles or altered the Constitution's fundamental

character. A Constitution Bench was assigned the task of determining whether the Twenty-sixth Amendment aligned with the Kesavananda decision and upheld the Constitution's core structure.

Significance of the case

The Kesavananda ruling was significant in the following ways:

1. Previous decisions by the judiciary had suggested that various provisions of the Constitution were of equal, if not greater, importance than fundamental rights. However, the Golak Nath case had limited this perspective to only fundamental rights. Kesavananda expanded on this by identifying additional elements that constitute the "basic structure" of the Constitution, which cannot be modified through constitutional amendments.
2. The Golak Nath case had made all fundamental rights non-amendable, a position seen by many, including the government, as too restrictive. Kesavananda introduced more flexibility, stating that not all fundamental rights are part of the Constitution's core framework. Only those rights considered integral to the "basic structure" are immune from amendment.

The IR Coelho's judgement

The Supreme Court's ruling in *IR Coelho v. Union of India* (2007) holds significant importance. The case, which was heard by a nine-judge bench, stemmed from a reference made by a constitution bench in 1999.

In *Balmadies Plantations Ltd. & Anr. v. State of Tamil Nadu* (1972), the Court had invalidated the Gudalur Janmam Estates (Abolition and Conversion into Ryotwari) Act, 1969, concluding that it did not qualify for the protection provided to agrarian reforms under Article 31-A of the Constitution. Later, the Constitution (Thirty-fourth Amendment) Act inserted the Janmam Act into the Ninth Schedule, which was subsequently challenged.

The Constitution bench observed that amendments made after the Kesavananda Bharati judgment on 24.4.1973, which inserted laws into the Ninth Schedule, were subject to judicial scrutiny. These amendments could be contested if they were found to undermine the basic structure of the Constitution. The case revolved around the extent to which judicial review should apply to constitutional amendments that place statutes in the Ninth Schedule, and whether such amendments or the laws they protect should be immune from challenge. Essentially, the issue at hand was whether laws that violate fundamental rights under Articles 14, 19, or 31 can be included in the Ninth Schedule, or whether such amendments that threaten the Constitution's core structure could be declared invalid.

Judgement of the case

Absolute immunity is not granted in all cases. In the IR Coelho case, the Court emphasized that the Kesavananda Bharati decision did not address the constitutionality of Article 31-B. However, the Court chose to regard Article 31-B as valid, noting that the constitutionality of this article, particularly in relation to the First Amendment, was not part of the issues raised when the matter was referred to the nine-judge bench for consideration.

The Court ruled that granting absolute immunity at discretion contradicts the theory of the Constitution's basic structure. As a result, laws placed in the Ninth Schedule after April 24, 1973 (the date of the Kesavananda Bharati judgment) were no longer immune from judicial review concerning the rights outlined in Part III of the Constitution. These laws, therefore, became subject to scrutiny in light of fundamental rights.

Additionally, the Court observed that laws intersecting with the fundamental rights embedded in the basic structure of the Constitution would be tested against a higher standard of validity. Any law that undermines a core principle of a fundamental right or its essential feature would be invalidated. Each case requires a careful assessment of the extent to which a law infringes upon or limits fundamental rights.

What constitutes the basic structure?

The IR Coelho case represents a significant development in the legal interpretation of the Constitution's basic structure. The judgment from the five-judge bench in the earlier M. Nagaraj case served as a foundation for the IR Coelho Court's expansion of these ideas. The Court addressed the tension between interpreting the Constitution based on its original meaning and the flexible nature of its text, which allows for the incorporation of various constitutional values. In Nagaraj, the Court had affirmed that the fundamental framework of the Constitution may not necessarily be explicitly outlined in its language.

In Nagaraj, the Court emphasized that principles like secularism, federalism, socialism, and reasonableness—though not directly mentioned in the Constitution—are essential to its integrity and are part of constitutional law. The IR Coelho Court further clarified this point, noting that the basic structure could encompass both the written provisions of the Constitution and these underlying principles. It distinguished between the "essence of the rights test" and the "rights test," explaining the difference between the fundamental principles supporting an expressed right and the actual right explicitly stated in the Constitution.

According to the IR Coelho Court, the Kesavananda Bharati case should not be interpreted as excluding fundamental rights from the basic structure. This allowed the Court to continue developing its argument. The IR Coelho Court also drew upon Nagaraj to assert that fundamental rights are not granted by the government, but are inherent to individuals. Part III of the Constitution merely affirms their existence and offers protection for them. Therefore, the Court held that each fundamental right in Part III has "foundational value."

Finally, the Court recognized Article 32 as part of the basic structure. Referencing Minerva Mills, the Court reiterated that Articles 14, 19, and 21—often referred to as the "golden triangle"—are also integral to the Constitution's basic structure.

The 'rights test' and 'essence of rights'

In IR Coelho, the Court had to clarify the distinction between the "rights test" and the "essence of rights" in relation to Part III of the Constitution and its connection to the fundamental structure. Although laws can be added to the Ninth Schedule, the Court emphasized that once Article 32 is invoked, these laws must undergo a thorough examination against the fundamental rights. The

Ninth Schedule can be amended without any restrictions on how often it is reviewed, and this flexibility means that any change to the Ninth Schedule directly impacts Article 32. Since Article 32 is part of the Constitution's basic structure, it must be assessed within the framework of the fundamental rights as they currently stand in Part III.

The Court concluded that the constitutional validity of laws under the Ninth Schedule could be tested using the direct impact and effect test, which is often referred to as the rights test. According to this test, the determining factor is not the form of the law, but its actual impact. The Court is responsible for deciding whether the interference caused by the law is justified and whether it violates the basic structure of the Constitution. This means that the impact of a law, rather than its formal characteristics, will be the key factor in determining its constitutionality.

This approach shifts the responsibility of deciding the necessity of a law from Parliament to the judiciary. It grants the courts the authority to assess the validity of such laws by applying both the rights test and its fundamental components. Ultimately, the courts will decide whether the law infringes upon the Constitution’s fundamental structure, and this determination could be decisive in the final ruling.

The Ninety-Ninth Constitutional Amendment and the doctrine of basic structure

The National Judicial Appointment Commission Act (NJAC Act) and the Ninety-Ninth Constitutional Amendment were introduced as a proposal to establish a new body for judicial appointments, replacing the existing system where the Supreme Court's three senior-most judges (the Collegium) make appointments, with the Executive playing a largely consultative role.

The constitutionality of the Ninety-Ninth Amendment was challenged in the case of *Supreme Court Advocates-on-Record Assn. v. Union of India* (2015). The central issue was whether the amendment violated the Constitution's basic structure by altering or undermining it.

The petitioners argued that the Constitution’s core principle of judicial independence is tied to the judiciary's exclusive control over judicial appointments, with minimal involvement from the Executive. They maintained that any deviation from this principle could threaten the independence of the judiciary.

On the other hand, the respondents contended that the independence of the judiciary would not be compromised by the Executive’s involvement in judicial appointments. They argued that the revised system would continue to uphold the judiciary's supremacy and independence while promoting transparency and accountability, and that these changes would not alter the Constitution’s basic structure.

The Court, in a 4:1 judgment, disagreed with the respondents. It ruled that the new system violated the Constitution's basic structure by diminishing the judiciary’s primary role in selecting judges. The Court held that the proposed amendments, particularly Articles 124A, B, and C, could potentially undermine the separation of powers, judicial independence, and the rule of law.

Self-Check Exercise-2

Q.1 Article 32 is part of the basic structure of Indian constitution. True/False

Q.2 Articles 14, 19, and 21 which were identified by the Supreme Court as the ‘golden triangle’ are part of the basic structure of the Constitution. True/False

15.4 Summary

This article examines the process of constitutional amendments. We have discovered that the Constitution has a concept known as the "Basic Structure," which is considered fundamental to justice, and any violation of it is seen as a breach of core principles. Initially, the judiciary believed that only the Preamble constituted the basic structure of the Constitution. However, later rulings expanded this understanding to include other elements, such as judicial review, as part of the Basic Structure.

The government has attempted, in several significant cases, to amend the Constitution to better serve the public interest. Initially, the judiciary opposed these efforts, but over time, certain judgments began to suggest that the executive could, in some instances, override specific elements of the basic structure if it served the public good. Nonetheless, in subsequent cases, the judiciary remained firm in its stance, allowing amendments only if there was clear evidence that they would substantially benefit public welfare.

It is important to recognize that the Constitution is the foundation of our democracy. While it was a visionary act by the framers to include provisions for constitutional amendments, these provisions must be used responsibly. Misuse of these powers could lead to an imbalance, granting excessive control to the legislative or executive branches, thereby threatening the very fabric of our democracy.

15.5 Glossary

- **Republic**- a country that has an elected government and an elected leader.
- **Totalitarianism** - a form of government that attempts to assert total control over the lives of its citizens.
- **Immunity** - the ability to avoid or not be affected by disease, criticism, punishment by law, etc.

15.6 Answers to self check exercises

Self-Check Exercise-1

Q.1 False

Q.2 True

Self-Check Exercise-2

Q.1 True

Q.2 True

15.7 References/Suggested Readings

15.8 Terminal questions

Q1 Discuss the essential features of amendment of Indian Constitution.
Q2 bring out the various ways of amending Indian Constitution.

Q3 Can fundamental rights be amended? If yes, then discuss the scope by giving ample examples.

UNIT-16

Procedure to Amendment of Constitution

Structure

16.0 Introduction

The Constitution of India is one of the most remarkable documents in the world. No other nation has a constitution as detailed or as extensive as India's, making it the longest constitution globally. Despite its thoroughness, what makes this document particularly intriguing is its remarkable flexibility. The framers of the Constitution designed it to be adaptable, ensuring that it would not only serve the country as it evolves but also evolve alongside it. To facilitate this, the Constitution

allows for amendments to address emerging issues, a power granted by Article 368. However, this raises an important question: If the Constitution is the source of the government's power, how can the government hold the authority to amend the very document that grants it that power?

16.1 **Learning Objectives**

After studying this lesson, the learner will be able to

- Know the Scope of amending the fundamental rights of the Indian Constitution
- Know the procedure of amendment of the Indian Constitution

16.2 Procedure to Amendment

- **Article 368** in Part XX of the Constitution outlines the power of Parliament to amend the Constitution and the procedures involved.
    - It allows Parliament to make changes to the Constitution through the addition, modification, or repeal of any provision, following the established procedure.
    - However, the article restricts amendments that affect the 'basic structure' of the Constitution, as established in the *Kesavananda Bharati* case (1973).
- The amendment process includes two main types:

    0. Amendments requiring a special majority in Parliament.
    1. Amendments requiring both a special majority in Parliament and ratification by at least half of the state legislatures through a simple majority vote.

  Some provisions of the Constitution can be amended with a simple majority in each House of Parliament, and these are not considered amendments under Article 368.

What is a Simple Majority?

- Several provisions of the Constitution can be modified by a simple majority in Parliament, outside the scope of Article 368. These provisions include:
    - The creation of new states or the modification of existing states' areas, boundaries, or names.
    - The creation or abolition of legislative councils in states.
    - The regulation of official language use.
    - Matters related to citizenship, such as acquisition and termination.
    - The organization of elections to Parliament and state legislatures.
    - Administration of scheduled areas and tribes under the Fifth Schedule.
    - Administration of tribal areas under the Sixth Schedule.

What is a Special Majority?

- **Special Majority**:

- Under Article 368(2), Parliament can amend the Constitution by passing a Bill with a special majority.
- Provisions such as Fundamental Rights and Directive Principles of State Policy (DPSP) can be amended with a special majority, but any amendments must remain within the framework of the Constitution's basic structure.
- Provisions that do not require state ratification and are governed by Article 368 can also be amended with a special majority.

- **Special Majority with State Ratification**:
  - Some provisions, particularly those related to the federal structure of the country, can only be amended if Parliament passes the amendment with a special majority and the consent of half of the state legislatures through a simple majority.
  - Key provisions that require state ratification include the election process for the President, the functioning of the Supreme Court and High Courts, the representation of states in Parliament, the distribution of legislative powers between the Union and states, and the scope of executive powers of both the Union and the states.
  - Notably, any change to Article 368 itself requires the consent of the states.

Self-Check Exercise-1

Q.1 The provisions that require ratification by the states are the **election of President**, **Supreme Court and High Courts**, representation of states in Parliament, **distribution of legislative powers** between the Union and the states, and the extent of executive power of the Union and the states.. True/False

Q.2 103rd Constitutional Amendment states that individuals from economically weaker sections of society can seek reservation from educational institutions, including private institutions. True/False

16.3 Amendment of Fundamental Rights

- The fundamental rights outlined in Part III of the Indian Constitution serve as the core of human rights in the nation. The judiciary has repeatedly upheld these rights in landmark cases, emphasizing their inviolability. These rights take precedence over other sections of the Constitution and play an essential role in shaping the nation's legal framework. However, with Parliament's authority to amend the Constitution, questions arise: Can they alter the fundamental rights? Do these rights constitute the Constitution's "basic structure"? To explore this, we examine the cases of *Sajjan Singh v. State of Rajasthan* and *Golak Nath v. State of Punjab*.
- Sajjan Singh v. State of Rajasthan, 1965
- This case ruled that fundamental rights could be amended, provided the amendments were indirect or of minimal significance, as per the powers under Article 226. Various

states had implemented agrarian reforms, prompting Parliament to amend certain sections of the Constitution, such as through the Constitution (First Amendment) Act, 1951, Constitution (Fourth Amendment) Act, and Constitution (Seventeenth Amendment) Act, 1964. The Seventeenth Amendment specifically added 44 Acts to the Ninth Schedule, including the acquisition of estates under Section 31A. The petitioners argued that the amendment violated Article 226 and the powers of the judiciary.

- **Key Issues:**
- Did the amendment infringe upon the powers under Article 226?
- Should the ruling in *Sri Sankari Prasad Singh Deo v. Union of India* be reconsidered?
- Did the amendment deal with land, and was Parliament authorized to make laws regarding it?
- Could Parliament validate laws ruled unconstitutional by the courts?
- **Held:**
- **Impact on Article 226**: The Court determined that if the Act's effect on Article 226 was incidental or insignificant, it did not require the procedures under Article 368.
- **Reopening Previous Decisions**: The Court refused to revisit *Sri Sankari Prasad*, stating that reopening the case was unnecessary.
- **Parliament's Authority on Land Laws**: Parliament's actions were deemed to validate existing land laws, rather than create new ones.
- **Validation of Invalid Laws**: Under Article 368, Parliament could retrospectively validate laws previously declared invalid.
- The dissent by Justice J.R. Mudholkar introduced the concept of "basic features" in the Constitution, which became pivotal in the later *Kesavananda Bharati* case. Justice Mudholkar raised the question of whether changes to fundamental rights could be regarded as altering the Constitution's basic structure, which led to significant debate on the limits of Parliament's amending power.
- I. C. Golaknath & Ors v. State of Punjab, 1971
- This case overruled *Sajjan Singh* and declared that Parliament could not amend fundamental rights. The petitioners challenged the Constitution (Seventeenth Amendment) Act, 1964, which added several Acts to the Ninth Schedule.
- **Key Issues:**
- Could fundamental rights be amended by Parliament?
- **Held:** The Court found that Articles 245, 246, and 248 empower Parliament to legislate, but Article 368 only governs the procedure for amending the Constitution. Amendments affecting fundamental rights under Part III would be void under Article 13. The Court adopted the doctrine of prospective overruling, meaning laws previously validated by amendments would remain valid, but from the judgment date forward, Parliament could not amend fundamental rights.
- Indira Nehru Gandhi v. Shri Raj Narain & Anr, 1975
- This case examined whether judicial review was a basic feature of the Constitution. Indira Gandhi's government, following electoral malpractice allegations, invoked emergency powers and passed an amendment (Article 329-A) that barred judicial review of elections. The Court ruled the amendment unconstitutional, emphasizing that free and fair elections are an essential feature of India's democracy.
- **Key Issues:**
- Was the 39th Constitutional Amendment Act, 1975, constitutional?

- **Held:** The Court upheld the *Kesavananda Bharati* doctrine, striking down Article 329-A, which undermined judicial review. It found that free and fair elections and judicial review were core principles of democracy, integral to the Constitution's basic structure.
- Minerva Mills Ltd. & Ors v. Union of India & Ors, 1980
- This case dealt with amendments made through the Constitution (Forty-Second Amendment) Act, 1976, and questioned the scope of Parliament's power to amend the Constitution.
- **Key Issues:**
- The constitutionality of the Forty-Second Amendment Act, 1976.
- **Held:** The Court declared clauses expanding the amending power and eliminating judicial review unconstitutional, asserting that such amendments violated the basic structure of the Constitution. It reaffirmed that Parliament's amending power is not absolute and cannot infringe on fundamental rights or the core democratic principles of the Constitution.
- M. Nagaraj & Others v. Union of India & Others, 2007
- This case reviewed amendments to Article 16(4A) that provided reservation in promotions with seniority, questioning their constitutionality in light of the basic structure doctrine.
- **Key Issues:**
- Constitutionality of the Constitution (Eighty-Fifth Amendment) Act, 2001.
- **Held:** The Court upheld the amendment, ruling that it did not violate the basic structure. It confirmed that such amendments must still respect equality before the law, as enshrined in Article 14, and should not undermine the Constitution's fundamental principles.
- I.R. Coelho (Dead) By Lrs v. State of Tamil Nadu & Ors, 2007
- In this case, the Court examined whether laws inserted into the Ninth Schedule could bypass judicial review.
- **Key Issues:**
- Can laws in the Ninth Schedule be immune from judicial review?
- **Held:** The Court ruled that laws in the Ninth Schedule must pass the basic structure test, ensuring they do not violate fundamental rights. It clarified that judicial review is an essential part of the Constitution's framework and cannot be excluded by adding laws to the Ninth Schedule.

Constitutional Amendments in 2019

Name of Amendment	Amendment	Objective
103rd	Added Clause (6) to Article 15 Added Clause (6) to Article 16	Clause (6) states that individuals from economically weaker sections of society can seek reservation from educational institutions, including private institutions. This is notwithstanding minority institutions Clause (6)

		of Article 16 established reservation of individuals from economically weaker sections in government posts.
104th	Amended Article 334	• The abolishment of Legislative councils in mentioned States. • Dual Citizenship for Indian origin outside the country. • Quota to educationally backward classes • Quota for religious minorities in government service.

Self-Check Exercise-2

Q.1 India has provision of dual citizenship. True/False

Q.2 103rd Constitutional Amendment states that individuals from economically weaker sections of society can seek reservation from educational institutions, including private institutions. True/False

16.4 Summary

This chapter examined the process of constitutional amendments and the concept of the Basic Structure of the Constitution. It was discovered that violating this structure goes against fundamental principles of justice. Initially, the judiciary viewed the preamble as the core of the Constitution's basic structure. However, over time, it was ruled that other elements, such as judicial review, could also be considered part of the Basic Structure. In various landmark cases, the government sought to amend the Constitution to better serve the public good. The judiciary, initially resistant, eventually acknowledged the possibility of allowing certain modifications to the Basic Structure if they aligned with the public's best interests. However, subsequent rulings made it clear that unless the judiciary was thoroughly convinced of the amendments' benefit to public welfare, they remained firm in protecting the Constitution’s core values. Ultimately, it is crucial to recognize that the Constitution is the foundation of our democracy. While the framers wisely included provisions for constitutional amendments, these provisions must not be abused, as such misuse could lead to an imbalance of power between the branches of government, undermining the democratic structure.

16.5 Glossary

- **Republic**- a country that has an elected government and an elected leader.
- **Totalitarianism** - a form of government that attempts to assert total control over the lives of its citizens.
- **Immunity** - the ability to avoid or not be affected by disease, criticism, punishment by law, etc.

16.6 Answers to self check exercises

Self-Check Exercise-1

Q.1 True

Q.2 True

Self-Check Exercise-2

Q.1 True

Q.2 True

16.7 References/Suggested Readings

16.8 Terminal questions

Q1 Discuss the essential features of amendment of Indian Constitution.
Q2 bring out the various ways of amending Indian Constitution.

Q3 Can fundamental rights be amended? If yes, then discuss the scope by giving ample examples.

Block-IV

UNIT-17

FUNDAMENTAL RIGHTS IN INDIA

Structure

17.0 Introduction

The fundamental rights were included in the Constitution of India with lot of enthusiasm, as the American idea of the 'Bill of Rights' was one of the inspiring factor while the Indians were struggling against the Britishers for freedom. Even during an alien rule the Indian nationalists were making demands for inclusion of a Bill of Rights in the Government of India Act of 1935. But their demand could not get fulfilled as the concept of a written list of rights was not popular among the Britishers. They believe that the rights are created by the Parliament. Sir John Simon, the chairman of the Simon Commission opposed the idea of inclusion of a bill of rights in the constitution. He was of the view that the concept of the British Constitution implied the sovereignty of the Parliament. All rights in Britain originates therefore, from Parliament. Secondly, the necessity of fundamental rights arises only where autocracy rules. But where there is a parliamentary system of government there is no necessity of fundamental rights. Thirdly there can only be two possibilities with regard to fundamental rights; either they are justiciable or non-justiciable'. Similar were the views of other Britishers. But there was a fundamental difference between the British constitutional system which has evolved itself in the span of a period of centuries, and the Indian system which was not a well established system, and social structure was a fragmented structure.

Finally the Government of India Act, 1935 was passed without any mention of the fundamental rights.

As the Indian nation got its Constituent Assembly in 1946, there was a strong demand for inclusion of a Unit on fundamental rights in the proposed constitution. A separate committee was formed under the chairmanship of Sardar Patel along with some other members particularly representing the minorities. This Committee submitted its report to the Drafting Committee, which prepared the Part on fundamental rights on the recommendations of the fundamental rights Committee. Though there were so many constitutions in the world having the fundamental rights, and the UN was also at the same time busy in preparing the list of inalienable rights of the man, yet the framers of the Indian Constitution carefully selected the rights to confer the status of fundamental rights on those rights. Peculiar social fabric of India, having typical problems like untouchability, caste based rankings in society, diversities based on diverse factors like language, religion, culture, level of development etc. were kept in mind while preparing the list of the fundamental rights. Part III, which deals with these rights was given the place of prominence in the Constitution. This Part was made not only 'justiciable' but also immune from any encroachment by the Government in future (Article 13). The makers of our Constitution tried their best to clarify the provisions of the fundamental rights and the limits for the enjoyment of these rights. The distinction was also made between the residents of India as the citizens and the non-citizens as the two words 'citizens' and 'persons' has been used in different rights. The Right to Constitutional Remedies in case of any infringement on these rights is made itself a fundamental right (Article 32). This Article was considered as heart and soul of the Constitution. The importance of this Article can be measured from the views expressed by the chairman of the Drafting Committee before the Constituent Assembly about its importance. Dr. Ambedkar said, "*if I was asked to name the particular Article in this Constitution as the most important without which this Constitution would be a nullity, I could not refer to any other Article except this one. It is the very soul of the Constitution and the very heart of it and I am glad that the House has realized its importance. Hereafter, it would not be possible for any legislature to take away the writs which are mentioned in this Article".*

17.1 Learning Objectives

After studying this lesson, the learner will be able to

- Know the significance and characteristics of fundamental rights
- Know in detail the fundamental rights enshrined in the constitution
- Know the amended fundamental rights and their reason

17.2 Genesis, Significance and Characteristics

The evolution of constitutionally guaranteed fundamental rights in India drew inspiration from several historical documents, such as the English Bill of Rights (1689), the U.S. Bill of Rights (ratified in 1791), and France's Declaration of the Rights of Man (adopted during the 1789 Revolution). During the British colonial period, Indian students were introduced to concepts of democracy, human rights, and European political history through their education. Moreover, the Indian student community in England found motivation in the British parliamentary system and the workings of British political parties.

The Rowlatt Acts of 1919, which granted sweeping powers to the British authorities, permitted indefinite detention, searches without warrants, restrictions on public gatherings, and severe censorship of the media. Public outcry against these provisions led to widespread non-violent civil disobedience movements across India, demanding civil freedoms and restrictions on government authority. The Indian independence movement was also influenced by Ireland’s fight for independence and the development of its constitution. Additionally, the directive principles of the Irish constitution served as a model for addressing India's social and economic challenges post-independence.

In 1928, the Nehru Commission, consisting of representatives from various Indian political parties, proposed constitutional reforms. These reforms included demands for dominion status, universal suffrage, protection of fundamental rights, and safeguards for religious and ethnic minorities. In 1931, the Indian National Congress, the largest political party at the time, passed resolutions committing to the defense of fundamental civil rights and socio-economic rights, such as the abolition of untouchability and the establishment of a minimum wage. By 1936, the Congress further embraced socialism, drawing on the constitution of the former USSR as a source of inspiration for instituting fundamental duties of citizens to contribute to the nation's welfare.

The chairman of the constitution drafting committee — B. R. Ambedkar

After India gained independence on 15 August 1947, the responsibility of framing a constitution for the newly independent nation was entrusted to the Constituent Assembly of India, which was made up of elected representatives under the leadership of Rajendra Prasad. Although the Congress party held the majority in the Assembly, Congress leaders ensured the inclusion of individuals from various political backgrounds to assist in drafting the constitution and formulating national laws. Bhimrao Ramji Ambedkar was appointed as the chairman of the drafting committee, while Jawaharlal Nehru and Sardar Vallabhbhai Patel chaired various committees and sub-committees focused on different aspects of the constitution. A significant event that influenced the development of the Indian Constitution occurred on 10 December 1948, when the United Nations General Assembly adopted the Universal Declaration of Human Rights, urging all member countries to incorporate these rights into their national constitutions.

The concept of Fundamental Rights was incorporated into the first draft of the Constitution (February 1948), the second draft (17 October 1948), and finally, the third and final draft (26 November 1949), which were prepared by the Drafting Committee.

Significance and characteristics

The inclusion of Fundamental Rights in the Indian Constitution was based on the belief that they are crucial for the development of every individual’s personality and for upholding human dignity. The framers of the Constitution saw democracy as ineffective without the protection of civil liberties, such as freedom of speech and religion. They believed that democracy fundamentally relies on

public opinion, and therefore, citizens must have the means to express and form that opinion freely. To ensure this, the Constitution guarantees the freedom of speech and expression, along with various other freedoms through the Fundamental Rights.

Everyone, regardless of their race, religion, caste, or gender, is entitled to approach the Supreme Court and High Courts to protect their Fundamental Rights. It is not mandatory for the affected party to initiate such actions themselves. For example, individuals in poverty may not have the resources to do so, but in the interest of justice, others can bring a case on their behalf. This is known as "Public Interest Litigation." In certain instances, High Court judges have also taken action based on reports in the media.

The Fundamental Rights not only safeguard individual freedoms but also serve to prevent severe human rights violations. They promote national unity by ensuring all citizens have access to the same opportunities and resources, regardless of their background. While some of these rights are granted to all people, others are specifically reserved for Indian citizens. For example, the right to life and personal liberty, as well as freedom of religion, applies to everyone, while the rights to freedom of speech and expression and to reside in any part of the country are restricted to citizens of India, including non-resident Indians. Similarly, the right to equality in public employment is not available to overseas citizens of India.

The primary purpose of Fundamental Rights is to protect individuals from arbitrary state actions, though some rights are also enforceable against individuals. For instance, the Constitution abolishes untouchability and forbids forced labor (begar), acting as a check both on state and private actions. However, these rights are not absolute and can be limited by reasonable restrictions necessary for the welfare of the general public. The Supreme Court has ruled that the Constitution, including the Fundamental Rights, can be amended, but Parliament cannot alter the Constitution's basic structure, such as secularism and democracy. These rights, protected by constitutional amendments, serve as checks not only on the executive but also on Parliament and state legislatures.

Self-Check Exercise-1

Q.1 The necessity of fundamental rights arises only where autocracy rules. True/False

Q.2 Who was the chairman of the constitution drafting committee?

13.3 PART-III FUNDAMENTAL RIGHTS

The Third Part of Indian Constitution begins with the definition of the word ‘State’. It includes the Government and Parliament of India, Governments and Legislatures of the States and other authorities under the control of the Government. This Article stands intact till date and no alteration has been made in it. This Article stands as following.

Art.12- Definition.

In this Part, unless the context otherwise requires, “the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and

all local or other authorities within the territory of India or under the control of the Government of India.

This Article which defines the meaning of the word 'State' for the purpose of the Part III, (dealing with the fundamental rights) remained intact since the commencement of the Constitution. The scope of this Article was kept flexible by including the words 'other authorities' in the definition of the word 'State'. Various judgments of the courts have interpreted it according to the nature of these 'other authorities'. Some of the 'other authorities' were declared as 'State' and others declared as 'not the State'. The test applied by the Judiciary to determine the question is mainly based on financial assistance by the Government, control of the Government in the administration of the body, monopoly status conferred on the body, and nature of functions of the body etc. The authorities declared as 'State' in various judgments included the Rajasthan Electricity Board, Nationalized Banks, and Delhi Transport Corporation etc. The other authorities declared as 'not the State' included the Board of Control for Cricket in India etc. These are different interpretations of the courts based on the nature and functions of the various bodies involved in the cases. Otherwise the structure of the Article 12 has not seen any change till date.

Art.13- Laws inconsistent with or in derogation of the fundamental rights

(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

(3) In this article, unless the context otherwise requires,

(a) "law" includes any Ordinance, order, byelaw, rule, regulation, notification, custom or usage having in the territory of India the force of law ;

(B) "laws in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

This Article was given the responsibility of safeguarding the fundamental rights. It has to insure the paramountcy of the fundamental rights. In clause (1) it provided for the inapplicability of all the laws in

force to the extent of inconsistency with the fundamental rights. In clause (2) it had forbidden the State from making any law in the future, which is inconsistence with the fundamental rights. The third clause was meant to make it clear that a 'law' includes all the possible forms of law by naming these as Ordinance, order, bye-law, rule, regulation, notification, custom or usage etc. There was no mention of the term 'amendment' in this Article in the original Constitution. It had led to the confrontation between the Judiciary and the Parliament on several occasions. The first amendment inserted Article 31A and Article 31B in the Part III, along with the addition of the 9th Schedule. The amendment was challenged in the Supreme Court, on the ground that the Parliament has no power to make an amendment in this Part. But the Supreme Court upheld the validity of the first amendment on the ground that Article 13 forbids the State from making any 'law' against the fundamental rights, but this amendment does not fall under the term 'law' used in that Article, as it is within the scope of Parliament due to the constituent power conferred on the Parliament under Article 368. This decision was again upheld in the *Sajjan Singh V. State of Rajasthan* Case in 1965. In this case the Court observed that the non inclusion of the word 'amendment' in Article 13 is not a result of omission by mistake, rather it was deliberately kept out of the scope of this Article, so an amendment of this Part cannot be challenged on grounds of inconsistency with the fundamental rights.

But this decision of the Supreme Court was overruled by the Court itself in 1967 in the famous *Golak Nath Case*[4]. In this case the Supreme Court held that an amendment is also covered under the term 'law' in the Article 13. There is no fundamental difference between the enactment of a law and of a constitutional amendment. Requirements as to 2/3 majority in Parliament and ratification by half of the State Legislature are provided only as additional protective measures to check a hasty decision by a thin majority in Parliament. Existence of such additional safeguards does not make a constitutional amendment anything else than a law. Term 'law' used in Article 13 includes a constitutional law also, and a constitutional amendment is nothing else than a constitutional law. The Court also held that Article 368 does not confer any constituent power on Parliament. It provides for procedure only to amend those parts or Articles of the Constitution, which are amendable. As Article 13 had forbidden the State from making any law against fundamental rights, so naturally no amendment can be done by the Parliament in these rights. If Parliament thinks it necessary it can summon a Constituent Assembly again for which it is empowered under residuary powers. This decision led to a serious clash between the Parliament and the Judiciary. To negate the effect of this decision, Parliament passed twenty fourth amendment in 1971. It amended Article 13 and Article 368 providing for the amendment of the Constitution. In Article 13 it inserted clause (4) making an express provisions that the bar of this Article would not be applicable to an amendment, made under the constituent power of the Parliament. The newly inserted clause (4) was as under;

Art. 13*(4) Nothing in this article shall apply to any amendment of this Constitution made under article 368.*

This amendment was again challenged in the *Kesavananda Bharati Case.* But the Supreme Court upheld the validity of 24th amendment and held that an amendment does not fall within the meaning of the term 'law' as used in Article 13. As a result of judicial decisions, and amendment of this Article, now the Parliament has power to amend the Constitution including the fundamental rights. As a result of this judgment a new concept had taken birth in the Constitutional Law of India. The Supreme Court declared that Parliament has power to amend the Constitution including the part on fundamental rights, but it could not change the *basic structure* of the Constitution.

Right to Equality

Art.- 14. Equality before law.

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

This Article has not seen any changes by the way of amendment of the Constitution. Till ninety eighth amendment it remained intact as it was in the Constitution at its commencement. In various cases the Judiciary has interpreted it that equality provided under this Article is not an absolute equality, rather it is contextual equality. Treating unequals as equals is not equality, it is denial of equality for the weakers. Unequals should be treated as unequals, and the weakers may be conferred some sort of reasonable relaxations for this purpose.

Though this Article has not seen any structural change, but some of the amendments have resulted into some changes in the status of the fundamental right provided under this Article.

Insertion of Article 31A;

Article 31A was inserted in the Part on fundamental rights with the first amendment. This Article was related with the power of the State to make laws to acquire the estates in order to abolish the Zamindari. It had also declared that any such law providing for acquisition of estates etc. cannot be challenged before the courts on grounds of inconsistency with any of the rights conferred by Part III. With the fourth amendment the scope of this power of the State was extended to companies and corporations also. But the

primacy of such laws was narrowed down. After this amendment Article 31A has provided that no law making a provision for acquisition of estates, or taking over of management of any corporation, or for termination of any licence or lease for searching minerals etc. can be challenged before the courts on grounds of inconsistency with the rights conferred by Article 14, Article 19 or Article 31.

Insertion of Article 31C;

Twenty-Fifth amendment has inserted Article 31C in Part III of the Constitution. It had undermined the status of Right to Equality, as it has made this right subordinate to the directive principals enshrined in Clauses (b) and (c) of Article 39. Article 31C had provided that any law which is enacted for the purpose of giving effect to any of the provisions of Clauses (b) or (c) of Article 39, shall enjoy the primacy over the fundamental rights provided under Articles 14, 19 and 31. This overriding power of the State was further extended by the forty-second amendment (1976). This amendment altered this provision, and provided that no such law which aimed at to secure any of the directive principals can be challenged in the courts on grounds of its inconsistency with the rights conferred by Article 14, Article 19 or Article 31. But this alteration was declared as 'invalid' by the Supreme Court in Mineral Mills v. Union of India Case in 1980. Now as an effect of this decision the State can make a law to give effect to the directive principals enshrined in Clause (b), and Clause (c) of Article 39, and such law cannot be challenged on grounds of inconsistency with the fundamental rights conferred by Article 14 or Article 19.

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

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, restriction or condition with regard to

(a) access to shops, public restaurants, hotels and places of public entertainment ; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

This Article was amended by the first and the ninety- third amendments. Originally this Article had prohibited the State from discriminating against any citizen on grounds only of religion, race, caste, sex or place of birth. But the third clause enabled the State to make special provisions for women and children. In Part IV (directive principals) the State was also directed under Article 46 to take special care

of the educational and economic interests of the Scheduled Castes, Scheduled Tribes and other weaker sections of the society. In response to this social responsibility provisions for reservation of seats were made by various State Governments. The Madras Government reserved the seats in the State Medical and Engineering Colleges among the different communities. This move of the State Government was challenged by Champakam Dorairajan on the grounds of violation of Article 15. The State Government insisted that the decision to divide the seats was taken in order to implement the directive principles. But this plea of the State Government was rejected by the Supreme Court. The Court held that the directive principles which were kept non justiciable by the Constitution itself cannot override the fundamental rights which are expressly made justiciable. The G.O. of the Madras Government was found volatile of the provisions of Art. 15 and Art. 29(2), hence declared void.

First Amendment, 1951

As a reaction to the judgment in *Champakam Dorairajan* case, the first amendment was enacted by the Parliament (originally the Constituent Assembly itself working as the Parliament of the Union till the first general election) in 1951. It added an enabling provision in Article 15 in the form of clause (4), which enabled the State to make special provisions in favour of socially and educationally backward classes of the society. The newly added clause (4) was as under;

Art.15(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

Ninety-Third Amendment, 2006

This Article was also amended with the 93rd amendment in 2005. This amendment added another enabling provision in this Article in the form of clause (5). Its main objective was stated as to provide access to the socially and educationally backward classes and Scheduled Castes and Scheduled Tribes to the seats available in the private educational institutions, as the number of seats in the Government institutions and the aided institutions was limited. The Government had felt that the principle enshrined in the Article 46 cannot be logically achieved by utilizing this limited number of seats[7]. But as the minority educational institutions established under Article 30 have also a special responsibility to protect the interests of minorities, so these institutions were not covered under this reservation. The newly inserted clause (5) is as following;

Art. 15(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.

The Central Educational Institutions (Reservation in Admission) Act was enacted by the Parliament in 2006. This Act has provided for reservation in admission into central educational institutions for the SCs (15%), the STs (7.5%), and the OBCs (27%). This Act was challenged before the Supreme Court, along with 93rd amendment. But the Court upheld the validity of 93rd amendment and this Act providing reservation in admissions into Central Educational Institutions[9]. The Court also ruled that the 'creamy layer' must be excluded from enjoying the benefit of this reservation.

Right to Education Act was passed by the Parliament in August 2009, which came into force on April 1, 2010. This Act has fixed the responsibility of private unaided schools to admit 25% of children belonging to the weaker sections and disadvantaged groups of the society. This provision of the Act was challenged before the Supreme Court by *Society for Unaided Private Schools of Rajasthan*. But the Court upheld the validity of this provision of the Act, and declared that this provision shall be applicable to government-controlled schools, government-aided schools (including minority schools), and private unaided schools except the unaided minority schools. After both of these amendments this Article now contains five clauses instead of original three. Clause (4) had enabled the State to provide for special provisions for the advancement of the down trodden, and clause (5) was added for enabling the State to extend the reservation for the backward sections of society even in the private and unaided educational institutions.

Equality of Opportunity in Public Employment

At the time of the Constitution's adoption, Article 16 addressed the principle of equal access to public employment, consisting of five clauses that covered various aspects of the issue. Clause (1) ensures that all citizens have equal opportunity for public employment. Clause (2) prohibits discrimination by the state based solely on religion, race, caste, or similar factors when it comes to access to public office. Clause (3) grants the state the authority to set residency requirements within a specific state for individuals seeking employment in that state. Clause (4) allows the state to make provisions for the reservation of positions for socially and economically weaker sections in state services. Clause (5) provides exceptions to this article in certain cases where laws specify that certain posts in religious or denominational institutions may be reserved for individuals of a specific religion or denomination.

The full text of Article 16 is as follows:

Article 16 - Equality of Opportunity in Public Employment

1. There shall be equality of opportunity for all citizens in matters related to employment or appointment to any office under the State.
2. No citizen shall be deemed ineligible for, or discriminated against in relation to, any employment or office under the State on the sole basis of religion, race, caste, sex, descent, place of birth, residence, or any other such factors.
3. This article does not prevent Parliament from enacting laws that require specific residency conditions for certain classes of employment or appointments under a State or local authority as specified in the First Schedule.
4. This article does not prevent the State from reserving appointments or posts for any backward class of citizens that, in the State's opinion, is underrepresented in the public services.
5. This article does not affect any law that mandates that a person holding a position in a religious or denominational institution, or a member of its governing body, must adhere to a particular religion or denomination.

Matter of Seniority and Reservations in Promotions, and 85th Amendment, 2001

In Ajit singh Januja & others Vs State of Punjab (SC 1996) it was held by the Court that the roster point promotees getting the benefit of accelerated promotion would not get consequential seniority and the seniority between the reserved category candidates and general category candidates in promoted category shall be governed by their panel position. This was overruled in Jagdish Lal and others v. State of Haryana and Others (1997), it was held that the date of continuous officiation has to be taken into account and if so, the roster- point promotees were entitled to the benefit of continuous officiation. This position was again overruled in Ajit Singh Januja & others Vs State of Punjab & others (1999). The Court repeated the decision taken in Ajit Singh case (1996) and in Union of India v. Virpal Singh case (1996) that the State may make provisions for the reservations in promotions. But if a junior candidate is promoted due to reservation prior to a senior candidate, such senior candidate shall regain his seniority over the reserved category candidate notwithstanding that he is promoted after the promotion of the reserved category candidate *(catch-up rule).* The Court held that roster promotions were meant only for the limited purpose of due representation of backward classes at various levels of service and therefore, such roster promotions did not confer consequential seniority to the roster point promotee. It led to the passing of 85th amendment by the Parliament in 2001. This is one of the smallest amendments of our Constitution as it added only three words in it. But in matters of reservation in promotions its consequences are far reaching. It nullified the decision of the Supreme Court that the accelerated promotions by virtue of reservation in promotions did not confer the consequential seniority on the junior members. It has empowered the State to make provisions for reservation in promotions with consequential seniority. After this amendment the Article 16

(4A) becomes as following;

Art.16(4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, ***with consequential 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.*

Art.- 17. Abolition of Untouchability-

"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.

This Article had not seen any structural change by the mode of an amendment in the Constitution. But as this Article has declared that “Untouchability” shall be an offence to be punishable in accordance with law, to implement this provision the Parliament has enacted *the Untouchability (Offences) Act, 1955*. This Act was amended in 1976 and renamed as the *Protection of Civil Rights Act, 1955.* In 1989 *the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act* was passed by the Parliament to provide for the special courts for the trial of offences against the Scheduled Castes and the Scheduled Tribes, and rehabilitation of the victims.

Art. 18- Abolition of titles-

(1) No title, not being a military or academic distinction, shall be conferred by the State.

(2) No citizen of India shall accept any title from any foreign State.

(3) No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State.

(4) No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, or office of any kind from or under any foreign State.

This Article forbids the State from conferring any title, and forbids the citizens from accepting any title from any foreign State. For the persons who are not the citizens of India, but are under the service of the State, this Article prohibited the accepting of any title or any of the other benefits from any foreign State without the consent of the President. Since the commencement of the Constitution this Article had not seen any structural change by the way of an amendment. In 1996 in Balaji Raghavan case[10] , the five- Judges

Bench of the Supreme Court held that the Awards- Bharta Ratna, Padma Vibhusan, Padma Bhushan and Padma Shri are the National Awards and does not fall in the category of 'titles' within the meaning of Article 18 (1). But they are not to be used as suffixes or prefixes and if this is done the defaulter has to forfeit the National Award conferred on him or her.

Right to Freedom

Article 19 - Protection of Certain Rights Regarding Freedom of Speech, etc.

1. Every citizen has the right to:

   (a) Freedom of speech and expression
   (b) Assemble peacefully and without arms
   (c) Form associations or unions
   (d) Move freely throughout the territory of India
   (e) Reside and settle in any part of India
   (f) Acquire, hold, and dispose of property
   (g) Practice any profession or carry on any occupation, trade, or business

2. Sub-clause (a) of clause (1) does not affect any existing law relating to, or prevent the state from making laws regarding, libel, slander, defamation, contempt of court, or any matter that offends decency or morality, or undermines or threatens the security of the state.

3. Sub-clause (b) of clause (1) does not affect any existing law that imposes, or prevent the state from making laws imposing, reasonable restrictions on this right in the interest of public order.

4. Sub-clause (c) does not affect any existing law that imposes, or prevent the state from making laws imposing, reasonable restrictions in the interest of public order or morality.

5. Sub-clauses (d), (e), and (f) of clause (1) do not affect any existing law that imposes, or prevent the state from making laws imposing, reasonable restrictions on these rights in the interest of the general public or for the protection of any Scheduled Tribe's interests.

6. Sub-clause (g) of clause (1) does not affect any existing law that imposes, or prevent the state from making laws imposing, reasonable restrictions on the right conferred, particularly regarding the qualifications necessary for practicing any profession, or carrying on any occupation, trade, or business. This includes laws that prescribe or empower authorities to prescribe such qualifications.

This Article has provided the rights to the citizens which are required for the free and full development the personality of an individual. But these rights were considered something like as the accessories to the personality of the citizens. While these were regarded as necessary for the full expression of the personality, attention was also given to the fact that these rights did not hinder the construction of a peaceful and egalitarian society, and protection of the security of the State. This is the only Article in the Part III which was made subject to the automatic suspension (Article 358) in case of the proclamation of an emergency under Article 352. As the Constitution started working, some of the provisions of this Article were found as obstructive in the path of construction of a peaceful and egalitarian

society. This Article was amended on a number of times, and this process started from the very first amendment. Subsequently the 16th, 44th and 97th amendments has also made some changes in this Article. The major changes made by these amendments are as following;

Article 20. Protection in respect of conviction for offences-

(1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) No person accused of any offence shall be compelled to be a witness against himself.

This is the right available to all the persons, not only the citizens. This right provides the protection to people, and imposed a restriction on the State that no person can be convicted unless breaking of a law which has existed at the commencement of the act. No person can be punished more than once for the same offence, and no person can be compelled to be a witness against himself. This Article has not seen any structural change since the commencement of the Constitution by the way of a Constitutional amendment. But various judicial decisions have thrown light on various facets of the right available under this Article. Like the accused has a right for not to be a witness against himself, but he has no right to conceal any objects which stands as witness against him. No accused person can deny to give his fingerprints required for as evidence[16]. Further the right of not to become a witness is available only to become a 'witness against himself' and not to the other person who is a witness to an act of offence.

Though the Article 20 has not been amended by any amendment, yet there is an amendment which has provided the place of primacy to this right along with the right to life and personal liberty. 44th amendment was enacted in 1978 as a reaction to the excesses committed by the parliamentary majority, led by the executive during the emergency and as an antidote to the imbalance created by the 42nd amendment. It has made changes in so many Articles like the 42nd amendment. Article 359 has empowered the President to suspend the enforcement of all or any of the rights mentioned in Part III, when a Proclamation of Emergency is in operation. But recognizing the worth of the right mentioned under Article 20, the 44th amendment excluded this right from the power of the President to suspend it even during the Proclamation of Emergency. Consequently, now after this amendment all the rights except the rights mentioned in Article 20 and Article 21 can be suspended by the President under Article 359, while a Proclamation of an Emergency under Article 352 is in operation.

Art.- 21. Protection of life and personal liberty

No person shall be deprived of his life or personal liberty except according to procedure established by law.

This is the most sacrosanct right guaranteed by Indian Constitution. Smallest in text, but guarantying the biggest right to all the persons, this Article was never amended by our Parliament by the formal method of amendment. But so many decisions has been delivered by the Judiciary with respect to the scope and application of this right, which has effected far- reaching changes. Some of the decisions of the courts are as following;

Right to life is not only right to physical existence-

In so many cases the courts have declared that the right to life does not constitute right to mere physical existence. It is something much more than it; it includes the right to a humane life, and a right to a dignified life. This Article assures the right to live with human dignity free from exploitation.

Right to livelihood-

In some of the cases the right to livelihood has also been included under this right by the courts.

Right not to live-

In P. Rathinam v. Union of India the Supreme Court declared that the right to live does not include right to a forced life. Section 309 of Indian Penal Code providing for a punishment for an attempt to suicide violates Art 21, and so it is void and unconstitutional[19]. But in another case the Supreme Court held that the right to life is a natural right as enshrined in Article 21, but suicide is an unnatural extinction of life, so the right to life does not include the right to die.

Euthanasia (mercy killing)-

In a case of *euthanasia* the Supreme Court has recommended to Parliament to consider the feasibility of deleting Section 309 of IPC from the statute, as according to it a person attempts suicide in depression, and hence he needs help, rather than punishment[21].

The court also lays down norms for passive euthanasia (withdrawal of life support) in case of a person in permanent vegetative state, according to which a High Court could pass suitable orders on the application filed by the near relatives or next friend or the doctors/hospital staff praying for permission to withdraw the life support of a person who is not competent to give his consent for withdrawal of life support.

A Public Interest Litigation was filed by an NGO ‘Common Cause’ before the Supreme Court to declare ‘dying with dignity’ a fundamental right for terminally ill patients. The NGO has argued that a terminally ill person should be given the right to refuse the life support system when a medical expert has

declared that she/he has reached a point of no return. On February 25, 2014 taking into account of the inconsistent opinions rendered in the Aruna Shanbaug case and the importance of question of law involved the case it was referred to a Constitution Bench for consideration.

Suspension of right to life and personal liberty, and 44th Amendment-

At the commencement of the Constitution the right to life and personal liberty was subject to suspension by a Presidential Order made under Article 359, when the Proclamation of an Emergency was in operation. This provision came before the courts on several occasions, particularly when internal emergency was in operation. Various High Courts had held that a writ of habeas corpus can be issued on some grounds even during suspension of enforcement of provisions of Art 21. Nine High Courts ruled in favour of the petitioners. Government brought the case before the Supreme Court in the form of an appeal what is known as A.D.M. Jabalpur v. Shivakant Shukla case. During the arguments Niren De, the Attorney General pleaded that since the right to move any court has been suspended, by the Presidential Order made under Art 359, the detenue had no *locus standi* under Art 21 and their writ petitions would necessarily have to be dismissed. Justice H. R.Khanna asked the Attorney General that 'life' is also mentioned in Art. 21, and would the Government. argument extend to it also? The Attorney General replied, "even if life was taken away illegally, courts are helpless".

The Supreme Court had held by a majority of 4:1 that when enforcement of Article 21 was suspended by the Presidential Order made under Article 359, the person detained lost his right to move the court to regain his liberty, and writ of *habeas corpus* cannot be issued by a court as it would amount to the enforcement of Article 21 which is under the suspension for the time being. This judgment shocked the conscience of the entire nation. This judgment was criticized worldwide and Justice H.R. Khanna, who alone gave his dissenting judgment was admired by the media throughout the world as an apostle of independence and impartiality of judiciary in India.

44th amendment makes some changes in Article 359, which is related to the suspension of fundamental rights during the Emergency. It makes the provisions of Article 21, along with Article 20 as immune from the power of the President to suspend these fundamental rights, while a Proclamation of an Emergency is in operation. Now after the 44th amendment the provisions of this Article cannot be suspended by the Presidential Order made under Article 359.

Art. 21A- Right to education

The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

Article 21A was inserted in this Part by the 86th amendment, 2002. Prior to it this provision was not a fundamental right. It was a goal set before the Government under Article 45 to endeavour to provide, within a period of ten years from the commencement of the Constitution, for free and compulsory education for all the children until they complete the age of fourteen years. By this amendment this right got bifurcated into two parts. With respect to the education of the children below the age of six years it remained as a directive principle under Article 45, and for the children within the age group of six to fourteen years it became a fundamental right under this newly inserted Article 21A. 'Right To Education' Act was passed by Parliament in 2009 to give effect to the provisions of this Article. This Act came into force from 1st April, 2010. Following are the main features of this Act;

1. A right to free and compulsory education for all the children between the age of six to fourteen years.
2. Duty of the Government and local authority to establish the schools within the limits of neighborhood.
3. Sharing of financial and other responsibilities by the Central Government and the respective State Governments.
4. Duty of every parent or guardian to admit his or her child or ward to a school for elementary education.
5. All the recognised schools are bound to share the responsibility of providing elementary education. It includes the schools run by the Government, aided

schools, and privately managed unaided schools. Schools in 'specified category' under the Act like Kendriya vidyalaya, Navodaya Vidyalaya, Sainik Schools or any other school specified by notification of the Government are also made to share the responsibility of elementary education. But the privately managed unaided schools, established by the minorities under Art. 30(1) were exempted from this responsibility by the Supreme Court in '*Society for Unaided Private Schools of Rajasthan v. Union of India'* case.

6. No student admitted in a school is to be held back in any class or expelled from school till the completion of elementary education.
7. No physical punishment or mental harassment to children in school.
8. Compulsion on the part of all the non-government schools to obtain the certificate of recognition from the prescribed authorities.
9. An academic authority of the Central Government may prescribe for minimum qualifications for teachers.

10. Teachers shall not be engaged in any of the non-education functions, except for the purpose of elections, census and disaster management.
11. Medium of instructions shall be as far as practicable, the mother tongue of children.
12. No Board examinations till the completion of elementary education.

The privately managed un-aided schools are obliged to admit at least 25% of children belonging to the weaker and disadvantaged section of society in class one in each academic year. Various State Governments has issued notifications to give effect to the provisions of the Act. In lieu of this responsibility a private school is reimbursed the fee. The amount of reimbursement is equal to per child expenditure incurred by the State or the actual fee collected by the school from each of the students, whichever is less.

Art- 22. Protection against arrest and detention in certain cases

1. Any person who is arrested must be informed promptly of the reasons for their arrest and has the right to consult and be represented by a legal practitioner of their choice.
2. Anyone arrested and detained must be brought before the nearest magistrate within 24 hours of the arrest, excluding the time needed for transportation. No person can be kept in custody beyond this time without a magistrate's order.
3. Clauses (1) and (2) do not apply to: (a) A person who is considered an enemy alien; (b) A person arrested or detained under laws related to preventive detention.
4. No law on preventive detention shall allow detention for more than three months unless: (a) An Advisory Board, comprising individuals qualified to be High Court judges, reports that there is sufficient cause for continued detention before the three-month period ends. However, this cannot extend beyond the maximum period defined by laws made by Parliament under clause (7)(b); (b) The detention is in accordance with laws made by Parliament as specified in clauses (7)(a) and (7)(b).
5. If a person is detained under preventive detention laws, the authorities must inform them of the reasons for detention and provide an opportunity to make a representation against the order.
6. Clause (5) does not require the authorities to disclose facts that they believe would be harmful to the public interest.
7. Parliament may establish laws to specify: (a) The situations and categories where a person can be detained for more than three months without the Advisory Board’s recommendation; (b) The maximum period a person can be detained under preventive detention laws in certain cases; (c) The procedure an Advisory Board must follow in inquiries as per clause (4)(a).

This article ensures safeguards against arbitrary arrest and detention. It was amended by the 44th Amendment, but Section 3 of this amendment, which pertains to its implementation, has not yet come into effect due to the lack of a required notification. If this section were implemented, the following changes would occur:

1. The maximum detention period without the Advisory Board's recommendation would be reduced to two months.
2. The Advisory Board would be constituted based on the recommendation of the Chief Justice of the relevant High Court.

3. The Advisory Board would be chaired by a serving judge, with two other members, either serving or retired High Court judges.
4. The provision allowing Parliament to extend detention beyond three months without the Advisory Board's recommendation would be removed.

Right against Exploitation

Art.- 23. Prohibition of traffic in human beings and forced labour

(1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(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.

This Article providing for prohibition of traffic in human beings and begar has not been amended by any of the Constitutional amendments. But some of the judicial decisions have expanded its scope to child labour, children of prostitutes, devadasi's and the bonded labour etc.

Art.- 24. Prohibition of employment of children in factories, etc.

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.

This Article has not undergone any structural change by the mode of an amendment. The Judiciary while interpreting the provisions of this Article has included the building construction work, Match Industries, and Carpet Industries etc. as not fit for the working of the children below the age of fourteen years. Courts have also directed the Government to make provisions for the education, nutrition and periodical medical checkup of the children who were engaged in these industries.

Right to Freedom of Religion

***Art.- 25. Freedom of conscience and free profession, practice and propagation* of religion.**

(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law

(a) regulating or restricting any economic, financial, political or other secular activity which may

be associated with religious practice ;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

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

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

Balance between religious and national practices

This Article has provided the rights related to freedom of free profession, practice and propagation of religion to all the persons residing in India. This Article was never amended by the Parliament. But as there are wider differences in religious beliefs, practices and their interpretations, this Article came before the judiciary on several occasions. One of such cases is *Bijoe Emmanuel & Others v. State of Kerala & Others*[23] case. In this case three children belonging to Jehovah's Witness community who worship only Jehovah- the Creator and none else were expelled from school. They had refused to sing the National Anthem because according to them it was against the tenets of their religious faith. But they stands up respectfully when the National Anthem was being sung. They were expelled from school under the instructions of Deputy Inspector of Schools. The children filed a Writ Petition in the High Court for restraining the authorities from preventing them from attending School, which was rejected by the Court. The case reached before the Supreme Court and the Petitioners told the Court that they have no particular objection to the language of the National Anthem of India. They do not sing 'God save the Queen' in England, the 'Star-spangled banner' in the United States and so on. They believe that Jehovah is the Supreme ruler of the universe. Satan was originally part of God's organisation and perfect man was placed under him. But the Satan rebelled against the God and set up his own organisation through which he ruled the world. All the worldly institutions are creation of the Satan to rule the world. So they (the Jehovah's) did not participate in political institutions in any of the States of the world. The Court set aside the judgment of the High Court as against the provisions of Art. 19(1)(a) and 25(1) and directed the authorities to re-admit the children into the school.

Religious Practices- Limitations

Another case related to this Article was '*Church of God (Full Gospell) in India v. K.K.R. Majestic Colony Welfare Association',* which travelled up to the apex court in the form of an appeal against the decision of Madras High Court. The Supreme Court ruled that *"No religion prescribes or preaches that prayers are required to be performed through voice amplifiers or beating of drums and in any case, if there is such practice, it should not adversely affect the rights of others including that of not being disturbed in their activities".* The appeal was made before the Supreme Court on the ground that investigating authorities have found that traffic is the main cause behind the noise pollution in the concerned area. But the Court rejected it by stating that because of urbanization or industrialization, the noise pollution may exceed the permissible limits in an area, but that would not be a ground for permitting others to increase the same by beating of drums or by use of voice amplifiers etc. The Court rejected a plea of the Church that the direction issued by the HC in respect of the `church' (appellant) overlooked its fundamental right to profess and practice its religion as guaranteed under articles 25 and 26 of the Constitution.

Every person has the right to perform religious practices, but which practices are integral part of a religion is open to decide by the courts. Like wearing of *kara* by the Sikhs is part of their religious practice. *Kara* being a symbol of the religious wear by the Sikh community, it is a jewellery exempted from the Customs Duty, and it cannot be confiscated. But if the person had admitted that he had purchased gold, converted it into a *Kara* and brought as such, he necessarily used it. Therefore, he is not entitled to the benefit of exemption.

Art.- 26. Freedom to manage religious affairs.

Subject to public order, morality and health, every religious denomination or any section thereof shall have the right

(a) to establish and maintain institutions for religious and charitable purposes ;

(b) to manage its own affairs in matters of religion ;

(c) to own and acquire movable and immovable property ; and

(d) to administer such property in accordance with law.

This Article providing the right to manage religious affairs had not undergone any change since the commencement of the Constitution. Some cases appeared before courts under this Article. One of such cases was *Sanjib Kumar Chowdhury v. Principal, St. Paul's College.* In this case the College was a Christian College and most of its students were related to Hindu religion. The Hindu students asked the Principal to permit them to celebrate 'Saraswati Puja' inside the College compound, which was rejected by

him. The case was filed before The Calcutta High Court by the students. The Court rejected the application on the ground that as Christianity does not permit idol worship, so an institution run by Church Missionary Society cannot be forced to allow the practices contrary to its religious beliefs.

Right to manage its own affairs in matters of religion is extended to all the practices, rites and ceremonies essential for practising of a religion, which are *integral part* of religion. These integral parts of religion has to be determined with reference to its doctrines, practices, and historical background etc. Disciplinary measures like ex-communicating a person who defied the fundamental basis of a denomination are also considered by the courts as essential for the continuity of the denomination.

Clause (c) has given the right to own and acquire property to the religious denominations. But the Supreme Court has ruled that it is not an absolute right, and is subject to reasonable regulations by the State. The State can acquire the property of a religious denomination, to give effect to agrarian reforms, if it is not within the ceiling limit.

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

No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses of any particular religion or religious denomination.

With respect to the freedom as to the payment of taxes for the promotion of any particular religion, the Supreme Court in *Jagannath Ramanuj Das v. State of Orissa* case held that a fee is different than a tax. A tax is merged in the general revenue of the State to be spent for general public purposes, while the fee is collected for a specific purpose and the collection is kept separate as a fund for that specific purpose. The specific purpose is also not the promotion of a religion as forbidden under Art. 27, rather it is the better management of the religious endowments within the State. Article 27 forbids the State from imposition of a tax, but a fee can be levied to meet the expenses of the staff working for the better administration of religious endowments.

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

(1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds,

(2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

(3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted

in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

Article 28 which deals with the religious instructions in the educational institutions has came before the courts on several occasions, and has been interpreted according to the facts of the cases. In one of the such cases the apex court has ruled that establishment of an institution for the academic study of the life, teachings or impact of any great Indian saint does not constitute religious instructions or promotion of a particular religion.

Cultural and Educational Rights

Art. 29- Protection of interests of minorities.

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

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

Conciliation between confronting claims

In *D.A.V. College Jullundur v. The State of Punjab case,* validity of sub section (3) of section 4 of *Guru Nanak Dev University, Amritsar Act* of Punjab was challenged on the ground that it violates the rights of the Arya Samajis of the State, who are a minority. The said provision of the Act has described as one of the objectives of the University "*to promote studies to provide for research in Punjabi language and literature and to undertake measures for the development of Punjabi language, literature and culture*". In the petition before the Supreme Court it was contended that the main object of the Act was to promote Punjabi language in Gurumukhi script and that since their (Arya Samaji's) institutions belonged to a minority based on religion and language their compulsory affiliation to the newly established university violates Articles 29(1) and 30(1) of the Constitution. The Court rejected this notion of the petitioners and held that Sub-Section (3) of Section 4 does not transgress the right granted under Art. 29. The Court held that the linguistic States are a reality of our country, and the purpose of these linguistic States is to provide for the facilities for the development of the people of that area educationally, socially and culturally, in the language of that region. Efforts for the development of a regional language does not mean the strangulation of another language and script of a minority. The impugned provision of the Act does not compel the

affiliated Colleges to give instruction in the Punjabi Language so it is not volatile of Article 29.

Art. 30- Right of minorities to establish and administer educational institutions

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

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

This Article had guaranteed the right to establish and administer the educational institutions by the minorities. These minorities could be determined on the basis of religion or language, both the sensitive issues since the birth of the Republic.

Who are minorities?

Unlike the Scheduled Castes, Scheduled Tribes and the Anglo-Indians, the word 'minority' does not find a definition in the Constitution. Attempts had been made by different sections to claim themselves as minorities on different grounds such as on local level, on State level and on National level. In DAV College Jullundur v. State of Punjab case it was held by the Supreme Court that religious or linguistic minorities are to be determined only in relation to a particular legislation which is before the court for consideration. If it is a State Legislation, the minorities are to be determined on the basis of figures of population of the State concerned, and if it is a Union legislation, then the minorities are to be determined on the basis of figures of population of the entire Country.

Forty-Fourth Amendment, 1978

The 44th amendment inserted clause (1A) in this Article as a corollary of omission of right to property from the list of fundamental rights. This clause makes an assurance that if the property of an educational institution established by a minority is compulsorily acquired by the State, then the amount fixed for that property shall be as much that the right of the minority to establish and administer an educational institution is not hampered by such an acquisition.

Right to Property

Article 31 - Compulsory Acquisition of Property

1. **No person shall be deprived of their property except by the authority of law.**
2. **No movable or immovable property, including interests in any commercial or industrial undertaking or in a company owning such undertakings, shall be taken for public purposes under any law permitting its acquisition unless the law provides compensation for the acquired property.** This compensation must either specify the amount or the principles and manner in which the compensation will be determined and paid.

3. **A law enacted by a State Legislature concerning property acquisition shall only come into effect once it has been reserved for the President's consideration and has received his assent.**
4. **If any Bill, pending when the Constitution commenced, was passed by the State Legislature, reserved for the President's consideration, and received his assent, the law shall not be challenged in court based on its non-compliance with clause (2) of this article.**
5. **Clause (2) does not affect:**
    - (a) Any existing law other than those specified in clause (6),
    - (b) Any new law passed by the State for purposes such as:
        - (i) Imposing taxes or penalties,
        - (ii) Promoting public health or preventing risks to life and property,
        - (iii) In accordance with agreements between the Government of India and other countries regarding evacuee property.
6. **A State law passed within 18 months before the Constitution commenced may be submitted to the President for certification within three months from the commencement.** If the President certifies the law through public notification, it shall not be challenged in court, even if it contradicts the provisions of clause (2) of this article or has violated section 299(2) of the Government of India Act, 1935.

The main takeaway from this article is that a person can only be deprived of their property under the authority of law. If the property is acquired for public purposes, the law must also provide for compensation. Additionally, if a law is made by the State Legislature, it must receive Presidential assent before it is enacted.

Confrontation with Land Reform Laws and the First Amendment, 1951

From the outset of the Constitution's operation, the Right to Property faced challenges from the government's social legislation initiatives. Landowners, seeking protection under the Judiciary, managed to get the Patna High Court to declare the *Bihar Land Reforms Act, 1950* as invalid due to its conflict with Article 14. The Court ruled that the zamindari abolition laws could be challenged not just on the grounds of compensation but also for other constitutional violations, such as infringing on Article 14. This interpretation created a setback for the government's social legislation goals. To address this issue, the Parliament passed the **First Amendment Act, 1951**.

The amendment introduced **Article 31A** to bridge the economic divide in agriculture, offering protection for laws related to the acquisition of estates, even if such laws conflicted with fundamental rights. The text of this article was as follows when it was introduced:

Article 31A - Protection of Laws for Acquisition of Estates, etc.

1. **Notwithstanding any other provision in this Part, no law that allows the State to acquire any estate or any rights within it, or that modifies or extinguishes such rights, shall be considered invalid on the grounds that it conflicts with or diminishes any rights guaranteed under this Part. Provided, however, that if such a law is enacted by a State Legislature, the provisions of this article will not apply unless the law has been reserved for the President's consideration and has received his approval.**

2. In this article:

    - (a) The term "estate" refers to the meaning assigned to it by the relevant land tenure laws in a particular area, and it also includes any jagir, inam, muafi, or similar grants.
    - (b) The term "rights," in relation to an estate, encompasses any rights vested in a proprietor, sub-proprietor, under-proprietor, tenure-holder, or any intermediary, as well as any rights related to land revenue.

Regarding State-made laws, this provision clarifies that the article does not apply to them unless the law has been reserved for Presidential assent. The term "estate" was specifically defined to include various forms of grants like jagir and muafi.

Additionally, this amendment introduced **Article 31B** to provide certain laws with immunity from judicial scrutiny. According to this provision, none of the Acts and Regulations listed in the Ninth Schedule will be considered void or invalid simply because they conflict with any provisions of Part III. The Ninth Schedule, which was added to the Constitution, initially contained 13 laws. The text of this article upon its insertion was as follows:

Article 31B - Validation of Certain Acts and Regulations

Without limiting the scope of **Article 31A**, none of the Acts or Regulations listed in the Ninth Schedule, or any provisions within them, shall be deemed to be void or to have ever been void due to inconsistency with the rights conferred under Part III. This holds true even if a court or tribunal has issued a ruling to the contrary. All such Acts and Regulations will remain in effect, subject to any competent Legislature's power to amend or repeal them.

This amendment was passed during an appeal process concerning a decision made by the Patna High Court. The landowners challenged the amendment as unconstitutional, but the Supreme Court rejected all petitions on October 5, 1951, and upheld the amendment's validity.

Fixation of Compensation Amount and the Fourth Amendment (1955)

In the **State of West Bengal v. Bela Banerjee** case, the Supreme Court ruled that compensation for property taken must be a fair equivalent of the value lost by the owner. The **West Bengal Land Development and Planning Act, 1948** allowed the acquisition of land for public purposes but limited compensation to the market value of the land as of December 31, 1946. The Court noted the significant difference in land values between 1946 and the post-partition years, making it unreasonable to base compensation on the 1946 market value. Since the Act was permanent, lands could be acquired years after its enactment, so this fixed ceiling on compensation was deemed arbitrary and incompatible with the requirements of **Article 31(2)**.

In response to this interpretation of **Article 31**, the **Fourth Amendment (1955)** was enacted to safeguard laws related to property acquisition, even in cases of inadequate compensation. It also clarified the distinction between property acquisition by the State for public purposes and the deprivation of property. This amendment revised **Article 31(2)** and introduced **Clause 2A**, which reads as follows:

Article 31(2) - Revised

No property shall be compulsorily acquired or requisitioned except for a public purpose and under the authority of a law that provides compensation for the property being acquired or requisitioned. The law must either specify the amount of compensation or define the principles and methods for determining and giving compensation. Furthermore, such a law cannot be challenged in court on the grounds that the

Acquisition of Land; Protection for Small Landholders, Seventeenth Amendment, 1964

This amendment aimed to ensure that when a law allows the State to acquire an estate, any land that is personally cultivated by an individual cannot be acquired unless the person is compensated at least at the market value of the land. However, this condition only applies to land that falls within the ceiling limit. A new proviso was added to clause (1) of Article 31A, which stated:

"Provided further that where a law provides for the State's acquisition of any estate, and any land within that estate is held by a person under personal cultivation, the State cannot acquire any portion

of such land within the ceiling limit, nor any associated building or structure, unless the law governing the acquisition provides for compensation at a rate not less than the market value of the property."

Twenty-Fifth Amendment, 1971:

Reduction of 'Compensation' to 'Amount'

Despite the Fourth Amendment specifying that inadequate compensation could not be grounds for declaring an acquisition act void, the **Bank Nationalization Case** (1970) raised concerns about the fairness of compensation. In this case, the Supreme Court ruled that the Constitution guarantees a right to compensation that is equivalent to the value of the property acquired. The **Banking Companies (Acquisition and Transfer of Undertakings) Act, 1969**, which led to the nationalization of major banks, provided compensation based on the assets of the banks but failed to account for important assets, such as goodwill or long-term leases, making the compensation insufficient. The Court held that the Act violated the guarantee of compensation under **Article 31(2)**, as it was based on irrelevant principles.

In response to this decision, the **Twenty-Fifth Amendment** was enacted to neutralize the effects of the ruling. The amendment replaced the term "compensation" with "amount" in **Article 31(2)** and added **Clause 2B** to exclude the application of **Article 19(1)(f)** (which guarantees the right to acquire, hold, and dispose of property) to laws made under **Article 31(2)**. However, the amendment still protected the rights of minorities to establish educational institutions by adding a proviso to **Article 31(2)**.

Forty-Second Amendment, 1976:

Primacy of Directive Principles Over Some Fundamental Rights

The **Forty-Second Amendment** introduced changes to **Article 31C**, giving precedence to all directive principles over the fundamental rights outlined in **Articles 14, 19, and 31**. The new text of **Article 31C** became:

"Notwithstanding anything contained in Article 13, no law aimed at fulfilling the State's policy to secure any of the principles outlined in Part IV shall be deemed void on the grounds that it is inconsistent with, or takes away or abridges any of the rights conferred by Articles 14, 19, or 31."

However, the Supreme Court declared this change invalid in the **Minerva Mills Ltd. v. Union of India** case (1980).

Forty-Fourth Amendment, 1978:

Right to Property Reduced to a Legal Right

The **Forty-Fourth Amendment** led to a significant change in the status of the Right to Property. It was removed as a Fundamental Right from **Part III** and placed in **Part XII** as a legal right. This amendment made the following changes:

- **Clause (f) of Article 19(1)**, which granted the right to acquire, hold, and dispose of property, was omitted.
- **Article 31**, which had undergone numerous amendments and judicial interpretations, was completely omitted, thereby ceasing the Right to Property as a fundamental right.
- The reference to **Article 31** was also removed from **Article 31C**.

A new **Article 300A** was inserted in **Part XII**, stating:

"No person shall be deprived of their property except by the authority of law."

This placed the right to property within the framework of legal rights rather than fundamental rights. Courts have affirmed this position, dismissing attempts to reassert the Right to Property as a fundamental right or part of the Constitution's basic structure. In the **Gudalur Janmam Estates (Abolition and Conversion into Ryotwari) Act** case, the Supreme Court held that the Act did not violate any fundamental rights or the basic structure of the Constitution. Justice Radhakrishnan noted that the right not to be deprived of property by authority of law is no longer a fundamental right but simply a constitutional right, not forming part of the Constitution's basic structure.

Right to Constitutional Remedies

Article 32 - Remedies for the Enforcement of Rights Conferred by this Part

1. The right to approach the Supreme Court through appropriate proceedings for the enforcement of the rights guaranteed in this Part is assured.
2. The Supreme Court has the authority to issue directives, orders, or writs, including those in the nature of habeas corpus, mandamus, prohibition, quo warranto, and certiorari, to enforce any of the rights granted in this Part.
3. In addition to the powers granted to the Supreme Court under clauses (1) and (2), Parliament may, through legislation, authorize other courts to exercise within their jurisdiction all or some of the powers that the Supreme Court may exercise under clause (2).
4. The right guaranteed by this Article cannot be suspended except in the cases specified by this Constitution.

This Article is often referred to as the "heart and soul" of the Constitution by Dr. B.R. Ambedkar, the chairman of the Drafting Committee. It empowers citizens to seek the enforcement of their fundamental rights by moving the Supreme Court. The language of the Article allows for "appropriate proceedings," but the Court has interpreted this to include even informal means, such as a letter sent by a public-spirited individual advocating for the rights of the underprivileged or marginalized. This led to a significant shift in legal practice, where the principle of "Locus Standi" (the right to bring a case) was relaxed, and Public Interest Litigation (PIL) was introduced. However, PIL, despite its progressive impact, has been criticized by the executive, which claims it has contributed to the increasing backlog of cases, leading to calls for imposing restrictions on this practice.

Though the Constitution has not amended Article 32 itself, subsequent amendments have affected its application. The **42nd Amendment** introduced **Article 32A**, which restricted the Supreme Court's power to consider the constitutional validity of state laws under this Article. It stated:

Article 32A (42nd Amendment): Restriction on Judicial Review of State Laws
Notwithstanding anything in Article 32, the Supreme Court shall not examine the constitutional validity of a state law in any proceedings under this article, unless the constitutional validity of a Central law is also involved in the same case.

This amendment also excluded the High Courts from considering the constitutional validity of any Central law. Furthermore, **Article 144A**, also inserted by the 42nd Amendment, set a minimum of seven judges to hear cases involving the constitutional validity of laws, and a two-thirds majority of those judges was required to declare a law unconstitutional.

However, these changes were perceived as an encroachment on citizens' rights and judicial powers, upsetting the balance between the different branches of government and between the state and citizens. Since the review of Central laws was exclusively the domain of the Supreme Court, it became difficult for citizens in

remote areas to challenge such laws. As a result, the **43rd Amendment** was passed, removing the provisions of Articles 32A, 131A, 144A, 226A, and 228A, thereby restoring the previous judicial framework.

Article 33 - Power of Parliament to Modify Rights Conferred by this Part in Their Application to the Armed Forces, etc.

Parliament has the authority to modify the application of the rights guaranteed in this Part to members of the Armed Forces or other forces responsible for maintaining public order, to ensure the proper performance of their duties and the maintenance of discipline. The law passed by Parliament may specify to what extent these rights can be restricted or abrogated.

This Article allows Parliament to impose certain limitations on the fundamental rights of military and law enforcement personnel to preserve order and discipline. The law does not require Parliament to specify the degree of restriction; rather, the relevant acts of the respective forces, such as the Armed Forces or Police, contain provisions to ensure discipline. Courts have upheld these provisions as valid under this Article. The **50th Amendment** expanded the scope of this Article to include personnel working in intelligence, telecommunications for forces, and other related organizations. The revised text is:

Article 33 - Modifying Rights for Armed Forces, Law Enforcement, and Related Personnel
Parliament may, by law, determine the extent to which the rights conferred by this Part shall apply to:
(a) members of the Armed Forces;
(b) members of forces responsible for maintaining public order;
(c) persons employed in any intelligence or counter-intelligence bureau;
(d) individuals involved with telecommunications for any of the above forces or organizations.

Article 34 - Restriction on Rights While Martial Law Is in Force

This Article grants Parliament the power to indemnify or validate actions taken by any person or authority during the enforcement of martial law. This includes acts related to maintaining or restoring order in areas under martial law, as well as validating any sentences, punishments, forfeitures, or other actions taken during this period.

Martial law, as referenced in this Article, represents a complete breakdown of normal judicial processes and law enforcement. It has not been amended through any other constitutional amendments.

Article 35 - Legislation to Implement the Provisions of This Part

1. Notwithstanding any provisions in the Constitution, Parliament has the exclusive power to make laws concerning: (i) matters under Article 16(3), Article 32(3), Article 33, and Article 34,
   (ii) prescribing punishments for offenses under this Part. Parliament is required to make laws for punishments related to the acts referred to in (ii) as soon as possible after the Constitution comes into effect.
2. Any pre-existing law concerning the matters mentioned above or dealing with punishments for these offenses will remain in force until modified or repealed by Parliament.

The purpose of **Article 35** is to empower Parliament to legislate on matters related to the enforcement of fundamental rights. State legislatures are excluded from making laws on these topics. This Article has remained unamended throughout the history of the Constitution.

Self-Check Exercise-2

Q.1 Under which article, the Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari?

Q.2 Which article concerns with Freedom of conscience and free profession, practice and propagation of religion?

Q.3 Right to property is a fundamental right. True/False

17.4 Summary

If we study the demands of the nationalist leaders of India during the British rule and the discussions of the Constituent Assembly, it can be inferred that the issue of the fundamental rights was taken with utmost care. But as the Constitution started working, there arose some contradictions between the fundamental rights of the citizens and the rights of the society as a whole. It resulted in the clash between the judicial decisions and the acts of Parliament. Due to these contradictions the Part on fundamental rights was amended from time to time, rather it is the Part which has been amended more frequently than any of the other Part of the Constitution.

17.5 Glossary

- **Ethnic** - connected with or typical of a particular race or religion.
- **Residuary power** - **A residuary power is** a power which is retained by a government authority after certain powers have been delegated to other authorities.
- **Estates** - a large area of land in the countryside that is owned by one person or family

17.6 Answers to self check exercises

Self-Check Exercise-1

Q.1 True

Q.2 Dr. B.R. Ambedkar

Self-Check Exercise-2

Q.1 Article 32

Q.2 Article 25

Q.3 False

17.7 References/Suggested Readings

1. *M.V. Pylee; "Constitutional Government in India", p.92, S. Chand & Company Ltd, New Delhi, 2003.*
2. *C. A. D. VII, p. 953.*
3. *Zee Telefilms Ltd. v. Union of India (2005) 4 SCC 649.*
4. *Golaknath v. State of Punjab, AIR 1967 SC 1643: (1967) 2 SCR 762.*
5. *Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461: (1973) 4 SCC 225: 1973*
6. *State of Madras v. Champakam Dorairajan 1951 AIR SC 226.*
7. *SOR, 93rd Amendment Act, 2005.*
8. *Section 3, the Central Educational Institutions (Reservation in Admission) Act, 2006.*
9. *The Tribune, Chandigarh, April 11, 2008.*
10. *Balaji Raghavan v. Union of India, AIR 1996 SC 770. SOR, 1st Amendment Act, May 10th, 1951.*
11. *SOR, 16th Amendment Act, January 18th, 1963.*
12. *Communist Party of India (M) v. Bharat Kumar, AIR 1998 SC 184: (1998) 1 SCC 201: (1998) 1 MLJ 99 (SC)*
13. *Bijoe Emmanuel v. State of Kerala, (1986) 3 SCC 615: AIR 1987 SC 748: 1986 KLT 1037.*
14. *Maharashtra Ekta Hawkers Union v. Municipal Corporation Greater Mumbai, AIR 2004 SC 416: (2004) 1 SCC 625.*
15. *Pokhar Singh v. State of Punjab, AIR 1958 Punj 294: 1958 Cri LJ 1084.*
16. *Bandhua Mukti Morcha v. Union of India, AIR 1984 SC 802.*
17. *Dehli Transport Corporation v. D.T.C. Mazdoor Congress AIR 1991 SC 101.*
18. *P. Rathinam vs. Union of India, 1994 AIR 1844.*
19. *Gian Kaur v. State of Punjab, (1996) 2 SCC 647.*
20. *The Hindu, Delhi, March 8, 2011.*
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22. *Bijoe Emmanuel v. State of Kerala 1987 AIR SC 748.*
23. *Church of God (Full Gospell) in India v. K.K.R. Majestic Colony Welfare Association, AIR 2000 SC 2773.*
24. *Surjeet Singh Chhabra v. Union of India, AIR 1997 SC 2560.*
25. *Sanjib Kumar Chauwdhry v. Principal St. Paul College, 1957 AIR Cal, 524, 61 CWN 717*
26. *Saifuddin Sahib v. State of Bombay, AIR 1962 SC 853.*
27. *Narendra v. State of Gujarat, AIR 1974 SC 2098.*

28. *Mahant Sri Jagannath Ramanuj Das v. The State of Orissa, 1954 AIR 400.*
29. *D.A.V. College Jullundur v. State of Punjab, AIR 1971 SC 1737.*
30. *Jagdev Singh Sidhanti v. Partap Singh Daulta, AIR 1965 SC 183.*
31. *D.A.V. College Jullundur v. State of Punjab, 1971 AIR 1737.*
32. *Ibid.*
33. *State of West Bengal v. Bela Banerjee AIR 1954 SC 170, 1954 SCR 558.*
34. *Rustom Cavasjee Cooper v. Union of India, AIR 1970 SC 564*
35. *Kesavananda Bharati v. State of Kerala AIR 1973 SC 1461.*
36. *The Hindu, New Delhi, Sep. 15, 2010.*
37. *Section 23, Forty-Second Amendment Act, 1976.*
38. *SOR, 43rd Amendment Act, 1977.*
39. *Prithi Pal Singh v. Union of India AIR 1982 SC 1413.*

17.8 Terminal questions

Q1 Discuss the significance and characteristics of fundamental rights.

Q2 Why Dr B.R. Ambedkar considered the right to constitutional rights as the most important right.

Q3 Why the right to property got deleted from the fundamental rights and converted to a legal right.

UNIT-18

DIRECTIVE PRINCIPLES OF STATE POLICY IN INDIA

Structure

18.0 Introduction

Directive Principles of State Policy provide essential guide -lines both for the state as well as the citizens for establishing economic democracy in India. The Constitution makers in India did not force on the people any particular economic system but they only tried to suggest a system which could be most suited to Indian conditions. With the passing of Forty -Second Constitution Amendment Act, it has been provided that India shall be a socialist democracy but socialism is not in the traditional sense but in the sense which suits Indian conditions . According to our Constitution Directive Principles, as against Fundamental Rights, are not justifiable in the courts of law. It is for the first time that a Part of Constitution (Part IV) has been devoted to these Principles. Earlier to this, the Government of India Act, 1935 also contained an Instrument of Instructions to the Governor -General and the Governors, but these instructions were for the executive government. Present Directives are however, for the Parliament and state legislatures. Whereas the Instrument of Instructions had no public opinion behind it, the directives

have force of public opinion behind them. Constitution makers in India drew their inspiration from the Irish constitution for incorporating these Directives in the constitution. There are some other countries of the world which have also incorporated directive principles in their constitutions. Thus, Constitution of India is not the first constitution to contain Directive Principles of State Policy.

14.2 OBJECTIVES

The Constitution Act of India, 1935, itself provided for 'Instruments of Instructions' which were a fruitful idea. Ambedkar said. The above statement of Dr. Ambedkar makes it crystal clear that these principles are not binding upon the Government. The Indian constitution becomes vested with the scope of sanctity essential to its durability, it will be difficult for any public figure to propose any legislative measures without making an appeal to Fundamental Rights or Directive Principles.

18.1 Learning Objectives

After studying this lesson, the learner will be able to

- Know the objectives of Directive Principles of State Policy
- Know some of the Directive Principles
- Know the Classification of Directive Principles
- Know the value of Directive Principles

18.2 DIRECTIVE PRINCIPLES & THEIR OBJECTIVES

The framers of the Constitution sought to grant the people of India the maximum possible rights. However, due to the country's unique social, economic, and political conditions at the time, it was not feasible to provide all of these rights in the form of Fundamental Rights. Therefore, the rights that were deemed achievable were incorporated as Fundamental Rights, while others were placed as Directive Principles, with the hope that, over time, these would evolve into justiciable rights. These principles reflect Gandhian philosophy and socialist ideas. They call on governments to:

In more recent years, political and social reformers who disagreed with the Marxist approach to addressing societal issues have advocated for these principles to become the guiding framework of state policy. The ideas of thinkers like Jeremy Bentham, along with the political and social strands of Liberal and Radical parties in Western Europe, major principles of Fabian Socialism, and, to a lesser extent, Guild Socialism, have influenced the development of the Directive Principles in the Constitution. Ivor Jennings notes that the influence of Sidney and Beatrice Webb can be seen in the entire text, describing how the Constitution reflects Fabian socialism without explicitly mentioning the term "socialism," with the only omission being the nationalization of production, distribution, and exchange. However, it would be an exaggeration to credit the Fabian influence too heavily, as other documents and more recent proclamations may have had a stronger influence on the framers of the Constitution. For instance, the Irish Constitution served as one such reference point. The Sapru Committee had recommended classifying fundamental rights into two categories—justiciable and non-justiciable. The Government of India Act of 1935 also included "Instruments of Instructions," which were a fruitful precursor.

Ambedkar pointed out that it would be inaccurate to consider the principles embedded in this part of the Constitution as mere borrowings from Western political or social thought. Many of these principles are intrinsically Indian, especially those connected to the foundational ideals of the national movement. Provisions concerning village panchayats, cottage industries, prohibition, protections against cow slaughter,

and safeguards for Scheduled Castes, Scheduled Tribes, and other socially and educationally backward classes are all distinctly Indian. Many of these were ideals Gandhi tirelessly advocated for throughout his life.

As the name suggests, the Directive Principles serve as guidelines for the various branches of government and government agencies, including village panchayats, to follow in governance. They outline the responsibility of the State to ensure these principles are incorporated into legislative and executive actions. They are intended to guide the lawmakers of India when crafting new laws and set a standard of conduct for the administrators who serve as the agents of national power. In essence, these principles provide the foundation for the realization of the values espoused in the Preamble of the Constitution: justice (social, economic, and political); liberty; equality; and fraternity.

A member of the Constituent Assembly proposed that the Directive Principles should be placed immediately after the Preamble, granting them greater sanctity. There was also a suggestion to rename this section as the "Fundamental Principles of State." The Advisory Committee on Fundamental Rights had recommended incorporating such a section, asserting that while these directives were not enforceable in court, they should be considered fundamental to the governance of the country.

There are nineteen articles in the Constitution addressing the Directive Principles, covering a wide array of state activities, from economic and social matters to education, culture, and international relations. Some of the key principles are:

1. To promote a social order based on the welfare of the people (Art. 38).
2. The State's policy should aim at:
    - Ensuring adequate livelihoods for all citizens.
    - Equitable distribution of the community's material resources for the public good.
    - Preventing the concentration of wealth that harms society.
    - Ensuring equal pay for equal work for men and women.
    - Safeguarding the health and strength of workers and preventing exploitation, especially in jobs unsuitable for their age or strength.
    - Protecting children and youth from exploitation and abandonment (Art. 39).
3. To provide free legal aid to ensure justice is accessible to all, regardless of economic or other barriers (Art. 39A).
4. To establish village panchayats as units of self-government (Art. 40).
5. To ensure the right to work, education, and public assistance in times of need, such as unemployment, old age, or illness (Art. 41).
6. To ensure just and humane working conditions, including maternity relief (Art. 42).
7. To secure fair wages, decent living standards, and leisure, while also promoting cottage industries (Art. 43).
8. To involve workers in the management of industries (Art. 43A).
9. To promote a uniform civil code throughout the country (Art. 44).
10. To provide free and compulsory education for all children up to the age of fourteen years, as specified in the Constitution (Art. 45).
    - The **86th Amendment of 2002** updated this to include early childhood care and education for children under six years and mandated parents or guardians to ensure education for children between six and fourteen years.
11. To focus on the educational and economic upliftment of weaker sections of society, especially Scheduled Castes and Tribes (Art. 46).
12. To improve public health and prohibit intoxicating drinks and drugs (Art. 47).

13. To organize agriculture and animal husbandry on scientific principles and preserve and improve cattle breeds, prohibiting the slaughter of cows and other milch and draught cattle (Art. 48).
14. To protect the environment and safeguard forests and wildlife (Art. 48A).
15. To preserve monuments of national and historical significance (Art. 49).
16. To separate the judiciary from the executive (Art. 50).
17. To work towards:

- Promoting international peace and security.
- Maintaining just and honorable relations between nations.
- Fostering respect for international law and treaties.
- Settling international disputes through arbitration (Art. 51).

These principles collectively form the foundation on which a new democratic India will be built. They embody the minimum aspirations of the Indian people, with the goal of achieving these ideals within a reasonable time frame. When these principles are fully realized, India can justly claim to be a Welfare State.

Before discussing the Directive Principles of State Policy, it is important to distinguish them from Fundamental Rights.

1. **Justiciability vs. Non-justiciability**:
   Fundamental Rights, which are outlined in Part III of the Constitution, are justiciable, meaning they can be enforced in a court of law. If these rights are violated, individuals can seek legal remedy by approaching the High Court or the Supreme Court. In contrast, the Directive Principles of State Policy, found in Part IV, are not enforceable by the courts. For example, if someone is wrongfully detained, they can seek relief through a writ of *habeas corpus*. However, if the government fails to implement a Directive Principle, such as the separation of powers between the judiciary and the executive, or the provision of universal education, the courts cannot intervene. The Directive Principles do not grant legal rights, and they do not provide for any judicial remedies.

   As noted in Article 38, the government is required to "strive" to implement these principles. Dr. Ambedkar explained that the term "strive" was chosen intentionally to convey that, despite challenges like adverse circumstances or financial constraints, the government should work towards fulfilling these principles. If the government fails to achieve these objectives, there is no legal recourse available to challenge this in court, as these principles are not legally binding.

2. **Negative vs. Positive Directions**:
   Fundamental Rights primarily impose restrictions on the actions of the state, meaning they are negative in nature. They prevent the government from infringing upon individual freedoms, such as freedom of speech, movement, and worship. If the state violates these rights, the individual has the legal right to challenge the action in court.

   On the other hand, Directive Principles are positive obligations, meaning they specify what the state must actively do for the welfare of its citizens. They outline the government's responsibility to promote social and economic well-being, such as improving education and healthcare. Gledhill succinctly captures the difference by stating, "Fundamental Rights are restrictions on the government, while the Directive Principles are proactive instructions to the government to take certain actions."

(b) **Directive Principles subsidiary to Fundamental Rights**.

(c) From a constitutional perspective, the Directive Principles of State Policy are subordinate to the Fundamental Rights. In the case of *State of Madras v. Champakan Dorairajan*, the Supreme Court of India stated that, "The Directive Principles of State Policy, which are explicitly made unenforceable by a court, cannot take precedence over the provisions in Part III, which are enforceable by appropriate writs, orders, or directions under Article 32."

(d) The section on Fundamental Rights is regarded as paramount and cannot be reduced by any legislative or executive actions, except as specifically allowed by the relevant articles in Part III. While the Directive Principles are important in guiding the government, they must align with and operate within the framework established by the Fundamental Rights. As long as the implementation of Directive Principles does not violate any Fundamental Rights, the state may act according to them. The Supreme Court has reiterated this position in multiple cases, affirming the legal primacy of Fundamental Rights over the Directive Principles, even though the latter remain essential to the governance of the country.

Self-Check Exercise-1

Q.1 To organize agriculture and animal husbandry on scientific lines and preserve and improve the breeds and prohibit the slaughter of cows, calves and other milch and draught cattle (Art.48) is a Gandhian principle. True/False

Q.2 To protect all monuments of historic interest and national importance enshrined in which article of Indian constitution?

18.3 Classification of the Directive Principles

The Directive Principles of State Policy are not arranged in the Constitution according to a specific order, which makes them difficult to categorize. Dr. M.P. Sharma, in his book *The Republic of India*, groups these principles into three broad categories: Socialistic, Gandhian, and Liberal Intellectualistic. Additionally, we can introduce a fourth category, *General*, which includes directives that do not fall under any of Dr. Sharma's classifications.

(a) Socialistic Principles

A significant portion of the Directive Principles is aimed at establishing a welfare state based on socialistic ideals. For example, Article 38 directs the state to promote the welfare of its people by securing a social order that guarantees justice—social, economic, and political—within all national institutions. Article 39 further guides the state in securing various social and economic objectives, including: ensuring equal rights to livelihood for both men and women, distributing resources to serve the common good, preventing the concentration of wealth, ensuring equal pay for equal work, and protecting the health and safety of workers, particularly children. Additionally, Article 41 provides for the right to work, education, and public assistance in cases of unemployment, old age, sickness, and other social needs. Other articles, such as 42, 43, 46, and 47, focus on improving workers' conditions, raising the living standards of the people, promoting education, and ensuring public health. These principles strongly reflect the socialistic vision for society, as noted by Sir Ivor Jennings, who observed that the influence of Sidney and Beatrice Webb is evident throughout Part IV of the Constitution.

(b) Gandhian Principles

The Gandhian philosophy is also evident in several Directive Principles, as the ruling party during the formation of the Constitution had been deeply influenced by Mahatma Gandhi’s ideas. Some key principles inspired by Gandhian thought include: organizing village panchayats and granting them self-government

powers, promoting the welfare of the Harijans, Scheduled Tribes, and other marginalized communities, encouraging cottage industries in rural areas, preserving and improving livestock, particularly cows and calves, and promoting prohibition, especially the ban on intoxicating substances harmful to health. These provisions reflect Gandhi's lifelong work to uplift the backward communities and his vision of self-sufficiency.

(c) Liberal Intellectualistic Principles

This category represents principles that reflect the ideas of liberal intellectuals who have advocated for certain policies for many years. These include: the promotion of a uniform civil code across India, ensuring free and compulsory education for children up to the age of 14 within ten years of the Constitution's commencement, organizing agriculture and animal husbandry on scientific lines, separating the judiciary from the executive, and fostering international peace, security, and cooperation through adherence to international law. These principles reflect the intellectual movements that have influenced the shaping of modern governance.

(d) Miscellaneous or General Principles

Finally, some Directive Principles do not neatly fall into the above categories and can be classified as general principles. For instance, Articles 36 and 37 provide definitions and clarify the application of the Directive Principles. Article 36 defines the term "State" in this context, while Article 37 emphasizes that while the Directive Principles are not enforceable by courts, they are fundamental in the governance of the country and should be applied when making laws. Article 49 obliges the state to protect monuments, places, and objects of artistic or historical significance. This category captures more general governance goals not specifically addressed by the other classifications.

14.5 The Significance of the Directive Principles

The Force Behind the Principles

(a) Despite some criticism (as mentioned earlier), the Directive Principles are far from insignificant or ineffective. It is incorrect to claim that they lack influence. In a democracy, "vigilant public opinion" plays a crucial role in holding institutions accountable, particularly those that serve the public good. In a parliamentary system, the government is constantly scrutinized by the public and political leaders. If the government adopts policies in line with the principles outlined in the Constitution, the people are likely to accept it; however, if the government deviates from these principles, it risks losing support in subsequent elections. Although the Directive Principles do not have legal enforcement, they are backed by public opinion, which acts as a powerful force. Governments are unlikely to disregard these principles without risking long-term consequences.

Their Constitutional Status

While the Directive Principles are not enforceable through legal action, their constitutional status is undeniable. Violating these principles is just as problematic as violating legally enforceable constitutional provisions. As Gledhill points out, any legislative proposals that conflict with the Directive Principles are likely to face challenges and opposition, as they are viewed as integral to the Constitution. In the *Gopalan v. State of Madras* case, Chief Justice Kania emphasized that the Directive Principles are not just temporary mandates but reflect the considered wisdom of the nation, as expressed by the Constituent Assembly. By declaring them fundamental in governance, the Constitution has endowed these principles with inherent sanctity.

A Safeguard Against Extremes

(b) The framers of the Constitution understood that in a democracy, the government could shift between conservative and radical ideologies over time. The Directive Principles are designed to guide the government, ensuring that conservatives are pushed to introduce necessary reforms, while preventing radicals from enacting sweeping changes that may not be suitable for the times. They provide a framework that encourages balance, as noted by Dr. Ambedkar, who stated that these principles offer flexibility, allowing different political ideologies to pursue the goal of economic democracy. Raghavachariar also observed that regardless of which party holds power, the government must consider these guiding principles, and be prepared to answer to the electorate in future elections.

The Value of Moral Guidance

Even if the Directive Principles are regarded as moral guidelines or aspirational objectives, their importance should not be underestimated. As Gledhill argues, moral precepts have historically shaped the course of nations and directed the lives of countless individuals. While documents such as the Magna Carta, the French Declaration of Rights, and the American Constitution may lack direct legal enforceability, their impact on the development of their respective nations has been profound. Similarly, the Directive Principles, although not legally binding, continue to shape the nation's future and the policies of its government, as they embody crucial values for social and economic governance.

Core Social and Economic Principles

The Directive Principles were conceived as the foundation for a new social and economic order, one that goes beyond the mere framework of political democracy. The Constitution explicitly states that while these principles are not legally enforceable, they are fundamental to the governance of the country, and the state is responsible for incorporating them into lawmaking. Articles 38 and 39, for instance, aim to secure a just social order by promoting welfare, social justice, and economic equality. The founders of the Constitution recognized that political democracy alone was insufficient and that these social and economic goals were necessary for a truly inclusive democracy. As Dr. Ambedkar noted, despite the challenges governments might face in implementing these principles, they must always strive toward fulfilling them.

Addressing Constitutional Ambiguities Through the Directive Principles

The Directive Principles have also been instrumental in addressing ambiguities within the Constitution, particularly with regard to the interpretation of certain Fundamental Rights. When there is uncertainty over the meaning of provisions like "reasonable restrictions" under Article 19, the courts have often referred to the Directive Principles to guide their decisions. In cases such as *Gopalan v. State of Madras*, the Supreme Court has clarified that while the courts cannot uphold a Directive Principle if it directly conflicts with a specific Fundamental Right, the principles can assist in interpreting provisions where restrictions are concerned. Courts have relied on the Directive Principles to determine whether restrictions on Fundamental Rights are reasonable and in the public interest. For example, in *State of Bombay v. KM. Balsara*, the Court used Article 47 (which relates to prohibition) to support the constitutionality of the Bombay Prohibition Act. Similarly, in *Buoy Cotton Mills v. State of Ajmer*, the Court upheld the Minimum Wages Act by referencing Article 43 of the Constitution.

Preventing Exploitation of the Directive Principles

(c) Some commentators, like D.D. Basu, have raised concerns that the President or Governor might misuse the Directive Principles to veto bills passed by the legislature, potentially leading to deadlocks. However, this concern is mitigated by the reality that the President's and Governor's veto powers are limited. As Dr. Ambedkar clarified, the Directive Principles cannot be used by the President or Governor to block legislation

passed by the legislature. In a parliamentary system, the constitutional leaders are not meant to take an assertive stance, and any attempts to do so would be unacceptable.

Self-Check Exercise-2

Q.1 The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India comes under the category of Liberal Intellectualistic right and it is enforceable through courts. True/False

Q.2 Article 38 provides that the State shall strive to promote the welfare of the people by securing and protecting a social order in which justice, social, economic and political shall inform all the institutions of national life. True/False

18.4 SUMMARY

These Directive Principles represent the national goals and collective conscience of the country. Regardless of which party wins the elections, it is not free to disregard them. Mr. Alladi Krishnaswamy Ayyar emphasized that no government, accountable to the people, can afford to dismiss the provisions outlined in Part IV of the Constitution lightly. These principles have consistently served as a framework for both the Union Parliament and state legislatures, and they are frequently cited by the courts in their rulings. Governmental bodies have consistently been guided by these constitutional provisions.

When assessing the current government's progress in fulfilling these policies, there is a sense of encouragement. Panchayats are being established in even the most remote villages, restoring them to their original significance. There have been efforts in nationalizing certain industries, setting up public corporations, imposing higher taxes on large incomes, pursuing the recovery of concealed taxes, and taking bold actions to hold large business figures accountable, all of which reflect the state’s commitment to preventing the concentration of wealth. The establishment of shelters for the homeless in the capital marks a significant move to address the issue of begging and ensure adequate livelihoods. With the expansion of state-owned industries and corporations, more employment opportunities are being created. The introduction of laws such as the Employees State Insurance Act and the Workmen’s Compensation Act has been a major step in offering support to workers during times of old age, disability, or other forms of distress. Cottage industries are being promoted, and Minimum Wage Acts have been enacted to improve the living conditions of various labor groups. Efforts are also underway to provide free primary education for children under the age of 14. Moreover, initiatives such as scholarships, fee concessions, and age limit relaxations for job applicants from Scheduled Castes reflect significant measures aimed at uplifting marginalized groups. Agriculture is being organized on modern, scientific lines, and efforts are being made to improve livestock breeds, with the slaughter of cows and calves prohibited in several states. The Ancient Monuments Act is an example of measures to protect national heritage, in line with Article 49 of the Directive Principles. In states such as Andhra Pradesh, Gujarat, Haryana, Punjab, Kerala, Madras, Mysore, and Maharashtra, the judiciary has been separated from the executive, helping to uphold judicial independence. On the international front, the Prime Minister’s endeavors toward global peace and security, such as the “Panchsheel” Agreement, exemplify these principles in action. Nehru was celebrated worldwide, not only as a leader of India but also as a cultural ambassador of the spiritual East to the material West.

However, much remains to be done. Political influences, as well as economic and social inequalities, still persist. The standard of living for many citizens has yet to improve, unemployment remains an issue, and socialism is still a distant goal. Nonetheless, the government's efforts to implement these objectives are praiseworthy and have yielded substantial progress.

Several challenges hinder the full implementation of these Directive Principles. One major obstacle is the lack of sufficient financial resources at the state level. Implementing each directive would require substantial funding, which the country cannot always afford. Additionally, with the many issues the country faces, the Directive Principles do not always rank high on the list of priorities. Public outcry against the lack of attention to these directives has been relatively muted. A more significant challenge arises when the implementation of a directive is linked to religious communities. For instance, the proposal for a Uniform Civil Code by the Supreme Court faced strong opposition from religious leaders, highlighting the complexity of addressing religious concerns in the context of constitutional directives.

18.5 Glossary

- **Injunction** - an official order from a court of law to do/not do something.
- **Ideology** - a set of ideas which form the basis for a political or economic system.
- **Welfare State** - a system organized by a government to provide free services and money for people who have no job, who are ill, etc.; a country that has this system

18.6 Answers to self check exercises

Self-Check Exercise-1

Q.1 True

Q.2 Article 49

Self-Check Exercise-2

Q.1 False

Q.2 True

18.7 References/Suggested Readings

Section 1 : Acts, Reports and other Documents

1. Constitution of India (Draft – 1949)
2. Debates in the Assembly (India) 1921 to 1945
3. Government of India Act,1919
4. Government of India Act,1935
5. Indian Independence Act,1947
6. Montagu -Chelmsford Report,1918
7. Nehru Committee Report,1928
8. Report of the All Parties Conference (1928)
9. Report of the Simon Commission (193 0)
10. Report of the Federal Structure Committee (1932)
11. Report of the Joint Parliamentary Committee (1934)

12. Report of the Committee of Parliament on Official Language (1958)

13. Report of the Commissioner of Linguistic Minorities (1962)

Section 2: Books

14. AGARWAL, P .P., (1959) *The System of Grants-in-aid in India*

15. AGGARWALA,OM PRAKASH, *Fundamental Rights and Constitutional Remedies* (3 Vols.)

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2. BAILEY,S.D., (1953) *Parliamentary Government in Southern Asia*
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5. BANERJEE, A.C.,and BOSE,D.R., (1946) *The Cabinet Mission in India*
6. BANERJEE, D.N., *Partition or Federation,a Study i n Inadian Constitutional Problems* .
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9. BOSE, SUBHAS CHANDRA, (1932) *The Indian Struggle*
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11. Manoj Sharma,(2005) *Indian Constitution Publications* Pvt,Ltd, New Delhi.

18.8 Terminal questions

Q1 Classify the Directive Principles of State Policy and discuss them in detail.
Q2 What is value of the Directive Principles of State Policy as enshrined in the constitution.

Q3 Are the Directive Principles of State Policy are inferior to Fundamental rights.

Discuss

UNIT-19

FUNDAMENTAL DUTIES

Structure

19 Introduction

19.1 Learning Objectives

19.0 Introduction

As an Indian citizen, certain rights and duties are provided to us. The duty of every citizen is to abide by the laws and perform his/her legal obligations. A person should always be aware of his/her fundamental duties. 11 fundamental duties are laid down by the Indian Constitution.

19.1 Learning Objectives

After studying this lesson, the learner will be able to

- Know the origin, scope and facts about fundamental dutiesl
- Know the 11 Fundamental Duties as enshrined in the constitution
- Know the various features of the fundamental duties
- Know the criticism and enforcement of fundamental duties

19.2 19.2 Origin, Scope, facts, features, need & criticism of fundamental duties

Origin

Following the suggestions of the Swaran Singh Committee, the 42nd Amendment of 1976 incorporated the fundamental duties into the Indian Constitution. Initially, there were 10 fundamental duties, but the 86th Amendment in 2002 expanded the list to 11. The addition of the 11th duty mandated that every parent or guardian must ensure educational opportunities for children between the ages of 6 and 14. These duties were inspired by the Constitution of Japan.

Scope

There is no direct provision in the Constitution for enforcing these duties, nor is there significant legal sanction to prevent their violation. However, these duties are considered obligatory. The following points highlight the significance of fundamental duties:

1. A person should give equal respect to both fundamental rights and duties. If the court finds that an individual seeking enforcement of their rights is neglectful of their duties, the court is unlikely to be lenient in their case.
2. Fundamental duties can help interpret any ambiguous statute.
3. The court can deem a law reasonable if it aligns with any of the fundamental duties, helping to protect the law from being ruled unconstitutional.

The fundamental duties were inspired by the Constitution of the former USSR (Russia). Their inclusion in the Indian Constitution has brought it in line with Article 29(1) of the Universal Declaration of Human Rights and similar provisions found in the constitutions of other modern nations.

Facts regarding Fundamental Duties in India

The Fundamental Duties in the Indian Constitution emphasize the importance of preserving and promoting the country's diverse cultural heritage, protecting the environment, including forests, lakes, rivers, and wildlife, and showing compassion for all living beings. They also encourage the development of a scientific mindset, humanism, and a spirit of inquiry and reform, the protection of public property, and a commitment to non-violence. These duties inspire citizens to be disciplined and devoted to the country and its people, while also discouraging anti-social or anti-national activities.

In conclusion, the eleven Fundamental Duties outlined in the Indian Constitution play a crucial role in fostering democratic behavior across the nation. These duties can be categorized into two main types: Moral Duties and Civic Duties. Moral duties honor the values that emerged from the freedom struggle, while civic duties focus on citizens' responsibilities to respect national symbols such as the Constitution, National Flag, and National Anthem.

Some key points about Fundamental Duties include:

- They represent essential responsibilities vital to the Indian way of life.
- Unlike some Fundamental Rights, these duties apply only to Indian citizens, not to foreigners living or visiting the country.
- Fundamental Duties are non-justiciable, meaning they cannot be enforced by courts.
- There are no legal penalties for failing to observe these duties.
- They are outlined in Part IV-A of the Indian Constitution under Article 51A.
- Initially, there were eight Fundamental Duties, later amended to ten, and a further amendment in 2002 added an eleventh duty (Article 51A(k)) through the 86th Constitutional Amendment Act.

- The concept of Fundamental Duties was inspired by the Constitution of the former Soviet Union (Russia).

11 Fundamental duties

- Part IV-A of the Indian Constitution includes only one article—Article 51A—which addresses the fundamental duties of citizens. It was incorporated through the 42nd Amendment Act in 1976, introducing a set of 11 fundamental duties for the first time. Article 51A outlines the following duties for every Indian citizen:
- **Respect for the Constitution, its ideals, and institutions, along with the National Flag and National Anthem** – Citizens must honor the Constitution and the values of liberty, justice, equality, and fraternity. They must also respect institutions such as the executive, legislature, and judiciary. Disrespecting the National Anthem or Flag undermines the dignity of a sovereign nation.
- **Cherishing the ideals that inspired the national struggle for independence** – Citizens should uphold the noble ideas of freedom, justice, equality, non-violence, and unity that guided India's independence movement, remaining committed to these ideals in daily life.
- **Protecting the sovereignty, unity, and integrity of India** – This essential duty emphasizes the importance of national unity. It is a citizen's responsibility to safeguard the country's sovereignty and integrity, with Article 19(2) of the Constitution placing reasonable restrictions on freedom of speech for this purpose.
- **Respect for the nation and readiness to serve when needed** – All citizens should be prepared to defend the country and support national interests, even if they are not in the military, when called upon to do so.
- **Promoting harmony and the spirit of brotherhood, while renouncing practices harmful to women's dignity** – Citizens must encourage unity among diverse communities and work towards eliminating practices that harm the dignity of women, reflecting national unity through a shared identity.
- **Preserving and valuing India's rich cultural heritage** – India's diverse cultural heritage is an invaluable legacy, and citizens have a duty to protect it for future generations.
- **Protecting and improving the natural environment, including forests, lakes, rivers, wildlife, and showing compassion for all living creatures** – As per Article 48A, citizens should contribute to the preservation of the natural environment and demonstrate empathy towards all forms of life.
- **Fostering scientific temperament, humanism, and the spirit of inquiry and reform** – In a rapidly changing world, citizens should cultivate a scientific mindset, continuously learning and adapting to new ideas for personal and societal growth.
- **Safeguarding public property and renouncing violence** – Citizens must protect public property and reject violence, as it causes harm to the nation's resources and goes against the principles of non-violence.
- **Striving for excellence in all aspects of life** – To help the nation achieve its full potential, citizens should aim for excellence in their work and contributions, fostering collective progress.
- **Providing educational opportunities for children aged six to fourteen** – Parents or guardians are responsible for ensuring that children between the ages of 6 and 14 receive

free and compulsory education, as mandated by the 86th Constitutional Amendment Act of 2002.

The features of Fundamental duties

1. The fundamental duties encompass both moral and civic responsibilities, such as the obligation for Indian citizens to honor the noble ideals of the freedom struggle and show respect for the Constitution, National Flag, and National Anthem.
2. While fundamental rights apply to both Indian citizens and foreigners, fundamental duties are specifically applicable to Indian citizens only.
3. Fundamental duties are not enforceable by law. The government cannot impose any legal penalties if these duties are violated.
4. Some of these duties are linked to traditional Hindu values or mythology, such as showing respect for the nation and fostering a spirit of unity and brotherhood.

Self-Check Exercise-1

Q.1 Both moral and civic duties have been laid down under the fundamental duties, like, “the Indian citizens should not only cherish the noble ideas that lead to the freedom struggle but they should also respect the Constitution, the National Flag and National Anthem”. True/False

Q.2 *One should always provide the opportunity of education to his child or ward between the age of six to fourteen years*– Free and compulsory education must be provided to the children who belong to 6 to 14 years of age and this has to be ensured by the parents or guardian of such child. This was provided by the 86th Constitutional Amendment Act, 2002. True/False

19.3 Fundamental duties and Indian constitution & Fundamental Duties Case Laws

The Indian Constitution was adopted in 1949, but it initially did not include provisions for fundamental duties. Recognizing the need to emphasize the importance of these duties, the Indian Parliament decided to incorporate them into the Constitution. As a result, Part IV-A was added by the 42nd Amendment Act of 1976, which outlines the fundamental duties citizens are expected to observe.

These duties are considered "directory," meaning they cannot be enforced through a writ of mandamus because they do not impose direct public obligations. Rather, they serve as a reminder of the nation’s goals and political principles. They encourage individuals to develop a sense of

social responsibility. The Supreme Court has stated that fundamental duties can be used to interpret ambiguous statutes. These duties also have educational and psychological value, promoting democracy and patriotism.

In the case of the **Ramlila Maidan Incident**, the court explained that the term "fundamental" in the Constitution is used in two different contexts. When referring to rights, "fundamental" means essential, and any law violating these rights will be declared void. However, when the term is used in relation to duties, it takes on a normative sense, establishing goals for the state to strive toward.

42nd Amendment Act, 1976

The 42nd Amendment Act, passed during the Emergency period, is regarded as one of the most controversial amendments to the Indian Constitution. Approved by the Indian National Congress, led by Indira Gandhi, this amendment made several significant changes, with most provisions coming into effect on January 3, 1977, while others took effect from April 1, 1977. Due to its sweeping changes, it is sometimes referred to as the "Mini-Constitution" or the "Constitution of Indira." The 42nd Amendment introduced 11 Fundamental Duties.

86th Amendment, 2002

Few constitutions worldwide explicitly outline the duties of citizens, with countries like Canada and the United Kingdom relying on Common Law and judicial decisions to govern these aspects. It is argued that teaching individuals about their fundamental duties at a young age would eliminate the need for formal enumeration in the Constitution, making it easier to implement these duties effectively.

The **Unnikrishnan Judgment** established that every citizen under the age of 14 has a right to free and compulsory education. Responding to public demand for greater access to education, the government took steps to make education a fundamental right. Consequently, the 86th Amendment of 2002 amended Article 51A by adding Clause (k), which made it a fundamental duty for parents or guardians to ensure that children between the ages of 6 and 14 receive free and compulsory education.

Key Case Laws:

1. **M.C. Mehta (2) vs. Union of India**: The Supreme Court made several important rulings:
    - Educational institutions must conduct at least one hour of lessons per week focused on protecting and improving the natural environment.
    - It is the duty of the Central Government under Article 51-A(g) to introduce this environmental lesson in all educational institutions.
    - The government is required to distribute free books on environmental topics to educational institutions.
    - To raise awareness about environmental conservation, the government should organize a "Keep the City Clean" week annually.

Fundamental duties committees

Swaran Singh Committee

- The Swaran Singh Committee, chaired by Sardar Swaran Singh, was tasked with reviewing the Indian Constitution during the period of National Emergency. Following the declaration of the emergency, Indira Gandhi assigned the committee the responsibility of examining the Constitution and recommending necessary amendments based on the circumstances at the time. Several changes to the Constitution were made following the committee's recommendations.
- The need to include fundamental duties in the Constitution became apparent during the emergency period. In response, the committee, formed in 1976, recommended the addition of a separate section titled "Fundamental Duties." This section would inform citizens of their duties while enjoying their fundamental rights. The government accepted this suggestion and incorporated Article 51A into the Indian Constitution, initially listing 10 fundamental duties. The government later acknowledged that the omission of fundamental duties by the original framers of the Constitution had been an oversight. While the committee proposed eight fundamental duties, the 42nd Amendment included ten duties. However, not all of the committee's recommendations were accepted.
- Some recommendations that were not adopted include:
- Granting the Parliament the authority to impose penalties or punishment for non-compliance with fundamental duties.
- Making such penalties or laws immune to challenge in a court of law.
- Including the duty to pay taxes among the fundamental duties, which was ultimately rejected.

Justice Verma Committee

- The Justice Verma Committee was established in 1998 with the goal of developing a strategy to make fundamental duties enforceable across all educational institutions and ensuring these duties were taught in schools. The committee recognized that the non-implementation of fundamental duties was due to a lack of a clear strategy, rather than a lack of interest.
- The committee suggested several provisions to ensure the operationalization of these duties:
- Under the **Prevention of Insults to National Honour Act, 1971**, no person can disrespect the National Flag, the Constitution of India, or the National Anthem.
- Various criminal laws have been enacted to penalize individuals who promote enmity based on race, religion, language, etc.
- The **Protection of Civil Rights Act, 1955** imposes punishments for offences related to caste and religion.
- The **Indian Penal Code, 1860** includes provisions that punish actions that undermine the nation's integrity and unity.
- The **Unlawful Activities (Prevention) Act, 1967** was enacted to prevent the declaration of communal organizations as unlawful associations.
- Members of Parliament or state legislatures found engaging in corrupt practices, such as using religion to solicit votes, are liable under the **Representation of the People Act, 1951**.
- The **Wildlife (Protection) Act, 1972** prohibits the trade of endangered species.
- The **Forest (Conservation) Act, 1980** ensures the protection of forests, directly supporting the enforcement of Article 51A(g).

Need for Fundamental Duties

Rights and duties are inherently linked and interdependent. Fundamental duties serve as a constant reminder to every citizen, emphasizing the need to balance their rights with responsibilities. While the Indian Constitution grants specific fundamental rights to its citizens, it also underscores the importance of certain basic democratic norms and behaviors that citizens must follow. The ruling party at the time, Congress, acknowledged that the framers of the Constitution had overlooked this aspect and rectified the omission by introducing a section on citizens' duties towards the nation.

In India, there has historically been a stronger focus on rights rather than duties. However, this perspective overlooks an essential aspect of Indian culture, where individuals have traditionally emphasized performing duties over asserting rights. From ancient times, the concept of *Kartavya* (duty) has been central to Indian society—whether towards one's community, country, or family. The teachings in texts like the Geeta and Ramayana advocate for performing one's duties selflessly, often placing them above personal rights and privileges.

The concept of duties has been constitutionally recognized. A careful examination of the Constitution reveals not only the rights of citizens but also their responsibilities. Those who argue that the Constitution only addresses rights and neglects duties will find that fundamental duties are indeed acknowledged in the document. Fundamental rights, such as liberty of thought, expression, belief, faith, and worship, are outlined in the Preamble of the Indian Constitution. However, these rights are not absolute, as the state may impose reasonable restrictions on them for the greater good of society. Additionally, the Preamble emphasizes the duties of the state and citizens in promoting justice—social, economic, and political.

Importance of fundamental duties

The government introduced fundamental duties to establish a strong national character and foundation. These duties not only highlight the importance of human dignity but also foster a sense of unity within the community. Our society can progress only if every citizen contributes towards bridging the gaps within society by fulfilling their duties. Judicial reforms have played a role in reinforcing these duties, as the Indian Constitution does not provide specific provisions for their enforcement. If individuals wish to see their fundamental rights respected, they must also fulfill their corresponding duties.

The significance of fundamental duties can be summarized as follows:

1. Fundamental duties serve as a continual reminder that citizens, while enjoying their fundamental rights, must also be mindful of their responsibilities to the nation.
2. These duties act as a deterrent, warning citizens against engaging in antisocial behaviors.
3. They offer individuals the opportunity to actively participate in society, rather than remaining passive observers.
4. These duties instill a sense of discipline and a strong commitment to the community.
5. Courts can refer to fundamental duties when determining the constitutionality of laws. If a law is challenged, and it supports any of the fundamental duties, it may be upheld as reasonable.

6. When fundamental rights are protected by law, the Parliament has the authority to impose penalties or punishment in the event of their violation.

A notable example of the importance of fundamental duties was the Supreme Court's directive for cinema halls to play the National Anthem when displaying the National Flag. This decision highlighted the significance of promoting national consciousness and the fulfillment of fundamental duties.

Criticism of fundamental duties

There have been several criticisms regarding the inclusion of fundamental duties in the Constitution. Some of the key concerns are as follows:

1. Critics argue that the list of fundamental duties is not comprehensive. They believe that many important duties, such as paying taxes and voting, which were recommended by the Swaran Singh Committee, should have been included.

2. The language used in the fundamental duties, such as "composite culture," is often difficult for the average person to comprehend. This lack of clarity makes it challenging for citizens to fully grasp the true meaning of these duties, leading to confusion and ambiguity.

3. Since these duties cannot be enforced by the courts, some critics question their value and effectiveness in the Constitution, believing they hold little practical significance.

4. Certain duties, such as showing respect for the National Flag and National Anthem, are already ingrained in the behavior of citizens, and critics feel that these obligations did not need to be explicitly stated in the Constitution.

5. The fundamental duties are located in Part IV-A of the Constitution, which follows the Directive Principles of State Policy. Critics contend that they should have been included in Part III, alongside the Fundamental Rights, to give them greater prominence and importance.

Fundamental duties case laws

6. **Bijoe Emmanuel vs. State of Kerala (National Anthem Case)**
   In this case, three children from the Jehovah’s Witnesses community were expelled from their school for refusing to sing the National Anthem, citing religious beliefs that prohibited participation. The school had issued a directive mandating that all students sing the National Anthem. The children, however, stood in respect but did not sing. They were expelled on grounds of violating the Prevention of Insult to National Honours Act, 1971. The court overturned the expulsion, ruling that the children had not violated the law, as their act of standing was a gesture of respect, not disrespect.

7. **M.C. Mehta (2) vs. Union of India**
   The Supreme Court ruled that educational institutions must allocate at least one hour per week for teaching about the protection and improvement of the natural environment, as outlined in Article 51A(g) of the Constitution. The Court also directed the government to distribute relevant educational materials and promote awareness through initiatives like an annual 'keep the city clean' week.

8. **AIIMS Students Union vs. AIIMS**
   In this case, the Supreme Court held that fundamental duties carry equal importance to fundamental rights. The Court struck down a reservation policy at AIIMS that violated Article 14 of the Constitution, emphasizing that fundamental duties should not be overlooked and must be equally upheld.

9. **Aruna Roy vs. Union of India**
   The Supreme Court upheld the National Curriculum Framework for School Education (NCFSE) when challenged on the grounds of violating Article 28 and being anti-secular. The Court ruled that the NCFSE does not involve religious instruction, thus aligning with the secular nature of the Indian Constitution.

10. **Rangnath Mishra vs. Union of India**
    A petitioner, concerned about balancing fundamental rights with duties, urged the President to direct the State to educate citizens about their fundamental duties. The National Commission reviewing the Constitution submitted recommendations for creating public awareness and consciousness regarding these duties, following the guidelines suggested by the Justice Verma Committee. The Court disposed of the writ petition but encouraged the government to take necessary steps based on these recommendations.

11. **Government of India vs. George Philip**
    In this case, the Supreme Court ruled on the case of a government employee who overstayed his leave for advanced research and was subsequently disciplined. The Court invoked Article 51A(j), emphasizing that individuals must strive for excellence and maintain discipline in all spheres of life for the collective good of the nation. The Supreme Court set aside the High Court's decision, which had allowed the employee to return without penalty, arguing that it undermined the essence of the constitutional duty to strive for excellence.

12. **Dr. Dasarathi vs. State of Andhra Pradesh**
    The Supreme Court held that citizens must fulfill their duties to strive for excellence in all aspects of life, contributing to the collective advancement of the nation. It clarified that the state has a role in facilitating excellence through constitutional methods.

13. **Charu Khurana vs. Union of India**
    The Supreme Court ruled that the state should focus on providing opportunities for citizens rather than restricting them. The Court noted that fundamental duties extend beyond individual responsibilities to include collective duties that the state must support.

14. These cases reflect the judicial interpretation of fundamental duties, demonstrating their significance in shaping the behavior of citizens and institutions in India, while highlighting the ongoing balance between rights and responsibilities.

Enforcement of Fundamental Duties

Fundamental duties play an important role in guiding not only citizens but also the actions of legislative, executive, and various other institutions, organizations, and local governing bodies. These duties are effectively observed when they are either mandated by law or influenced by role models, making it essential to establish appropriate laws to ensure citizens fulfill their

responsibilities. Such duties should be enforceable only when directed by the legislature and judiciary, especially in cases where they are violated. If existing laws are insufficient to enforce these duties, legislative gaps must be addressed.

The legal significance of fundamental duties is comparable to that of directive principles. While fundamental duties apply to citizens, directive principles are directed at the state, and neither carries legal consequences for non-compliance. However, failure to observe fundamental duties can be viewed as a reasonable limitation on corresponding fundamental rights.

The 42nd Amendment incorporated fundamental duties into the Constitution, categorizing them as statutory duties enforceable by law. If these duties are neglected, the Parliament has the authority to impose penalties. The effectiveness of this provision depends on how well these duties are communicated to the public and the manner in which enforcement is carried out. A lack of awareness among citizens, often due to illiteracy and a lack of political consciousness, can hinder the enforcement process. To overcome this, educational institutions and other public spaces should serve as platforms for raising awareness and educating citizens about their responsibilities.

Fundamental duties complement fundamental rights

The Constitution of India not only grants fundamental rights but also outlines fundamental duties. While the fundamental rights were incorporated into the Constitution long before the fundamental duties, and are enforceable by the courts, the 42nd Amendment of 1976 introduced the concept of fundamental duties. These duties, however, are not legally enforceable and are considered moral obligations of responsible citizens. It is important for these duties to complement the fundamental rights.

Article 21 of the Indian Constitution guarantees the right to education, while Article 51A(k) requires parents and guardians to provide free and compulsory education to children aged 6 to 14 years. This highlights the interconnectedness between fundamental rights and duties.

However, in contemporary society, there is often a tendency for people to demand their rights while neglecting their duties. For instance, a recent incident at Jawaharlal Nehru University involved individuals exercising their right to freedom of speech and expression by raising anti-national slogans. In doing so, they violated their fundamental duty under Article 51A(c), which mandates citizens to protect the country's sovereignty, unity, and integrity.

Similarly, political leaders sometimes use religion to garner votes, violating their fundamental duty under Article 51A(c) to safeguard the nation’s unity and integrity by promoting social division along religious or caste lines.

For democracy to flourish, citizens must balance their fundamental rights with their fundamental duties. In exercising their rights, they should also fulfill their duties to uphold the values enshrined in the Constitution.

Relationship between the fundamental rights, directive principles and fundamental duties

The relationship between fundamental rights, directive principles, and fundamental duties can be understood as follows:

When there is a conflict between the constitutional validity of legislation and the fundamental rights, the Directive Principles of State Policy have been used to support the constitutional validity of such legislation. Article 31C, added by the 25th Amendment in 1971, states that any law enacted to implement the directive principles mentioned in Articles 39(b) and 39(c) will not be invalidated simply because it may conflict with fundamental rights under Articles 14, 19, and 31. The 42nd Amendment sought to extend Article 31C to all Directive Principles, but the Supreme Court struck down this provision, asserting that it violated the Constitution's basic structure. Thus, both fundamental rights and directive principles have been used together to form the basis for laws related to social welfare.

After the landmark Kesavananda Bharati case, the Supreme Court concluded that fundamental rights and directive principles are not only complementary but also mutually supportive. Together, they aim to establish a welfare state through social change.

The Court has upheld the constitutional validity of various laws that promote the objectives laid out in the fundamental duties. These duties, though not directly enforceable in court, can still be supported by legislation. The Court has directed the government to take necessary steps for the effective implementation of these duties.

While fundamental duties are not enforceable through the courts, fundamental rights are enforceable under Article 32 of the Constitution, which grants the Supreme Court the power to issue writs, and under Article 226, which gives the High Courts similar powers. When interpreting fundamental rights or any limitations on them, the courts take into account the fundamental duties and directive principles outlined in Part IV of the Constitution.

In the case of *Javed vs. State of Haryana*, the Supreme Court affirmed that fundamental rights must be read in conjunction with fundamental duties (Article 51A) and the directive principles in Part IV, stating that these provisions cannot be interpreted in isolation.

In *State of Gujarat vs. Mirzapur*, the Supreme Court noted that the directive principles and fundamental duties (Article 51A) play a crucial role in testing the constitutional validity of statutory provisions or executive actions. The Court emphasized that the reasonableness of any restrictions on fundamental rights imposed by law must be assessed with consideration of both the fundamental duties and the directive principles.

In the *Ramlila Maidan Incident*, the Court highlighted the importance of maintaining a balance between fundamental rights, restrictions on those rights, and the fundamental duties. Giving undue emphasis to either fundamental rights or duties would create an imbalance. The Court acknowledged that duties such as protecting the sovereignty and integrity of the nation and safeguarding public property are significant.

In *N.K. Bajpai vs. Union of India*, it was noted that there is a common thread running through Parts III, IV, and IV-A of the Indian Constitution. Part III guarantees fundamental rights, Part IV lays down the guiding principles for state governance, and Part IV-A outlines the fundamental duties of citizens. The Court emphasized that when interpreting any provision, it is crucial to consider all these constitutional elements together.

Self-Check Exercise-2

Q.1 The 25th amendment in 1871 added Article 31C which states that any law enforced which was to give effect to the directive principles that were provided in Article 39(b)-(c) would not be held invalid on the grounds that they derogated from the fundamental rights that are present in the Articles 14, 19 and 31 of the Indian Constitution. True/False

Q.2 Fundamental duties are not enforceable through courts but fundamental rights are enforceable through the Supreme Court under Article 32 of the Constitution and the High Court has the power to issue writs for the enforcement of the fundamental rights under Article 226. True/False

19.4 Summary

The fact that fundamental duties are not legally enforceable does not diminish their significance. These duties play a crucial role in a democratic society by not only enabling citizens to enjoy their rights but also reminding them of their responsibilities to the nation. The term "fundamental" underscores the importance of these duties, making it essential for all individuals to adhere to them. Although some duties are backed by separate laws that make them enforceable, this does not reduce the importance of the other duties outlined in Article 51A. It is not solely the government's responsibility to provide for everything in the Constitution; citizens must also be aware of their role in society. Duties such as paying taxes and voting are vital and must be carried out by every citizen. These duties foster a sense of social responsibility and are always considered when interpreting fundamental rights.

19.5 Glossary

- **Imputation**- a charge or claim that someone has done something undesirable; an accusation..
- **Secular** - not concerned with religion.

19.6 Answers to self check exercises

Self-Check Exercise-1

Q.1 True

Q.2 *True*

Self-Check Exercise-2

Q.1 True

Q.2 *True*

19.7 References/Suggested Readings

19.8 Terminal questions

Q1 Bring out the relationship between Fundamental Principles, Directive Principles and Fundamental Duties.

Q2 Discuss the various committees convened on the issue of Fundamental Duties.

UNIT-20

SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES

Structure

20.0 INTRODUCTION

The framers of the Indian Constitution recognized the need for specific protections for Scheduled Castes (SC) and Scheduled Tribes (ST), as well as other marginalized communities. To fulfill these constitutional commitments, both the Central and State Governments have implemented various welfare and development programs aimed at helping these communities achieve social, economic, political, and cultural advancement alongside other groups in India. However, it is concerning that the benefits of these efforts have not reached the intended communities to the expected degree. Despite numerous initiatives to improve their socio-economic conditions, SC/ST communities continue to face significant challenges and vulnerabilities across various aspects of life in India. This article reviews the importance and effectiveness of constitutional provisions for SCs/STs in India, drawing on a thorough examination of existing literature.

20.1 Learning Objectives

After studying this lesson, the learner will be able to

- Know about dalits in Indian Society
- Know the Constitutional Provisions for SCs'/STs'
- Know about protection of linguistic minorities
- Know Anglo-Indians and their current status in the Constitution

16.2 Dalits, Linguistic Minorities in Indian Society, Constitutional Provisions for SCs'/STs'

Dalits

India, a diverse society, encompasses all major religions of the world. Over the centuries, the caste system was established to maintain the social and economic monopoly of the upper castes, denying basic human rights such as property, education, freedom, and equality to the weaker sections of society. As a result, the lower castes, particularly Dalits, faced numerous disadvantages and were systematically excluded from mainstream social, cultural, and economic practices.

India, being the second-largest country globally, has approximately 25% of its population belonging to Scheduled Castes (SCs) and Scheduled Tribes (STs). These groups have historically been marginalized, living on the periphery of society and often deprived of basic rights. After gaining independence in 1947, India adopted its Constitution, which guarantees human rights and specific safeguards for these communities. The Constitution of India enshrines several provisions aimed at improving the conditions of SCs and STs, addressing their social, economic, political, and educational needs.

These safeguards can be broadly classified into four categories:

1. Social safeguards
2. Development and economic safeguards
3. Political safeguards
4. Other protective measures

As Srivastava notes, the social system in India has long perpetuated social and economic injustices against these groups. The caste system enforced a hierarchical structure that concentrated privileges in the hands of the higher castes, leaving the lower castes with limited access to resources, opportunities, and rights. This segregation continued for generations, with these communities often excluded from educational, economic, and social advancements.

The Constitution of India, recognizing this historical injustice, provided provisions aimed at uplifting these communities. However, despite various welfare and development programs launched by the government, the intended progress has been slow, and the SC/ST communities continue to face significant barriers. These communities remain vulnerable and marginalized in many areas, hindering their full integration into mainstream society.

Scholars and advocates have argued that for India to become a truly inclusive and welfare-oriented society, the constitutional provisions for SCs and STs must be fully implemented, and all social, economic, and educational disparities must be addressed. The struggle for the rights and betterment of these communities continues, as they still face social and economic disadvantages that prevent them from reaching their full potential in a rapidly changing India.

CONSTITUTIONAL PROVISIONS FOR SCs'/STs'

The Constitution of India includes several protections and provisions designed to uplift the Scheduled Castes (SCs) and Scheduled Tribes (STs), which are central to the nation's legal framework. These provisions are meant to safeguard the interests of these communities and foster their socio-economic advancement. The inclusion of such safeguards is largely attributed to Dr.

Bhimrao Ramji Ambedkar, the Chairman of the Drafting Committee of the Indian Constitution, who was deeply committed to the welfare of marginalized groups. Dr. Ambedkar's efforts ensured that these provisions were incorporated into the Constitution, reinforcing his vision for the empowerment of historically disadvantaged groups.

As Thorat observes, the founding fathers of the Constitution recognized the deep social, economic, and political disparities in Indian society and sought to address these inequities. They understood that these disparities had created systemic disadvantages for the weaker sections of society. This understanding led to provisions such as Article 46, which embodies a new policy to provide hope and relief for marginalized communities, including SCs and STs.

Article 46: Promotion of Educational and Economic Interests of Scheduled Castes and Scheduled Tribes

Article 46 mandates that the State promote the educational and economic interests of weaker sections of society, particularly SCs and STs, and protect them from social injustice and exploitation. This constitutional commitment reflects India’s dedication to achieving social justice for historically oppressed groups.

The Constitution, which came into effect on January 26, 1950, establishes India as a Sovereign, Socialist, Secular, and Democratic Republic. It is the supreme law of the land, ensuring justice, liberty, and equality for all citizens, including SCs and STs. This focus on inclusion is evident in the special provisions made for these groups, aimed at addressing centuries of deprivation.

Challenges and the Continuing Role of Reservations

The main objective of the constitutional safeguards for SCs and STs has been to reduce social and economic disparities and level the playing field as quickly as possible. However, despite more than five decades of implementation, the policy of reservation has faced challenges and has not fully achieved its intended outcomes. Still, reservations have become an entrenched part of India’s social fabric, and the question remains: how can the system be made more effective to truly elevate SCs and STs to the same level as other sections of society?

The Preamble of the Constitution articulates the core philosophy of the nation, vowing to secure justice, liberty, and equality for all citizens. This foundational document has been instrumental in establishing safeguards for SCs and STs, recognizing their historical marginalization.

Key Constitutional Articles for SCs/STs

- **Article 340**: This article allows the President to appoint a commission to investigate the conditions of socially and educationally backward classes and recommend measures to improve their situation.
- **Article 341**: This article allows the President to specify, through a public notification, which castes, races, or tribes will be deemed as Scheduled Castes in any given State or Union Territory.
- **Article 342**: Similarly, this article provides for the President to identify tribes or tribal communities as Scheduled Tribes, and also empowers Parliament to amend the list.

- **Article 366**: This article defines the terms “Scheduled Castes” and “Scheduled Tribes,” as outlined in Articles 341 and 342, providing clarity on the scope of these categories.

The constitutional provisions for SCs and STs are designed to promote their education, economic welfare, and social inclusion. These safeguards are meant to protect these groups from exploitation and ensure their participation in the nation's growth and development. The implementation of these provisions is vital to achieving the constitutional vision of justice and equality for all, especially the historically marginalized sections of society.

SOCIAL SAFEGUARDS

Equality Before the Law:

Under the Constitution of India, no person shall be denied equality before the law or the equal protection of the law within the territory of India.

Article 15: Prohibition of Discrimination

Article 15 of the Constitution ensures that discrimination on grounds of religion, race, caste, sex, place of birth, or any combination thereof is prohibited. Specifically:

- Section 1: The State shall not discriminate against any citizen solely based on religion, race, caste, sex, or place of birth.
- Section 2: No citizen shall face any disability, liability, restriction, or condition concerning access to public facilities, such as shops, restaurants, hotels, bathing ghats, wells, or public places maintained by the State.
- Section 3: This article allows the State to create special provisions for women and children.
- Section 4: It also permits the State to make provisions for the advancement of socially and educationally backward classes, including SCs and STs.

Article 16: Equality of Opportunity in Public Employment

Article 16 ensures that all citizens have equal opportunities in employment or appointments under the State. This article prohibits discrimination on grounds such as religion, race, caste, sex, or place of birth, and guarantees equality in access to public employment. It also provides for:

- Section 4: Provisions for the reservation of appointments or posts for backward classes, including SCs and STs, in areas where they are underrepresented.
- Section 4(A): Provisions for reserving promotions in government services for SCs and STs when they are inadequately represented in those services.

Article 17: Abolition of Untouchability

Article 17 of the Constitution abolishes untouchability and forbids its practice in any form. It considers the enforcement of any disability arising from untouchability an offense punishable by law.

Rights Against Exploitation:

- Article 23(1): Prohibits traffic in human beings, beggary, and all forms of forced labor. Violations of this provision are punishable by law.
- Article 25(2)(b): Calls for the opening of Hindu religious institutions to all classes and sections of Hindus, ensuring social welfare and reform.

Untouchability and Atrocities

Before the passage of the Untouchability (Offences) Act in 1955, there was no uniform Central law addressing untouchability across India. The Act was later amended in 1976 and renamed the Protection of Civil Rights Act (PCR Act). This Act introduced stricter punishments and non-compoundable offenses to combat untouchability. It also mandated the creation of special cells and courts to enforce these laws, although its implementation has been insufficient. Special courts and mobile squads to address untouchability offenses have not been adequately established, and the enforcement of the Act is not always effective.

Additionally, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was enacted to address crimes against these communities. However, despite special provisions, the Act's implementation has been less than effective, requiring a more sensitive approach and rigorous enforcement.

Bonded Labour

Article 23 of the Constitution prohibits trafficking in human beings, beggary, and forced labor, and sets punishments for violations. The Bonded Labour System (Abolition) Act, 1976, aimed to end bonded labor, which predominantly affects SCs and STs. Despite this, the Act's implementation has been inadequate, particularly in tribal areas. In response, the government launched the Centrally Sponsored Programme (1978-79), which provides financial aid for the identification, liberation, and rehabilitation of bonded laborers. However, the Act still requires amendments to increase penalties for offenses and improve its efficacy in eradicating bonded labor across the country.

These safeguards reflect the government's commitment to ensuring social justice and equality for Scheduled Castes and Scheduled Tribes, though challenges in their enforcement remain.

ECONOMIC SAFEGUARDS FOR SCs/STs

Various economic safeguards for Scheduled Castes (SCs) and Scheduled Tribes (STs) are provided under several provisions in the Indian Constitution. These include Article 15(4), Article 16(4), Article 29(2), Article 46, Article 330, Article 332, Article 334, Article 335, and Article 338. Below is an overview of these provisions:

Article 15(4):
This article allows the State to make special provisions for the advancement of socially and educationally backward classes, including Scheduled Castes and Scheduled Tribes. It ensures that

such communities are given special consideration for their upliftment in educational and social fields.

Article 16(4):
This provision empowers the State to reserve appointments or posts for any backward class of citizens who are not adequately represented in public services. It aims to ensure equitable representation for SCs, STs, and other backward classes in government services.

Article 29(2):
This article prohibits discrimination in admission to educational institutions maintained by the State or receiving State funds. It ensures that no individual shall be denied admission based on their religion, race, caste, or language, providing equal educational opportunities to all citizens, including SCs and STs.

Special Grants under Article 275:
Article 275(1) allows the Central Government to provide grants from the Consolidated Fund of India to states for promoting the welfare of Scheduled Tribes or improving administration in Scheduled Areas. This financial assistance supports state schemes aimed at enhancing the living standards of SCs and STs. For example, significant sums were released to state governments under this provision during the Eighth Five Year Plan and in subsequent years.

Article 330: Reservation of Seats in the House of the People:
This provision ensures the reservation of seats in the Lok Sabha for SCs and STs, which is intended to ensure their political representation in the national legislature. The number of reserved seats is proportional to the population of SCs and STs in each state, except for the autonomous districts of Assam.

Article 332: Reservation of Seats in Legislative Assemblies of States:
Similar to Article 330, Article 332 reserves seats for SCs and STs in the Legislative Assemblies of states. The number of reserved seats is determined based on the population of these communities within each state. For Assam, special provisions are made for the autonomous districts.

Article 334: Duration of Reservation and Representation:
This article specifies that the reservation of seats for SCs and STs in the House of the People and in State Legislative Assemblies will cease after sixty years from the commencement of the Constitution. However, this provision does not affect the representation of SCs and STs until the dissolution of the current House or Assembly.

Article 335: Consideration of SCs and STs for Services and Posts:
This provision ensures that the claims of SCs and STs are considered for appointments to services under the Union or State, while maintaining the efficiency of administration. It allows for relaxation of qualifications or other provisions to facilitate their inclusion in public services.

Article 338: National Commission for Scheduled Castes and Scheduled Tribes:
Originally, Article 338 provided for a Special Officer, the Commissioner for SCs and STs, to report on the working of the safeguards provided under the Constitution. However, it was later amended in 1990 to establish a high-level five-member Commission for SCs and STs, which is tasked with ensuring the effective implementation of constitutional safeguards for these communities. The Commission works to protect the welfare, socioeconomic development, and advancement of SCs and STs across India.

These provisions and safeguards are designed to address the economic disparities faced by SCs and STs, ensuring their social, educational, and political inclusion in the mainstream of Indian society. The goal is to provide them with equal opportunities and improve their socio-economic conditions.

Linguistic Minorities

India is home to over 1,369 languages, yet many of these face the risk of disappearing in the near future. In light of this, P Avinash Reddy examines both the constitutional safeguards and the challenges that minority languages face, as well as how affirmative action could play a role in their preservation.

Language is a vital part of individual identity. It is not only a means of communication but also a vessel for culture and knowledge systems. One's language is a gateway to understanding the surrounding world, as it carries accumulated knowledge that has been evolving for generations. The 2011 Census data revealed a total of 19,569 languages, which, after classification, were narrowed down to 1,369 distinct mother tongues. However, nearly 400 of these languages are at risk of vanishing within the next 50 years. This highlights the need for urgent measures to protect the linguistic diversity in India.

Constitutional Protections for Linguistic Minorities

The Indian Constitution recognizes the importance of safeguarding linguistic minorities. Under **Article 30(1)**, linguistic minorities are granted the fundamental right to establish and administer educational institutions of their choice. At the same time, **Article 351** directs the Union to promote Hindi as a national language, which can sometimes overshadow regional languages. The promotion of Hindi, alongside English, can marginalize minority languages, with these communities bearing the brunt of this imposition.

Article 350A ensures that every state provides primary education in the mother tongue, while **Article 350B** mandates the appointment of a ‘Special Officer’ to investigate and report on matters related to linguistic minorities. However, the Constitution does not specifically define what constitutes a linguistic minority. In the **1971 case of DAV College v. State of Punjab**, the Supreme Court of India defined a linguistic minority as a group that speaks a language, even if it does not have its own script. The court further clarified in the **TA Pai Foundation case** that the status of a linguistic minority is determined at the state level, rather than nationally.

The protections granted in the Constitution are crucial, but the continued survival of linguistic minorities in India depends on concerted efforts to preserve these languages and promote their use in education and public life. Affirmative action and other supportive measures could be key to ensuring that these languages are not lost to history.

The protection of linguistic minorities: commissions

The National Commission for Religious and Linguistic Minorities report outlines that a community's status as a linguistic minority is determined by its numerical inferiority, non-dominant position within a state, and distinct identity. The report further claims that exclusive reliance on a minority language contributes to socio-economic disadvantages and that this issue can be remedied by teaching the majority language.

However, the Commission should have focused on creating systems and structures that support linguistic minorities, ensuring they are not economically marginalized simply because of the language they speak. Rather than addressing the deficiencies in the education system that fail to recognize the languages of linguistic minorities, the report suggests that these individuals and communities learn the majority language to progress. This recommendation reflects a systemic form of state discrimination based on language. It is the state's duty to provide equal opportunities for all citizens, regardless of whether they belong to the majority or a minority group, yet it falls short in fulfilling this obligation.

In 2006, the National Commission for Religious and Linguistic Minorities held a workshop on linguistic minorities, during which recommendations were made, including the need for a clear definition of linguistic minority status. This definition could then inform laws designed to provide affirmative action for those facing socio-economic disadvantages. Although the criteria for identifying socio-economic backwardness in linguistic minorities is similar to those used for other backward communities, it suggests that a lack of knowledge of the majority language is a key factor. This addition is problematic. The criteria for assessing the backwardness of a linguistic minority should focus on the risk of language extinction and the lack of institutional support for its development, rather than the ability to speak the majority language.

It is crucial to note that merely knowing the majority language does not address the socio-economic challenges faced by linguistic minorities. True progress can only be achieved by incorporating minority languages into the education system. This approach not only aids in preserving these languages and their associated cultural knowledge but also makes learning easier for students from linguistic minority groups. While the workshop recommendations acknowledge the importance of teachers being proficient in the minority language, they fall short by not recommending that the medium of instruction should be in the minority language for these students. Ultimately, this reflects an effort to assimilate linguistic minorities rather than supporting the integration of their languages into the education system.

Affirmative action and language

Tribal communities, particularly those belonging to linguistic minorities, are among the most vulnerable groups in India. Despite the critical risk of their languages disappearing, there are very few government initiatives or systems that aim to incorporate these languages into the educational framework. Many of these linguistic minorities are indigenous groups, and they can access reservations in higher education institutions under the Scheduled Tribe (ST) category. However, this situation reflects linguistic discrimination, as these students are compelled to assimilate through education in the dominant language, which often marginalizes their own. This dynamic not only threatens the survival of their languages but also forces individuals to integrate into the majority culture at the expense of their native tongues. The government's promotion of the majority regional language or English as a way out of backwardness creates a conflict between maintaining one's language and striving for social mobility.

The use of a foreign language as the medium of instruction for these students often leads to high dropout rates. Those who continue their education often do so at the expense of their native language, further perpetuating cultural assimilation. The High-Level Committee on the Socio-economic, Health, and Educational Status of Tribal Communities in India highlights that low literacy rates among Particularly Vulnerable Tribal Groups are due to inadequate educational infrastructure,

unqualified teachers, the lack of instruction in tribal languages, and a curriculum that is irrelevant to their needs. Similarly, the Draft National Policy on Tribal Groups recognizes that the shift toward English-medium instruction in schools for tribal communities could contribute to the extinction of many tribal languages, emphasizing the importance of primary education in the mother tongue.

With the increasing adoption of English as the medium of instruction, students from indigenous linguistic minorities are struggling to understand the curriculum while simultaneously losing touch with their languages. As a result, these students are unable to fully benefit from affirmative action programs in higher education.

It is crucial that the government addresses the gaps in the education system that impact these communities. To effectively use affirmative action, the medium of instruction must be the students' native language, with English or the majority language taught as a secondary language. This approach would not only preserve their languages but also provide these students with a more holistic education, better preparing them for both their cultural identity and future opportunities.

What Defines a Linguistic Minority?

A linguistic minority refers to a group of individuals whose mother tongue differs from that of the majority population in a state or region. The Indian Constitution guarantees the protection of the rights and interests of linguistic minorities.

According to the 2011 Census, approximately 36.3 million people in India, out of a total population of 1.2 billion, speak a language that qualifies as an “absolute minority.” These languages are considered minority languages across all of India’s 28 states.

Role of the Special Officer for Linguistic Minorities

- To ensure equal opportunities for the inclusive development and national integration of linguistic minorities.
- To increase awareness among linguistic minorities about their rights and the protections in place for them.
- To monitor and promote the effective implementation of constitutional safeguards for these groups.

Appointment of the Special Officer for Linguistic Minorities

Initially, the Constitution of India did not mention the position of the Special Officer for Linguistic Minorities. However, the States Reorganization Commission (1953-55) recommended the establishment of this position. Following this, the Seventh Constitutional Amendment Act of 1956 introduced Article 350-B in Part XVII of the Constitution, which outlined the creation of the Special Officer role.

According to this provision, the President of India is responsible for appointing the Special Officer. This officer’s duties include investigating matters related to the constitutional protections for linguistic minorities and submitting reports to the President at regular intervals. These reports are then presented before Parliament and shared with the state governments concerned. It is important

to note that the Constitution does not define the qualifications, term length, salary, or removal procedure for the Special Officer.

Powers, Functions, and Responsibilities

Under Article 350-B of the Constitution, the position of the Special Officer for Linguistic Minorities was officially established in 1957, and the officer is referred to as the Commissioner for Linguistic Minorities. The Commissioner operates from New Delhi and oversees three regional offices located in Belgaum (Karnataka), Chennai (Tamil Nadu), Kolkata (West Bengal), and Prayagraj (Uttar Pradesh), each led by an Assistant Commissioner. At the national level, the Commissioner is supported by a Deputy Commissioner and an Assistant Commissioner at headquarters.

The Commissioner maintains communication with state governments and Union Territories through designated officers and submits annual or other reports to the President via the Union Minister for Minority Affairs.

ANGLO-INDIANS

The term "Anglo-Indian" refers to individuals in India with mixed Indian and European ancestry, typically through the paternal side. Historically, the term was used to describe British nationals residing in India from the 18th to early 20th centuries. Over time, the definition of "Anglo-Indian" has evolved. It wasn’t until the 1911 Indian census that the term came to be used as a category for people of mixed ethnic backgrounds. The Government of India Act of 1935 formalized the term by defining an Anglo-Indian as "a person whose father, or any male ancestor in the male line, is of European descent but who is a native of India." This definition was maintained when Anglo-Indians were recognized as an official minority in India’s 1950 Constitution. As the community spread across the world, it has become increasingly difficult to pinpoint their exact numbers or identify them clearly.

The Anglo-Indian community is primarily urban and Christian, with roots tracing back to the early interactions between India and Europe, particularly from 1498 when the Portuguese navigator Vasco da Gama landed on the Malabar Coast. Following this, the Portuguese established settlements, and in 1510, Governor Alfonso de Albuquerque conquered Goa, encouraging Portuguese men to marry local Indian women. Their offspring, known as Luso-Indians, marked the beginning of the community. As Portuguese influence waned, these Luso-Indians integrated with the local population, particularly in Goa, Mumbai, and along India’s western coast. Many of these Luso-Indians retained European cultural traditions while blending with other communities of mixed British and Indian descent, ultimately leading to the creation of the Anglo-Indian identity.

When the British took control of much of India in the 17th century, many English men came to assist in the administration, and their children with local women were known as "Eurasian" or "half-caste" until they were later categorized as Anglo-Indians in the early 20th century.

After India's independence in 1947, the Anglo-Indian population was around 300,000. However, with the decline in their social status post-independence, many Anglo-Indian families emigrated, primarily to countries like the United Kingdom, New Zealand, Canada, Australia, and the United States. Due to their dispersion across the world, there is a broad range of estimates regarding the current population of Anglo-Indians in India, with numbers varying from 30,000 to 150,000.

Removal of Anglo-Indians Reservation in Legislative Bodies

the Union Cabinet has approved the **removal of reservation for Anglo-Indians in legislative bodies.**

- Anglo-Indians were provided **two nominated seats in the Lok Sabha** and **one nominated seat in the State Legislative Assemblies** to ensure adequate representation of the community in elected legislative bodies.
- Anglo-Indians constitute a **religious, social, as well as a linguistic minority.** Being numerically an extremely small community, and being interspersed all over India, the Anglo-Indians were provided reservations in legislative bodies.
- The reservation for the Anglo-Indian community was extended till the year 2020 through the **95th Amendment, 2009.** Originally,this provision was to **operate till 1960.**

Constitutional Provisions for Anglo-Indians

- Article 366: Defines an Anglo-Indian as a person whose father or male ancestors in the male line were of European descent but who resides in India and was born in the country to parents who were habitual residents and not temporarily residing there.
- Article 331: Allows the President to nominate two members of the Anglo-Indian community to the Lok Sabha if they are underrepresented.
- Article 333: Authorizes the Governor of a state to nominate one Anglo-Indian member to the State Legislative Assembly if the community is not adequately represented.
- Article 334(b): This provision extended the reservation for Anglo-Indians in legislative bodies for 40 years, starting from 1949.
- National Commission for Scheduled Castes (Article 338): This commission investigates matters relating to the constitutional and legal safeguards provided for the Anglo-Indian community and submits reports to the President regarding their implementation.

104th Constitutional Amendment Act

The 104th Constitutional Amendment Act, passed in 2019, ended the reservation of seats for Anglo-Indians in the Lok Sabha and State Legislative Assemblies, while continuing reservations for Scheduled Castes and Scheduled Tribes for an additional ten years. The amendment bill was introduced by the Minister of Law and Justice, Ravi Shankar Prasad, in the Lok Sabha on December 9, 2019. It was passed on December 10, 2019, with 355 votes in favor and none against. After passing in the Rajya Sabha on December 12, 2019, with 163 votes in favor, it received the

assent of President Ram Nath Kovind on January 21, 2020, and became effective on January 25, 2020.

Reason for the Amendment

Minister Ravi Shankar Prasad explained that although Scheduled Castes and Scheduled Tribes had made significant progress over the last 70 years, the provisions for their representation in the legislature were still relevant. Therefore, the amendment was seen as maintaining the inclusive character of the Constitution, as intended by the framers. The minister also stated that the issue of extending Anglo-Indian reservations had not yet been addressed, although it could be revisited in the future.

Criticisms of the Amendment

One significant criticism of the amendment was the discontinuation of the reservation for Anglo-Indians, while extending it for Scheduled Castes and Scheduled Tribes. The statement of objects and reasons for the 104th Amendment justifies the extension of SC and ST reservations but does not clarify the decision not to extend the reservation for Anglo-Indians.

The Supreme Court’s ruling in Prashar v. Vasantsen Dwarkadas (1963) emphasized that the statement of objects and reasons for a law cannot be used to interpret the law's provisions if the language of the law is clear. However, it can help understand the intent behind the legislation and identify the issues it aims to address.

The amendment’s approach to Anglo-Indians, based on the 2011 Census data, contrasts with the spirit in which the Constitution’s drafters intended to address the community’s needs. The 2013 Ministry of Minority Affairs report highlights significant challenges faced by Anglo-Indians, including cultural loss, identity crisis, unemployment, educational disadvantages, and inadequate housing. This broader context, reflected in the parliamentary debates of June 16, 1949, shows that the welfare and representation of Anglo-Indians should have been considered in a more comprehensive manner rather than merely relying on their census numbers. This unequal treatment raises concerns about Parliament's commitment to addressing the unique challenges of the Anglo-Indian community.

Self-Check Exercise-1

Q.1 The Constitution of India (Article 350 A) provides that every state must provide primary education in a mother tongue and also provide for the appointment of a ‘Special Officer’ for linguistic minorities (Article 350 B), who is responsible to investigate matters relating to linguistic minorities and report them to the President.True/False

Q.2 Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes, [except the Scheduled Tribes in the autonomous districts of Assam], in the Legislative Assembly of every State. True/False

16.3 National Commission for Backward Classes

The National Commission for Backward Classes (NCBC) was established on August 14, 1993, under the Ministry of Social Justice and Empowerment, as a constitutional body created by the National Commission for Backward Classes Act, 1993. Its purpose is to examine the conditions and challenges faced by socially and educationally disadvantaged communities and make suitable recommendations for their upliftment.

1. The creation of the NCBC was a direct result of the Indra Sawhney case (commonly known as the Mandal Commission case) of 1992.
2. Following the Supreme Court's decision in the Mandal Commission case, the Court emphasized the formation of NCBC as a statutory body to address the concerns related to backward classes.
3. The NCBC, headquartered in Delhi, was officially established on August 14, 1993, as per the provisions outlined in the NCBC Act of 1993.
4. In 2015, the NCBC recommended that individuals with an annual family income of up to ₹15 lakhs, who belong to the Other Backward Classes (OBC), should be recognized under a minimum income ceiling for OBCs.
5. The Commission also proposed the categorization of OBCs into three subgroups: ‘backward’, ‘more backward’, and ‘extremely backward’. According to NCBC's findings, the number of backward castes in the Central OBC list increased to 5013 by 2016.

Structure of NCBC
The National Commission for Backward Classes (NCBC) is comprised of five members, including a Chairperson, Vice-Chairperson, and three other members. Each member serves a tenure of three years. The specific members of the NCBC can be found in the table provided below.

Constitutional Provisions

- Article 340 outlines the responsibility to identify "socially and educationally backward classes", assess their conditions of backwardness, and provide recommendations to address their challenges.
- The 102nd Constitutional Amendment Act introduced new Articles 338B and 342A.
- Article 338B grants the NCBC the authority to examine grievances and welfare measures concerning socially and educationally backward classes.
- Article 342A gives the President the power to designate socially and educationally backward classes in various states and Union Territories in consultation with the respective state governors. However, any amendment to the list of backward classes requires an act of Parliament.

The Other Backward Classes

While the Indian Constitution specifically provides reservations for Scheduled Castes (SCs) and Scheduled Tribes (STs), the provision for Other Backward Classes (OBCs) has been more general. There is no nationwide list of OBCs, but both the Ministry of Education and State Governments have created their own lists, often leading to discrepancies.

To address this, the Backward Classes Commission was formed in 1953 under Kaka Kalekar to establish criteria for identifying socially and educationally backward classes. The Commission prepared a detailed list based on factors such as social hierarchy, literacy rates, and representation in services and industries. However, the recommendations of the Commission were not fully accepted, leading to further reliance on state criteria for identifying OBCs.

Some states, like Karnataka, established special commissions to identify backward classes, while others introduced laws to provide reservations or special facilities for these communities. In regions where such provisions were weak or absent, movements for reservations began to gain momentum.

As the demand for OBC reservations became a national issue, the Mandal Commission was formed to study the situation. Though it submitted its report in 1980, its recommendations were implemented in 1990 by the V.P. Singh government, leading to the reservation of 27% of posts in central government services for socially and educationally backward classes. This decision sparked widespread protests from middle and upper castes.

Criteria for Identifying Backward Classes

1. Economic Status: Since 1961, the central government has emphasized using economic criteria to define backwardness. While some states have resisted this due to political pressure from powerful castes, many have now adopted this criterion for awarding scholarships and other benefits to OBCs.
2. Caste and Class Dynamics: The core of the OBC population consists of peasant castes that occupy a lower position in the caste hierarchy but are often above untouchables. These groups have historically lacked access to education and government jobs. In some areas, these dominant castes have exerted significant control over local economies and politics, leading to debates about their continued status as backward classes to maintain access to government benefits.

Through these measures, both the central and state governments aim to address the educational and social disadvantages faced by these communities, though the issue remains a complex and evolving one.

NCBC- Powers and Functions

1. To investigate and monitor all the matters of the socially and educationally backward classes under the Constitution or under any other law that are related to the proper working of the safeguards provided.
2. To participate and advise actively on the socio-economic development of the socially backward classes along with evaluating the progress of their development.
3. It annually presents the reports based on the working of the safeguards to the President. If any of those reports relate to any matter which is concerned with the State Government, a copy of that report is forwarded to the State Government.

4. NCBC is responsible for the protection, welfare, development and advancement of the socially and educationally backward classes.

Benefits of the National Commission for Backward Classes (NCBC)

- The NCBC ensures justice for socially and educationally disadvantaged communities.
- It works to address the issues of backward classes and promote social equality in society.
- The Commission helps members of backward communities seek justice for atrocities committed against them.
- The inclusion of a female member from backward classes in the proposed Commission is a positive step.
- The creation of the NCBC does not infringe upon the authority of state governments, as they can maintain their own backward class commissions.
- The NCBC is placed on an equal footing with the National Commission for Scheduled Castes (NCSC) and the National Commission for Scheduled Tribes (NCST).

Challenges Faced by the NCBC

- Several states have yet to implement the 27% reservation for Other Backward Classes (OBCs).
- Legislation alone has not been sufficient to address the issue, as the impact has not reached the grassroots level. For example, recent data shows that only 7 out of every 100 teachers in central universities belong to the SC/ST and OBC categories.
- OBC representation in high judicial bodies such as the Supreme Court and state high courts remains minimal.
- There is disproportionate representation of OBCs in various government bodies, including committees, commissions, and boards.
- The recommendations made by the commissions are not legally binding on the government.
- Critics argue that the scope of reservation is limited, especially given the current push for public-private partnerships and privatization, as promoted by NITI Aayog.

Way Forward for the NCBC

- It is crucial to ensure proper representation of backward classes, helping them integrate into the national mainstream.
- The government must release the results of the caste census and adjust reservation policies accordingly.
- Sub-categorizing OBCs could facilitate better access to reservations in education and government jobs, particularly for the less dominant subgroups.
- Political parties need to prioritize social justice over vote bank politics to create meaningful change for backward communities.

Self-Check Exercise-2

Q.1 Many states have not implemented 27 per cent reservation to the OBCs. True/False

Q.2 Article 338B provides authority to NCBC to examine complaints and welfare measures regarding socially and educationally backward classes. True/False

20.4 SUMMARY

The founders of the Indian Republic and framers of the Constitution recognized the importance of implementing specific protections for the Scheduled Castes (SCs) and Scheduled Tribes (STs) to ensure their upliftment. The Constitution of India incorporates several provisions aimed at safeguarding the rights and welfare of these communities, making it a distinctive feature of the nation's legal framework. One such measure is reservation, which involves reserving a certain percentage of seats in educational institutions, government jobs, and legislative bodies for the members of these marginalized groups. Advocates and scholars have long supported the concept of affirmative action and protective discrimination as essential tools for empowering these communities. Both the Central and State Governments have introduced various welfare programs and initiatives to fulfill their constitutional commitments and help SCs and STs progress socially, economically, politically, and culturally. Numerous Centrally Sponsored Schemes have been launched to support these communities in the post-independence period. However, the full realization of these constitutional safeguards has often been hindered by a lack of organized advocacy from Dalit groups and a lack of political commitment from those in power. Progressive Dalit thinkers and activists in India continue to advocate for a more robust and equitable system, often referring to the need for a "Bhim Rajya" to ensure true empowerment and justice for these communities.

20.5 Glossary

- **Vulnerable**- weak and easy to hurt physically or emotionally.
- **Descent** - a person's family origins.

20.6 Answers to self-check exercises

Self-Check Exercise-1

Q.1 True

Q.2 True

Self-Check Exercise-2

Q.1 True

Q.2 True

20.7 References/Suggested Readings

20.8 Terminal questions

Q1 Discuss the current status of provisions for Anglo-Indians in the Constitution of India.
Q2 Discuss the Structure and functions of NCBC.

Q3 Discuus various provisions to minimise the atrocities on SCs'/STs'.
