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Chapter 1: Law as an instrument of social change

Topics for study:

1. ***Meaning and concept of Social Transformation***
2. ***Law as an instrument of social change***
3. ***Law as a product of tradition and culture***

1. Meaning and concept of Social Transformation

Law is the reflection of the will and wish of the society. It is said that if you want to study any society, you have to study the laws enacted by that society and you come to know whether the society is developed or wild world. The law, though it is the product of the society is responsible for the social transformations. In fact, there are two modes of this aspect. law facilitates social interaction. It regulates conflicts and disputes, attempts to restore equilibrium in the social system when it becomes unbalanced, gives some degree of predictability and certainty to voluntary transactions and arrangements, guides social action by rationality and efficiency, teaches people what is right and wrong according to the prevailing normative standards, and helps to maintain historical continuity. It should also be recognized, however, that just as law facilitates social interaction, so social interaction and the social forces working on the individual through the process of "reglementation facilitate the very efficacy and relevance of the law in society. All forms of "law" share these general characteristics. For analytical purposes, however, it is helpful to disaggregate "law" into four subcategories on the basis of their respective origins: customary law, contract law, enacted (or authoritatively declared) law, and adjudicative law.
In summary, "law" should be viewed as a process and should be disaggregated into its four component parts before attempting to relate it to the other sectors of a society.
According to Blackstone, “Law is a rule of conduct, prescribed by the supreme power in the State, commanding which is right and prohibiting what is wrong. Jurisprudentially law consists of rules prescribed by the society for the governance of human conduct”. Law of any civilized country is not denite, but changes according to the demand and circumstances of the society. Roger Cotter views “Social change is held to occur only when social structure - patterns of social relations established social norms and social roles changes”. Law not only lays down the norms

which are acceptable to a given society, it also lays down the norms, which the society should adopt in the interest of its own welfare. The rules or code of conduct which a society develops by experience shapes into law for the sake of uniformity, consistency, performance and sanction. An acceptable norm thus becomes a law. The departure there from is condemned as crime in criminal law but civil law becomes a code of conduct regulating the society.

Necessity of changing the law Indian judiciary has generally been found to be alive to the needs of social thinking. The courts have brought and their fresh implications and added new dimensions to the law.

As rightly quoted by Justice P N Bhagawati ,

"It is the judge who infuses life blood into the dry skeleton provided by the legislature and creates a living organism appropriate and adequate to meet the needs of the society". To show the instrumentality of law on social change, it is necessary to study some special changes that have taken place in India, because nothing is permanent but change is permanent.

1. **Law changed Society:**

   First is, "Law changing the society", which means that the law of the land compels the society to be changed according to it.

2. **Society changed the law:**

   And secondly is "Society changes the law", as per its needs.

   It means law is made by the society according to its requirement by its democratic institution i.e. Legislative or by adopting custom and usage.

   When law changes the society it is the sign of beginning of the development of the society.

   When society changes law it is the sign of maturity of the society.

   We can cite the enthusiasm of the people in the matter of 'Nirbhaya' where the commonest of the common was talking on how the law must be, what must be the punishment etc.

   Here this compelled the government to consider the sentiments of the society and set up a commission to give suggestions and untimely the criminal law amendment bill came into existence.

   The change required in the society can be initiated by a single person also and this has been proved in India right from Raja Ram Mohan Roy; to Mahatma Phule, Mahatma Baseswar, and Mahatma Gandhi up to Anna Hazare.

Thus the demand takes root and shakes up the government to either reform the existing laws or make new or even delete the existing unworthy laws. For this we will have to cite examples for the history of India. When mahatma Phule's wife Savitribai Phule actually started teaching in a school aimed only for girls it was considered taboo, something not good and would be affecting the society but this movement gradually became the source of law where the girls could actually study and develop.

Gradually the then society thought reluctantly adopted this fact and started to send girls to school this is positive sign of beginning of the development of the society. Ultimately the girls got into colleges also.

This was not only limited to the Hindu society, finally the Aligarh Muslim college also had some seats for female students studying. But no dough the lamp was lighted by the phule couple. This is the 'Society changes the law', But per its need, rather demands. Whereas the law play important role in changing the society too.

2. Law as an instrument of social change:

Definitions of law: - The laws are variously defined by the scholars.

1. Smmer: According to Summer "Laws are actually codified mores".
2. Kant: Kant defined it as "a formula which expresses the necessity of an action".
3. Krabble: Krabble defines Law as "the expression of one of the many judgments of value which we human beings make by virtue of our disposition and nature".
4. Green : Green Arnold defined "Law is more or less systematic body of generalize rules. Balanced between the fiction of performance and the of change, governing specifically defined relationship and situations and employing force or the threat of force in defined and limited ways".
5. Duguit: According to Duguit, laws are "the rules of conduct normal men know they must observe in order to preserve and promote the benefits derived from life in society."
6. MacIver and Page: According to MacIver and Page "Law is the body of rules which are recognized. Interpreted and applied to particular situations by the Courts of the State."
7. Cardozo: B.N. Cardozo says "Law is a principle or rule of conduct so established as to justify a prediction with reasonable certainty that it will be enforced by the Courts of its authority is challenged".

8. Max Weber: Max Weber feels that "Law is an order, the validity of which is guarantee by the probability that deviation will be met by physical or psychic sanction by a staff specially empowered to carry out this Sanction".
9. Hertzler: Hertzler comments, "Law in effect structures the power (Super-ordinate Subordinate) relationship in society; it maintains the status quo and protests the various strata against each other, both in Governmental and nongovernmental organizations and relationship".
10. Roscoe Pound: According to Roscoe Pound, "Law is an authoritative cannon of value laid down by the force of politically organized society".
11. Anthony: Anthony Giddens says "Laws are norms define and enforced by Governments." Austin defined Law as "the Command given by a superior to an inferior".
12. Some define "Law as the Command of Sovereign of the dictates of the State." Sociological view believes that "Law as the rules of right conduct." Laws are the general conditions of human activity prescribed by the State for its members.
13. Roscoe Pound stated, "Laws must be stable and yet cannot be stand still." As defined by Lundberg and others "Social Change refers to any modification in established patterns of inter-human relationship and standards of conduct."
14. The definition is very apt and properly encompasses all ingredients of the social change. The established pattern of 4 Inter-human relationship between Caste Hindus and Scheduled Castes was that of touch-me-not-ism as the same was thought to be polluting them i.e. the Caste Hindus.
15. The social change in the above dogmatic stratification really called for modification in the changing and already changed social scenario following independence in 1947 and following coming in force the constitution of India. The standards of conduct of Caste Hindus were required to change in time with Constitutional Provisions.

    Thus modification in established patterns of inter-human relationship and standards of conduct was brought through legal means mainly the Constitution of India. The equal laws like I.P.C. (Indian Penal Code) / Cri.P.C. (Code of Criminal Procedure) / Evidence Act etc. and finally and especially through the Untouchability (Offences) Act, 1955 and the Protection of Civil Rights Act, 1955 (Amended with new name in 1976) and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 At the beginning of industrialization and urbanization in Europe, Bentham expected legal reforms to respond quickly to new social needs and to restructure society.

He freely gave advice to the leaders of the French revolution, because he believed that countries at a similar stage of economic development needed similar remedies for their common problems. However, Savigny believed that only fully developed popular customs could form the basis of legal change. As customs grow out of the habits and beliefs of specific people, rather than expressing those of an abstract humanity, legal changes are codifications of customs, and they can only be national and never universal.

There are two contrasting views on this relationship:

1. Law is determined by the sense of justice and the moral sentiments of the population, and legislation can only achieve results by staying relatively close to the prevailing social norms.
2. Law and especially legislation, Is a vehicle through which a programmed social evolution can be brought about. In general, a highly urbanized and industrialized society like the US law does play a large part in social change, and vice versa, at least much more than is the case in traditional societies or in traditional sociological thinking. [e.g. In the domain of interfamily relations, urbanization, with its small apartments and crowded conditions, has lessened the desirability of three-generation families in a single household. This social change helped to establish social security laws that in turn helped generate changes in the labor force and in social institutions for the aged.

The Binding force of Law Law is binding because most people in society consider it to be. Some consider the content of the law to command obedience, which, in turn, is seen as a compelling obligation. The law achieves its claim to obedience, and at least part of its morally obligatory force, from a recognition that it receives from those, or from most of those, to whom it is supposed to apply.

Even when laws are against accepted morality, they are often obeyed. The extermination of more than six million Jews in Nazi Germany, clearly the most extreme instance of abhorrent immoral acts, was carried out by thousands of people in the name of obedience to the law. Milgram contends that the essence of obedience of obedience is that individuals come to see themselves as instruments for carrying out someone else's wishes, and they therefore no longer view themselves are responsible for their actions. Under certain conditions many people will violate their own moral norms and inflict pain on other human beings, and that succinctly underlines the notion that most people willingly submit to authority and, by extension, the law Sanctions for disobedience to the law are surely among the primary reasons that laws have binding force.

"The law has teeth; that can bite if need be, although they need not necessarily be bared." Sanctions are relate to legal efficacy and are provided to guarantee the observance and execution of legal mandated to enforce behavior.

Remarkable social changes:

1. **Indian Slavery Act 1843:**

   To remove slavery from India in 1843, Indian Slavery Act was passed and it further declared it as an offence by sections 370, 371 of the Indian Penal Code 1860. Art 23 of the constitution of India protects trafcking of human being and forced labour as a part of fundamental rights. Though many attempts had been taken to curb the issue of bonded labour it could be effectively done only through the Act.

3. **Abolition of Sati System Sati** – meaning burning or burying live of widow along with the corpse of her husband. It was considered to be a great honor among Hindus to become a sati since ancient times. In 1812 Raja Ram Mohan Roy the Indian social reformer started against these practices. The practice could not be stopped by the society as it was considered as part of their customs and traditions. It was law which could control it on 4th Dec 1829. The practice was formally banned in Bengal presidency lands by governor lord William Bentick by a regulation for declaring the practice of sati or of burning or burying hindu widows as illegal and punishable by the criminal courts. In post independent India – sati was not curbed effectively. Legislature took serious steps by introducing a special law for the treatment of persons who abet sati and made it exemplary punishable upto death sentence under Commission of Sati Act, 1987. Now in most areas of India it is a forgotten system. These laws relating to sati, widow remarriage, child marriage were enacted due to public opinion. The laws made during colonial administration was out of ambit of sociological jurisprudence. They were interested in these legislations only due to various social reformers and public opinion. Widows Remarriage The Hindu society prevented remarriage of widows in order to protect their family's honour and property. It was the efforts of Ishwar Chandra vidyasagar who urged British to pass a legislation allowing Hindu women to remarry. In pursuance of this The Hindu Widow Remarriage Act was passed in 1856. Legalising the remarriage of Hindu widows and to provide legal safeguards against loss of certain forms of inheritance for remarrying a Hindu widow. Thus it empowered a Hindu widow to live a life.

4. **Prohibition of Child Marriage:**

This practice of child marriage was vehemently seen in Indian society across various religious communities. Tough attempts were made by many reformers it turned futile until a law was enacted. The Hindu Child Marriage Restraint Act was substituted by the prohibition of Child Marriage Act 2006. It introduced child marriage prohibition ofcer and extended the power of family court to decide the matter under the Act. The act also enhanced the punishment upto two years rigorous imprisonment or with ne up to Rs 2 lakhs or with both.

5. **Elimination of Child Labour :**

   Preventing a child from enjoying his childhood is a grave crime. The Factories Act 1881 was the rst one of its kind to prohibit employment of child below the age of 7years and working hours were limited. Very many legislations were made and nally we have Child Labour (Prohibition and Regulation) Act 1986 which generalizes the age of child upto 14 years for the purpose of prohibition of child labour. The Act has also listed 17 prohibited occupations and 65 processes in Schedules A & B. Right to free and compulsory education

6. **Right to education:**

   In 1992 the honorable Supreme Court declared the right to free and compulsory education as a fundamental right in the ambit of 'Right to Life' under Art 21 of the constitution. In 2002 the constitution was amended by inserting Article 21A to implement the right to free and compulsory education of every child aged between 6 – 14 years and inserted fundamental duties of parent and guardian. In 2010 The Right of Children to Free and Compulsory Education Act 2009 was put in force with effect from 1st April to provide free and compulsory education from 1 to 8th standard to every child. Thus it can be seen that law protects the life of the children.

7. **Public Interest Litigation :**

   The Honorable Supreme Court has adopted the broader approach of the rule of locus standi to utilize the initiative and deal the public spirited persons to move the courts to act for the general or group interest even though they may not be directly injured in their rights. The most important fact regarding PIL is that of relaxing the locus standi concept, any public spirited person can approach the constitutional courts and could bring to the courts notice of blatant violations of Fundamental Rights of people who are not capable of being approaching the courts themselves. PIL is a concept aimed at increasing the accessibility to justice and forms a part of constitutional jurisprudence in India. Right to Information – For Effective Governance It is best and landmark instruments of law regarding social change which started in 1975, when the honorable Supreme

Court upheld that freedom of speech and expression includes the right to know every public act done in a public way by their public functionaries. Right to know is implicit in right of free speech and expression and disclosure of information regarding functioning of the government must be the rule.

8. **The Right to Information Act:**

The Right to Information Act: of 2005 has proved to be a strong legislation with good teeth because of effective implementation of the Act. Female Infanticide A study on the implementation of the Infanticide Act demonstrates that this particular legislation was a purposive legislation which has positive and negative sanctions, along with effective administrative mechanism, which led to substantial decrease in female infanticide practice. This could very well being understood as use of law as an instrument of social control.

9. **Female Infanticide :**

A study on the implementation of the Infanticide Act demonstrates that this particular legislation was a purposive legislation which has positive and negative sanctions, along with effective administrative mechanism, which led to substantial decrease in female infanticide practice. This could very well being understood as use of law as an instrument of social control. The Supreme Court has also played a pivotal role as an institution of social change by the liberal and proactive interpretation of the constitutional provisions. From the sociological jurisprudence Supreme Court of India has played an important role in the social transformation with providing access to justice being made available to the masses. To conclude the researcher is of the opinion that it is only through the instrument of law the social changes can be effectively brought out and implemented thus empowering the masses.

2. Law as the Product of traditions and culture:

Some believe that in the olden days men lived in a perfect state of happiness and such a time was golden time for man. Indian people admire "Satyug" like anything and always found lamenting that society has deteriorated in "Kaliyug" a time not so desirable and full of all sorts of deceit, conceit, cheating and fraud. According to Indian mythology man has passed through four ages

(1) Sat Yug

(2) TretaYug

(3) DwaparYug and

(4) Kali Yug. The Sat Yug was the best age in which man was honest, truthful and perfectly happy. Thereafter degeneration and deterioration began to take place. The modern age of Kali Yug is the worst period where in man is said to be deceitful, treacherous, false, dishonest, selfish and consequently unhappy.

This concept is found in Hindu mythology, according to which Sat Yug will again start after the period of Kali Yug is over. But looking to various wars fought between different Kings and Emperors in those times, we come across many examples wherein deceit, treachery, falsehood, dishonesty, selfishness and all vices even from today's point of view were order of the day and even there were no regulatory mechanism to check the same.

There was no room for rights of women, Rights of Dalits and noble principles of Liberty, Equality and Fraternity which are noblest cornerstones of to-day's polity. It all depends on how we view the primitive, the past and the present time.

Criticism and evaluation of Law in the light of colonization:

Social changes can be brought about by various methods. The social change can be brought by preaching of religions, by launching social reform movements like one done by Raja Ram Mohan Roy, Swami DayanandSarswati, Justice Ranade, Shahu Maharaj, JotibaPhule, Gandhiji, and Dr. B.R. Ambedkar and other such prominent social thinkers.

But such efforts have no legal obligations or force of law remedial measures in cases where individuals do not agree to a prescribed social behavior and conduct. Such optional, sweet will obedience was found not bearing desired fruits in right direction and therefore need arose to formulate laws purely to bring about social change prescribing and providing necessary penal mechanism in case of not confirming to change and violating provisions of such law which aimed at social change from extant social process as procedures and practices.

A cursory quick look back on history of Dalits/ Scheduled Castes/Harijans/Depressed Class/Shudras/Anti-Shudras/Antyajas as they were variously called or addressed contemptuously by fellow Indians will give an interesting scenario of social change that took place during the passage of time and would be of immense importance from this study's view point. Every Seventh person in India is a Scheduled Caste.

The Scheduled Caste have been oppressed right from post Vedic period. And hence positive discrimination, protective discrimination, affirmative action (American Concept) and occupational mobility in their favor for their upliftment are warranted. In spite of reform

movements in ancient and medieval times, they continued to remain the most backward and deprived groups in Society. Society was comparatively flexible during the Rigvedic period, however, with the passage of time, the Varna system and Caste. Cobweb of outmoded traditions, meaningless rituals, harmful customs had made the life of Hindus a complex and miserable existence. The Brahmin controlled every aspects of daily life of a Hindu from birth till death.

If he wanted to travel he must consult the priest for auspicious days.

If he decided to marry or start a business or enter his own house, he could not do so unless the Brahmin approved of the time and date. Dr. Ambedkar always raised voice for the upliftment of the untouchable in our society.

He felt that in the matter of pollution, there is nothing to distinguish the Hindus from the Primitive or ancient People. He studied Hindu scriptures and objected to wherever he found degrading remarks against the untouchables and the Shudras. He was very strong critic of Manusmriti which prescribed various indignities for the Shudras almost in all matters of human life. Manu had made a provision for getting rid of defilement by transmission through a scapegoat namely by touching the cow or looking at the sun after sipping water. The curse of untochability has its roots too strong to be easily uprooted. The non-Hindu society only isolated the affected individuals.

They did not segregate them in separate quarters. The Hindu society insists on segregation of Untochables. The Hindus will not live in the quarters of the untouchables and will not allow the Untouchables to live inside Hindu quarters. This is a fundamental feature of Untouchability as it is practiced by the Hindus. It is not a case of social segregation, a mere stoppage of social intercourse for a temporary period.

Itr is a case of territorial segregation and of a cordon sanitarium putting the impure people. The first shot to herald the freedom of the Untochables was fired by Dr. Ambedkar in 1927 at Mahad, in Kolaba district of Maharashtra. The Kolaba district is now renamed as ‘Raigad’ to honour the memory of Chharapati Shivaji, in 1923. The Bombay legislative Assembly had passed a resolution moved by S.K.Bole, a prominent social reformer in those days. That the untouchables be allowed to use all public watering places, Wells, Schools, dispensaries etc. In pursuance of this resolution. The progressive Municipality of Mahad resolved in 1924 that the local Chowdar Tank be thrown open to the untouchables. However, the caste Hindus did not allow them to take water from the tank. This promoted Dr. Ambedkar, the liberator and the emancipator of the

downtrodden, to launch an agitation to exercise the right of free access to the Chowdar Tank. In response to his call, more than ten thousands men and women assembled at Mahad on 19 March, 1927.

Next day the delegates began their March from the venue of Conference to the Chowdar Tank to assert their right of drinking water from the Municipal Tank. Ambedkar was at the head of the procession. Ten thousand volunteers followed their leader in a file of fours wading through the streets of Mahad in a disciplined and peaceful manner, the procession 8 reached the Chowdar Tank. Dr. Ambedkar, the most gifted and qualified untouchable ever born in India, asserted the right of the suffering humanity by drinking water from the forbidden Tank.

Most of the Volunteers also followed suit and vindicated their right. This was truly an historic event. Never before the so the called untouchables had demonstrated their determination to assert their right in such a glorious manner.

The participants of the procession returned to their venue of Conference peacefully. Meanwhile a rumor spread that Ambedkar and his men were planning to enter into the Veerashwar temple.

The fanatic caste Hindus attacked unarmed men. Women and children and mercilessly beaten them up. The commando attack on the 'Pandal" was followed by attacks on splinter groups of the delegates returning to their villages, in spite of all this beating and humiliation.

Ambedkar advised his followers to be calm and not to retaliate. Thus first part of the epic struggle of the victims of untochbaility was over. Soon after news came that the orthodox Hindus had performed a tank purification ceremony which they thought had been polluted by Ambedkar and his people. In the meanwhile the Mahad Municipality revoked on 4 August, 1927 its resolution in accordance with which the Chowdar Tank was thrown open to the unotouchables. Hence the untouchables decided to besiege Mahad again. Accordingly Thousands of Satyagrahis reached Mahad on 2nd December, 1927. This time more than fifteen thousand untouchables turned up for the Mahad agitation

The Introduction of common law system and institutions in India and its impact on further development of law and legal institutions in India:

The law is often used as an instrument of social reform. The Untouchability (Offences) Act, the Hindu Code Bill. The sarda Act, the Prohibition Act are examples in this context. VidyaBushan and D.R. Sachdeva observed 15 that "Thus Law does not always lay behind the times. One great merit of law is that it adapts itself to the changing needs of society and maintains stability when

the rapid alterations disturb the relations in society. Law helps the society assimilate the changes by adjusting group advantages and injuries resulting from them.

Finally the law may become an advanced instrument of social change on a national as well as international level by affecting the social frame work in which relations take place. However, law is greatly in advance of or greatly behind the 9 trends of change in the society. It remains unenforceable,if it is in harmony with the processes of change. It accelerates and institutionalizes changes."

The various "pressure groups" exercise considerable influence on lawmaking organs. Practically all legislations are passé to satisfy the demands of certain groups presented to the legislature directly or indirectly, which demands will be recognized in Law depends to a large degree upon the power of the groups which make the demands. Political parties themselves are a combination of pressure groups. The legal groups today are the product of the pressures of the most powerful groups in the society.

By powerful groups is meant effective power in terms of the number of votes at the disposal of the group, the amount of money it can command, the effectiveness of the organization, the skill of its lobbyists, and the support it is able to secure from public opinion. Despite the directive from the Supreme Court, the Rao Government did not think it politically wise to enact a uniform Civil Code.

Chapter 2: Tools of social Transformation

Topics for study:

1. ***Religion as a divisive factor***
2. ***Language policy in India***
3. ***Linguistic states – problems and perspectives***
4. ***Regionalism- Problems and perspectives-Constitutional philosophy***

Introduction:

Religion is a social phenomenon, distinctive and each has its own centre of population. The character and right of religious observance depends upon the membership of particular social group. Religious issues often become spots of social anxiety because of competing religious sentiments.

Transformations within the religion occur in the course of social development due to reformative movements, emergence of alternative faiths, rise of new leadership, impact of other cultures and efforts of modernisation.

A principled distancing from religions and an approach of impartiality in treatment provide a safe walk, soberness and legitimacy 11 for state action. Being a component of the policy of multiculturalism, this approach sets ways and limits to law's regulative task, and inculcates an attitude and mindset for co-existence amidst different religious communities.

1. Religion as a divisive factor:

Basically religion is for spiritual guidance of the people and hence can be a major resource for peace and social justice. It can become, as liberation theology indicates, a powerful option for the weaker sections of society. Instead religion has more often been used by powerful vested interests of which religious functionaries become apart. Worse, religious functionaries and priests themselves create powerful establishments and join hands with politicians to protect their establishments.

Religious Fanaticism :

Religious fanatics Secularism in India is based on the rich heritage and culture steeped in its various religions. The secular fabric of the country is very well reflected in the phrase 'Vasudhaiv Kutumbakam' which means that the whole world is one family. India has always

been an inclusive society, which has welcomed people of all religions and faiths with open arms, never discriminating among religions and never considering any religion or faith to be a threat. But this secular fabric has not meant that there is no communalism in India.

In spite of a number of laws treating people of all religions at par, India has had a long history of communal riots, the worst of them being at the time of partition of the country when blood flowed as rivers.

In a land where tolerance is byword for life, when did this hatred for fellow beings arise? The answer to this question lies in the British rule of the country, particularly post-1857. Prior to 1857, the British rulers restrained themselves from interfering in the social structure of the country. Post-1857, they realized the importance of dividing the people of the country in order to weaken them.

2. **Language policy in India:**

This gave rise to the 'divide and rule' policy, which they used, on religious lines thus distancing Hindus and Muslims. The persistence of this policy of the British is reflected in the painful partition of the country and the displacement of a large number of people from their hearths and homes. This has continued even after the independence of the country in spite of the government being neutral as far as religion is concerned and the constitution ensuring that there is no discrimination on the basis of religion as far as employment, education etc. are concerned. This is apparently on account of minimal social interaction between various religious communities leading to a distorted view of other communities and its practitioners. Such a social interaction is especially important to heal the scars and pain of the partition. The delicate secular fabric could not withstand the body blow of the partition.

This situation was sought to be remedied through the provisions of the constitution. The pain of the partition revisited the country in the form of communal violence riots from time to time, as if not to let people forget their wounds. The action or inaction of the political leaders and the administrative system at times also added to the communal frenzy.

Some major events which changed the way world viewed India were based on communal frenzy viz. Babri Masjid demolition, the Gujarat riots, Delhi (Sikh) riots. Babri Masjid located at Ayodhya in Uttar Pradesh was demolished on December 6, 1992 by kar sevaks under the

guidance of some of our leaders who are facing trial in the case. The demolition of the Babri Masjid made the fabled respect for all religions that Indians have a thing of the past.

The fact, that a religious shrine of any religion could be demolished, raises questions about the secularity of the people of the country as also the conviction of the state towards secularism.

The Gujarat violence in 2002 is a matter of great shame for the country. The fact, that people were massacred only on account of their belonging to a particular religion, is unacceptable in any secular nation. The fact, that the administration reacted late, also raises questions regarding the State's belief in secularism.

A similar incident, which happened about two decades prior to the Gujarat violence, was the riots of Delhi in 1984. Sikhs were brutally slaughtered on the streets of Delhi just because the person who assassinated the then Prime Minister of India, Smt. Indira Gandhi happened to be a Sikh. It is ironic that this killing happened to exact revenge for the death of the person who was instrumental in incorporating the word 'secular' in the Indian constitution. Needless to say it is totally unfair comparison.

In fact one cannot take values of one religion and compare it with history of other. Values must be compared with values and history must be compared with history. While values are divine, humanitarian and common to all religions, history is full of violence perpetrated by various vested interests, power struggle within or two or more faith communities and often represents worst side of human behaviour.

It should not be blamed on religion. Thus what happens in history should not be taken as representative of religious values or religious norms, much less its cause. These massacres and killings represent nothing but lust for power and wealth by some followers of that religion. It has nothing to do with the teachings of that religion. Every religion gives us certain norms and values to improve our conduct and to make us good or even perfect human beings. It is true religion is misused by all sorts of interests and more often than not. It is sought to be misused as it strongly appeals to our emotions and can easily create feeling of 'we' versus 'they' but nevertheless it is misused and for misuse we cannot blame religion. As Asghar Ali Engineer rightly puts it, "Let us be very clear on one thing that no religion would be acceptable to people just because it allows killing or conversion. A religion is acceptable only if improves morality, controls basic instincts and brings about spiritual and moral change for better. It is extremely knave to believe that a religion would spread by sword".

3. Linguistic states: Problems and perspective

Religion and Terrorism The supreme law of the land, rightly described India as a secular country in which the State has no religion, nor does it seek to promote or discourage any religion or religious belief. It guarantees a complete religious freedom, with the absence of any compulsion whatsoever in religious matters. Thus, it is obvious that the Government and people of India are secular, that is, there is no official religion.

The State is committed to a policy of non-interference in religious matters. Religion is a matter of personal beliefs and convictions. But how far are "we the people of India" secular in thought, word and deed? Upon a close observation of the working of our political parties, we shall find that candidates for elections are often chosen on communal considerations—Hindu candidates for constituencies having maximum Hindu electorate, Muslim candidates for areas where the large number of the voters are Muslims. Also we find that the voting in elections is often on communal lines; Hindus voting for Hindu candidates, Muslims for Muslim candidates and Sikhs for Sikh. Although the political parties are not formed on a religious basis, we often find that there are some distinctly communal parties in this 'secular country'.

The emerging concepts like "vote banks," augments 'caste' factor and plays a decisive role in leading the followers to exercise their franchise for a particular candidate in name of religion. Religion should have no connection whatever with politics. But is it really so in India today? Instead of creating amicability amongst the public of all the religion the fundamentalist and politicians are hand in glove. The social fabric gets destroyed by religious controversies. Once the religious fanatics or fundamentalist come face to face they destroy the balance created by these aspects. Overt act of fanatic is to cause injury to other in such a way that the enjoyment of human rights of the individual as well as the society at large is impaired. Thus leads to terrorism. Terrorism is a global phenomenon. No doubt it has direct impact on human being, with shattering loss of right to life, liberty and physical integrity of victims. In addition to this individual loss, terrorism has destabilized Governments, weaken civil society, jeopardize peace and security, and threaten social and economic development. The common understanding of the world 'terrorism' is: any organized program of individual, social groups or political groups of using force to create fear or panic. It is belief in resorting to violence for the purpose of bringing pressure on the government and non-governmental bodies and individual to agree to the view point of the perpetrators and compel all to concede to their demands.

The United Nations General Assembly in the open sessions of their 53rd meeting explained terrorism in the following words "In its wider sense, terrorism is the tactic of using an act or threat of violence against individuals or groups to change the outcome of some process of politics" The basic question is why at all terrorism has grown so fast and steadily? Why is it a threat to the civil society? Who is responsible for the growth of terrorism is it the religious fanatics or fundamentalist or politicians or business class?

Secularism as a solution to the problem:

Secularism is one of the important national goals. Though secularism has been an official Government policy, bulk of people in India still remain non secular. Communalism and Terrorism are big threat to secularism.

Secularism as a means of liberation from prejudices and communal frenzies has inherent competence to enhance the worth of human rights and welfare. Search for viable parameters for the appropriate triangular relations among state, religion, and individual become an imperative in shaping the legal policies in the task of social transformation. Hence it was felt that India be declared as secular State.

The English word "secular is derived from the Latin word SAECULUM". Earlier in Monarchical countries secularists were described as republicans. The French Revolution of 1789 popularized the idea of secularism.

The French constitution of 1791 introduced the idea of secular state. Great Indians like, the mughal king Akbar, social and religious reformers like Raja Ram Mohan Roy and Swami Vivekananda respected the people of all religions.

Particularly Indian king Maharaja Ranjith Singh officially announced secularism as the policy of his Government.

He was successful in this regard. Ranjith Singh is considered as a forerunner in implementing the idea of Secularism through Government means. In the year 1888 the Indian National Congress opened a debate on secularism and proposed secular nationalism for India. The idea of secularism began in Indian politics in 1920 when Mahathma Gandhi organised Khilafat movement in support of the Sultan of Turkey.

It is necessary to have an idea of the nature and meaning of the term 'secularism'. It is interesting to note that there is no agreed and precise meaning of 'secularism' in our country. As

Jawaharlal Nehru wrote in his autobiography… "no word perhaps in any language is more likely to be interpreted in different ways by the people as the word 'religion'.

That being the case, 'secularism' which is a concept evolved in relation to religion can also not have the same connotation for all".

Models of secularism:

There are two possible models of secularism. In the first one, there is a complete separation of religion and state to the extent that there is an 'impassable wall' between religion and secular spheres. In such a model, there is no state intervention of religious matters and vice versa. In the other model, all religions are to be treated equally by the state; in other words, the state is equi-distant from all religions.

This model is also referred to as 'nondiscriminatory' and is particularly relevant for multi-religious societies. In contrast to the former model, the latter allows for state intervention on grounds of public order and social justice.

The Sanskrit phrase 'Sarva Dharma Sambhava' is the most appropriate Indian vision of secular state and society. But it should not be forgotten that the word 'Secular' has not been defined or explained under the constitution either in 1950 or in 1976 when it was made part of the preamble.

Modern and political Principle:

Secularism as a modern political and constitutional principle involves two basic propositions. The first is that people belonging to different faiths and sects are equal before the law, the constitution and the government policy. The second requirement is that there can be no mixing up of religion and politics. It follows that there can be no discrimination against any one on the basis of religion or faith nor is there room for the hegemony of one religion or religion of majority sentiments and aspirations. It is in this double sense – no discrimination against any one on grounds of faith and separation of religion from politics – that our constitution safeguards secularism.

4. Regionalism- Problems and perspectives:

Problems The constituent assembly which was constituted to frame a constitution for India declared eight guiding principles of Indian constitution. Among these eight basic and guiding principles of the constitution–Secularism is placed in fifth position. To that extent the constitutional pandits gave importance for secularism.

The idea of secularism is essential to maintain unity in diversity.

Secularism is a basic ideology for the effective functioning of a healthy Democracy. When the Indian constitution was adopted in January 1950, it has got sufficient provisions to promote secularism.

The Constitution of India firmly believes in the principle of secularism. The founding fathers of the Indian Constitution never hesitated to build India on secular foundations.

They opposed and defeated the amendment of Mr. H. V. Kamath to invoke the name of god in the preamble of the Constitution. Pandit Kunjru said that we invoke the name of God, but I am bold to say that while we do so, we are showing a narrow, sectarian spirit, which is contrary to the spirit of the Constitution.

The Indian Flag consists of Ashoka Chakra in its center. The wheel has many spokes but, all are of equal length. It indirectly refers to the Indian stand on the principle of equal treatment of all religions. (Sarva Dharma Sambava).

Although, the word 'Secular' was not there initially in the constitution, a mere perusal of the various articles of it would amply demonstrate that 'Secularism' is an integral part of the Indian constitution. At this juncture, it would not be inappropriate to have a glance at the relevant constitutional provisions pertaining to secularism.

Constitution of India and secularism:

1. **Art. 14:**

   Article 14 of the constitution provides for equality before law for all people.

2. **Art.15:**

   Article 15, inter alia, lays down that the state shall not discriminate any citizen on the ground of religion.

3. **Art.16:**

   Article 16 provides for equality of opportunity in matters of employment under the state, irrespective of religion.

4. **Art.25:**

   Article 25 provides for freedom of conscience and the right to profess practice and propagate the religion of one's choice. The constitution not only guarantees a person's freedom of religion and conscience, but also ensures freedom for one who has no religion, and it scrupulously restrains the state from making any discrimination on grounds of religion.

5. **Art.26:**

   Article 26 provides freedom to manage religious affairs and Article 27 prohibits compulsion to pay taxes to benefit any religious denomination.

6. **Art.28:**

   The impact of Secularism can also be seen in Article 28, which states that no religious instruction shall be provided in any educational institution wholly maintained out of state funds.

The analysis of the above said constitutional provisions makes it amply clear that Indian secularism is unique and it treats all religions alike.

In our country, judiciary is the guardian of the constitution and it has been held by the Supreme Court that secularism is a basic structure of the constitution and it cannot be altered by a constitutional amendment.

Judicial Pronouncements:

Before looking into the Articles in the Constitution that are supposed to interpret the idea of secularism, it will be worthwhile to look into one important judgment given by the Supreme Court of India viz. ***Kesavananda Bharati vs. Kerala case*** which was decided by a full Constitutional bench of judges on April 24, 1973.

By a water-thin majority of 7-6, the Supreme Court held that the power to amend the Constitution under Article 368 couldn't be exercised in such a manner as to destroy or emasculate the fundamental features of the Constitution. In identifying the features, which are fundamental and thus non amendable in the constitution was this statement – A secular State, that is, a State in which there is no State religion (5(vii)).

This was (probably) the first time that the concept of secularism was interpreted by the Supreme Court. Here we get the first authorized interpretation of the word "secular" as mentioned in our Constitution. So our basic idea of being a secular state is that we do not have a 'State religion'.

"…THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVERIGN, SOCIALIST, SECULAR, DEMOCRATIC, REPUBLIC and to secure to all its citizens…". So we have decided that we will create India as a secular state.

The only other place where the word secular appears in our Constitution is in Article 25 (2) (a) while discussing the "Right to freedom of religion". What is problematic in this context is the absence of a proper definition of secularism. How can we interpret the term secularism? Do we interpret it as the complete detachment of state from religious activities or do we accept the 18

original definition of Holyoake? What is the stand of the government regarding this? To find answers to these questions, we have to look at the related discussions in the Constituent Assembly.

An important amendment (Amendment 566) was moved in the meeting dated December 03, 1948 by Prof. K.T. Shah. “The State in India being secular shall have no concern with any religion, creed or profession of faith; and shall observe an attitude of absolute neutrality in all matters relating to the religion of any class of its citizens or other persons in the Union.” It is now clear that this idea of making India a secular state was not there in the original draft. It was only on December 18, 1976 the word “SECULAR” was added in the preamble of our Constitution.

The 42nd amendment Act reads – “In the Preamble to the Constitution, - (a) for the words “SOVEREIGN DEMOCRATIC REPUBLIC” the words “SOVERIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC” shall be substituted”. So the word secular entered our Constitution only almost 25 years after it had come into effect.

Freedom of religion and non-discrimination on the basis of religion :

Freedom of religion under Article 25:

Article 25 of the Constitution of India guarantees to every citizen the right to profess, practice and propagate religion.

Article 25 reads as follows: 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, practice and propagate religion.

(2) Nothing in this Article shall affect the operation of any existing law or prevent the State from making any law—

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b)Providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus. Explanation I: The wearing and carrying of Kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II: In sub-clause (b) of the 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."

Accordingly Article 25 protects two freedoms:

(a) freedom of conscience,

(b)freedom to profess, practice and propagate religion.

The freedom of conscience is absolute inner freedom of the citizen to mould his own relation with God in whatever manner he likes. When this freedom becomes articulate and expressed in outward form it is to profess and practice religion. To profess religion means to declare freely and openly one's faith and belief. To practice religion is to perform the prescribed religious duties, rites and rules. To propagate means to spread and practice his view for enlightening others.

The right to propagate one's religion is not a right to convert other to one's own religion. Article therefore postulates that there is no fundamental right to convert another person to one's own religion, 'because if a person purposefully undertakes the conversion of another person to his religion as distinguished from his effort to transmit or spread the tenets of his religion that would impugn on the freedom of conscience guaranteed to all citizens of the country alike'; as decided in ***Rev. Stainialaus v. St. of Madhya Pradesh (AIR 1977 SC 908)*** The Supreme Court in ***Punjab Rao v. D. P. Meshram,*** (***AIR 1966 SC 1179)*** expresses that, the right is not only to entertain such religious belief as may be approved by his judgment or conscience but also to exhibit his sentiments in overt acts as are enjoyed by religion. In the words of the Article, he may "profess a religion means the right to declare freely and openly one's faith."

And in ***Ratilal Panachand Gandhi v. State of Bombay, (AIR 1954 SC 388)*** declares that he may freely practice his religion; "Religious practices or performance of acts in pursuance of religious belief are as much a part of religion as faith or belief in particular doctrines". Rituals and observances, ceremonies and modes of worship considered by a religion to be its integrals and essentials part are also secured. What is integral and essential part of a religion or religious practice has to be decided by the Courts with references to the doctrine of a particular religion include practice regarded by the community as part of its religion as put forth by the honourable Supreme Court in ***Seshammal v. state of Tamil Nadu, (1972) 2 SCC 11.***

Again in Ratilal, the SC states that, he may propagate freely his religious views for the edification of others. It is immaterial also whether a person makes the propagation in his individual capacity or on behalf of some church institution.

If one makes an attempt to look at the secular aura in our Constitution, the only point to reach is Article 25, which refers "Right to freedom of religion". It reads thus– "Freedom of conscience and free profession, practice and propagation of religion –

Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion".

1. ***In Bijoe Emmanuel v. State of Kerala (AIR 1987 SC 748***) also known as National Anthem case, the Supreme Court has upheld the religious belief of the Jehovahs witness, a Christian community not to praise anybody but for his or her own embodiment of God.

   In this case the children of Jehovahs witness were expelled from the school for refusing to sing the National Anthem. The Supreme Court held their religious practice was protected under Article 25. Chinnappa Reddy, J., observed "that the question is not whether a particular religious belief or practice appeals to our reason of sentiment but whether the belief is genuinely and conscientiously held as part of the profession or practice of religion.

   Our personal views and reactions are irrelevant. If the belief is genuinely and conscientiously held it attracts the protection of Article 25 but subject, of course, to the limitations contained therein".

   The Indian constitution provides for the individual as well as collective freedom of religion. The basic guarantee of this right of individual freedom is in Art. 25 (1). This freedom extends to all persons including aliens underlined by Supreme Court in

2. ***Ratilal Panchand vs. State of Bombay***.

   The Indian Constitution makes freedom of conscience as well as right to freely profess, practice and propagate religion subject to state control in the interest of public order, morality and health. But Supreme Court has made it clear that state can have no power over the conscience of individual – this right is absolute.

   The Indian Penal Code (sections 295-8) makes it a crime to injure or defile a place of worship or to disturb a religious assembly etc. even though these actions might be sanctioned by offender's

own religion. Practices like devadasi, sati may have religious sanctions but the state still has constitutional power to ban them.

Art. 25(2) grants to the state broad, sweeping powers to interfere in religious matters. This reflects peculiar needs of the Indian society. The extensive modification of Hindu personal law has been by legislation based on this provision. Art. 25(2) thus authorizes the state to regulate any secular activity associated with religion, to legislate social reforms.

Article 25 gives freedom for all to practice any religion they want. This is a basic right guaranteed in the Constitution.

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Art. 26: Art.26 deals with the freedom to manage religious affairs. Accordingly any religious denomination is given right to establish religious institutions, acquire properties (movable and immovable) and manage affairs regarding the religion.

Art. 27 : Art.27 is also very important which reads – "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 for the promotion or maintenance of any particular religion or religious denomination."

In S.P. Mittal v Union of India, the Government enacted the Auroville (Emergency Provision) Act, to take away the management of Aurobindo Society property on the ground of mismanagement of affairs. The petitioners challenged the validity of the said Act on the ground that it violates Articles 25 and 26 of the Constitution. The Court held that teachings of Aurobindo did not constitute 'religion' and therefore taking of Aurobindo Ashram did not infringe the Society's right under Articles 25 and 26. It further held, even if it was assumed that the Society were a religious denomination, the Act did not infringe its rights under Articles 25 and 26. The Act has taken only the right of management of property of Auroville, in respect of secular matters, which can be regulated by law.

Also, ***in Mohd. Hanif Quareshi v State of Bihar,*** the petitioner claimed that the sacrifices of cows on the occasion of Bakr-Id was essential part of his religion and therefore the State law forbidding the slaughter of cows was violative of his right to practice religion. Court rejecting the argument held that sacrifice of cow on Bakr-Id day was not essential part of the Mohamedan religion and hence could be prohibited by State under Clause 2(a) of Article 25.

In a another case State of ***West Bengal v Ashutosh Lahiri,*** the Supreme Court held that slaughter of cows on Bakrid day is optional and not obligatory. It is not essential or required for religious purpose of Muslim.

Essential Religious Practices:

Article 25 deals with essential religious practices. b. State Acting towards Social Welfare and Social Reforms: Under clause (2)(b) of Article 25, the State is empowered to make laws for social welfare and social reforms. Under this the State can eradicate those evil practices, which are under the guise and name of the religion.

Example, the devadasi system, the Sati system etc. The State can throw open Hindu religious institutions of public character to all Hindus. Article 25(2)(b) enables the State to take steps to remove the untouchability from amongst Hindus.

But this does not mean the right is absolute and be unlimited.

The Supreme Court in Shastri Yagnapurushdasji v Muldas Bhundardas Vaishya makes it clear that the State cannot regulate the manner in which the worship of the deity is performed. Whereas it justifies banning of polygamy amongs hindu in State of Bombay v Narasu. What the Courts have tried to do is to separate 'religious' activities and 'social and secular' activities, the former are protected under Article 25 the latter are not.

Art.26: Right to manage religious affairs :

Article 26 says that: Subject to public order, morality and health, every religious denomination of any section have the following rights:

(a) to establish and maintain institutions for religious and charitable purposes;

(b)to manage its own affairs in the matters of religion;

(c) to own and acquire moveable and immoveable property;

(d)to administer such property in accordance with law. The right guaranteed by Article 26 is the right of an ‘organized body or entity’ like the religious denomination or any section thereof. The word ‘denomination’ can be understood as a collection of individuals, classed together under the same name; generally religious sect or body having a common faith and organization and designated by a distinctive value. In S.P. Mittal the SC states that, the words ‘religious denomination’ in Article 26 must take colour from the word ‘religion’ and therefore as described in the case of

Achaiya Jagdishwaranand Avadhuta v Commissioner of Police, Calcutta it must also satisfy three conditions:

(1) It must be collection of individual who have a system of beliefs, which they regard as conducive to their spiritual well being, that is common faith;

(2) It must have a common organization; and

(3) it must have distinctive name. Thus in the large sense 'Hinduism' is a denomination and to some extend various philosophies governing the Hindu Society, such as Advaitas, Dwaitas, Visishtadwiatas and Shaivites can also be termed as denomination. On this base the SC held that "Anand Marg" is a religious denomination within the Hindu religion in Shastri Yagnapurushdasji v Muldas Bhandardas Vaishya.

Clause (a) of Article 26 talks about right to establish and maintain institutions for religious and charitable purpose — “Every religious denomination has right to establish and maintain institutions for the religious and charitable purposes”. The words “establish and maintain” in Article 26(a) must be read together and therefore it is only those institutions, which a religious denomination establishes, which it can claim to maintain it.

The “matters of religion” means that secular activities connected with religious institution can be regulated by State. The places of worship like temples, mosques, Gurudwaras cannot be used for hiding criminals or carrying on anti-national activities. They cannot be used for political purpose. The State has power under Article 25(1) and clause (2) to prohibit their activities in the places of worship.

In ***Athiest Society of India, Nalgonda District Branch v Government of Andhra Pradesh,*** the petitioner, Atheist Society of India, prayed for issuing a writ of mandamus directing the State Government to prohibit breaking of coconuts for performing of Pooja, chanting of mantras or sutras of different religions in religious functions organised by the State.

The Andhra Pradesh High Court rejected their prayer and held that these activities have been a part of the Indian tradition and are meant to invoke the blessings of almighty for the success of the project undertaken. Such noble thought cannot be found fault with as offensive to anyone. May be that the petitioner Society who claim to be atheist do not appreciate invocation of Gods as they do not believe in God.

There is no constitutional guarantee to the faith of the atheist who worships barren reason that there is no God. It is not the object of Constitution to turn the country into irreligious place. A

secular State does not prohibit the practices of religion. If that is parented it will infringe the rights of millions of Indians, which are guaranteed to them under Article 25 and will run directly contrary to the secular objectives of preamble to the Constitution, which is one of the basic structures. It would deprive them of their right of thought, expression, belief, faith and would amount to abolition of Indian tradition and religious practices.

Clauses (c) and (d) of Article 26 says that right to administer property owned by denomination. It is to be noted that the rights under clauses (c) and (d) of Article 26 are confined to the existing rights to administer its property by a religious denomination cannot be destroyed or taken away completely.

It can only be regulated by law with a view to improve the administration of property. Thus the law must leave the right of administration of property to the religious denomination itself subject to such restrictions and regulations as it might choose to impose.

Religious Minorities and law Right to religion:

1. **The Universal Declaration of Human Rights**: The Universal Declaration of Human Rights, 1948 recognizes the right to religion in Art. 18 which say that "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief; and freedom, either alone or in community with others in public or private, to manifest his religion or belief in teaching, practice, worship and observance". That makes it clear that an individual who is 'born free' also has freedom to manifest his religious beliefs as he is free to practice any religion, he is also free to change his religion. Either he automatically adopts the religion practiced by his parents after his birth or has freedom to choose his own. It is his absolute choice to profess his religion in private and if he wishes he may join any religious group.

3. **Civil and Political Convention 1966:**

In the Civil and Political Covenant, 1966, the right to religion is discussed as follows:

Article 18 : Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

No one shall be subject to coercion, which would impair his freedom to have or to adopt a religion or belief of his choice.

Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

The State Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardian to ensure the religious and moral education of their children in conformity with their own convictions.

4. **Declaration on religious Discrimination, 1981:**

The Declaration on the Elimination of All forms of Intolerance and of Discrimination Based on Religion or Belief adopted by General Assembly of UN in 1982 states in

Article 1, : Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, freedom either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practices and teaching.

2. No one shall be subject to coercion, which would impair his freedom to have a religion or belief of his choice.

3. Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to public safety, order, health, or morals or the fundamental rights of freedoms of others.

Right not to be taxed to promote a religion: Individual freedom of religion is further strengthened by Article 27 prohibiting religious taxation.

Article 27: No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination. To maintain the “secular” character, the Constitution guarantees freedom of religion to individuals and groups, but it is ‘against the general policy of the Constitution that any money being paid out of public funds for promoting or maintaining any particular religion’ as stated in Commissioner HRE v. L.T. Swamiar. Therefore Article 27 lays down that no person "shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination."

The Supreme Court in various decisions has tried to differentiate between tax and fee. Tax is in nature of compulsory exaction of money by public authority for public purposes the payments of which are imposed by law. Tax is imposed for public purposes to meet general expenses of State. Tax is collected and merged with the general revenue of the State. Tax is a common burden. Fees on the other hand is payments primarily in public interest lent for some special work done for the benefit of those from whom payments are demanded. Article 27 prohibits imposition of the tax and not fee.

Article 28 Restriction on religious instruments in educational institution:. –

(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.

(1) 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.

Art.28(3):

According to Article 28(3) no person attending any educational institution recognized by the State or receiving aids out of State funds shall be required to take part in any religious instruction imparted in the institution, or to attend any religious worship conducted in the institution thereto, unless he consents to do voluntarily or, if a minor, his guardian gives consent for the same Cultural and Educational Rights The constitution keeps the spirit of secularism by making a space to all the religious protecting the interest of minorities respecting their right to development. Art 29 and 30 guarantee certain cultural and educational rights to cultural, religious and linguistic minorities.

Article 29:

(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.

Article 30:

(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

(2) (1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.

(3) 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.

Chapter 3: Constitution and Protective Group

Topics for study:

1. ***Concessions to Women and children***
2. ***Reservation to Scheduled Castes and Tribes***
3. ***Status of physically challenged people***
4. ***Religious Minorities***
5. ***Legislative Measures to uplift Protective Groups***

1. Concession to women and children :

Introduction :

Women are the half of world's population. Are human women have right to live a dignified and secured life.

They are strong enough but gets shattered when their self esteem is hurt. The dignity for women is much precious then life and this is universal phenomenon. Right to life includes right to human dignity.

Various Laws reinforce safeguards against discrimination and provide for positive discrimination for women.

Women ought to be protected and responsible persons or institutions must observe certain guidelines to ensure the prevention of sexual harassment of women so that lives with dignity as guaranteed by our Constitution. In this unit you will be studying Various Crimes against women, Gender injustice and its forms. Existence of Women's Commission its function.

IMPORTANT CONSTITUTIONAL AND LEGAL PROVISIONS FOR WOMEN IN INDIA:

The principle of gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. The Constitution not only grants equality to women, but also empowers the State to adopt measures of positive discrimination in favour of women. Within the framework of a democratic polity, our laws, development policies, Plans and programmes have aimed at women's advancement in different spheres. India has also ratified various international conventions and human rights instruments

committing to secure equal rights of women. Key among them is the ratification of the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) in 1993.

1. **CONSTITUTIONAL PROVISIONS**

   The Constitution of India not only grants equality to women but also empowers the State to adopt measures of positive discrimination in favour of women for neutralizing the cumulative socio economic, education and political disadvantages faced by them.

2. Fundamental Rights, among others, ensure equality before the law and equal protection of law; prohibits discrimination against any citizen on grounds of religion, race, caste, sex or place of birth, and guarantee equality of opportunity to all citizens in matters relating to employment.

3. Articles 14, 15, 15(3), 16, 39(a), 39(b), 39(c) and 42 of the Constitution are of specific importance in this regard. Constitutional Privileges

   (i) Equality before law for women (Article 14)

   (ii) The State not to discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them (Article 15 (i))

   (iii) The State to make any special provision in favour of women and children (Article 15 (3))

   (iv) Equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State (Article 16)

   (v) The State to direct its policy towards securing for men and women equally the right to an adequate means of livelihood (Article 39(a)); and equal pay for equal work for both men and women (Article 39(d))

   (vi) To promote justice, on a basis of equal opportunity and to provide free legal aid by suitable legislation or scheme or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities (Article 39 A)

   (vii) The State to make provision for securing just and humane conditions of work and for maternity relief (Article 42)

   (viii) The State to promote with special care the educational and economic interests of the weaker sections of the people and to protect them from social injustice and all forms of exploitation (Article 46)

   (ix) The State to raise the level of nutrition and the standard of living of its people (Article 47)

   (x) To promote harmony and the spirit of common brotherhood amongst all the people of India and to renounce practices derogatory to the dignity of women (Article 51(A) (e))

(xi) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat to be reserved for women and such seats to be allotted by rotation to different constituencies in a Panchayat (Article 243 D(3))

(xii) Not less than one- third of the total number of offices of Chairpersons in the Panchayats at each level to be reserved for women (Article 243 D (4))

(xiii) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality to be reserved for women and such seats to be allotted by rotation to different constituencies in a Municipality (Article 243 T (3))

(xiv) Reservation of offices of Chairpersons in Municipalities for the Scheduled Castes, the Scheduled Tribes and women in such manner as the legislature of a State may by law provide (Article 243 T (4))

Reservation for Scheduled caste and scheduled tribe:

The objective of providing reservations to the Scheduled Castes(SCs), Scheduled Tribes (STs) in services is not only to give jobs to some persons belonging to these communities. It basically aims at empowering them and ensuring their participation in the decision-making process of the State.

Besides, the state is also keen to end practices such as untouchability.

Scheduled Castes (SC) are given 15% quota in jobs/higher educational institutions while Schedule Tribes (ST) are given 7.5% quota in jobs/higher educational institutions.

Reservation is provided not only with respect to direct recruitment but also with respect to promotions for SC/ST category (Article 16(4A)).

There is no concept of 'creamy layer' with respect to SC/ST reservation. This means that irrespective of the income status or the government posts held by the parents, children of SC/ST parents will get SC/ST Reservation.

Article 46 of the Constitution provides that the State shall promote with special care the educational and economic interests of the weaker sections of the society and in particular, of the Scheduled Castes and Scheduled Tribes and shall protect them from social injustice and all forms of exploitation.

Reservation in educational institution has been provided in Article 15(4) while reservation in posts and services has been provided in Article 16(4), 16(4A) and 16(4B) of the Constitution.

Article 23 which prohibits traffic in human beings and beggar and other similar forms of forced labour has a special significance for Scheduled Tribes. In pursuance of this Article, Parliament has enacted the Bonded Labour System (Abolition) Act, 1976. Similarly, Article 24 which prohibits employment of Children below the age of 14 years in any factory or mine or in any other hazards activity is also significant for Scheduled Tribes as a substantial portion of child labour engaged in these jobs belong to Scheduled Tribes.

Article 243D provides reservation of Seats for Scheduled Tribes in Panchayats.

Article 330 provides reservation of seats for Scheduled Tribes in the House of the People.

Article 332 provides reservation of seats for Scheduled Tribes in Legislative Assemblies of the States.

Article 334 provides that reservation of seats for Scheduled Castes and Scheduled Tribes in the Lok Sabha and the State Vidhan Sabhas (and the representation of the Anglo-Indian Community in the Lok Sabha and the State Vidhan Sabhas by nomination) would continue up to January, 2020.

Other specific safeguards have been provided in Article 244 read with the provisions contained in Fifth and Sixth Schedule to the Constitution.

4. Status of Physically challenged person:

The Constitution of India applies uniformly to every legal citizen of India, whether they are healthy or disabled in any way (physically or mentally)

Under the Constitution the disabled have been guaranteed the following fundamental rights:

1. The Constitution secures to the citizens including the disabled, a right of justice, liberty of thought, expression, belief, faith and worship, equality of status and of opportunity and for the promotion of fraternity.

2. Article 15(1) enjoins on the Government not to discriminate against any citizen of India (including disabled) on the ground of religion, race, caste, sex or place of birth.
3. Article 15 (2) States that no citizen (including the disabled) shall be subjected to any disability, liability, restriction or condition on any of the above grounds in the matter of their access to shops, public restaurants, hotels and places of public entertainment or in the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of government funds or dedicated to the use of the general public. Women and children and those belonging to any socially and educationally backward classes or the Scheduled Castes & Tribes can be given the benefit of special laws or special provisions made by the State.
4. There shall be equality of opportunity for all citizens (including the disabled) in matters relating to employment or appointment to any office under the State.
5. No person including the disabled irrespective of his belonging can be treated as an untouchable. It would be an offence punishable in accordance with law as provided by Article 17 of the Constitution.
6. Every person including the disabled has his life and liberty guaranteed under Article 21 of the Constitution.
7. There can be no traffic in human beings (including the disabled), and beggar and other forms of forced labour is prohibited and the same is made punishable in accordance with law (Article 23).
8. Article 24 prohibits employment of children (including the disabled) below the age of 14 years to work in any factory or mine or to be engaged in any other hazardous employment. Even a private contractor acting for the Government cannot engage children below 14 years of age in such employment.
9. Article 25 guarantees to every citizen (including the disabled) the right to freedom of religion. Every disabled person (like the non-disabled) has the freedom of conscience to practice and propagate his religion subject to proper order, morality and health.
10. No disabled person can be compelled to pay any taxes for the promotion and maintenance of any particular religion or religious group.
11. No Disabled person will be deprived of the right to the language, script or culture which he has or to which he belongs.
12. Every disabled person can move the Supreme Court of India to enforce his fundamental rights and the rights to move the Supreme Court is itself guaranteed by Article 32.

13. No disabled person owning property (like the non-disabled) can be deprived of his property except by authority of law though right to property is not a fundamental right. Any unauthorized deprivation of property can be challenged by suit and for relief by way of damages.
14. Every disabled person (like the non-disabled) on attainment of 18 years of age becomes eligible for inclusion of his name in the general electoral roll for the territorial constituency to which he belongs.

- Where one party is unable to give a valid consent due to unsoundness of mind or is suffering from a mental disorder of such a kind and extent as to be unfit for 'marriage for procreation of children'
- Where the parties are within the degree of prohibited relationship or are sapindas of each other unless permitted by custom or usage.
- Where either party has a living spouse

The rights and duties of the parties to a marriage whether in respect of disabled or non-disabled persons are governed by the specific provisions contained in different marriage Acts, such as the Hindu Marriage Act, 1955, the Christian Marriage Act, 1872 and the Parsi Marriage and Divorce Act, 1935.

Other marriage Acts which exist include; the Special Marriage Act, 1954 (for spouses of differing religions) and the Foreign Marriage Act, 1959 (for marriage outside India). The Child Marriage Restraint Act, 1929 as amended in 1978 to prevent the solemnization of child marriages also applies to the disabled.

A Disabled person cannot act as a guardian of a minor under the Guardian and Wards Act, 1890 if the disability is of such a degree that one cannot act as a guardian of the minor. A similar position is taken by the Hindu Minority and Guardianship Act, 1956, as also under the Muslim Law

5. Rights of minority:

1. Article 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.
2. . Article 25: Freedom of conscience and free profession, practice and propagation of religion (1) Subject to public order, morality and health and to other provisions of this part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.

(2) Nothing in this Article shall affect the operation of any existing law or prevent the state from making any law-

(a) regulating or restricting any economic, financial political or other secular activity which may be associated with religion practice.

(b) providing for social welfare and reform or throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus. Explanation 1- The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religions.

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.

Religious Minority:

Article 26: Freedom to manage religious affairs Subject to public order, morality and health, every religious denomination or any section thereof shall have the right- The Minority Rights Under Article 30 of the Indian Constitution…..

(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.

Article 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 for the promotion or maintenance of any particular religion or religious denomination.

Article 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 fund.

(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 required that religious instruction shall be imparted in such institution.

(3) No person attending any educational institution recognized 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.

4.2 Exclusive Rights of Minorities India is the largest democracy of the world with secular character and is governed by the constitution. The founding fathers of the Indian Constitution, in order to give a sense of security and confidence to the minorities, have conferred certain rights to minorities.

Minorities in India do not stand on equal footing with others, which made the framers of the Constitution, through Article 29 and Article 30, accord special rights to the people who form religious or linguistic minority in India. At the outset it is desirable to delineate Articles 29 and 30 of the Constitution of India, with relevant subject matter for the purpose of this study.

The need for defining minorities stems from Article 29 and 30, which guarantees minorities with the following privileges:

4.3 Cultural and Educational Rights of Minorities Article 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.

Article 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) [(1A) In making any law providing for the compulsory acquisition of any property of any educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.]

(3) 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.

(4) Art. 15(4): Clause 4 of article 15 is the fountain head of all provisions regarding compensatory discrimination for SCs/STs. This clause was added in the first amendment to the constitution in 1951 after the SC judgment in the case of Champakam Dorairajan vs State of Madras.

It says thus, "Nothing in this article or in article 29(2) shall prevent the state from making any provisions for the advancement of any socially and economically backward classes of citizens or for Scheduled Castes and Scheduled Tribes." This clause started the era of reservations in India.

Art. 15 (5) : This clause was added in 93rd amendment in 2005 and allows the state to make special provisions for backward classes or SCs or STs for admissions in private educational institutions, aided or unaided. Art. 16(4): This clause allows the state to reserve vacancies in public service for any backward classes of the state that are not adequately represented in the public services.

Art. 16 (4A): This allows the state to implement reservation in the matter of promotion for SCs and STs.

Art. 16(4B): This allows the state to consider unfilled vacancies reserved for backward classes as a separate class of vacancies not subject to a limit of 50 per cent reservation.

Art. 17: This abolishes untouchability and its practice in any form. Although the term untouchability has not been defined in the constitution or in any act but its meaning is to be understood not in a literal sense but in the context of Indian society.

Due to the varna system, some people were relegated to do menial jobs such as cleaning toilets. Such people were not to be touched and it was considered a sin to even touch their shadow.

They were not even allowed to enter public places such as temples and shops. The constitution strives to remove this abhorring practice by not only making the provision a fundamental right but also allows punishment to whoever practices or abets it in any form. Towards this end, Protection of Civil Rights Act 1955 was enacted. It has implemented several measures to eradicate this evil from the society. It stipulates up to 6 months imprisonment or 500 Rs fine or both. It impresses upon the public servant to investigate fully any complaint in this matter and 100 failing to do so will amount to abetting this crime.

In the case of State of Kar. vs Appa Balu Ingle, SC upheld the conviction for preventing a lower caste person from filling water from a bore well.

Art. 19(5): It allows the state to impose restriction on freedom of movement or of residence in the benefit of Scheduled Tribes.

Art. 40: Provides reservation in 1/3 seats in Panchayats to SC/ST. Art. 46: Enjoins the states to promote with care the educational and economic interests of the weaker sections, specially SC and STs.

Art. 164: Appoint special minister for tribal welfare in the states of MP, Bihar, and Orrisa. Art. 275: Allows special grant in aids to states for tribal welfare.

Art. 330/332: Allows reservation of seats for SC/ST in the parliament as well as in state legislatures. Art. 335: Allows relaxation in qualifying marks for admission in educational institutes or promotions for SCs/STs. 101 In the case of State of MP vs Nivedita Jain, SC held that complete relaxation of qualifying marks for SCs/STs in Pre-Medical Examinations for admission to medical colleges is valid. Art. 338/338A/339: Establishes a National Commission of SCs and STs.

Art. 339 allow the central govt. to direct states to implement and execute plans for the betterment of SC/STs.

Art. 340: Allows the president to appoint a commission to investigate the condition of socially and economically backward classes and table the report in the parliament. Legislative framework: The Constitution provides a three-pronged strategy to improve the situation of SCs and STs:

Legislative framework to uplift protective group:

Protective arrangements: Such measures as are required to enforce equality, to provide punitive measures for transgressions, to eliminate established practices that perpetuate inequities, etc.

A number of laws were enacted to implement the provisions in the Constitution. Examples of such laws include The Untouchability Practices Act, 1955, Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, The Employment of Manual Scavengers and 102 Construction of Dry Latrines (Prohibition) Act, 1993, etc.

Affirmative action: Provide positive or preferential treatment in allotment of jobs and access to higher education as a means to accelerate the integration of the SCs and STs with mainstream society. Affirmative action is popularly known as reservation. Development: Provide resources and benefits to bridge the socioeconomic gap between the SCs and STs and other communities

Development: Provide resources and benefits to bridge the socioeconomic gap between the SCs and STs and other communities.

Chapter 4: Social Transformation and Democratic Process

Topics for study:

1. ***Political Parties: Constitutional and Legal Position***
2. ***Trend in the Growth and Functioning of Political Parties***
3. ***Problem in functioning of political parties***
4. ***Role of Election commission***
5. ***Local self government***

1. Political Parties: Constitutional and legal position:

The founding fathers of our Republic conceived of representative parliamentary democracy as the polity most suited to India's ethos, background and needs. They envisaged equal participation of all the adult citizens in the democratic process without any discrimination. Selection of representatives of the people through universal adult franchise and free and fair elections was for them an act of faith. Universal adult franchise was a bold and ambitious political experiment and a symbol of the abiding faith that the founders reposed in the great masses of the country and in their innate wisdom.

Provisions of the Constitution :To achieve these objectives, article 326 of the Constitution enfranchises for all the adult citizens (not less than 18 years of age) and empowers them to vote at the elections to the Lok Sabha and the State Assemblies. Article 324 vests the superintendence, direction and control of the preparation of electoral rolls and conduct of elections in an independent Election Commission. Under articles 243K and 243ZA elections to local bodies – Panchayats and Municipalities – are the responsibility of State Election Commissions.

In the Parliamentary form of government party government is the real name for the Parliamentary democracy. Political parties are not merely a link between the government and the people; they are the instrumentalities of social change, social resurrection and transformation. Political parties play the most crucial role in the electoral process - in setting up candidates and conducting election campaigns. The history of origin and growth of political parties in India can be traced to the days of India's struggle for freedom.

The Indian National Congress was perhaps our first political party; it came into existence in the year 1885. There were some groups formed by patriotic Indians before that, but they did not converge into becoming a political party. The Indian National Congress was the natural and inevitable outcome of a national awakening. All the major political parties (with the exception of the BJP) that exist in India today were at one time within the fold of the Congress. Political parties and the party system in India have been greatly influenced by cultural diversity, social, ethnic, caste, community and religious pluralism, traditions of the nationalist movement, contrasting style of party leadership, and clashing ideological perspectives.

The evolution of the party system after Independence presents a study of transformation from one-party dominant system to a complex of multi-party configuration, in which presently strong trends of fragmentation, factionalism, and regionalism, coupled with the desire to form alliances for seeking a share in the pie of power are being witnessed. In recent years, we have witnessed a succession of unstable governments, and the reason for such a recurring phenomenon is the mal-functioning of political parties. Alliances and 119 coalitions are made, broken and changed at whim, and the balance of power seems to be held not by those at the Union level, but by minor parties. Indian political parties have fragmented over the years. Frequent party splits, mergers and counter splits have dramatically increased the number of parties that now contest elections. In 1952, 74 parties contested elections, whilst in recent years this number has swollen to more than 177, and has been consistently increasing. The instability at the Union level or in the States can be attributed solely to the growing number of parties, or the malaise with which the political system suffers today lies in the functioning and the dynamics of the party system in India, apart from the other causes in the working of the political system as a whole.

Political parties do not find any direct mention in the Constitution of India. However, the Tenth Schedule (which was added by the 52nd Constitutional Amendment Act, 1985) of the Constitution deals with the disqualification of a person for being a member of either House of Parliament [Art. 102(2)] or the Legislative Assembly or Legislative Council of a State [Art. 191(2)], on ground of defection. These articles are relevant to the functioning of political parties. In the absence of adequate constitutional provisions, the onus of framing and administering the rules and regulations governing 134 political parties in India has fallen on the Election Commission. The Election Commission of India has the ultimate power to accord recognition and status to political parties. The Election Commission has the power to decide whether or not

to register an association or body of individuals as a political party. According to Article 29A (1) and (2) of the Representation of Peoples act, 1951 it is mandatory for any association or body of individuals of India calling itself a political party to make an application to the Election Commission for its registration as a political party, within thirty days from the date of its formation. Article 29A (5) requires that the application shall be accompanied by a copy of the memorandum or rules and regulations of the association or body and such memorandum or rules and regulations shall contain a specific provision that the association or body shall bear true faith and allegiance to the Constitution of India, and to the principles of socialism, secularism and democracy and would uphold the sovereignty, unity and integrity and unity of India. And proviso to Sub-section (7) of Section 29A provides that no association or body shall be registered as a political party under this Section unless the memorandum or rules and regulations of such association or body conform to these provisions, i.e. the provisions of Sub-section (5) of Section 29A. The decision of the Commission in this matter is final.

2. Trend in the Growth and Functioning of Political Parties:

At any given time, we have had a large number of parties present in the Lok Sabha. It can not be said that all of these parties are formed along the ideological lines or they represent different policies and approaches to the nation's economic or socio political problems. Except for the CPI and the CPI (M), all of the above parties believe in the market economy and can be considered as on Right of the Centre. These parties do not differ on economic or socio-political issues.

The Election Commission has recognized only six parties as National Parties. The real difference between these parties is that many of State parties represent interests of different groups based on caste, religion or region. The sole objective of existence of these parties is to advance the interest of the community or the region they represent. These parties do not have any national perspective.

The general trend amongst both, the national and regional parties to move away from the strict ideological framework of the party of the left or the right. Although in general, they do profess to stick to their party ideology or at least are known by certain ideological labels.

But in their actual programmatic support they are not reluctant to give up their ideological instance, if that helps gain them a share of political power. Then, we have many parties which do not have any ideological base and they also do not represent any particular caste, class or religion. These parties are basically alter egos of their leaders. The genesis of such parties can be

traced to the hurt ego or frustrated ambitions of their leader. Often these parties are one man force. A large number of 'samajwadi' parties illustrate this very clearly.

Though the ideological foundations were always missing in the case of a large number of our political parties, the opportunistic shifts have become more blatant in the present age of coalition governments. Parties which are ideologically poles apart, come together and strike alliances.

Thus we can explain the Congress and the CPI (M) joining hands at the centre though in the states, the two parties are fighting each other tooth and nail or DMK joining the Congress in fourteen Lok Sabha while Congress topple down I.K. Gujral's United Front Government in Eleventh Lok Sabha asking for DMK Ministers. We also see the expelled members of one party being happily embraced by the rival party, making a mockery of the party discipline and ethics.

This naked opportunism of our political classes made the functioning of the parliamentary democracy meaningless. The electorate votes a party on the basis of its declared programme, but once elected, the party goes to implement opposite of what it had promised during the election. Such trend has been witnessed both at the national as well as at the State level and parties are less inhibited to share power in government 133 formation with the groups, who till the other day were their bitter political opponents. In Kerala and the West Bengal, the CPI (M) and the Congress fight elections against each other, but once elected, both are seen on the same side in the Parliament. We have seen the self declared champions of secularism like Shri George Fernandes joining hands in the government with strong Hindutvavadi parties like the Shiv Sena.

There is so much of double talk and hypocrisy in our political life that it is impossible for a man to find out as to which party stands for what. Except for their own interest, the parties seem to forget and ignore all other commitments they make during the elections.

3. The lack of strong and consistent political affiliations on the part of our leaders, and a fast turnover of small parties have led to the voter confusion and apathy for the political activity. Today a cynicism has spread over the general public, particularly the elite class has became so much apprehensive of the politicians that they shun the very political activity. This is very bad omen for our democracy. It is common knowledge that very few educated and economically advanced people go to cast their vote.
4. **Problem in functioning of political parties:**

- **Absence of Inner Party Democracy:** Over the last fifty five years, no political party has been able to observe the basic norms of inner party democracy. The authority in organizational

matters has always been from the top to the bottom through successive layers of party structures. Leaders of political parties have not always emerged through a process of democratic elections and promotion from the lower levels to the higher and the top. Highly integrated party structures create rifts between party organizations. Party disintegration takes place due to over centralization and personal ego that reduces the party to the status of a regional party. Strong leaders with support from their States have been by-passed in favour of loyalists. The party Presidents appoints party Chiefs in the States just before the organizational elections were to take place despite the protests of the central election authority chairmen. Even when the elections to State party chiefs take place after a long gap, only the President of the party nominate a majority of the State party chiefs. These trends are likely to affect the party's strength and capability. A party is a public institution, not a personal fief. Without intra-party elections, without ministers who enjoy strong regional support, and without the encouragement of a variety of opinions, political parties are like to wither away.

- **Need for Funds:** To perform various functions and contest elections in an effective manner, every political party requires huge funds. But the financial matters of party are kept secret while other aspects of organization are known to people. Very little is known about finances of political parties. In fact, secrecy is maintained even within a party. Only a few leaders at the higher level know the truth about the total funds and expenditure. Parties do not publish statements of accounts, income and expenditure, though financial matters are discussed at 139 conventions and conferences or in meetings of higher bodies like working committee or the executive committee. Many political parties and candidates use dubious methods in raising funds, like kickbacks, funds from foreign countries and even from donations by mafia gangs and other non-desirable elements. How to let the parties get honest funding from legitimate sources for their basic and continuing political activities has emerged as one of the most crucial contemporary concerns in respect of the functioning of political parties in India. The need to ensure accounting and auditing of party finances at various levels of party organization has been stressed by many. Transparent sources of party finances are a must.
- **Lack of Ideology and Values in Politics:** Party dynamics in India has led to the emergence of valueless politics. Gandhiji taught us tremendous selflessness, self sacrifice and service to the people, such inspirational values, the democratic norms and institutions have been destroyed over the last fifty five years of the working of the Constitution. The politicians and political

parties have lost their credibility. There seems to be a crisis of character amongst the politicians, as the system does not encourage the honest leader. Because of the falling moral standards both in the public and among the leaders, criminalisation of politics and politicization of criminals has become the norm. Due to degeneration of leadership, parties have been entangled in power struggle for the sake of personal ends. There has been very sharp erosion in the ideological orientation of political parties Astronomical sums of tainted money have come to play an important role both in the pre and post-election scenario. The entry of criminal elements within the folds of political parties and later their elevation to executive positions of ministers have resulted in an environment of declining moral standards of public life and the emergence of valueless politics for personal gains. Unfortunately this trend has penetrated to all walks of public life and no political leader or political party seems to care for value-based politics and upholding of moral standards.

The Gandhian value of the spirit of service to the nation has become completely extinct from the present day politics. The importance and claim to high office of a politician being measured not in terms of what he can contribute to the state or public but the size of the funds he can covertly raise and the necessary 'criminal' power to win elections he can provide. The older political leadership had risen from the ranks. The rise was not sudden, and their adherence and commitment to party ideals and ideology was unflinching. They respected party discipline. The present day political leadership seems to be in a tremendous hurry to reach up to the top, and is not averse to use short cuts, dubious methods, money or muscle power to achieve their objective. The entry of the toughs and persons with criminal background to the legislature is a very serious consequence of these trends. Aggressive instance to disrupt or withhold the proceedings of the legislature for days on thereby causing a tremendous drain on the public exchequer and the valuable time of the House is common nowadays. The result is that the more important issues facing the nation do not get discussed or passed and policy making and the process of good governance suffer.

- **Regionalism:** The regionalisation of political parties has compelled many of the parties to orient their highly centralized organization and decision making structure to suit the new demands of party at the state level, thus adopting a confederation like approach for the party organization. This has resulted in a lesser assertion of national control over state units. Our Federal system of Government helps in creating regional political centers which provide opportunity for regional

political patronage. Federal system makes it possible for a regional party to gain power and force its way to the party system while giving them capacity to govern. But these regional interests have a limited 141 area to fight and generally clash with national interest. Regionalism and regional parties have made 'ethnicity' acquire a growing respectability at home and abroad. Most important is national politics has now entered a coalition phase, regional parties are being grouped together to provide a working majority at the center. At the same time, differences in the economic, educational and social interests of regional middle classes, intermediate castes and the new classes are bound to overwhelm the \ unifying capacity of regional pride.

- **Castetism:** Social structure in India is based on cast system. Interrelationship of casteism and politics has posed a great problem nowadays. During the struggle for freedom people of all castes, cults and sects stood against the British Empire like one man. However, after independence these loyalties were divided in to castes and communities. Post independence politics encouraged people to go in divergent directions. The castes, which had somewhat gone underground by the efforts of social reformers during the years of freedom struggle, was revived with all its evil force. In a society on which various communities are considered as important organisations, it is quite natural for political parties to strengthen themselves through these communities. People of different caste and communities make efforts to achieve political benefits. All parties have played a vital role in creating this situation. Minority castes have shown the tendency to be united against majority castes. This is a good sign that they are becoming conscious of their rights but practically this is again a betrayal of their support. Power hungers are not concerned with their upliftment but taking their advantage as a vote bank. Political parties have a lot to contribute to the revival of casteism just to capture power. We can take examples of Bihar and Tamilnadu. The political parties have always thought of casteism as a determinant in election. They have made no hitch in choosing a candidate with reference to the caste composition of the electorate.

  The election strategy has the caste as the most important consideration to win the election. Unfortunately, the parties win elections quite frequently on caste calculations. They form the government and rule over the country for five years. During their tenure, the representatives are busy in building up a background for the next election rather then improving the condition of the people. Keeping in view the future election some political and administrative decisions are taken to please the people of a particular caste. This tendency has rapidly increased during the past

fifty years. It has disappointed the nonpartisan voter. It has intensified partisanship and sectional interests. It is intolerable in the democratic system if persons having no caste background are denied opportunities in political, administrative and judicial fields. This tendency has proved to be disastrous for the system we have adopted hoping for equal share in power. It is a deliberate effort to go against the very basic tenets of democracy. Caste, which Nehru abhorred and believed would disappear from the social metrics of modern India, has not merely survived, but has become an instrument for political mobilisation. In terms of political identity, it became more important to be a 'backward caste' Yadav, a 'tribal' Bodo or a sectarian Muslim than to be an Indian. Moreover, every group claimed a larger share of a national economic pie that had long since stopped growing. The emergence of regional parties and the 'withering away of national outlook and spirit' thus set off another crisis. Candidates come to be selected not in terms of accomplishments, ability and merit but on the appendages of caste, creed and community. Ultimately caste becomes the deciding factor on selection. When 'disparate' political groups with caste-based ideologies compete for space in governance, national goals take a back seat. The more serious repercussion of this development is the political violence that has resulted in many parts of the country, particularly in Bihar, where dominating caste groups openly clash 143 with minority groups resulting in a spate of caste-wars and massacres of innocent people. One caste, in its attempt to obtain political power is committing aggression on the other. The talk of minority interests (especially of a community only) by regional parties is only a smokescreen to hide caste and regional interests. Caste based politics and casteism are eroding the 'unity' principle in the name of regional autonomy. Although there is hardly any instance in India of a political party being totally identified with any particular caste group, yet there are cases of certain castes lending strong support to particular political parties. Thus while political parties struggle among themselves to win different caste groups in their favour by making offers to them, caste groups too try to pressurize parties to choose its members for candidature in elections. If the caste group is dominant and the political party is an important one, this interaction is all the more prominent. In many political parties, in place of ideological polarization there occurs the determination of policies and programmes as well as the nomination of electoral candidates and the extension of support to them on caste consideration. Caste exercises its impact in the political field by specific caste groups coming together to vote en bloc for a candidate of their own caste, without considering the merits and demerits of the candidate,

by appointing the members of influential caste or caste group or groups in the party as well as in the constituency and to offices of profits. A caste, wishing to exercise political power must have a considerable number of its members elected. This involves putting pressure on some particular party and different castes struggling against each other in a bid to have a majority of their caste candidates elected. The electoral field witnesses both competition as well as alliances between various caste groups in order to get a substantial number of their caste-men elected. Caste, therefore dominates the political field, especially at the lower level.

5. **Role of Election Commission:**

After independence from British imperial rule, free India chose to adopt the system of parliamentary democracy and democratic practices are sustained as well as strengthened through elections. Elections were also conducted during British rule. These elections to the Provincial and Central Legislatures, did not fulfil the aspirations of the people of India and were anything but fair and democratic. Undoubtedly, the foremost task of the founding fathers of the Constitution was to make the elections free, besides contemplating to constitute an institution which could carryout electoral process impartially and independently, so that the democratic character of the country could be preserved. The framers of the Constitution, keeping in view the complexity, caused by the diversities of the country, resolved that the authority vested with the conduct of elections should be competent, effective, apolitical, independent and neutral. The foresight of the Constitution makers, virtually, has paid rich dividend to the people of India. Despite whatever has happened to politics and political practices in the country, the prospect of a free and fair election survives as the election machinery remains apolitical, impartial and independent.

This authority vested with the conduct of election is none, but a constitutional body, that is, the Election Commission of India.

D.D. Basu writes : “In order to supervise the entire procedure and machinery for election and for some other ancillary matters, the Constitution provides for an independent body, namely, the Election Commission.

Free and fair elections are the prerequisite of a successful democracy. But such elections require an independent institution to deal with the entire electoral process. Article 324 of the Constitution of India divulges that the framers of the Constitution entrusted the ‘Superintendence, Direction and control’ of elections to an independent authority appointed by

the President of India, namely the Election Commission. There were two divergent views and proposals on the structure of Election Commission before the Drafting Committee-

i) to have a permanent institution of four or five members, and

ii) to have an ad hoc body constituted at the time of peak electoral activity. The Drafting Committee chose the middle path by providing for a one-man Commission, called Election Commissioner, permanently in office. The one-man Commission, intended to be a permanent nucleus for organising elections to the Central and State legislatures was to be augmented at the time of election by appointing Election Commissioner and Regional Election Commissioners.

Role of local self government:

Village pnchayats have been an integral part of village administration since times immemorial but nothing much is known about the status, structure, functions and finances of panchayats in ancient India. Although the idea of decentralised planning is as old as the Gandhian economic thought, attempts at giving a concrete shape to this thinking may be said to have been made in the post independence period. During the constitution making process and thereafter since the inception of planning in India, certain hard choices had to be made between the needs of national security, national unity and economic growth, on the one hand, and the consideration of achieving a measure of distributive justice, on the other, so that the benefits of development accrue to the people at the grass-root level, and also people may participate in the process of planning and development at different territorial levels. In the initial years, the choice was made in favour of rapid growth and planning and, therefore, decision-making remained centralised and vertical around the two political levels, viz. the Union and the state. Local bodies like panchayats, by and large, functioned as civic agencies of the state government and not as instruments of micro-level planning.

It was during the III five year plan that a methodology of preparing state plans for rural development on the basis of district and block plans, was evolved and attempts were made to constitute three-tier system of PRIs, based on the recommendations of the Balwant Rai Mehta Committee (1957), and with it the idea of "planning from below" gained some currency. But these ideas did not pick up and were not operationalized, as the PRIs, except in some states, were stagnating or declining, after the initial enthusiasm for their development. Lot of discussion had taken place in the country in respect of the need for creating multi-level planning framework

which envisaged devolution of definite powers, functions and finances to different territorial levels, but no concrete steps were taken in this direction.

Since the beginning of the VI five year plan, a number of special programmes for poverty alleviation, employment generation and area development were launched in the country. At this stage, block level was considered important to implement rural development programmes through fuller utilization of local resources. In November 1977, a Working Group under the Chairmanship of Prof. M.L. Dantwala was appointed by the Government of India, to draw up guidelines for block level planning. At the same time, in December, 1977, a Committee on Panchayati Raj, headed by Ashok Mehta was appointed. The Committee considered inadequacy of resources, mainly responsible for failure of PRIs and, therefore, recommended, inter alia, measures for strengthening the financial resources of PRIs.

In the light of recommendations of the Committee, gradually PRIs were set up in almost all the states and were contemplated to be developed as instruments of development. Whereas in Maharashtra and Gujarat, power was vested in district panchayats, in Madhya Pradesh and some other states, the responsibility for development was entrusted to development blocks. Another committee headed
by Prof. C.H. Hanumantha Rao (1984) went into the question of evolving methodology for district level planning and recommended that planning process at the district level should be sufficiently decentralised, having a good deal of autonomy, administrative and technical capability and financial adequacy.

The above discussion shows that there has been no dearth of ideas and expert opinion but what is lacking is consistency in thinking and political will to implement the concept of decentralised planning and development in a multi-level framework, and create PRIs in that framework which are democratic, autonomous, financially strong, capable of formulating and implementing plans for their respective areas and provide decentralised administration to the people. Elections were not held regularly in a large number of states. Even after three decades since the Balwant Rai Mehta Committee had recommended 3-tier Panchayati raj system as a form of rural self-government and as a mechanism for democratic decentralisation, in most of the states, the position regarding PRIs remained unsatisfactory, and no tangible action was taken to strengthen the local self-government system. Financially these bodies were weak and dependent largely on

state governments which did not follow any consistent policies, with the result that most of the PRIs remained defunct or superseded.

The Constitutional Amendment Act, 1992, marks a water-shed in the history of local self-government in the country since it gives a constitutional mandate to the state governments to restructure and revamp rural local bodies in accordance with constitutional obligations. The Act provides for

(i) the creation of three tier system of PRIs - gram panchayat at the village level, Janapad Panchayat at the block level and Zila Panchayat at the district level, with sufficient powers and functions contained in schedule XI of the Act;

(ii) the creation of State Election Commission to ensure free, fair and timely elections after the expiry of every 5 years, and

(iii) the creation of State Finance Commission after every 5 years to recommend devolution of financial resources from the state government to local bodies and also suggest measures for strengthening their financial position.

Since our primary concern in this chapter is with evolution of rural local self government in Madhya Pradesh, against the background of developments in the country, we would, therefore, take up, in the first instance, the discussion of developments in the field of panchayat raj institutions in the state .

The passage of the Constitution (73rd Amendment) Act, 1992 (or simply the Panchayati Raj Act) marks a new era in the federal democratic set up of the country. It was based on the recommendation of Balwant Rai Mehta committee. It came into force with effect from April 24, 1993. It has a 3-tier system of Panchayati Raj for all States having population of over 20 lakh**.**

Main Features of the 73rd Amendment Act

• Gram Sabha may exercise such powers and perform such functions at the village level as the Legislature of a State may, by law, provide.

• There shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of this Part.

• Panchayats at the intermediate level may not be constituted in a State having a population not exceeding twenty lakhs.

All the seats in a Panchayat shall be filled by persons chosen by direct election from territorial constituencies in the Panchayat area and, for this purpose, each Panchayat area shall be divided

into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the Panchayat area.

The Legislature of a State may, by law, provide for the representation of the Chairpersons of the Panchayats at the village level, intermediate level or, in the case of a State not having Panchayats at the intermediate level, in the Panchayats at the district level.

Chapter 5: Role of Legal Institution, Law and Social Transformation

Topics for study:

1. ***The Role of Law Commission in Transforming the law***
2. ***Role of Judiciary in Expanding Horizons: PlL***
3. ***Prison reforms- Plea Bargaining***
4. ***Right to Information-Problems and Perspetives***

1. The Role of Law Commission in Transforming the law

The Law Commission is an executive body which is established by the government for a fixed tenure. It acts as an advisory body to the Law Ministry.

- The Law Commission is neither a statutory nor a constitutional body.
- It is primarily composed of legal experts.
- The first Law Commission in India was formed in 1955 with its chairman being the then Attorney-General of India, M. C. Setalvad.
- Currently, there is no Law Commission as the tenure of the latest commission, i.e., the 21st Commission got over in August 2018.
- The Law Ministry has initiated the process of forming a new Law Commission.
- The Commission submits reports to the government on various matters of a legal nature. The reports are not binding on the government, which can either reject or accept them.

Law Commission Members

The Commission comprises of legal and judicial experts. There is a Chairperson and other members in the Commission. The Law Secretary and the Secretary (Legislative) under the Law Ministry are ex-officio members.

Law Commission History

Law Commissions in India have a pre-independence origin. The first Law Commission was formed in 1834 as a result of the Charter Act, 1833 under the chairmanship of TB Macaulay.

- The first commission's recommendations resulted in the codification of the penal code and the Criminal Procedure Code.
- Three other law commissions were constituted before independence by the British government. All four pre-independent law commissions have contributed to the statute books immensely.

- After independence, the first Law Commission was constituted in 1955 in a continuance of the tradition of bringing law reforms in the country through the medium of law commissions.
- It submitted 14 reports to the government.

Functions:

The main function of the Law Commission is to conduct legal research and review existing laws with the aim of bringing in reforms. Some of the other functions of the Law Commission are mentioned below.

- Identifying laws that are no longer relevant and can be repealed immediately.
- Identifying laws that are not in tune with the current climate of economic liberalisation and require changes.
- Identifying laws that require changes and to make recommendations as to the changes.
- Considering suggestions given to it by other ministries/departments regarding revision or amendment of laws.
- Suggesting measures for the speedy redressal of grievances of citizens, in the legal domain.
- Studying laws that affect the poor and also conducts post-analysis of socio-economic laws.
- Recommend the enactment of new laws that may be needed to implement the DPSPs and to achieve the objectives of the Constitution as formulated in the Preamble.
- Give its views on any matter connected with law and judicial administration, that could be referred to it by the Law Ministry.
- With respect to eliminating delays, reducing costs and ensuring a quick clearance of arrears, without affecting the principle of justice and fairness.
- With respect to simplifying procedures and eliminating technicalities.
- With respect to improving the standards of administration of justice.
- Consider requests for providing research to foreign countries as referred to it by the government through the Law Ministry.
- Studying the existing laws with respect to gender equality and giving recommendations thereof.
- Studying the effects of globalisation on unemployment, food security and suggest measures for protecting the interests of the marginalised and the vulnerable.
- Prepare and submit reports on all issues and subjects regarding the research undertaken by the Commission for effective steps to be taken by either the central or the state governments.
- Perform any other function which may be assigned to it by the Union Government.

2. Role of Judiciary in Expanding Horizons: Public Interest Litigation

Ubi Jus, Ibi Idem Remedium is a Latin term which means that where there is a right, there is always a remedy. Legally a right means the standard of permitted action by law. The remedy for enforcement of Rights guaranteed under the Constitution of India is embedded in Article 32 and 226 of the Constitution. It confers power upon the Supreme Court and the High Courts to issue writs in the nature of Prohibition, Habeas Corpus, Mandamus, Certiorari and Quo Warranto. Any person whose right has been infringed can approach the Supreme Court under Article 32 or the High Courts under 226 for the enforcement of such infringed rights. One of the methods adopted for enforcement of such rights is through Public Interest Litigation which was adopted by the Judiciary in the Late 1980s whereby any public-spirited person acting bonafide can come forward to further a cause for a particular class of the society namely the weak, the deprived and the illiterate. Such actions must be public interest and must not be for any personal gains, private profits or political motivation. The judiciary has played an exemplary role in the expansion of Public Interest Litigation by relaxing the rule of locus standi and at the same time had cautioned against the abuse of such relaxation. The Courts through Public Interest Litigation has introduced a new dimension to our public law. It is an instrument that allows citizens to bring corrupts individuals to the public view and secure justice for the common man. With that being said there have also been a lot of petitions filed in private interest rather than the public interest. This constitutes a serious problem where a method adopted for addressing the rights of the poor and the deprived are used more for publicity or private purpose.

Development and Expansion of Public Interest Litigation:

The landmark innovation of Public Interest Litigation was an important contribution of Judicial Activism and the role of the judiciary had expanded considerably with the help of Public Interest Litigation. As observed by Justice Bhagwati, "it is the duty of the Court to innovate new methods and strategies to provide access to justice to large masses of people who are denied basic human rights."Since then the courts have been flooded by PIL'S. In *Hussainara Khatoon vs. the State of Bihar(1979)*, the Court declared that the accused's right to speedy trials and free legal aid is contained as a right under article 21 of the Constitution of India. In *D.K. Basu vs. State of West Bengal(1996)*, the Supreme Court issued detailed guidelines for arrest and detentions of persons and severely criticized the instances of Custodial Death and regarded it to be one of the Worst Crimes in a Civilised Society to be governed by the Rule of Law.

In *Sheela Barse vs. Union of India(1988)*, the Court directed the State Government to set up necessary remand houses and observation homes where children accused of an offence could be accommodated pending investigation and trial. With the expansion of the locus standi rule, more cases relating to other social issues came to be filed in the Court. The emergence of Public Interest Litigation led to other landmark innovations and has become a potential weapon for enforcement of public duties resulting out of public injury. This also led to the evolution of the Epistolary jurisdiction of the Indian Supreme Court which is a unique feature of Indian Supreme Court and means that mere letters addressed to the Court can be treated as a writ petition in cases where there is a gross violation of fundamental rights.

Public Interest Litigation has played an exemplary role in the area of environmental protection as well. During the period from 1985 onwards, an era of litigation for environment protection commenced with the need for protecting and preserving the environment from degradation and destruction. The Court has observed that apart from economic development, protection of environment and ecosystems are important as well.

In the *Oleum Gas Leak Case(1985)*, a PIL was filed for the closing of Shri Ram Fertilizers from where the oleum gas had leaked. The court here applied the doctrine of absolute liability and stated that any enterprise engaged in any sort of dangerous activity is absolutely liable to compensate all persons who were affected by such gas leak.

In the *Taj Trapezium Case(1984)*, a PIL was filed for the protection of Taj Mahal from the pollution arising out of the industries present within the Taj Trapezium Zone. The Supreme Court ordered the closing down of all the industries functioning within the Taj Trapezium Zone and ordered that the industries functioning within the zone be relocated as per the Agra Master Plan. In the *Kanpur Tanneries Case(1985)*, a PIL was filed regarding the pollution of the river Ganga by the discharge of effluents from tanneries. The Supreme Court ordered that the tanneries be closed down and held that such closing down may cause poverty, unemployment, etc. but the health and safety of the people mattered most. Public Interest Litigation has also played an important role in policymaking. There were numerous PIL's filed in the Supreme Court whereby certain legislations were enacted for the welfare of the society.

In *Vishakha vs. the State of Rajasthan(1997)*, a PIL was filed in the Supreme Court calling for the need for enacting a law to protect women from sexual harassment and recognition of their rights which are guaranteed to them under the Constitution of India. A three-Judge bench of the

Court framed certain guidelines for the protection of women from sexual harassment and these came to be known as the Vishakha Guidelines which prompted the government to enact the Sexual Harassment at Workplace (Prevention, Prohibition & Redressal) Act, 2013. In *Delhi Domestic Working Women's Forum vs. Union of India(1994)*, a PIL was filed to uncover the pathetic plight of domestic servants who were subjected to indecent sexual assault by seven army personnel. The Supreme Court has laid down suitable guidelines in this regard to provide amicable assistance to rape victims.

In *Shreya Singhal vs Union of India(2015)*, a PIL was filed regarding the constitutional validity of section 66 A of the Information Technology Act, 2000. The court struck down section 66A of the Information Technology Act stating it to be in violation of article 19(1)(a) of the Constitution. In *Lily Thomas vs. Union of India(2000)*, a PIL was filed regarding section 8(4) of the Representation of Peoples Act, 1951 contending that the said section was in contravention to article 14 of the Constitution. The Court held section 8(4) to be ultra vires to the Constitution and held that any MP, MLA who was convicted of a crime and punished with a term of two years would lose his seat in the house.

Public Interest Litigation makes sure that the rights of the people who are being infringed are restored back. It has also proved to be a strong and effective weapon for enabling the Court to discover several scams and corruption cases that were prevalent in public life and punishing those persons who were guilty of such practices. Not only public-spirited individuals but organizations too have filed numerous PIL's in the Court requesting inquiry and punishment for those people who bypassed the laws and misused their official position in public life. Public Interest Litigation has made access to justice easier. It has helped the judiciary earn popularity as the saviour of democracy, protector of Rule of Law and became an efficient tool for social transformation. It has also ensured that the legislature and executive do not exercise excessive powers by keeping a check on its functioning thereby upholding the doctrine of Separation of Powers.

3. Plea Bargaining:

In INDIA, Plea Bargaining was introduced in the Criminal Procedure Code through Chapter XXIA by Criminal Law (Amendment) Act i.e. Act 2 of 2006 containing Section 265A to 265L. Under Section 265A of the Code. Plea bargaining is not applicable for the offences for which punishment is life imprisonment or death sentence. Its only applicable for the offences for which

punishment is less than 7 years. Further offences affecting socio-economic condition of the country or committed against women or child below 14 years have been excluded from the ambit of Plea Bargaining. Pursuant to this, Central Government had immediately notified list of 19 Acts of Parliament declaring offences therein as affecting the socio-economic condition of the country.

Before the Amendment Act, the Indian judicial system did not recognize the concept of plea bargaining and thus opposed it. Pre-amendment, the apex court repeatedly declared that the concept was against the public policy.

In Murlidhar Meghraj Loya v. State of Maharashtra (1976) the Indian Supreme Court held, “It is idle to speculate on the virtue of negotiated settlements of criminal cases, as obtains in the United States but in our jurisdiction, especially in the area of dangerous economic crimes and food offences, this practice intrudes on society’s interests by opposing society’s decision expressed through predetermined legislative fixation of minimum sentences and by subtly subverting the mandate of the law.” In KasambhaiAbdul Rehman Bhai Sheikh v. State of Gujarat (1980) Supreme Court held, “The practice of Plea Bargaining was unconstitutional, illegal and would tend to encourage corruption, collusion and pollute the pure fount of justice.” In State of Uttar Pradesh v. Chandrika (2000) the Supreme Court held, “It is settled law that on the basis of plea bargaining Court cannot dispose of the criminal cases. Mere acceptance or admission of the guilt should not be a ground for reduction of sentence. Nor can the accused bargain with the Court that as he is pleading guilty sentence be reduced.”

However, the Indian judicial system saw a change in the recognition of the concept of plea bargaining after 154th Law Commission Report, which recommended the introduction of the plea bargaining. The committee took views from judges, lawyers, bar associations etc. The recognition of the plea bargaining has made a deep impact over the years and has become an essential part of criminal jurisprudence in India. While deciding challenge to the concept of plea bargaining, the division bench of the Gujarat High Court, in State of Gujarat V. Natwar Harchanji Thakor (2005), has held, “the very object of law is to provide easy, cheap and expeditious justice by resolution of disputes, including the trial of criminal cases and considering the present realistic profile of the pendency and delay in disposal in the administration of law and justice, fundamental reforms are inevitable. There should not be anything static.”

There are three types of plea bargaining: Charge Bargaining: Negotiating for dropping some charges in a case of multiple; charges or setting for less grave charge is called charge bargaining. Sentence Bargaining: Where the accused has no option of admitting guilt and setting for lesser punishment is called sentence bargaining. Fact bargaining: Negotiation which involves an admission to certain facts in return for an agreement not to introduce certain other facts is called fact bargaining.

Plea bargain differs from 'guilty plea' as the facts accepted by the accused during a plea bargain cannot be used against him anywhere in a legal proceeding under Section 265K of the Code. The accused may get less punishment, be released on probation or admonition under Section 265E of the Code. No appeal lies against such judgment except Special Leave .

Appeal under Article 136 and Writ Petitions under Article 226 & 227 of the Constitution of India under Section 265G of the Code. Less time and money are consumed ending uncertainties involved in a criminal trial. The victim may also get benefitted by plea bargaining for the same may provide quick justice for victim and fast compensation.

The cons regarding plea bargain are that the same may hamper with victim's right to fair trial, involvement of coercion by the investigating agencies and corruption in the process. Section 265C provides for guidelines for mutually satisfactory disposition, where a victim is called to participate in a meeting with accused to work out disposition, along with his pleader. However, knowing the nature of prevalent corruption, unless all the processes and proceedings pertaining to plea bargain are recorded and supervised by Magistrates, the chance of coercion of victim would be writ large. Similar is true for persons who are falsely implicated in offences and are forced to admit crimes and thereafter further forced for plea bargain under Section 265B of the Code to justify State's action against such persons.

To sum up, while plea bargaining is beneficial to the accused and victim of a crime, enough safeguards are required to be placed to stop possible abuse of this process. Plea bargain is a pragmatic vision to overcome crowded criminal courts and prisons and a potential way to improve litigation efficiency and rationalize judicial resources, infrastructure and expenses. Lack of infrastructure, facilities and inadequate appointments of judges is a cry far from over for last so many decades, Plea Bargaining may act as a stark silver lining in the criminal justice delivery system of India, if rightly propagated and applied, therefore benefitting millions of undertrials

languishing in jails for defined crimes and saving high expenses and space borne by State in maintaining them.

4. Right to Information Act: Problems and perspectives:

1. Many ministries and departments of the Government of India seem to have appointed multiple public information officers (PIOs). This results in citizens having to run from office to office seeking out the correct PIO ñ sometimes in vain. Clearly there should be a single window approach in each department/ministry so that harassment to the citizen is avoided. Perhaps the Department of Personnel and Training (DoPT)- which, incidentally, itself has over 40 PIOs ñ could be requested to send out a circular to all central/state government public authorities asking them to ensure that there is a single window approach in receiving applications and appeals under the RTI, in order to prevent harassment to the people.

2. There are also problems regarding people's access to PIOs. In many departments the PIO can only be met after a security pass has been obtained. However, in case the PIO is not in his/her seat, the security desk does not issue a pass. Therefore, people have to sometimes wait for hours till the PIO returns to his/her seat. Considering the PIOs are also performing other functions that could keep them away for long periods of time, each office could authorize the cashier or the person designated to collect the fee to also accept the RTI form and issue the acknowledgement along with the receipt. This could also be taken up with the DoPT.

3. There appears to be a lot of confusion about the appointment of Assistant Public Information Officers (APIOs), both at the central and state levels. The RTI Act says: "Öevery public authority shall designate an officerÖ.at each sub divisional level or other sub-district level as a Central Assistant Public Information Officer or a State Assistant Public Information Officer, as the case may be, to receive the applications for information or appeals under this ActÖ."(5)2)). However, in many states and in some central departments, APIOs are being appointed in the same offices where the PIOs are already located. Though there has been a welcome initiative from the DoPT to designate postal officers as central APIOs, the confusion still seems to prevail. The DoPT could be requested to issue the necessary instructions to the various public authorities.

4. It has also been reported that various ministries and departments of the government are insisting that they will only accept the specific forms that they have designed. The law, however, does not provide for a form and does not authorize the public authorities to prescribe forms.

Therefore, whereas they can have recommendatory formats, they must accept all requests even if they are on plain paper. Perhaps the DoPT should be asked to send a circular accordingly.

5. Some Public Authorities are not only making their own forms but also laying down conditions that are contrary to the law. For example, the Ministry of Home Affairs demands proof of residence with applications, while the Ministry of Environment and Forests states that information only for three years will be given at a time! The DoPT should be requested to send out a circular clarifying that the RTI Act does not require any form and that people are free to apply on plain paper, as long as all the required information is included. The DoPT could also caution the various public authorities not to seek information that is at variance with section 6(2) or any other provision of the Act.

6. The DoPT, despite earlier assurances, seems to have sent out no guidelines. The NCPRI had drafted a detailed set of rules and sent them to the NAC, which had forwarded them, after some discussion, to the DoPT. When some of us met the Minister Personnel, he had promised that most of these draft rules would be converted into guidelines and widely circulated by the DoPT, well before the act became operational. However, nothing has happened and the DoPT could be requested to urgently circulate the required guidelines, especially in light of some of the problems listed above.

7. There are central public authorities all over the country. Also, people living in the states would also sometime seek information from the Central Government and its agencies. It would, therefore, seem impractical to locate all the central information commissioners in Delhi. Instead, it would be a good idea to have them located in different regions to facilitate filing of appeals and complaints by people in that region.

Chapter6: Alternative Approaches to Law

Topics for study:

1. ***The Jurisprudence of Sarvodaya***
2. ***Socialist through on Law and Justice***
3. ***Naxalite and Anti Insurgent Movement***
4. ***Concept of Gram Nyayalayas***

Introduction:

The law has been instrument of social change. Time and again it was proved by history. India is a culminating point of many cultures and had seen many rulers. Thus the law also kept on changing. Sometimes it was harsh and sometimes people friendly. But the law was and is always a necessary instrument to maintain law and order in the society. The courts are the byproducts of law.

It is always thought that a wise man should not approach the courts. It is not true that there is not proper justice done in the court, but it is true that legal proceedings take too much of time as well as money spent is also high.

Therefore there was always a medium way to sort the problems through institute alternate to the legal system. Because law must not be what it is it must be what it ought to be. The ultimate goal of law is justice and if it is delayed. That truly means justice delayed is justice denied. Gandhiji was exponent of Sarvodaya movement and his follower Vinoba Bhave and Jayaprakash Narayan lead it further. The difficult problems like those of land less labours, the dacoits they found a solution. But after them the present leaders are unable to look into the problem of Naxalites. However justice to the grassroots can be now achieved through the gram nyayalayas which is new concept. And it is gaining popularity, which is the sign of a mature society.

1. The Jurisprudence of Sarvodaya:

Sarvodaya aims to establish a new social order on the basis of truth, love and non-violence. It is highly critical of the state and its government, because both are based on force and coercion. Human society must be free from coercive institutions. As such, Sarvodaya aims towards the creation of a social order free from every form of authority. Its ultimate aim is to establish a Stateless society where “the ruler and the ruled will be merged in the individual”. The main features of Sarvodaya social order, as expounded by Vinoba Bhave, are as under:

1. No power should be dominant in society; there should only be a discipline of good thought;
2. All faculties of the individual to be dedicated to society which must provide the individual with growth and development; and
3. The moral, social and economic values of all the callings performed honestly should be the same Sarvodaya aims towards the welfare and rise of all individuals. Man will be the center of such a society, but self-interest will not be the basis of social organization. In an ideal social order no one should be downtrodden. An ideal social order is one where "love is to reign and cooperation to prevail". It is that order where 'there will be freedom for all and utmost equality; there will be no class and castes; no exploitation nor injustice; and equal opportunity for each for fullest development shall prevail'.

Mahatma Gandhi's concept of Sarvodaya:

Gandhism and Sarvodaya are inter-related to each other, the former is the essence of the latter. Gandhism is associated with the teachings and writings of Mahatma Gandhi. Gandhi's mission in life was to regenerate faith and trust in mankind, to reinstate the freedom of man, and to renovate the dignity of human beings. Gandhian way of life is closely related to the doctrine of Sarvodaya. Gandhi visualizes an integral development in society which is realised through Sarvodaya. Sarvodaya is the name Gandhi gave to his mission embarrassing betterment of humankind.

Socialist through law and justice:

Socialist Nation: Socialist nation means the policies of a country influenced with socialist thoughts. The term 'socialist' has been inserted in the preamble of Constitution by 42nd Amendment Act, 1976. This Amendment has merely explained the concept, which was already embedded in constitution. The word 'socialism' is used generally in democratic as well as socialistic constitutions. 'Socialist' means in general some form of ownership of the means of production and distribution by the State.

The degree of State control will determine whether it is a democratic State or socialistic State. India has chosen, however, its own brand of socialism, i.e., mixed economy.

The word "socialist" implies a system of Government in which the means are wholly or partly controlled by the State. India's socialism is not a communist socialism but it is er a democratic one. The preamble has embodied both, socialism and democracy. This is a unique combination and the combination has been criticised by many writers. It has been said that democracy and

socialism cannot co-exist. However, this criticism is not justified. In the view of modem socialist thinker, India emerging as a 'Welfare State', would prevent the excess of exploitation and allow free competition without destroying individual initiative and without detriment to the political freedoms. The Hon. Supreme Court in Excel Wear's case held that the addition of word 'socialist' might enable the courts to lean more in favour of nationalisation and State ownership of an industry. But so long as private ownership of industries is recognized and governs an overwhelming large proportion of our economic structure, the principle of socialism and social justice cannot be pushed to such an extent so as to ignore completely, or to a very large extent, the interest of another section of the public; namely, the private owners of undertaking.

The Hon'ble Supreme Court, in D.S. Nakara 's case held that "....the principal aim of a socialist State is to eliminate inequality in income and status and a decent standard of life". Court further observed that "....the basic framework of socialism is to provide a decent standard of life to the working people and especially provide security from cradle to grave. This amongst others on economic side envisaged economic equality and equitable distribution of income. This is a blend of Marxism and Gandhism leaning heavily towards Gandhism socialism. This is the type of socialism which we wish to establish in our count.The Constitution of India declares India to be a socialist, republic as well as a secularcum-sovereign democratic republic. The preamble of a Constitution enlightens the path to which is to be follow by the State to set-up a sovereign, socialist, secular, democratic entity. Although, theconcept of "socialism" has not been defined in the Constitution of India, it is commonly understood to mean "from each according to his ability to each according need". After the induction of the word "socialism" under the preamble of the Constitution (42nd Amendment), the State has aimed to eliminate inequality in life of people with the object of providing decent standards of life.

An enquiry through constitutional debates on the right to property. A Debate on right to property in India:

Originally "right to property" was a fundamental right. Under Art. 19(1) (f) and 31 the constitution guaranteed to the Indian citizen the freedom to acquire, hold and dispose of property. However, the State by the Art. 19 (5) was permitted to impose by law reasonable restrictions on this right in the interest of general public or for protection of the interest of any Scheduled Tribe. Anyone could invoke the Supreme Court under Art.32 on the violation of right

to property. But, Constitution (44th Amendment), has converted this right from fundamental right to constitutional right by inserting a new Article in the form of Art.3 00-A therefore, consequently, Art. 19(1) (f) & (5) and Art.3 1 have been deleted. The effect of the Amendment is that a person will not be entitled to invoke the writ jurisdiction of the Supreme Court under Art.32 for violation of his right to property under Art.300 A. He will however, be entitled to invoke the jurisdiction of High Court under Art.226.

The Art. 300-A reads as follows —"No person shall be deprived of his property save by authority of law". Thus the only condition to be complied with for the acquisition of private property right is law of legislature. Where the property of any one will be taken away appropriate compensation will be paid. No one can be deprived of the possession of any property without due process of law which is also the mandate of this Article. The authority of law must mean 'due authority' of a 'valid' law (Jilabhai Kochar case).

Abolition of the right to property as a fundamental right has been criticized by an eminent authority on Constitution Mr. H.M. Seervai. He opinioned that "the abolition of the right to property as fundamental right would destroy the other fundamental rights which are embodied in the constitution", he further states that the fundamental right to freedom of speech and expression including the freedom of press and freedom of association, the freedom to move freely throughout the territory of India to settle in any part of India, to carry business, profession or vocation in any part of India would be destroyed if the right to property, is not guaranteed as fundamental right and the obligation to pay compensation for private property, acquired for public purpose is not provided for. After the amendment and insertion of Art., 300-A, the right to property is more definitely and largely secured under the constitution, than ever before. Now, the State will not be able to acquire private property without showing 'public purpose' and without paying 'full compensation' or the 'market value' of the property. If any amendment in the existing position is to be brought in, now it will not only require the procedure laid down in Art.368, but also the consent of the States as prescribed in the proviso to Art-368. Also, under Entry-42 of the Concurrent List Parliament and the State Legislatures have power to legislate on "acquisition or re-acquisition of the property". Although, the Government has an inherent right to take andappropriate the property belonging to individual citizen for public use.

This power is known as Eminent Domain. It may be out of' any publicnecessity. Keeping in mind the famous maxim Salus populi est superemalex, which means that the welfare of the

people or the public is theparamount law and is also on the maxim necessitta public major estquam, which means public necessity is greater than the private observed
Justice B. K. Mukherjee (in Bishambers case). Thus property may be needed and acquired under this power for Government for office, libraries, and slum clearance projects of public interest, public schools,and hostels for students, colleges and universities, public highways, Public Park, railways lines, telephone lines, dams, drainage, sewer and water systems, airport and many other project of public interest, convenience and welfare schemes. That the existence of such power(compulsory acquisition of land by State) has been recognised in thejurisprudence of all civilised countries as conditioned by public necessity and payment of compensation observes the Hon. Supreme Court inKameshwar Sings case. According to Section 4 of the Land Acquisition Act, 1894 ;
Whenever it appears to the Appropriate Government that land in any locality is 'needed' or is 'likely to be needed' for any 'public purpose' or for a 'company', a notification to that effect shall be published in the Official Gazette as well as in two daily newspapers circulating in that locality of which at least one shall be in the regional language. Also the Collector shall cause public notice of the substance of such notification tobe given at convenient places in the said locality. , the date of publication
of the notification shall be considered as the last of the date of such publication and of such public notice. Before the acquisition is held to be valid, it had to pass the test of Art. 19 (5) on the ground of procedural reasonableness as held in R.C. Cooper Case. Depriving a citizen of his private property can be challenged on the ground that it does not provide for payment of compensation and is not for 'Public purpose'. In that case, it has been held that the 'law' and procedure enacted and prescribed for the deprivation of personal libertymust be just, fair and reasonable. So, if a law under Art.300-A does not
provide for taking away private property of an individual for publicpurpose and for payment of compensation, it will be an unjust, unfair andunreasonable law and hence can be declared unconstitutional and void.
Non-payment of compensation can be challenged as expressed in thedecision of the Supreme Court in Maneka Gandhi's case and a series ofcases following it.
Sarvodaya builds a new society on the foundations of moral values. The society so established shall head towards integral welfare of all human beings. After the Independence of India,

Gandhi's devoted disciple Acharya Vinoba Bhave established a Sarvodaya Society. Later on, Jaya Prakash Narayan joined the Sarvodaya movement. The Sarvodaya movement aims to reconstruct social and political order on the ideals and teachings of Mahatma Gandhi. It a means to give the Gandhian way of life a realistic profile. Vinoba Bhave the exponent of Sarvodaya movementTo continue the ideology and mission of Gandhi, 'Sarvodaya Plan' was drafted in 1950 which intended to achieve a non-violent, non-exploitative, cooperating society with equal opportunity for all without distinction based on caste or class. It set forth the policy of "tiller to be the owner of land"redistribution of excessive land, and formation of cooperative farms by accumulating uneconomic holdings. It contemplated protection of minimum wages and formation of multipurpose village cooperatives.

It divided industries into centralised and decentralised ones. The former was to be owned by autonomous corporations or cooperatives with workers' participation in management and the latter by individuals or corporations. Banking and insurance ought to organise mass saving and control of investment. 50 per cent of the public revenue might be spent by the village Panchayat. Vinobaji's Bhoodan and Gramdan movements are to be understood as specific schemes of Sarvodaya movement. Bhoodan, according to him, was not charity, but a realisation of right, a method of equitable distribution and an introduction of new values to the society. Eminent Gandhian puts it as; it was an experiment in non-violent economic revolution, a trusteeship theory put into action. And in words of Vinoba, "through the medium of land donation campaign, thoughts of the religion of humanity are taking roots in the country." Donation had the dimension of equal division and distribution and attitude of non-accumulation. He said, "Distribution of land is not our ultimate goal, but means to the goal. The goal is social revolution. The government is a servant. The people are the masters. I am trying to convince the masters. If they are convinced, they will get their servants do the needful.." for him the government was a bucket and people were the well. If there would be water in the well, then only then could the bucket be filled.

Acharya Vinoba well known as the Walking Saint of India, conducted series of pilgrimages convincing the landoners with cultural reasons to donate one sixth of their land to the landless. Jayaprakash Narayan in his book Total Revolution (Vol.-II) notes that, in Telangana area, where communists claimed to have distributed 30,000 acres of land after two and a half years' of violence resulting in 3000 murders and destruction of huge public property, Vinoba Bhave

activated Bhoodan movement and could collect 1.5 million acres of land. In U.P. he collected five Iakh acres. Bhoodan movement made moral appeal to the landed class to donate land, and provoked the landless not to cooperate with those landlords who did not donate. According to one source, donation of land under bhoodan was 3.46 million acres up to 1954, which made a slow progress reaching 4.26 million acres in 1967. The land distributed was 1.19 million acres because of unfitness of 44 per cent of land for cultivation and withdrawals by donors. The bhoodan figure in states ranged between 21 lakh acres in Bihar and 211 acres in Jammu and Kashmir.

The contribution of Bihar, M.P., U.P., and Rajasthan aggregated to 85 per cent of donated land.

Jayaprakash Narayan writes, about the role of law in the process of change contemplated in bhoodan movement, “Vinoba is not against legislation. But he is impatient and does not want to wait till there is legislation. He says he is clearing the road for legislation. There must be public opinion created before a law can be made. It would come sooner if his message spreads to every village.” The legal procedure for bhoodan included owner’s declaration before Revenue Officer, registration of gift deed under the Indian Registration Act, distribution of donated land to the landless families by theSarvoday Mandal with title subject to a condition not to sell, lease or mortgage. In order to help the poor donees to cultivate the land, sampatti dan and sadhan dan (donation of money and equipments) were also popularized by Vinoba.

In addition to resolving the problem of inequality in possession of land, bhoodan was aspired to release and bring into play the moral and social forces for the regeneration of society. Gramdan abolishes private proprietorship of land, and recognises community ownership and cooperative farming. The revival of the concept of common property resource by community’s participation rather than by imposition from the top is part of the process building the rural economy by sharing of ownership, work and benefits.

Socialism of Sarvodaya was unique through voluntary efforts.

The Programme of Sarvodaya

Though Sarvodaya is a comprehensive movement, yet one can trace the basic items in its programme. They are—

1. to establish communal peace and harmony
2. to remove Untouchability

3. to eliminate the caste system

4. to implement prohibition

5. to encourage Khadi and village industries

6. to make the village a unit of self-government

7. to spread new education

8. to propagate the ideals and rights towards women's equality and dignity

9. to develop Indian languages

10. to remove the provincial and sectarian feelings of narrowness

11. to take steps towards the development of agriculture and labour organizations

12. to provide service to tribes and other backward and weaker classes

13. to provide other welfare activities to society in general.

Jayaprakash Narayan, Sarvodaya and Surrender of dacoits

(a)Jayaprakash Narayan's notion of total revolution

Jayaprakash Narayan visualized the plan of total revolution as continuity or rather a new version concept of Sarvodaya. By "total revolution" he meant inclusive revolution affecting all aspects of social life including individual life. The nature of total revolution was to begoverned by the needs of the time and situations pertaining in the country. He proposed to bring total change in civic life, civic relationships, civic institutions, and ultimately "beyond the sphere of civic life we enter larger spheres of the state of the national life". He believed there was need to bring changes in innumerable spheres.

According to him total revolution was a combination of seven revolutions-

1. social,
2. economic,
3. political,
4. cultural,
5. ideological or intellectual,
6. educational and
7. spiritual.

Economic revolution meant revolution in the structure and institutions of society.

Since man's material and spiritual needs were to be fulfilled within a moral framework, he suggested modest living as the best solution at the individual level. At the village and city level, moral-spiritual constraints arising from natural-environmental framework were to operate on material development. The economic framework for development that Jayaprakash Narayan contemplated was one that aimed at human welfare; he suggested 'broad spread ownership of industries and workers' participation' in management. Rural schools were to cater to the requirements of the countryside development. He had conceived definite principles of socialized economy suitable to the Indian circumstances. Concerned about the role of weaker sections and religious minorities in total revolution, Jayaprakash Narayan preached the Sarvodaya attitude of enhancing their strength by their effective organizations which was to be preceded by change in the attitude of stronger sections by taking more benevolent view of
their responsibilities and obligations to the weaker sections and minorities.

(b)Jayaprakash Narayan and Sarvodaya:

His view was that protection to landless laborers; better wage structure as well as their social participation -which must be meaningfulwas preconditions to development. He conceived total revolution to leading light for eradication of caste system. Buy which he dreamt to bring dynamism and mobility in social structure; this was the process which the social reformers advocated from days immemorial. Removing the persistent impediment in the form of 'caste system' could bring
Cultural Revolution in rural society as India lived in villages.

To ensure direct and effective participation of people a unique demand for restoration of Indian polity was naturally. According to him, the Modem Western democracy was based on a 'negation of the socialnature of man and the true nature of human society'. This democracy conceives of society as a non-living 'accumulation' of separate individuals. The differences of religion, caste, community, language, culture have aggravated Indians to ambush on each other with all kinds of violence. Disunity of people had weakened the polity in the past, and could hardly be continued. Therefore Jayaprakash Narayan preached for elementary humanity for developing India as a decent community.

1. Naxalite and Anti Insurgent Movement

Jayaprakash Narayan and surrender of dacoits:

In his view for the problems that involve 'human beings', entirely legalistic or coercive solutions are not proper. His solution to the nuisance of Chambal dacoity consisted in human treatment of them to convert them into good citizens. Jayprakash Narayan was a great organizer and motivator. He has previously organised Jana Sangharsha Samiti and Chhatra Sangharsha Samiti at Gujarat and Bihar in pre-emergency days to combat corruption, lawlessness and oppression of the poor, he demonstrated the potentiality of people's control over government. Also, regarding implementation of agrarian laws and struggles against benami transactions and other devious methods of land grabbing, he constituted struggle committees in each panchayat in order to unearth facts and remedy'the grievances. His approach was central to his 'people oriented strategy'

Surrender of dacoits:

Dacoity means a robbery committed by five or more persons. Dacoity is a crime under Indian Penal code, 1960. Preparation for dacoity and to be member of a gang of dacoits is also punishable under IPC. The dacoits considered looting as a profession and the gangs were organized, reports The Hindu magazine. It also reports that, if a person had any dispute and killed anyone in a fury or committed a murder, would join the gang instead surrendering the police. Chambal's gun culture propelled due to the caste and class system as well as geographical condition. For nearly 1000 years Chambal had been a homeland to the feared dacoits—professional bandits for whom murder and robbery were a tradition as well as a way of life. Chambal's dacoits had captured the public imagination as the royal rebels (baaghi), who helped the helpless; the long-suffering farmer who took up arms against the rich feudal lord; the poor goatherd who could find no other escape from state atrocities; and the woman who swore blood-revenge againsther rapists. Because of the Robinhood character of the key leaders, they had some supportive social base. They acted as parallel police in providing security to the poor villagers who believed in them.

When the conventional police methods had persistently failed to control the dacoits, Acharya Vinoba Bhave gently persuaded 20 bandits to give themselves up in 1960 pointing out that everyone had both good and bad propensities and sins of life are burnt out by repentance and by following righteous path just like the darkness of cave is dispelled even by a small candle. He compared the rebellious character of dacoits to the rebellion against the social order infested with

poverty, inequality and injustice and preached for non- accumulation of wealth and donation of land to uproot the evil. He pleaded with the state authorities, "It is unbecoming of a welfare state to try to solve the dacoit-problem with the help of the police. It should be tackled as a human problem... Treat them as human beings."

In 1972, a large number of dacoits surrendered in the Chambal Valley and Rajasthan owing to an important role played by Gandhian organizations under the leadership of Jayaprakash Narayan. Jayaprakash Narayan assured them that they won't be hanged i.e. the punishment under IPC would not be implemented. The Indian Government promised commutation of all death sentences, take care of families of dacoits and provided scholarships for their children. In response to the desperate poverty that led many of the dacoits to lives of violence the redevelopment program for the Chambal valley was planned by the government. After the multiple surrenders, the Chambal valley enjoyed a period of relative peace. As a result, agriculture and other development activities flourished. Most dacoits who did surrender lived peaceably, farming the 30 bighas of land that the government allotted to them as a measure of rehabilitation. The once turbulent Chambal became known for its prosperity. Compassionate advance put forward by voluntary action and governmental support to rehabilitate the surrendered dacoits within the legal framework provided a comfortable solution. What could not be accomplished by police force could be achieved by an approach of benevolence, correction and amelioration. How the Sarvodaya principle and procedure can supplement the basic aim of the legal system is fruitfully confirmed in the Chambal incident.

Concept of Grama Nyayalayas.

The Gram Nyayalayas Act was passed in January 2009 (got President's assent on 7 January 2009) to provide for the establishment of Gram Nyayalayas at the grass roots level for the purpose of providing access to justice to the citizens at their doorsteps and to ensure that opportunities for securing justice are not denied to any citizen by reason of social, economic or other disabilities and for matters connected therewith or incidental thereto.

The latest in the reforms in the structure of the Indian judiciary is the Gram Nyayalayas. The State initiated other means to dispense justice such as Fast track Courts and Lok Adalats to address the colossal backlog of cases in the judiciary. Considering the sensitive issues of family the Family Courts were instituted in 1984 which also promotes speedy disposal, sensitive approach and relaxation of strict rules of evidence and procedure.

The Gram Nyayalayas seems to be a combination of the objectives of several special courts in disparity to the regular stress on the adversarial trial. The 114th Law Commission of India back in 1986 proposed the Gram Nyayalaya as a different court. The report recommended the concept of the Gram Nyayalaya had two objectives. While addressing the pendency in the subordinate courts was the major objective, other objective was the introduction of a participatory forum of justice. To make it participatory the Law Commission recommended that the Magistrate be accompanied by two persons who .shall act as Judges, that the legal training of the Magistrate will be complemented by the knowledge of the lay persons who would bring in the much required socio-economic dimension to adjudication. It was proposed that such a model of adjudication will be best suited for rural litigation. However the participatory aspect has been set aside in current Act and we find the Gram Nyayalaya manned by the regular Judicial First Class Magistrate.

The Law Commission also observed that such a court would be ideally suited for villages as the nature of disputes coming before such a court would be 'simple', 'uncomplicated' and obviously would be easy for

solution and that such disputes should not trapped in procedural claptrap.

This act extends to whole of India except the State of Jammu and Kashmir, the State Nagaland, the State of Arunachal Pradesh, and the State of Sikkim and to the tribal areas of country. The Tribal area under this act means the area specified in Part I, II, and III of table below paragraph 20 of the sixth Schedule to the Constitution within the State of Assam, the State of Mehghalaya, the State of Tripura and the State of Mizoram, respectively.

Establishment of Gram Nyayalaya :

The State Government shall, after consultation with the High Court establish one or more gram Nyayalaya for every Panchayat. Such establishments shall be in addition to the 'courts established under any other law for the time being in force'. The State Government shall, in accordance with this act specify the local limits of the area of jurisdiction, as well as increase or reduce or alter such limits of a Gram Nyayalaya.

The Nyayadhikari, shall preside the matters of dispute in the Gram Nyayalaya, and shall be appointed in consultation with the High Court.

Any person eligible to be appointed as a judicial magistrate of first class shall be qualified to be appointed as Nyayadhikari. It is specifically mentioned in the act that appropriate representation

shall be given to the members of Schedule Castes, the Scheduled Tribes, women and such other communities as may be specified in the notification by the State Government. Also the salary and other allowances and the terms and conditions of services shall be as of the Judicial Magistrate first class.

The Nyayadhikari shall not preside in the matters which he has interest or is otherwise involved or is related to any party to such proceedings. If it is so he shall refer the matter to the District Court or Court of Sessions, which shall subsequently transfer the matter to other Nyayadhikari. Jt shall be the duty of the Nyayadhikari periodically the village under his jurisdiction and conduct trials or proceedings. If the Gram Nyayalaya decides to hold mobile courts outside its headquarters it shall give wide publicity as to the date and place where it proposes to hold mobile court.

Jurisdiction of Gram Nyayalaya:

The Gram Nyayalaya shall exercise both civil and criminal jurisdiction in the manner and to the extent provided under this Act. And act according to the Code of Criminal Procedure, 1973 or the Code of Civil Procedure, 1908 or any other law for the time being in force. The Gram Nyayalaya may take cognizance of an offence on a complaint or on a police report and shall-

(a) Try all offences specified in Part I of the First Schedule; and

(b)Try all offences and grant relief, if any, specified under the enactments
included in Part II of that Schedule.

(c)Shall also try all such offences or grant such relief under the State
Acts which may be notified by the State Government under subsection (3) of section 14.

Civil jurisdiction.

The Gram Nyayalaya shall have jurisdiction to according to provisions
contained in the Code
of Civil Procedure, 1908 or any other law for the time being in force, and
shall

(a) Try all suits or proceedings of a civil nature falling under the classes of disputes specified in Part I of the Second Schedule;

(b) Try all classes of claims and disputes which may be notified by the Central Government under sub-section (1) of section 14 and by the
State Government under sub-section (3) of the said section. (2) The

pecuniary limits of the Gram Nyayalaya shall be such as may be
specified by the High Court, in consultation with the State
Government, by notification, from time to time.

I. Civil Disputes :

Disputes arising out of implementation of agrarian reform and allied statutes

1. Tenancies -protected and concealed and contested.
2. Boundary disputes and encroachment.
3. Right to purchase.
4. Use of commo'ñ pasture.
5. Entries in revenue records.
6. Regulation and timing of taking water from irrigation channel.
7. Disputes as to assessment.

II. Property Disputes:

1. Village and farm houses (possession).
2. Easements : Right of way for man, cart and cattle to fields and courtyards.
3. Water channels.
4. Right to draw water from a well or tubewell.

III. Family Disputes:

1. Marriage.
2. Divorce.
3. Custody of children.
4. Inheritance and succession — share in property.
5. Maintenance.

IV. Other Disputes:

1. Non-payment of wages and violation of Minimum Wages Act.
2. Money suits either arising from trade transaction or money lending.
3. Disputes arising out of partnership in cultivation of land.
4. Disputes as to use of forest produce by local inhabitants.
5. Complaints of harassment against local officials belonging to police,

revenue, forest, medical and transport departments.

6. Disputes arising under the Bonded Labour System (Abolition) Act, 1976 and the Protection of Civil Rights Act, 1955.

The Gram Nyayalaya must have jurisdiction to try all offences which can be tried under the Code of Criminal Procedure, 1973, by the Judicial Magistrate First Class.

Though undoubtedly, the Family Courts Act, 1984 has been enacted and brought into operation, since custody of children has a distinct local flavour, the Gram Nyayalaya must have jurisdiction to deal with matrimonial disputes arising in rural areas.

The Gram Nyayalaya would be a body for administration of justice, and a legislation for the same would squarely fall under Entry 11-A of the Concurrent List.

At the end of the trial, if the decision is not by consensus between the parties, the Presiding Judge shall draw a brief statement of the dispute, the evidence led, the decision and the reasons in support of the decision. It shall be signed by all the three Judges. In the event of a difference of opinion, the decision of the majority will be binding. On a question of law, the view expressed by the Presiding Judge shall be binding on the lay Judges.

If the Gram Nyayalaya finds that it has no jurisdiction, it may make over the case to the District Court having jurisdiction for transfer of the case to the Court having jurisdiction. As a first step, it is advisable to retain the procedure prescribed in the Code of Criminal Procedure, 1973 for trial of offences before the Gram Nyayalaya. An attempt, however, should be made to devise a still simpler procedure which may stand the test of Article 21 of the Constitution. The Evidence Act as such stricto sensu would not apply.

The parties appearing before the Gram Nyayalaya will be entitled to appear through lawyers of their desire both in civil and criminal proceedings.

But the Gram Nyayalaya shall not adjourn the case, or change the venue, toaccommodate the lawyer. The proposed National Legal Services Act should
assign two lawyers to be attached to each Gram Nyayalaya who would be
independent of party influence and who would assist as court officers in
disposal of the disputes, and also would be readily available to the parties if
they so desire.

The Gram Nyayalaya will have power to:

(a) Enforce the attendance of any person and examine him on oath;
(b) Compel the production of documents and material objects;
(c) Issue commissions for the examination of witnesses or if the witness is
unable to appear before it on account of physical incapacity; and
(d) Do such other things as may be prescribed.

The proceedings before the Gram Nyayalaya shall be conducted in the State language permitting the dialect of the locality to be used. Records shall be maintained in the State language and copies shall be furnished to those who desire the same. The decision shall be, if not by consent of the parties, recorded in the language of the court. No court fee shall be levied in the proceedings before the Gram Nyayalaya.

No appeal would lie against any decision of the Gram Nyayalaya except the one in which at the end of a criminal trial a substantive sentence is imposed.

A revision petition would lie to the District Court of the district in which the Gram Nyayalaya is functioning. Only errors of law can be corrected by this revisional forum. Even if it comes to the decision that another view is possible, it would have no jurisdiction to interfere with the decision of the Gram
Nyayalaya.

A decision by peers should not be interfered with by a court presided over by a Judge considering the matter from a purely technical legal approach.

An appeal would lie to the Sessions Court against the decision by a Gram Nyayalaya in a criminal case in which a substantive sentence of imprisonment has been imposed. The appeal would be both on questions of fact and of law.

The appeal should be dealt with according to the provisions of the Code of Criminal Procedure applicable to the appeals entertained against the decision of a Judicial Magistrate, First Class. Any other view is likely to infringe Article 21 of the Constitution.

Jurisdiction:

The jurisdiction of the Gram Nyayalaya is exclusive to the extent that in respect of matters covered by the jurisdiction conferred on the Gram Nyayalaya, the jurisdiction of any other court is ousted; such jurisdiction is not optional.

A simple method for execution of its orders must be provided for. The nature of the execution would depend upon the relief granted by the decision of the Gram Nyayalaya. Depending upon the relief granted, the fruits must be made available forthwith or soon thereafter. No prayer for granting interim stay till the party aggrieved by the decision prefers a revision petition should be entertained.

All authorities -revenue, police, forest -- operating at village and Tehsil level should be put tinder an obligation to assist the Gram Nyayalaya in discharging its functions and performing its duties. Failure on their part shall be treated as misconduct, and a Gram Nyayalaya should be empowered to take effective action against such defaulting authority.

For a uniform pattern of functioning of the Gram Nyayalayas, a simple code may have to be drawn up by the State Government in consultation with the High Court.

Every Gram Nyayalaya will be furnished with a copy of a list drawn up by the State Government of non-governmental voluntary organisations operating in rural areas. The Gram Nyayalaya may enlist their help in reconciliation proceedings before resorting to adjudication. The list may also be useful in selecting the panel of lay Judges. This will make the participatory process far more effective.

Naxilism:

In remote area of Darjeeling district there is a cluster of villages known as Naxalbari. In this village in 1967 the revolutionary peasants losing faith in legal remedy they resorted to revolutionary thoughts and strategies developed by leaders under influence of Marxism. Which latter was recognized as Naxilism derived after the name of the village cluster. Naxalbari proclaimed that the existing economic and political could be overthrown by the oppressed classes only through the use of revolutionary violence and then regenerated India could arise.

Ultima’tely both the fractions the CPI and CPI(M) abandoned Marxism —Leninism and Naxalbari revolutionaries were guided by revisionist orientation, ‘the new orientation’ and the ‘new concepts’ preached by Khrushchev and his successors. Guided by Mao Tsetung thought Charu Majumdar made his contribution to what brought about the Naxalbari Sttrugle writes Suniti Kumar Ghosh.

Causes of Naxalite movement:

The discontent peasants and landless labourers in West Bengal got together to expressed their frustration in the form of organised efforts. The adhiars i.e the tenant was exploited at the hand of the jotedars i.e. the landlords. The share of adhiars was to undergo deductions on account of supply of cattle plough, seeds and loan of paddy at a totally disproportionate rate. Free-of-cost maintenance ofjotedars’ labourers, stable and granary was also the burden of adhiars. The ever-increasing burden of debt, loss and fraud, in addition to feudal practices of social hierarchy, provoked the peasants to revolt against the system. Added to this were the anti-people activities of gardeners and estate owners. Thus the relation between the landlords (lotedars) and tenants (adhiars) had become deepened with the exploitative practices about crop sharing and money lending.

In the report of an Expert Group submitted to the Planning Commission, in April, 2008 states that, “The analysis of roots of discontent, unrest and extremism rely upon extensive discussions based on official reports in the past, publications from the extremist groups, reports of human rights groups, books by observers of such developments, and media coverage in the background of field insight and interaction of members of the Expert Group. This has revealed that the causes are varied depending on characteristics of an area; social, economic and cultural background; a history of not working out solutions to lingering structural problems; and ineffective application of ameliorative steps undertaken since Independence and more so since the mid-sixties of the last century. Dissent movements, including the extremist Naxalite movement, are not confined to difficult hilly and forested areas but cover large contiguous tracts in the plains. They are not limited to dry land areas of recurring crop failures but extend to irrigated commands of major irrigation systems, as in the state of Bihar. The causes are, therefore, complex. The intensity of unrest resulting in extremist methods and effort to resolve issues through violent means as a challenge to state authority is in response to the gathering of unresolved

social and economic issues for long durations.
It creates' the impression that policy making and administration responds to extreme means.
The more recent development is in the emergence of CPI (Maoist)
after the merger and consolidation two powerful naxalite streams in
September, 2004.
This new formation, since its inception, is defining the official understanding of the extremist phenomenon of the level of the state as well as the Union Government. This has appeared in the public perception as a simplistic law-and-order face-off between the official
coercive machinery and this more radical extremist political formation.
The social consequence results, then, in undermining instruments ofsocial and economic amelioration as well as processes of democratic exchange to resolve persisting issues. This is the crux of the problem".
After perusing the report of experts and the report of Experts (2008) and
the report of the Ministry of Home Affairs (2003 -04) we get to understand that the Naxalite movement is principally a political action for armed conquest of State power.

Naxalite movement and its cure:

In 1970 Jayaprakash Narayan thought to give solution to the Naxalite problem. For him the Naxalism was basically a social, economical, political, and administrative problem and to a small extend a question of law and order. He suggested that arrests, imprisonments, and
shootings could not put down Naxalism or any other kind of revolutionary violence. Therefore he undertook the work in Musahari of Bihar, the Naxal hit area, to wean the area away from violence included establishment of the Gram Sabha; redistribution of one twentieth of the land covered by gramdan; setting up of gramkosh; organisation gram
shanti sena, and legal confirmation of Gramdan. By redistribution of land collected through gentle persuasion He looked into the problem of landless labourers and cases of injustice and oppression. He was of the opinion that the laws agrarian reform laws and Minimum Wages Act were not implemented properly and that had led to the growth of the rural
violence. Law furnishes a false sense of promise and expectation, ultimately leading to self-deception, dissatisfaction and frustration.

Few suggestions to bring an end to violence by the tribals can be discussed as follows:

• Due to acquisition of land involuntary displacement of tribes ultimately turning them landless.

• Indiscriminate land acquisition should be stopped.

• The land acquired in the name of public should be restricted to public welfare activities and matters oTnational importance.

• The proposals of Land Acquisition must be such that they minimize displacement and secure the rights of affected displaced persons.

• The law must be so formulated so as to protect poor and vulnerable sections in case of direct acquirement by companies.

• The provision for rehabilitation and resettlement of persons whose lands are procured by companies or other private interests should be compulsory on the State.

The 'Acquired land' which is not utilised should be give back to previous land owners.

Bibliography

Indian Law Institute ; Law and Social Change
Ishwar Bhat: Land Social Transformation , 2009
University of Madras: Sarvodaya, 1972
Reports of the National Commission to Review the funct ning of the Consitution Volu-II, Book-I 2002
Duncan Derret: The State, Religion and Law in India ,1999
Granville Austin: Working a Democratic Constitution: The Indian Experience,2000