DIRECTORATE OF DISTANCE EDUCATION

UNIVERSITY OF NORTH BENGAL

MASTER OF ARTS-POLITICAL SCIENCE

SEMESTER -I

CONSTITUTIONAL PROCESS IN INDIA

CORE-102

BLOCK-1

UNIVERSITY OF NORTH BENGAL

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FOREWORD

The Self Learning Material (SLM) is written with the aim of providing simple and organized study content to all the learners. The SLMs are prepared on the framework of being mutually cohesive, internally consistent and structured as per the university's syllabi. It is a humble attempt to give glimpses of the various approaches and dimensions to the topic of study and to kindle the learner's interest to the subject

We have tried to put together information from various sources into this book that has been written in an engaging style with interesting and relevant examples. It introduces you to the insights of subject concepts and theories and presents them in a way that is easy to understand and comprehend.

We always believe in continuous improvement and would periodically update the content in the very interest of the learners. It may be added that despite enormous efforts and coordination, there is every possibility for some omission or inadequacy in few areas or topics, which would definitely be rectified in future.

We hope you enjoy learning from this book and the experience truly enrich your learning and help you to advance in your career and future endeavours.

CONSTITUTIONAL PROCESS IN INDIA

BLOCK-1

BLOCK-2

BLOCK-1 CONSTITUTIONAL PROCESS IN INDIA

Introduction to the Block

In this block, we will go through the Constitution and Debates in the Constituent Assembly. Concepts and status of Indian Federalism, Judiciary and Political Process in India. Also the analytical study of Fundamental Rights, Secularism and Minority Representation along with power and role of law-making in progressive and vigilant democracy.

Unit 1 explains the salient features and functions of the Constituent Assembly of India.
Unit 2 explains the concept and status of Indian Federalism.
Unit 3 explains about the Judiciary and the political process in India.
Unit 4 explains about the Judicial Activism and Public Interest Litigation. Also, understand issues and debates on Judicial Review and some landmark judgments.
Unit 5 deals with the analytical study of fundamental rights, secularism, and minority representation. Also understand about the origin, meaning, principle, role and importance of Secularism.
Unit 6 deals with the analytical study of women, third gender, and political corruption.
Unit 7 explains about parliament v/s judiciary. Power and role of law-making in progressive and vigilant democracy.

UNIT-1:CONSTITUTION OF CONSTITUENT ASSEMBLY AND DEBATES IN CONSTITUENT ASSEMBLY ON THE INDIAN STATES

STRUCTURE

1.0 OBJECTIVES

After learning this unit based on Constitution of Constituent Assembly and Debates in Constituent Assembly on The Indian States, you can learn about the following topics:

- To discuss the salient features of the Constituent Assembly.

- To know Functions of the Constituent Assembly.
- To Study regarding various committees in the Assembly.
- To brief about Preparation of Memorandum.
- To study about the Deliberations and Recommendations.
- To know all about the Final Voting.
- To discuss the Objective Resolution.
- To do criticism of the Constitutional Assembly.

1.1 INTRODUCTION

Exactly from now, 70 years ago for the first time the Constituent Assembly of India sat together in the month of December 9th, in the year 1946.Thus, a historic journey began from here, seeing India attaining independence, deciding on its national flag, national insignia, national anthem, and finally adopting the Constitution that made India a democratic republic country. On this occasion, in collaboration along with Jana Vidhi Muhim, Down to Earth is putting together a special package that works to spread constitutional literacy in particular to counter ignorance and misinformation.

It is desirable that the Constitution should be made available by a common citizen and that it should not just be preserved by scholars and lawyers. We are presenting this package with the hope that more and more individuals will realize that the Constitution is a functional manual rather than a holy book.

On December 9th, 1946, a Constituent Assembly was formed on the basis of the framework provided by the Cabinet Mission. The constitution-making body was elected by the 389members Provincial Legislative Assembly comprising 93 Princely States representatives and 296 British India representatives.

The seats were allocated to British Indian counties and princely states in proportion to their corresponding population and were to be split among Sikhs, Muslims and other groups. Despite restricted suffrage, all parts of the Indian society were represented in the Constituent Assembly.

The Constituent Assembly's first session was held in New Delhi on December 9th, in the year 1946, with Dr. Sachidanand being chosen as the Assembly's provisional president. However, Dr. Rajendra Prasad being appointed as president and H.C. Mukherjee as Constituent Assembly Vice-President on December 11th, 1946.

Check your Progress-1

1.Where was the constituent assembly held and when?

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1.2 SALIENT FEATURES OF CONSTITUENT ASSEMBLY OF INDIA

India's Constituent Assembly came into existence in accordance with the May 1946 year's Cabinet Mission Plan regulations. Its job was to formulate constitutions to facilitate a suitable transfer of sovereign authority from British officials into hands of Indians.

The assembly was supposed to have proportional representation from current existingprovincial legislatures and from different princely states. By the end of the month of July 1946, the majority of these elections were completed under the supervision of the Reforms Office of the Governor General (i.e. Viceroy).

There were three parts of the Assembly namely:

a) Punjab & North-West.
b) Bengal-Assam.
c) Rest of India.

For Indian Union, each section and each of the provinces therein, the Constitutions were to be formulated. The Muslim League, which won most of the 80 Muslim seats and dominated two smaller sections,

decided not to participate so that the assembly never convened in sections individually.

Assembly held 12 sessions, or also called as rounds of sittings on the following days:

1. December 9th– December 23rd, 1946.
2. January 20th –January 25th, 1947.
3. April 28th- May 2nd, 1947.
4. July 14th- 31st, 1947.
5. August 14th – August 30th, 1947,
6. January 27th, 1948,
7. November 4th, 1948-January 8th, 1949.
8. May 16th- June 16th, 1949.
9. July 30th-September 18th, 1949.
10. October 6th-17th, 1949.
11. November 4th– November 26th, 1949.
12. January 24th, 1950.

For different reasons, membership of the Assembly was kept on varying, other than resignation and death. Many government figures showed a willingness to join the Assembly, but some groups such as the Muslim League, Socialists and Communists also denounced their membership.

These attitudes have also altered. After the British Parliament passed the Indian Independence Act, it was decided that representatives wishing to maintain their seats in the provincial legislature would vacatein the assembly their seats. But several provincial legislature representatives continued to arrive and participate in the assembly until the constitution itself made provision against this.

The Partition of India's statement triggered the biggest change in membership. Some members such as Dr. Ambedkar, elected from regions allocated to Pakistan's Dominion, have lost their seats. Elected leaders of the Muslim League from United Provinces, Bihar and elsewhere came after partition to occupy their seats.

On many occasions such employees have been humiliated and Patel even advised them to go to Pakistan. Following initial disinterest, the princely states began negotiating for their representation with an Assembly commission. Hundreds of princely states have been grouped into bigger organizations over a period of time, and provisions have been created for them to elect their representatives to the assembly.

New representatives continued to join until the Assembly's last day. No representative was sent to Hyderabad until the end. No official or scholar calculated the total number of people who sat as members of the Assembly at any time. Records indicate that by the end of the term of the Assembly, the maximum membership was 307.

Several non-members were helped by the Assembly to formulate the Constitution. For focused deliberations on specificfeatures or sections, eminent public figures outside the Assembly were asked to work as members of commissions created by the Assembly.

In these committees a great deal of constitution-making took place, both from a procedural and substantive point of view. To date, no official report on the exact number of committees formed by the Constituent Assembly has been published in the public domain. Resolutions have been shifted as and when the need arose to set up committees and adopted after debate. Their official appointment lasted a few hours, days or weeks after the adoption of a resolution, depending on the speed of the appointment or election of the representatives of the corresponding boards.

Check your Progress-2

1.When did the assembly held its 12 sessions?

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1.3 FUNCTIONS OF THE CONSTITUENT ASSEMBLY

The functions of the Constituent Assembly of India are as stated below:

1. It helps in framing the Constitution of India.
2. Enacting the laws and also involved in the decision-making process of the country.
3. It also adopted the National flag on the date of July 22nd, in the year 1947.
4. It also accepted and approved India's membership of the British Commonwealth in the month of May in the year 1949.
5. It elected Dr. Rajendra Prasad as the first President of India on the date of January 24th, in the year 1950.
6. It also adopted the National anthem on January 24th, in the year 1950.
7. It adopted on the date of January 24th, in the year 1950the National song for India.

Check your Progress-3

1.State the functions of the constitution of Assembly of India.

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1.4 COMMITTEES

1.4.1 Organizational Committees

The organizational committees constituted of:

- The rules of Procedure Committee that was appointed on December 11th, in the year 1946. There were total 15 members, Chairperson- Rajendra Prasad, ex-officio. And the committee worked till 20thDecember in the year 1946.
- Steering Committee that was appointed on January 21st, in the year 1947. There were total 19 members, Chairperson- Rajendra Prasad, ex-officio. And the committee worked till the end.
- Staff and Finance Committee.
- Credentials Committee that was appointed on December 23rd, in

the year 1946. There were total 5 members in the committee, Chairperson- A.K. Ayyar. And the committee till the end kept onworking.

- Order of Business Committee that was appointed on January 25th, in the year 1947. There were total 3 members, Chairperson- K.M. Munshi. The committee worked till July 14th,in the year 1947.
- StatesNegotiating Committee that was appointed on December 21st, in the year 1946. There were total 6 members, Chairperson- J.L. Nehru. The committee worked till June 5th, of the year 1947.
- Flag Committee that was appointed on June 23rd, 1947. There were total 12 members, Chairperson- Rajendra Prasad, ex-officio. The committee worked till July 22nd, of the year 1947.
- Committee on Functions of Constituent Assembly, under the Indian Independence Act that was appointed on August 20th, in the year 1947. There were total 7 members, Chairperson- G.V. Mavlankar. The Committee worked till August 25th, of the year 1947.

1.4.2 Principal Committees And Their Sub-Committees

- Advisory Committee on Fundamental Rights, Minorities, Tribal Areas and Excluded Areas that was appointed on 24thJanuary in the year 1947. 57 members were in total constituted in the committee, Chairperson- Sardar Patel. The Committee worked till 26th of May in the year 1949.
- Union Powers Committee was appointed on 25th January, 1947. 12 members were constituted in the committee, Chairperson- J.L. Nehru. The committee worked till 26th August of the 1947.
- Union Constitution Committee was appointed on 4thMay of the year 1947. 12 memberswere constituted in the committee, Chairperson- J.L. Nehru. The committee worked till 31stJuly, 1947.
- Provincial Constitution Committee was appointed on 4thMay, of the year 1947, 21 memberswere constituted in the committee, Chairperson- Sardar Patel. The committee worked till 21stJuly, of

the year 1947.

- Drafting Committee was appointed on 29th Augustof the year 1947. 8 memberswere constituted in the committee, Chairperson- Dr. Ambedkar. The Committee worked till 17th Novemberof the year 1949.

1.4.3 Other Sectoral Committees

- Ad-hoc Committee on Citizenship was appointed on 30th April, of the year1947. 7 memberswere constituted in the committee, Chairperson- S. Varadachariar. The committee worked till 12th July of the year 1947.
- Committee on Chief Commissioner's Provinces was appointed on 31st July, of the year 1947. 7 memberswere constituted in the committee, Chairperson- N. Gopalaswami Ayyangar. The committee worked till 21st October of the year 1947.
- Experts Committee on Financial Provisions of Constitution was appointed in the month of Novemberin the year 1947. 3 memberswere constituted in the committee, Chairperson- N.R. Sarkar. The committee worked between 17th November to 5th December of the year 1947.
- Sub-Committee on Minority safeguards for West Bengal and East Punjab was appointed on 24th February of the year 1948. 5 memberswere constituted in the committee, Chairperson- Sardar Patel. The committee worked till 23rd November, of the year 1948.

Check your Progress-4

1.What were the three committees?

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1.5 PREPARATION OF MEMORANDUM

Constitution making has been from a long span of time a controversial problem. This controversy consumes a lot of public energy that can be better used to enhance our collective knowledge of the Constitution.

Many specialists have published devoted books on constitution making, but there was lacking a streamlined brief on incremental phases of its wording.

- Dissemination of Constitutional Advisor's Brief (i.e. pamphlets) & Questionnaire (September 1946 to November 1947):

B N Rau was been appointed by theViceroy Lord Wavell as Constitutional Advisor somewhat around in late month ofJuly of the year1946 to head the Secretariat of the Constituent Assembly. In the month of January 1944, he retired from the civil service but stayed active. He provided his honorary services to the Viceroy, who was most likely accepted shortly after Governments enactment owing to his stint at the Reforms Office of the Act of India, of the year 1935.Rau prepared a number of pamphlets on multiple elements of the upcoming constitution, as well as collecting text from some of the world's major constitutions to promote informed debate by assembly members. On September 16th, 1946, Jawaharlal Nehru, as Vice-President of the Executive Council of Viceroy, endorsed the dissemination of these briefs. Subsequently, in the month of March 1947, Rau also distributed a concentrated questionnaire on certain elements of the federal constitution and sometimes concentrated notes on different boards.

- Preparation of Memorandum by the Advisor based on responses; Submission of notes by certain members (February to November in the year 1947):

Rau prepared his Memorandum on the basis of answers to his briefs and questionnaire, which included plans for likely provisions of the forthcoming constitution. Some representatives have chosen to send their own individual notes to the Assembly committees.

- Deliberations in Principal Committees, including joint and sub-committees, and their Reports (February to August in the year 1947):

His Chairman formed four main commissions at the Assembly's second session:

1. Advisory Committee on Fundamental Rights.
2. Minorities and Tribal Areas & Excluded Areas.
3. Provincial Constitution Committee.
4. Union Constitution Committee and Union Powers Committee.

Sardar Vallabhbhai Patel chaired the first two of these boards, while Nehru chaired the latter two. For more concentrated job on a specific section, most of these committees assigned their subcommittees. Two or three of these committees also sat together to consider issues in overlapping consideration areas.These committees completed much of their job by the month of August of the year 1947, but first committee work continued for a long time due to minority issues. Partition is often quoted as an excuse for delay, but the key statement was made on June 3rd, in the year 1947, while the task of these main committees was to complete their job by April to May of the year 1947. However, their Assembly reports included draft constitutional clauses and some explanatory notes. The chairperson of the corresponding commission usually presented the report to the chairperson of the assembly as well as it was presented in the assembly and clarified or defended it.

The Constituent Assembly's work, including the appointment of an acting president, the election of a regular president and the formation of operational committees, was decided in the month from July to August of the year 1946 by an unofficial Congressional Committee of Experts. It was this committee that drew up the draft Objective Resolution moved by Nehru in the first session.

- Discussion on Reports in Constituent Assembly and adoption of principles (April to August in the year 1947):

The Assembly debated the principal committee reports in detail and adopted the principles contained therein. These debates addressed more than two-thirds of the final Constitution Bill.

- Preparation of First Draft by Constitutional Advisor (July to October in the year of 1947):

Constitutional Advisor began drafting the first draft constitution by aligning the previously discussed and accepted reports. He also increased it by filling in apparent gaps in the form of suggestions himself, or indicating certain spaces that would only be filled after sectoral committee reports came in. This was the first significant delay phase in completing the job since the first draft missed the August-September date and only arrived on October 27th, in the year 1947.

Check your Progress-5

1.What were the four main commissions of the Assembly's second session?

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1.6 DELIBERATIONS AND RECOMMENDATIONS

The Deliberations and recommendations were as stated below:

- Deliberations in Sectoral Committees and their Reports (April to December of the year 1947):

Different sectoral committees began and concluded their deliberations, and this activity continued for a long time. These sectoral committees have been allocated very definite duties either by the Assembly Chairman or by one of the committees themselves. Many of these reports could not be used in the Constitutional Advisor's first draft or in the Draft Constitution, and were incorporated later.

- Deliberations in Drafting Committee and resultant Draft Constitution (October of the year 1947 to February of the year 1948):

In the month of July of the year 1947, the Assembly had decided to set up a drafting committee to adjust the Constitution Bill from the point of view of legislative language and other such elements. This drafting committee was appointed by the Assembly on August 29th, of the year 1947, while in its first session the committee chose its chairman. The drafting committee's primary input was to refine and expand the draft Constitutional Advisor (i.e. 240 Articles and 13 Schedules) almost continually in its session.By the month of February 21st, of the year 1948, it created the draft constitution containing 315 articles and 8 schedules. It was released on the date February 26th and was commonly distributed for comment among official and non-official circles. This was the second significant phase of delay in constitution implementation as it was expected to complete its job in a month and Dr. Ambedkar even informed halfway through this round of sessions that allocated work would be completed in the month of December of the year 1947.

- Consideration of Responses by Drafting Committee, and its recommendations (March 23rd, 24th and 27th, of the year 1948):

Responses to the draft constitution were invited by the date of 22nd March of the year 1948. The drafting committee soon sat down to consider these answers as submitted by the secretariat of the assembly. Recommendations were duly forwarded to the Chairman of the Assembly from these sessions.

- Deliberations on Responses in Special Committee, and its decisions (April 10th-11th, of the year 1948):

The Chairman of the Assembly decided that a special commission, consisting of representatives of the Committees on Union Powers, Union Constitution and Provincial Constitution, should consider answers to the draft constitution and suggestions of the drafting commission. Nehru chaired the sessions that some 30 participants attended.This Committee settled a number of issues and kept some of them for account later. It suggested that Members of the Assembly call for amendments be issued. On date of May 11th, of the year 1948, this committee was intended to meet again, but obviously it never did. It continues a mystery,

unanswered by any participant or scholar, as to what caused 6 lengthy months of formal inactivity on constitutional implementation.

- Deliberations in Drafting Committee for parallel/official amendments (October 18th-20th, of the year 1948):

Lastly, on the date of 18thOctober of the year 1948, the drafting committee selected the cue and decided in its 3-day sessions to issue a copy of the draft constitution containing the amendments that the committee was prepared to sponsor, in conjunction with the appropriate Article or Schedule. At these two phases, the approach adopted ensured that the Assembly would have to go through debate and vote on several sections over and over again. Nehru and Patel's lack of clarity and interest in this stage extended the Drafting Committee's role and power. Neither of the Assembly's two de-facto rulers came forward to prepare and guide a suitable second draft in the Assembly.

- Publication of bound books of proposed amendments, both officially sponsored and private member's amendments (October 26th, of the year 1948):

According to the drafting committee's resolution, all members of the Assembly were given a copy of the draft constitution. Criticism of the reasoning behind this bizarre draft was continuously prevented and thus remains out of print despite the reality that this version was regarded by the Assembly and not the often-cited draft Constitution of February 1948. At the same time, the President of the Assembly ensured that the bound volumes of amendments proposed by individual members were printed and distributed. Amendments were referred to by sequential number and book number during the discussions in the Assembly.

Check your Progress-6

1.State the deliberations and recommendations.

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1.7 FINAL VOTING

- Discussions and voting in meetings of Congress Assembly Party, held in Constitution House (October of the year 1948 to November of the year 1949):

Since the congressional officials dominated the assembly, party whip played a major role. However, some individual members in the Assembly expressed their opinions even at the danger of challenging the whip of the party. Meetings of the Assembly Party were open to attending non-congressmen. The Party took care not to enforce strict emotional discipline and allowed open discussion in the Assembly, although in the end it took a final decision on nearly every segment of the Constitution. As the Constitution Bill is such a bulky document, the party whip released lists of articles and the choices made on them to all employees mimeographed.

- Discussion and voting on Draft Constitution and amendments, in the Assembly (November 4th, of the year 1948 to October 17th, of the year 1949):

The most noticeable aspect of constitution making was the Assembly's year-long debates. This was called the first reading for formal reasons. The discussion did not always take place in sequential order that articles were arranged in the draft constitution, but the steering committee decided. The Assembly approved very few informal amendments at the vote. They were often denied even if they are not withdrawn. During the debate, some of the informal amendments were approved by the drafting committee and were therefore not voted on. KM Munshi played a key part in establishing a periodic connection between the Drafting Committee and the Party to the Congress.

- Preparation of so-called Final Draft, by Drafting Committee (November 3rd, of the year 1949):

Discussion in the Assembly was rather haphazard insofar as it was not in the draft Constitution's sequential order. Several issues have been revisited for deliberations, already decided after debate and vote, and often modifications in the drafting nature have been left to the drafting committee. It was clear that a smooth draft was needed and therefore such a draft was presented by the drafting committee. In doing so, the commission implemented some unapproved modifications that needed the Assembly's deliberation and decision. It was obtained by individual employees around November 6th, of the year 1949, and the chance was provided to suggest improvements to these new modifications.

- Discussion for three days and final voting for amendment of certain clauses (November 14th to 16th, of the year 1949):

Officially called Constitution Bill's second reading, this stage experienced the movement of 170 amendments. Only 88 have been adopted, 30 have been removed and 52 have been denied. This overcame the actual job of constitutional formulation.

- Discussion on 'Settled-by-Assembly' version of Constitution Bill (November 17th to 26th of the year1949):

This was the start of a mainly ceremonial stage, which was formally called third-reading. Most of the speakers (that consists more than 100) describe their assumption of the Constitution's merits and shortcomings in the debate that followed. Ultimately, Dr. Ambedkar and the Assembly President gave their opinions.

- Final adoption, enactment through signing by Chairman of Assembly; and partial commencement (November 26th, of the year 1949):

The Constituent Assembly accepted it with the last vote on the Constitution. The President of the Assembly signed a copy of the Constitution to formally bring it into force, though in part, because at that stage in time only 16 of the 395 articles went into force.

- Signing of calligraphed version of the Constitution by all members of Assembly (January 24th, of the year 1950):

The day's proceedings started with the assembly president's statement being elected as India's president. Then all members signed three copies of the Constitution, the English print and calligraphed version of the Constitution in English and Hindi. Nehru was the first to sign these copies and Prasad was the last to sign them.

- Formal Commencement (January 26th, of the year 1950):

It officially began in the month of January of the year 1950 in accordance with the provisions of the Constitution, putting it into force in its entirety. Most likely, this date was selected to celebrate Nehru's statement of' Poorna Swaraj' (i.e. Total Independence) at the 1929 annual Congress meeting in Lahore. For many years, Congress used to celebrate this day as an Independence Day, but conditions and British authorities' sudden decision to grant independence rendered it Republic Day.

Check your Progress-7

1.What happened in the discussion for three days and final voting for amendment of certain clauses?

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1.8 OBJECTIVE RESOLUTION

Pandit Jawaharlal Nehru, who provided the philosophy and guiding principles for framing the Constitution, moved the Objective Resolution on December 13th, of the year 1946 and subsequently took the form of the Preamble to the Constitution of India. The Constituent Assembly adopted this resolution unanimously on 22nd January of the year 1947.

The resolution indicated that the Constituent Assembly would, in the first place, proclaim India as an Independent Sovereign Republic comprising all regions, maintaining as independent units and possessing residual powers ; all Indians shall be guaranteed justice, equality of status, liberty of thought, speech, belief, faith, worship, vocation, association and subject to law and public morality.Adequate safeguards shall be given for minorities, backward, depressed classes, the integrity of the Republic's lands and its sovereign land, sea and air rights, and thus India would contribute to the promotion of world peace and human welfare.

1.9 CRITICISM OF THE CONSTITUENT ASSEMBLY

The grounds on which the Constituent Assembly was criticized were as stated follows:

1. **Not a Popular body:**

Critics argued that the people of India did not directly elect the members of the Constituent Assembly. The Preamble says the people of India adopted the Constitution, while it was adopted by only a few people who were not even elected by the people.

2. **Not a Sovereign body:**

The critics said the Constituent Assembly was not a sovereign body because it was not formed by the Indian people. It was developed by the British rulers' suggestions through executive action before the independence of India, and they determined its structure.

3. **Time consuming:**

The critics maintained that, compared to other countries, the time taken to prepare the Constitution was too much. It took only four months for the US Constitution's framers to prepare the Constitution.

4. **Dominated by Congress:**

The critics continued to argue that the Constituent Assembly Congress was quite dominant and, through the Constitution drafted by it, imposed its thinking on the people of the nation.

5. Dominated by one community:

The Constituent Assembly lacked religious heterogeneity, according to some critics, and was dominated by the Hindus.

6. Dominated by Lawyers:

Critics also argued that because of the dominance of lawyers in the Constituent Assembly, the Constitution became bulky and cumbersome.

They made it difficult for a layman to understand the language of the Constitution. The other sections of the society were unable to express their issues and during the drafting of the Constitution were unable to engage in the decision-making process.

The Constituent Assembly therefore became India's Provisional Parliament and contributed considerably to the drafting of India's historic constitution and subsequently helped build the Indian political system.

1.10 LET'S SUM UP

The Indian Constitution's resilience is testimony to the Constituent Assembly members' collective knowledge. Although criticism has been levelled against the Constituent Assembly's unrepresentative composition, it cannot be denied that the members gave a voice to the issues of the under-represented sections of society. A Constituent Assembly's dispassionate appraisal would require not only taking its limitations, but also an appreciation of the Assembly's foresight.For Granville Austin, with some eventualities that arose after the Constitution was adopted, the Constituent Assembly did not foresee.

First, the possibility of conflict between the Fundamental Rights (Part III) and the Directive Principles of State Policy (Part IV) was not

anticipated and, as a result, a long-drawn tussle between the legislature and the judiciary ended with the First Amendment Act.

Second, there was no consideration of the possibility of abuse of the powers conferred under the rule of the President.

Third, while Adult Franchise was a revolutionary and egalitarian move at the country's founding time, the framers were unable to understand how a changed pattern of hierarchical relationships could arise with oppression still working.

Fourth, the founding members were unable to foresee the chance of declining Congress in the years ahead.

Finally, the Assembly left unwritten the room of constitutional conventions leading to manipulations through amendments in the years to follow.

Even Austin, however, considers these lacunas to be 'small oversights' the gargantuan task of drafting a Constitution for a country separated into lines of caste, class, language, and religion was achieved with élan. Within the framework set by the Assembly, the country had taken measures towards a democratic structure. That the Constitution can be amended with the requirements of time has turned it into a dynamic document; or in Zoya Hasan's words etal.'A Living Constitution'.

1.11 KEYWORDS

1. Suffrage: The right to vote in political elections.
2. Controversy: Prolonged public disagreement or heated discussion.
3. Dissemination: The action or fact of spreading something, especially information, widely.
4. Mimeograph: A duplicating machine which produces copies from a stencil, now superseded by the photocopier.

1.12 QUESTIONS FOR REVIEW

1. What were the salient features of the Constituent of Assembly of India?
2. Explain in brief the committees in the Assembly.
3. What was the objective resolution?
4. What were the criticism of the constituent Assembly of India?

1.13 SUGGESTED READINGS AND REFERENCES

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1.14 ANSWERS TO CHECK YOUR PROGRESS

1. (Answer for Check your Progress-1 Q.1)

The Constituent Assembly's first session was held in New Delhi on December 9th, in the year 1946, with Dr. Sachidanand being chosen as the Assembly's provisional president.

2. (Answer for Check your Progress-2 Q.1)

Assembly held 12 sessions, or also called as rounds of sittings on the following days:

- December 9th – December 23rd, 1946.
- January 20th –January 25th, 1947.
- April 28th- May 2nd, 1947.
- July 14th- 31st, 1947.
- August 14th – August 30th, 1947,
- January 27th, 1948,
- November 4th, 1948-January 8th, 1949.
- May 16th- June 16th, 1949.
- July 30th-September 18th, 1949.
- October 6th-17th, 1949.
- November 4th– November 26th, 1949.
- January 24th, 1950.

3. (Answer for Check your Progress-3 Q.1)

The functions of the Constituent Assembly of India are as stated below:

- It helps in framing the Constitution of India.
- Enacting the laws and also involved in the decision-making process of the country.
- It also adopted the National flag on the date of July 22nd, 1947.
- It also accepted and approved India's membership of the British Commonwealth in the month of May in the year 1949.
- It elected Dr. Rajendra Prasad as the first President of India on the date of January 24th, 1950.
- It also adopted the National anthem on January 24th, 1950.

4. (Answer for Check your Progress-4 Q.1)

The three committees are as stated below:

- Organizational Committees.
- Principal Committees and their sub-committees.
- Other Sectoral Committees.

5. (Answer for Check your Progress-5 Q.1)

The four main commissions at the Assembly's second session were as stated below:

1. Advisory Committee on Fundamental Rights.
2. Minorities and Tribal Areas & Excluded Areas.
3. Provincial Constitution Committee.
4. Union Constitution Committee and Union Powers Committee.

6.(Answer for Check your Progress-6 Q.1)

The deliberations and recommendations are as stated below:

- Deliberations in Sectoral Committees and their Reports.
- Deliberations in Drafting Committee and resultant Draft Constitution.
- Consideration of Responses by Drafting Committee, and its recommendations.
- Deliberations on Responses in Special Committee, and its decisions.
- Deliberations in Drafting Committee for parallel/official amendments.
- Publication of bound books of proposed amendments, both officially sponsored and private member's amendments.

7. (Answer for Check your Progress-7 Q.1)

Officially called Constitution Bill's second reading, this stage experienced the movement of 170 amendments. Only 88 have been adopted, 30 have been removed and 52 have been denied. This overcame the actual job of constitutional formulation.

UNIT-2: CONCEPT AND STATUS OF INDIAN FEDERALISM: A COMPREHENSIVE ANALYSIS

STRUCTURE

2.0 OBJECTIVES

After learning this unit based on "Concept and Status of Indian Federalism: A Comprehensive Analysis",you can learn about the following topics:

- To understand the concept of federalism.
- To study about contemporary federations.
- To study financial Relationship.
- To study of various intergovernmental disputes.

2.1 INTRODUCTION

Federalism is kind of government in which exclusive power is subdivided between the national and units of other governments. On the 26th January 1950, the Constitution of India was coming into force and it is detailed document which contains 9 schedules and 395 articles.it assistant ushers into country a process of government was mainly on two things which are - British type democratic government system and federalism of India. India's both the government i.e. Central government and state government at both level parliamentary form of government is operates based on the adult suffrage.

Unlike USA, Canada and Australia's Constitution which only contain skeletal kind of provisions for regulating inter-governmental relationships, India has constitution which makes elaborative provisions that covering many different aspects of both central and state government as well as it also covers ups of aspects of some inter-state's relationship.

From the commencement of Indian federalism, it has been called to meet various challenges Which helps in improving the Material well-being of peoples. India also embarked on socio-economic planning suturing to many different aspects of national life, like as an industry, land reforms, agriculture, exploration of natural resources, controlling population and provision of some social services like education, housing, health, etc. And this required for completing country's resource mobilisation.

Afterwards, because of bellicose behaviour of India's some of neighbours, country has faced many issues on its border. Within the politic body there have been some strain's because of language barrier which resulting from internal developments. These type of various compulsions and forces are involved in Indian federalism.

Further, there is one political party which India has witnessed – the Indian congress party-this party is completely dominating since from year 1947 when party controls both I.e. central and all state government. This facilitated and smoothened the operating of federalism in its formative period. It also minimised the various tensions among different

government which helps in resolving issues at party forums and it stabilized the administrative and political overall structure of India. But earlier, this situation has changed completely.

The fourth time general election held in year of 1967 which broken the dominance of one party, or we can say congress monolith. With this era, the career of Indian federalism has to be ended and new, even more challenging one is initiated.

The all new political situations are bound to form and release new forces which may have impact on it. and tone can easily predict that, many disputes among many governments of various political complexion are arise, and much that accepted till now in the era of federalism would perchance be challenged and other new trends initiated.

Check your Progress-1

1. What do you meant by federalism?

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2.2 CONTEMPORARY FEDEARATIONS

The founding fathers built the of Indian Federalism on -three pillars, which are a strong Centre, flexibility, and co-operative federalism. These concepts are not in any way novel as in varying degrees they have come to be accepted, and translated into practice, in the federations of the Australia, U.S.A and Canada. The farmers of the Indian Constitution learned a good deal from the experiences, the problems faced and solutions found of these federations, and their approach to the structuring of Indian Federalism was conditioned in good amount by their knowledge. It might therefore be worthwhile to have a brief survey of the trends in these federations as a background to the Indian Federalism.

The oldest of the contemporary federal constitutions, The American Constitution which was drafted in year 1787. The motivating forces which promoted federalism amongst the several colonies were defence and the felt required to keep down economic barriers among them. The U.S. Constitution follows a simple method of dividing powers between the Centre and the States. It has only one list enumerating eighteen heads of powers for the Centre, whose powers are thus specific and include such items as taxation and spending, payment of debts, regulation of foreign and interstate trade and commerce, coinage and currency, war and defence, post office and, post roads, promotion of science, etc.

The Congress is authorised to make a law which may be "necessary and proper" to carry into execution any of the enumerated powers. Whatever does not belong to the Centre belongs to the States. From an agricultural community of the 18th century, the U.S.A. has emerged into an industrial giant of the 20th century. In the meantime, the political philosophy has changed from laissez faire to social welfare. The country has met the challenges of wars and depression. This has been possible because the Centre, a very small affair to begin with, has grown into a colossus and dwarfed the States.

This transformation has taken place not through formal Constitutional amendments because of the rigidity of the amending process not many amendments have culminated so far but through the process of judicial interpretation. The judiciary basically helped the Centre first by protecting it from hostile State action and then conceded greater latitude to it by interpreting broadly its enumerated powers in. response to the demands of the times.

The commerce power has given to, Centre control over the economic. life of the nation it can regulate not only interstate commerce, but to some extent even the intrastate commerce in so far as the two are intermixed. At the same time, States have been restricted from interfering with the, flow of trade and traffic over State boundaries. Without this, America could not have industrialised itself in such a phenomenal manner their operations throughout the. Big corporations having country

would not have grown had the States power to interfere with them not, been kept in check.

The Centre has full control over foreign affairs, and can implement a treaty, ratified, by the Senate, irrespective, of the fact whether its subject-matter falls within its, enumerated powers or not. Without this, the U.S.A.- would -not have gained a primacy in the international level. The defence and war powers enable to centre to take any step. Taxing powers have been found to be broad-based and the Centre is thus position to raise. A broad interpretation of its spending power has enabled it to finance even the state activities and thus the vast programme of Central. The mechanism of grants has helped the States in providing better services to the people than what their own resources would permit, and it has enabled the Centre to influence an area of governmental operations much larger than its own enumerated powers.

A kind of central states partnerships for promoting the people's welfare has thus come into existence which has transformed the whole concept and character of federalism. In the beginning, the central state relationship has competition, each trying to claim more powers to itself, but as of now given place to co-operative federalism.

Although, in the phase of changed political complexion of the India, the needed state concurrence may be difficult to get to proposed amendment. Still, this procedure would have proven as intractable as amending procedures in USA and Australia.th concept of co-operative federalism has worked out in a number of ways. There is also judiciary with powers to intercept the constitution and thus to draw necessary balance in accordance with needs.

But this needs to be stated that this should not lead to impression that states are completely subservient to the centre they have their own powers. Many conventions have been evolved making them more autonomous in practise than what they look to be in a theory.

Above all, India is an underdeveloped country whose socio-economic progress has been retarded for centuries. The framers of the Constitution foresaw that the country would have to force the pace of economic

development so as to compress into decades the progress of centuries, and this could be done effectively by mobilising national resources and using them properly under Central leadership.

Then, political forces, earlier added have also cabined the central initiative to some extent because it is more expedient for the centre to carry the states along rather than always threaten to use its reserve powers.it might therefore be misleading if one were to take his ideas about the Indian federalism merely from constitutional text. For drawing balanced picture, one has to search for practices and operating forces underneath the surface of the formal constitutional provisions.

Check your Progress-2

1.What did the framers of constitutions foresee?

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2.3 RELATIONSHIPS

The constitution of India (between the centre and the states government) has sub divided in the three other relationships which are: legislative, executive and financial relationships which gives the Indian constitution a civic character while, in a hierarchical assembly, judiciary is united. The centre state relations are further classified into three relationships, which are mentioned as below:

1. Legislative Relationship.
2. Financial Relationship.
3. Administrative Relationship.

2.3.1 Legislative Relationships

The important point in federation is the allocation of law-making powers between the centre and the constituent units.as compared to schemes

adopted for the purpose in constitution of the USA, Australia and Canada.

The legislative powers in between state and centre government distributed are in three list which are:

1. In first list (the union list): It includes matters with respect to which the centre has exclusive right to making law and matters which need a uniform law for the whole country; those in List 11 admit of local variations. There are about 100 subjects consisted in union list as foreign affairs, railway, defence, postal services, banking, atomic energy, currency, communication, etc.
2. In second list (the concurrent list): It enumerates matters for exclusive legislation by the states. There are about 52 subjects included in concurrent list which are as education, protection of animals and birds, forests, electricity, labour welfare, criminal law and procedure, family planning, civil procedure, drugs, population control, etc.
3. In third List (the state list): It includes matters for concurrent law making of both the centre and the state. There are about 61 subjects included in state list which are as public order, police, roadways, health, agriculture, local government, drinking, sanitation, water facilities, etc.

This list includes matters where local treatment may be found wanting and uniformity may have to be secured. Each of the three Lists is elaborate and contains a number of entries.Each of the three Lists is elaborate and contains a number of entries.The Centre has been given extensive powers of legislation over such, matters as defence, foreign Affairs, many forms of communications, currency, taxation, foreign and interstate trade and commerce, incorporation of trading companies, banking and insurance, industries, mines, some educational institutions, some aspects of education and health.

On the other side, The State’s powers of legislation, although not so extensive as that of Centre, are yet significant and touch the people perchance more intimately. Also, they have to Maintain orders and law.

But recently, in the atmosphere of new politics, Chief Ministers of Madras and Kerala have expressed sentiments that the Centre has too many, and the States too few, powers and that the States should be given extra powers. But, as yet, these ideas remain vague and nebulous, and no concrete suggestions have been formulated regarding what powers should be given to the States. For the present, it is extremely doubtful whether any change would be made in the scheme of distribution. Of powers either in favour of the States or that of the Centre.

2.3.2 Financial Relationships

The constitution primary deals with centre-state financial relations. The constitution has provided state government and union government with independent revenue sources.

The powers are distributed in state and centre is as follows:

1. The Indian parliament has power to levy taxes on the subjects of union list like as foreign affairs, railway, defence, postal services, banking, atomic energy, currency, communication, etc.
2. The state level legislations have power to levy taxes on the subjects described in state list such as public order, police, roadways, health, agriculture, local government, drinking, sanitation, water facilities, etc.
3. Both, i.e. parliament and state level legislation are empowered that to levy taxes on the subjects described in concurrent list such as public order, police, roadways, health, agriculture, local government, drinking, sanitation, water facilities, etc.
4. And, parliament has powers to levy the taxes on matters regarding to subjects of residuary.

The ordering of the Centre-State financial relationship in a federal polity constitutes a complicated exercise, for the crux of the matter is to allocate resources amongst two levels of governments so as to enable each of them to find funds adequate for its needs. An imbalance in the function-resource equation at any level cannot lead to good government and this is bound to create tension in the federal system.A scheme of

State-Centre economical relationship therefore is a for a functioning of a federal polity as a unit.

An autonomous economical commission is appointed in every five years to make recommendations as to tax-sharing and fiscal-need grants. Since 1950, when the Constitution was made effective, four such commissions have made recommendations on these points resulting in a larger transfer of Central funds to the States each time.

The finance commission ensures that funds would flow from the Centre to the States without political pressures and on objective criteria. It also introduces flexibility into the system as the flow of Central funds can be adjusted every five years. Besides the fiscal-need grants, the Constitution also provides for specific purpose grants which are given outside the finance commission, at the discretion of the Centre, for such State activities as the Centre may want to promote to achieve desired national goals. These grants have increased manifold under the impetus of planning and have dwarfed the fiscal-need grants and are made on the recommendation of the planning commission. But- the compulsions of planning have cast a shadow on the smooth operation of the Centre-State fiscal relationship.

2.3.3 Administrative Relationships

In between the relations of centre and state with administrative, powers of every state shall be so exercised for ensuring compliance with parliament made laws parliament and other already existing laws apply in state, and powers of union will extend to giving of directions to a state as they appear to the Indian government which is necessary for that purpose.

In the modern era, which is characterised as the administrative age, the need for an effective administration cannot be over-emphasized in India, much more so in the context of planning which requires sustained administrative effort, initiative and enterprise, on a large scale, to complete the plan programmes within a fixed time.

The Indian Constitution lays down a flexible scheme of allocation of Central-State administrative responsibility which permits all kinds of co-operative arrangements between the governments as may be deemed desirable. The Centre can administer any activity in its exclusive field, or leave it to the States. The States administer matters in their exclusive area but, by agreement, may leave any of their functions to the Central administration, matters in the concurrent field are ordinarily administered by the States but parliament can by law enable the Centre to take up any of them under its administration.

The Centre can direct the States to construct and maintain means of communications of national or military importance or for protecting the railways, the cost of this being defrayed by the Centre.the Centre confines its administration to some matters in the exclusive List, e.g., defence, foreign affairs, railways, collection of taxes and regulation of foreign trade, foreign exchange, or industries declared to be of national importance, etc. Quite a few of its exclusive functions are administered. through the States, e.g., till recently, passports were issued by the States, but this task has now been centralised; policing of some of the international borders still rests with the States.It may be advisable, to institute many more such services as the quality of the people joining them is much better than those who go to exclusively State services.

Check your Progress-3

1.What do you mean by Financial Relationship?

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2.4 INTER GOVERNMENTAL DISPUTES

When a number of governments function within a polity as they do in a federation, areas of tensions, differences and disputes are bound to arise between them from time to time, and it, therefore, becomes necessary to

have some mechanism to resolve these disputes in order to smooth the working of the federation.

If the controversy has legal overtones, resort to the judiciary may help. For this purpose, India's supreme court has been given original jurisdiction in any of dispute between two governments.Another method to take recourse to the judiciary in the matter of intergovernmental disputes is by invoking the Supreme Court's advisory jurisdiction. A question of the law or public importance may be referred to the court for its advice by the President. The court holds a hearing and delivers its opinion in the open court.Most of the constitutional controversies, however, arise in India on the initiative of private parties who seek to challenge the government action infringing their rights or interests. Many a time, such cases are blown up into a full-scale intergovernmental controversy.As a matter of practice, when an important case comes before the Supreme. Court, it may itself issue notices to the Attorney-General of India and Advocates-General of States inviting them to place their respective points of view before the court so that the matter may be decided after all its aspects have been argued and considered.

Under the provision of disputes of sharing water of the rivers on the borders of states, Parliament has enacted two Acts I.e. The Act of river boards 1956, offers for the establishment of river boards for development and regulation of interstate rivers valleys and river provides for adjudication of disputes regarding to waters of interstate river valleys and rivers, by Central Government, on a request being received from State Governments or otherwise, and for advising the governments concerned in matters concerning regulation or government of an interstate river or river valley.

Another dispute included is free flow of trade and commerce over State boundaries. Parliament would facilitate creation of a suitable mechanism for resolving disputes among the States regarding free flow of trade and commerce over State boundaries. One such body already created is the Interstate Transport Commission under the Motor Vehicles Act which consists It may prepare schemes for the purpose, settle disputes, grant,

revoke and suspend permits for an interstate route or region or issue directions to the authorities of interested State transport for the purpose.

Apart from these constitutional provisions, an instrumentality very widely used to resolve complicated issues has been that of commissions under the Commissions of the Inquiry Act. These commissions study the problems referred to them, hear evidence and such parties as may be interested in the issues, and then make their reports to the Government which takes final decisions. A number of commissions have been appointed for the purpose of smoothing the, process of linguistic re-organisation of the country. Although, under the Constitution, Parliament has full power to take any decisions it wants in this in reality it is more of a responsibility than a power and has brought the Centre under heavy strains and pressures from various linguistic groups.

To increase the effectiveness of the federal system is the main function of the commission. It has studied a number of problems, has published a number, of reports, has promoted the idea of cooperative federalism., and has exercised healthy influence and impact on congressional legislation.

Check your Progress-4

1. What is main function of commission?

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2.5 INTER-STATE TRADE, COMMERCE AND INTERCOURSE

No federal country has a uniform or an even economy, land the constituent units in which it happens to be divided usually have varied economic patterns. Like Some of them may be agricultural, while others may be industrial; some of them may produce raw materials or other primary goods, but the processing and manufacturing industries may be

located in other places outside these States, because of more favourable commercial, geographical or economic factors, e. g., availability of labour or power, or ready markets, etc. This situation creates a broad-based view of national interests, may seek to create barrier in the way of flow of trade and commerce over their boundaries, discriminate between indigenously-produced goods and those produced outside, deny access to raw materials to outsiders, or impose discriminatory taxes on entry of goods from outside. The country required to be Strengthened by economic unity as well distribution of powers has been drawn in such a way as to give to the Centre broad powers in, the economic field. Interstate trade and commerce is a matter within the exclusive law-making jurisdiction of the Centre's while the States have power only on trade and commerce within the StateAny State's Legislation undertaken by a State under pressure from regional economic interests should be examined by the Centre from a national point of view. This mechanism seeks to draw a balance between national and region al economic interests.A State law levying a sales tax on imported goods while the indigenous goods were not so subject has been held to be invalid.

The tax, being levied on the movement or transportation of goods, imposed a restriction on the freedom of trade and commerce and this could not be done without satisfying the constitutional requirement of Central assent. The Constitution also provides for the appointment of an authority by Parliament to effectuate the constitutional provisions, regarding freedom of trade and commerce.

2.6 PLANNING

Since Independence, planning has been a major occupation of the governments in India, and it has had a deep impact on the evolution of Indian Federalism.The Constitution does not set up any planning machinery.

The Constitution does not lay down any articulate economic policy or philosophy, but its main thrust is towards economic democracy and welfare State without which, political democracy would be meaningless to large segments of the people. Though planning was in the air at the

time of the constitution-making, and the scheme of distribution of powers was drafted.

In the year 1950, the Government of India set-up the planning commission by its resolution to discharge the following functions:

1. For make an assessment of the capital, material and human resources of the country and for investigate the chances of augmenting such of these resources as are found to be deficient in relation to the nation's essentials.
2. To formulating a plan for the most balanced and effective utilisation of the resources in country.
3. On the determination of priorities, for outline the various stages in which the plan should be carried out and propose the allocation of resources for the due each stage's completion.
4. For indicating the various factors which are tending to retard financial development and finding the conditions which in view of recent political and social situation, should be established for the accomplishment of execution of the plan.
5. For determining the nature of the machinery which will be required for securing the successful execution of each stage of the plan in all its aspects.
6. For evaluate from time to time the progress achieved in each stage's execution of the plan and recommend the adjustments of measures and policy that such appraisal might show to be necessary.
7. And at last, to make such ancillary and interim recommendations as might be appropriate on a consideration of the prevailing financial conditions, development and measures programmes, current policies or on an examination of such particular problems as may be referred to it for advice by the State or central Governments.

Planning has been unified as well as comprehensive in India. The plans deal not only with the Central subjects but also with State subjects. The Planning commission, which formulates the plans, though it includes members of the Central cabinet, has no State representation as such. It

has all along been a body nominated by the Centre without consulting the States.

Each State formulates a plan for itself for a five-year period and submits it to the planning commission. The Commission discusses the plans with the State representatives, and after pruning and adjusting the plans in the light of resources and priorities and including the Central plans, evolves a master plan for the whole country for a five-year period.

2.7 EMERGENCY

Federalism as a system of counterpoise is no longer viable in the field of war-making's and that there is incomparability between the requirements of total war and principles thus far deemed to be fundamental to government under the Constitution's Accordingly, the Indian Constitution also makes some emergency provisions under which normal, peace-time federalism is adapted to the demands of the emergency. A unique feature of these provisions, however, is that instead of relying on the judiciary to effect necessary adjustments in the Centre-State power balance, they provide a simpler mechanism for the purpose, of executive determination subject to parliamentary control. there was not much room left for the judiciary to make necessary adjustments in emergency situations. Moreover, the emergency provisions in India envisage certain situations which are not to be found in any other federal constitution.

Firstly, the President may issue a proclamation of emergency when he is satisfied that there is a threat to the security of country either by external aggression or internal disorder, a concept which is parallel to the war-time emergency.

Secondly, an economical emergency may be declared if the country's president is satisfied that a situation has arisen threatening the economic stability or country's credit.

The salaries and allowances of persons in the service of the Union can also be reduced if necessaries. It will be noticed that financial emergency

increases the Central supervision over the States in financial matters. Perhaps, the idea of such an emergency was adopted by framers of the Constitution from the experiences of other federations during the depression of the 30's when the Central Governments in the U.S.A. and Canada found themselves hampered in taking effective action to meet the situation 16's.

Thirdly, the Indian Constitution envisages an emergency arising because of the failure of constitutional machinery in a State. Recently, under this provision, the Central Government sent its forces into Detroit, State of Michigan, on a request of the Governor, to contain the racial violence. A similar provision is to be found in Australia.

It will be necessary to evolve certain norms for this matter so that political considerations are kept aside and the Centre-State relationship in the sensitive area is placed on an objective, non-party and non-political basis so that democracy and federalism can flourish in the country. This matter indeed is full of difficulties.

2.8 THE LANGUAGE PROBLEM

The language problem constitutes to-day a divisive influence in the Indian polity, India has two main linguistic groups, the Indo-Aryan and Dravidian, which is spoken by nearly 75 percent and 24 percent of people.

Hindi is spoken by nearly 42 percent of the people, and out of the 4 languages in the second group, Telugu is spoken by nearly 0 percent .Some of these languages are very old, have a rich cultural and literary heritage, and are spoken, in absolute terms, by a larger number of people than many modern languages in the globe.

During the British rule, English was the language of administration, instruction, examination, communication amongst the elite, and on an all-India basis.

When independent India adopted democratic government based on adult suffrage, retention of English as the language of administration appeared to be an anachronism for that would have effectively cut off vast numbers of people from any real participation in country's affairs making democracy meaningless.

But as the intelligentsia was accustomed to thinking, and speaking in English and as there was Also the problem of non-Hindi speaking people, it was decided to have a 15-year transitory period and during the transition to continue English for the official purposes of the Centre.

To facilitate the change-over from English to Hindi, Provision was Made in 1955 for appointing an official language commission, consisting of people from all regional languages, to Make recommendations for progressive use of Hindi for the Centre's official purposes, restricting the use of English for any such purpose and for the usage of language.

The Constitution also directs that the Hindi must be developed So that it serve as medium of all elements of the Indian composite tradition and for securing its enrichment by integrating without interfering with forms , genius, expressions used in Hindu language and in the other regional languages and by drawing for its Vocabulary mainly on Sanskrit and other Languages.

The States have been authorised to adopt a regional language or Hindi for their official purposes. Provisions have also been made in the Constitution for linguistic change-over in the Supreme and High Courts and in field of legislation.

A major apprehension of the non-Hindi speaking people is that the adoption of Hindi will give an edge to the Hindi-speaking people in the affairs of the Union and, more importantly, in the Union services in which today the non-Hindi People enjoy a major share.

In this way, the Centre is to decide finally whether a change-over from English to Hindi or regional language is to be permitted in a particular High Court. Since the commission-s recommendations in the year 1957,

non-Hindi speaking people have been agitating for the continued use of English.

The language problem has also manifested itself in another way, viz., the linguistic re-organisation of the country. When independence came, the leaders began to be assailed with doubts over the wisdom of this policy as they were. afraid that linguistic chauvinism might generate parochial tendencies resulting in the weakening of the country.

The re-organisation of the States on a linguistic basis has led each State. to adopt the regional language as the official language. As each State has one predominant language group, it is easier to run the administration in that language. To ease this difficulty, a three-language formula is being sponsored which means that students should study the regional, the Union and an international language.

Check your Progress-5

1.What is language problem constitute of?

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2.9 CO-OPEARATIVE FEDERALISM

In common with the dominant theme of co-operative federalism emerging in other, federation's India too has developed a number of instrumentalities and techniques for promoting the inter-governmental co-operation.

Under the constitutional provision pertaining to interstate council, two advisory bodies have been established –

1. The Central Council of Health. consisting of Union and, State Health Ministers.
2. The Central Council of Local, Self-Government consisting of the Central Minister of Health and the State Ministers for Local Self-Government and Village Panchayats.

The Northern Zonal Council consist of the States of Haryana, Punjab, Rajasthan, Jammu and Kashmir, and the Union, Himachal Pradesh and Territories of Delhi, the Eastern Council comprises the States of West Bengal, Bihar, Orissa, Assam, Nagaland, and the Manipur and Tripura Union Territories, The Western Council includes the other States of the Maharashtra and Gujarat, The Central Council comprises the States of Madhya Pradesh and Uttar Pradesh and the Southern Zonal Council includes four southern States of Andhra Pradesh, Madras, Mysore and Kerala. Each council is composed of the Central Home Minister as chairman, each of the State Chief Ministers acting as vice-chairman in rotation for a year, two other ministers from each State and two members from each Union Territory.

Each council has certain official advisers with a right to participates in discussions without vote. Generally, a zonal level council, which is a recommended body, it can discuss any matter in which some States, or the Centre and a State, may be interested. The council may advise the Centre and the States as to the action to be taken in any such matter. Provisions have been made for each council to have a secretariat and for several councils to hold joint meetings to discuss matters of. common interest.

These bodies aim is to promote interstate co-operation by bringing together the States in a region so that they may discuss their common problems and suggest joint action to solving these problems. These, councils, although they do not have many spectacular achievements to their credit, have, yet, helped in developing a common approach to some regional problems,

According to the Constitution, university education is a State subject, but co-ordination and maintenance of standards in this area is a Central

charge and it is to fulfil this function that the Centre has created the commission with broad powers.

2.10 LET'S SUM UP

Federalism is kind of government in which exclusive power is subdivided between the national and units of other governments. It is in contrast with unitary government, in which central authority hold the power and a confederation. From the commencement of Indian federalism, it has been called to meet various challenges Which helps in improving the Material well-being of peoples. When a number of governments function within a polity as they do in a federation, areas of tensions, differences and disputes are bound to arise between them from time to time, and it, therefore, becomes necessary to have some mechanism to resolve these disputes in order to smooth the working of the federation. framers of the Constitution foresaw that the country would have to force the pace of economic development, and this could be done effectively by mobilising national resources and using them properly under Central leadership.

2.11KEYWORDS

1. Constitution: An aggregate of fundamental principles.
2. Political group: It is organized group of peoples who have same political position.
3. Federalism: It is system of government or a federal principle.
4. Legislative: relating to have a power for making laws.
5. Judiciary: System of court which applies the law in the country.
6. Territory: Land's area under the jurisdiction of state.

2.12 QUESTIONS FOR REVIEW

1. State federalism.
2. What are the three relationships constitution of India divided in?
3. What do you mean by legislative relationship?

4. What are different inter-governmental disputes.

2.13 SUGGESTED READINGS AND REFERENCES

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2.15 ANSWERS TO CHECK YOUR PROGRESS

1. (Answer for Check your Progress-1 Q.1)

Federalism is kind of government in which exclusive power is subdivided between the national and units of other governments. It is in contrast with unitary government, in which central authority hold the power and a confederation.

2. (Answer for Check your Progress-2 Q.1)

India is an underdeveloped country whose socio-economic progress has been retarded for centuries. The framers of the Constitution foresaw that the country would have to force the pace of economic development so as to compress into decades the progress of centuries, and this could be done effectively by mobilising national resources and using them properly under Central leadership.

3. (Answer for Check your Progress-3 Q.1)

Financial relationship of the constitution of country primary deals with centre-state financial relations. The constitution has provided state government and union government with independent revenue sources which are distributed in central, state government. Also, all the finance commission ensures that funds would flow from the Centre to the States without political pressures and on objective criteria.

4.(Answer for Check your Progress-4 Q.1)

The main function of the commission is to increase the effectiveness of the federal system. It has studied a number of problems, has published a number, of reports, has promoted the idea of cooperative federalism., and has exercised healthy influence and impact on congressional legislation.

5.(Answer for Check your Progress-5 Q.1)

The language problem constitutes to-day a divisive influence in the Indian polity, India has two main linguistic groups, the Indo-Aryan and Dravidian, spoken by nearly 75 percent and 24 percent of the people.

UNIT–3: JUDICIARY AND THE POLITICAL PROCESS IN INDIA: AN INTRODUCTION

STRUCTURE

3.0 OBJECTIVES

After learning this unit based on "Judiciary and The Political Process in India: An Introduction", you can gain knowledge of about the following important topics:

- To do the separation of Powers and Judicial Review.
- To know the Parliamentary Democracy.
- To know the Judicial Review and Indian Constitution.
- To discuss Judicial Review and Federalism.

3.1 INTRODUCTION

In a systematic framework, democracy goes through. There is a political system in every democratic nation and the political process is the most suitable tool for analysing the political system. The political process is the method of formulating and managing public policy generally through communication between social groups and political organizations or between political management and public opinion based on the policies of the societyconcerned. The political process gets data and signals from the setting and then turns this data and signals into authority. It is a study of political behaviour aimed at achieving an objective through the use of political power or through activity in political channels; specifically, as involvement in political organisation, elections and lobbying. Sociologists coincide with the word- political process Um. It is a movement or uprising-related analysis in a specific sector that shifts trends and creates a fresh scope. The political process has to do with political socialization. Charles Tilly first used the term political process in his article entitled Political Process in Revolutionary France 1830-32.3 the theory / model of political processes is related to mobilization of social movement. The main components / factors of the theory of political procedures are political opportunities, mobilizing structure and framing procedures. When focusing or paying attention to distinct movement characteristics and their interaction. Social movements ' characteristics include structure of the organization, financial and political context. Social movements are, according to the theory of political processes (PPT), the means of achieving political ends and resolving legitimate grievances. Charles Tilly's — from mobilization to revolution (1978)—almost provides PPT with a base and three elements, i.e. Interest, organizational opportunities and opportunities. As a consequence of the civil rights struggle, the PPT was created in the U.S.

Check your Progress-1

1.What is the political process?

3.2 PUBLIC POLICY

Government enacts legislation, makes policies, and allocates funds in any community. Public policy can usually be described as a scheme of legislation, regulatory measures, course of action, and financing priorities related to a particular subject promulgated by a government body or its officials. Individuals and organizations often try to shape public policy through schooling, advocacy, or interest groups mobilization. The shaping of public policy in distinct types of government is clearly distinct. But it is sensible to believe that the method always includes attempts to influence policymakers in their favour by competing interest groups. Executives have a predominant position in the implementation of public policy in every political system. The other two state bodies, parliament and courts, however, can also affect policy making depending on the type of government such as parliamentary and presidential government. Legislation is a significant element of public policy. In particular, the law involves particular legislation and constitutional or international law provisions that are more widely defined. There are many ways the law can affect the government's public policy. Legislation identifies fields of government policy and the nature of it. It is therefore not surprising that public policy discussions are taking place on suggested legislation. In a parliamentary type of government, the legislature's function in the implementation of public policy is growing excessively. The notion of judicial review is based on judicial interference in policy making. Integrated judiciary is inconsistent with the country's federal spirit.1 judicial interference in policy making, particularly a topic such as education included in the Concurrent List, creates more confusion and chaos in policy execution. Policy diversification is a federal 50 type of public merit, but it is hampered by judicial interference. For this purpose, Supreme Court cases concerning self-financing education are a good instance.

Check your Progress-2

1. What is Legislation?

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3.3 SEPRETION OF POWER AND JUDICIAL REVIEW

A truly liberal constitutional document is one that gives authority, but it also offers mechanisms to curtail any arbitrary practice. In the Indian Constitution, there are three ways this occurs. First, the Constitution lists the stuff the State can't do and also lists all the things it has to do. Second, because the Constitution is federal, the State's authority is split between the Union and the States. Third, there is a division of powers, which is split by the Constitution itself (Hidayatullah 1966: 64-66) between the legislature, the executive and the judiciary. No single body of men is entrusted with all the power possessed by the State in these various respects.Montesquieu was totally correct when he said, 'By dividing powers, government becomes the servant of the individuals, not the master.' In India, the concept of the separation of powers between three branches of government was efficiently substituted by a Unitarian statement of official judicial supremacy. The notion of the rule of legislation is intended to legitimize this argument, but it remains an open question whether judicial power–either as such or as exercised by the Supreme Court of India–effectively upholds the rule of legislation. To understand how this scenario has come about, it is useful to know that the authority of judicial review in India is more or less explicitly stated in the Constitution of 1950 and that this Constitution has a dual objective. On the one side, it seeks to verify the authority of government and protect individual rights and freedoms as a fundamental law in the liberal tradition. On the other side, it is the job of framers who, with good cause, thought that their nation required a state with the ability to intervene massively in society to resolve structural injustices that were sufficiently

serious to threaten liberal democracy itself (Mehta 2007: 110). Therefore, the Constitution enables the judiciary to intervene in the cause of what could be loosely called' social reform.' In addition, judges have gradually expanded the definition of freedoms deemed constitutionally justiciable. From civil liberty to urban planning, therefore, the scope of judicial interference can include everything. This constitutional practice, which gave the courts permission to intervene, was bound to produce a promiscuity that would trigger some resentment. It is difficult to tell what the circumstances under which autonomous judicial review will occur and take hold are essential and adequate. It used to be a popular argument that powerful federalism causes and demands effective constitutional judicial review. Federalism needs a 'referee' to safeguard border agreements, so every unit of a federation will promote the development and maintenance of some central institution intended to define and prevent non-compliance by others, despite incentives to deviate. The nature of India's federal agreement has switched to how judicial power is exercised, and judicial review has often eroded federalism rather than reinforced it (Mehta 2007: 114). In defining the Indian polity's federal personality, the legislature and executive mainly followed the lead of the judiciary. This indicates that, as with a solid division of powers between distinct levels of government, a powerful division of powers between distinct branches of government will foster judicial power and independence. The general presumption was that there would be weak judicial review in the parliamentary system, where the executive rises straight from the parliament (Mehta 2007: 114). Yet in parliamentary nations such as Australia and Canada, powerful judiciaries full of judicial review doctrines are appearing.

In the exercise of judicial power, the actions of judges themselves, not federalism or the separation of powers, most cogently explain changes over time. Court rulings are the primary means by which judicial review is institutionalized. In India as elsewhere, it is not just the official allocation of powers that has improved the powers of judicial review, but an evolving constitutional jurisprudence. It appears in democratic societies that the degree of independence asserted by a judiciary is itself a development of judicial power (Mehta 2007: 115). Probably as useful

as any response to the judicial power puzzle is the idea that 'judicial review causes itself.' The history of judicial power and its practice in India suggest an extremely inaccurate metaphor for the separation of powers doctrine. Of course, it is still invoked all the time, but in fact it does not provide a precise empirical description of how real judiciary operate, nor any government's plausible conceptual account. In many situations, policy making has become a regular component of the judicial role, and adjudication now also belongs to the domain of administrative functioning in many nations and in many respects. The traditional difference that maintains legislatures as forums of principle for balancing interests and courts is far less evident than it appears. On the conceptual stage, metaphor breaks down the plausibility of the division of powers as quickly as one asks: 'Who polices the borders between distinct state branches? 'Each branch will want to patrol its own boundaries, making any concept of separationrhetorical'. India's Supreme Court has provided rulings that all state branches are 'under the Constitution,' implying that all legitimate power has its origin in a legal or constitutional order that somehow controls men's behaviour (Mehta 2007: 115). In brief, the judiciary has become stronger because the Court is not just the guardian of the Constitution, but also the separation of powers. So, Court can decide the limits between separate public branches, especially between the judiciary and two other branches.

Check your Progress-3

1.What is Traditional difference?

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3.4 PARLIAMENTARY DEMOCRACY

India has a state hybrid system. The hybrid system combines two classical models: British traditions, based on parliamentary sovereignty and conventions, and American principles that uphold a written

constitution's supremacy, separation of powers, and judicial review. Because parliamentary sovereignty 53 and constitutional supremacy are incompatible, the two models are contradictory. India has separate imprints on British and American principles in its constitution. In other words, after the adoption of the 1950 Constitution, India has developed from British and American constitutional practices a totally distinct political-constitutional agreement with features. The peculiarity resides in the reality that the Indian political arrangement, despite being parliamentary, does not fully conform to the British scheme merely because it has also embraced the federal values, it can never be entirely American since the Indian parliament remains sovereign. India has led as a hybrid political system to a totally distinct political-constitutional structure, defined as parliamentary federalism, with no parallel in the constitution's development history (Chakrabarty 2009: 86). Therefore, the political system in India, based on both parliamentary methods and federal values, is a conceptual riddle underlining the hitherto unexplored dimensions of nation-states 'socio-political history imbibing British traditions and American principles. India's Constitution offers for the parliamentary democracy scheme at the Centre as well as in the States. The most challenging scheme to operate is this parliamentary government. It has been successful in a few nations and today's trend is certainly towards a powerful executive who can regulate the turbulence and turmoil of political life and the tremendous challenge of the modern world. In India's constitutional history, the most important innovation is the consolidation of a parliamentary type of government that generally corresponds to the Westminster model. Equally striking is the development of federalism in India despite the parliamentary government that flourished within a unitary government scheme in its classical form. While Britain is recognized as a classic parliamentary government model, the U.S. is always referred to as an optimal federal government form. The Constituent Assembly was in favour of executive federalism while discussing the 54 type of government for independent India, which they assumed was suitable for a stable political power. Because of latest radical modifications in the political structure of India, parliamentary federalism has metamorphosed to a substantial extent and the increasing significance of the constituent state in domestic governance has created

circumstances for legislative federalism that suggest equal and meaningful representation of units in federal decision-making (Chakrabarty 2009: 84-85). As a type of government, the democracy envisaged is a representative democracy, and the individuals of India are to practice their sovereignty through a parliament at the centre and a legislature in each country to be elected an adult franchise, to which the true executive, namely the Council of Ministers, is responsible for the common house (Asaiah 1987: 36). The Parliament is the domestic activity's nerve centre. It is through Parliament that elected representatives of the individuals ventilate the grievances and views of individuals on multiple problems, scrutinize the functioning of the executive on both the House floor and through special committees set up for the purpose, and enact legislation.

3.5 JUDICIAL REVIEW AND INDIAN CONSTITUTION

American constitutional thinking and the U.S. Supreme Court's job had a deep effect on the minds of the Indian Constitution's makers. They opted for the British parliamentary system but deliberately embraced the American model of a judicially enforceable Bill of Rights and a federal system with the Supreme Court to maintain within their respective areas the jurisdiction of both the Union and the States (Chatterjee 1998: 93). Nevertheless, one of the U's foundational notions is the' due process clause.' S. In Indian Constitution, the constitutional system was not integrated. To quote AlladiKrishnaswamiAyyar, 'The United States Supreme Court has not taken a coherent perspective at all in the growth of the doctrine of due process and the choices are inconsistent. Very often, one choice is overturned by another decision. It all relies on the 55 magistrates who were chairing the occasion. '(Constituent Assembly Debates, vol. VII, 853-54). Following a lengthy discussion in the Constituent Assembly, it was decided unanimously to acknowledge simply the procedural element of due process in the Indian constitutional system.2 In post-independence India, it was essential to include specific provisions for' judicial review' to give impact to the individual and

group rights guaranteed in the Constitution document. Dr. B.R. Ambedkar, who chaired our Constituent Assembly's drafting committee, defined the provision as the' core of the Constitution.' Article 13(2) of the Constitution of India stipulates that no law which removes or abbreviates any of the fundamental rights shall be enacted by the Union or States, and any law which contravenes the aforesaid mandate shall be void to the extent of the contravention. While judicial review of administrative action has developed along the lines of common law doctrines such as' proportionality,'' lawful expectation,'' reasonableness' and values of natural justice, the authority to rule on the constitutionality of legislative and administrative decisions has been provided to the Supreme Court of India and the numerous High Courts. In most instances, judicial review powers are exercised in order to safeguard and implement the fundamental rights enshrined in Part III of the Constitution (Balakrishnan 2009). The greater courts are also approached to rule on issues of legislative competence, mostly in the context of Centre-State relations since Article 246 of the Constitution reads with the 7th timetable, provides for a clear demarcation as well as an area of junction between the Union Parliament's parliamentary powers and the different State legislatures. The warrant for judicial review emerges from a combined reading of the Indian Constitution's Articles 13, 32 and 142. Article 13(2) provides that' No law which removes or abbreviates the rights conferred by that part shall be enacted by the State and any law which contravenes that clause shall be void to the extent of the contravention (Govt. of India 2007: 56 5). Article 32 and Article 226 grant any individual the right to transfer the Supreme Court or the High Court to enforce the fundamental rights secured in Part III of the Constitution, respectively. Finally, Article 142 offers that the Supreme Court 'may pass or create such a decree as is essential to do full justice in any case or matter,' and such a decree or order is 'enforceable throughout India's land' (Govt. of India 2007: 58). Article 142, in particular the sentence' full justice,' granted a virtual permit to the judiciary to intervene in any matter. Over the years, the Court has developed its own authority in a variety of fields in relation to these textual enablers. It is acknowledged, however, that the Indian Supreme Court is the constitution's supreme interpreter and guardian. In certain

circumstances, it may invalidate a law enacted by the legislature (Chatterjee 2005): if the legislature (whether the legislature of the parliament or the legislature of the state) makes a law by violating its jurisdiction. If the law abbreviates the citizens' fundamental rights. By Article 13(2) of the Constitution of India, the State shall not create any law that removes or abbreviates the Fundamental Rights. Thus, the Supreme Court is the ultimate power to decide whether a law has removed and curtailed the Fundamental Rights and what the Fundamental Rights limits would be. The Supreme Court also has the ultimate power to decide whether a statute imposes unreasonable restrictions on the enjoyment of the right to freedom guaranteed by Article 19 of the Constitution. Under Article 31(2) (now abolished) it was the court's responsibility to determine whether or not a property was obtained or requested for a 'government purpose.' Thus, while we did not accept the US Constitution's 'due process' clause, there are still a number of provisions in the Indian Constitution that, in fact, authorize the Supreme Court to examine the reasonableness 57 or fairness of the substantive content of very vital laws aimed at bringing about the country's socio-economic transformation.

3.6 JUDICIAL REVIEW

Judicial Review relates to the judiciary's authority to interpret the constitution and declare any such law or order of the legislature and executive void if it finds them in conflict with the Indian Constitution. India's Constitution is the country's supreme law. India's Supreme Court has the supreme duty to interpret and protect it. It also functions as the guardian-protector of people's fundamental rights. The Supreme Court exercises the authority to determine the constitutional validity of all legislation for this purpose. It has the authority to dismiss any law or any of its unconstitutional parts. This Supreme Court authority is called the power of the Judicial Review. State High Courts also exercise this authority, but the Supreme Court may reject or modify or uphold their judgments. Judicial Review relates to the judiciary's authority to interpret the constitution and declare any such law or order of the legislature and executive void if it finds them in conflict with the Indian Constitution. Judicial review is the judiciary's authority by which: I the

tribunal reviews the legislation and regulations of the legislature and executive in instances before them; in litigation instances.

The tribunal shall determine the constitutional validity of the government's legislation and regulations; and (iii) the tribunal shall reject that law or any portion thereof which is found to be unconstitutional or contrary to the Constitution.

The Supreme Court and the High Court's use Judicial Review Power: both the Supreme Court and the High Court's exercise Judicial Review authority. But the Supreme Court of India has the ultimate authority to determine the constitutional validity of any law. Judicial Review relates to the authority of the judiciary to interpret the Constitution and declare null and void any such law or order of the legislature and executive, if the Constitution of India conflicts with it. India's Constitution is the country's supreme law. India's Supreme Court has the supreme duty to interpret and protect it. It also functions as the guardian-protector of people's fundamental rights. The Supreme Court exercises the authority to determine the constitutional validity of all legislation for this purpose. It has the authority to dismiss any law or any of its unconstitutional parts. This Supreme Court authority is called the power of the Judicial Review. State High Courts also exercise this authority, but the Supreme Court may reject or modify or uphold their judgments. Judicial Review relates to the authority of the judiciary to interpret the Constitution and declare null and void any such law or order of the legislature if the Constitution of India conflicts with it. Judicial review is the judiciary's authority by which, the tribunal reviews the legislation and regulations of the legislature and executive in instances before them; in litigation instances.

The court shall reject the law or any portion thereof that is found to be unconstitutional or contrary to the Constitution. The Supreme Court and the High Court's use Judicial Review Power: both the Supreme Court and the High Court's exercise Judicial Review authority. But the Supreme Court of India has the ultimate authority to determine the constitutional validity of any law. Judicial review of both central and state legislation: Judicial review of all central and state legislation, executive orders and orders, and constitutional amendments may be

carried out. Judicial review cannot be carried out with regard to the legislation included in the Constitution's 9th Schedule. It includes legislation and not political problems, it only includes law problems. It cannot be practiced in political matters. The Supreme Court does not use its own jurisdiction over judicial review. It can only use it if any law or rule is specifically questioned before it or if the validity of any law is questioned before it during the course of hearing a case. legislation is constitutionally valid. The law remains to function as before in this situation, or the law is constitutionally invalid. In this situation, from the date of the judgement the legislation ceases to function with effect. Only certain sections of the law or sections thereof are invalid. Only invalid components or components in this situation become non-operational and other components stay in service. If, however, the invalidated parts / parts are so vital to the law that other parts cannot function without them, then the entire law is dismissed. when a law is dismissed as unconstitutional, it ceases to function from the judgment date. All operations carried out in accordance with the law before the date of the judgement which declared it invalid, stay valid. Judicial review in India is regulated by the principle:' Law-setting procedure.' Under it, the tribunal carries out one test, i.e. whether or not the law was created in accordance with the powers given to the law-making body by the Constitution and follows the prescribed procedure. It is dismissed when it is considered to be in violation of the legal procedure.

3.6.1 Legislative Action

Legislature, executive and judiciary under the Constitution are to exercise powers with checks and balances, but not in water-tight rigid mould. In India, by basis of Article 13 (2) the Supreme Court can exercise the power of judicial review. Judicial review in India comprises of three aspects:

1. Judicial review of legislative action.
2. Judicial review of administrative action.
3. Judicial review of judicial decisions.

The Constitution of India provides for judicial review under Article 13. The Supreme Court has pronounced that judicial review is a fundamental feature of the Constitution. The power of judicial review by courts therefore is not subject to amendment and thus has been effectively taken out of the field of Parliament's power to amend or in any way abridge. The judiciary has declared a 'hands-off' command to the legislature. Thus, judicial review is a highly complex and developing subject. It has its roots long back and its scope and extent vary from case to case. It is considered to be the basic feature of the Constitution. The court in its exercise of its power of judicial review would zealously guard the human rights, fundamental rights and the citizens' rights of life and liberty as also many non-statutory powers of governmental bodies as regards their control over property and assets of various kinds, which could be expended on building, hospitals, roads and the like, or overseas aid, or compensating victims of crime.

Check your Progress-4

1.What will the court in its exercise of its power of judicial review do?

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3.6.2 Administrative Action

The limitations on judicial review authority are a recurring theme in our Constitution's evolution. The Supreme Court has described the outline of sovereign authority in some of its distinguished decisions as 58 distributed among the three branches of government, namely the legislature, the executive and the judiciary. In the initial years after independence, on the one hand, the Supreme Court tried to strike a balance between the much-needed economic and social reform programs (such as land reform and land redistribution) and, on the other, to establish the credibility of the newly born Indian State. It attempted to

encourage the rule of law and to honour the freedoms conferred by legislation preceding independence and the Constitution itself. (AIR SC 458 in 1951).

3.6.3 Judicial Decisions

During the first few centuries when India functioned as a de facto one-party political system for all practical reasons. The Supreme Court concentrated on encouraging constitutionalism values, separation of powers, and checks and balances across and within each state organ. The Supreme Court and the High Courts have been constantly vigilant in their evaluation of executive decisions, thereby ensuring protection of the public against excesses of authority or abuses of power (AIR 1964 SC 962). They were equally vigilant in their evaluation of legislative behaviour, both in terms of legislation and in balancing lawful parliamentary powers (needed for Parliament's efficient functioning) with parliamentary privileges, particularly that of punishment for negligence (AIR 1965 AII 349). In the decades that followed, the Supreme Court turned its attention to the frequency with which the Parliament amended the Constitution using as much as possible the dominance of a single political party at both domestic and state level. The Court drew up the difference between parliamentary and legislative authority (AIR 1967 SC 1643). Moreover, as the judiciary and the Indian political system matured, by articulating the fundamental structural doctrine, the Supreme Court strongly created the primacy of the Constitution, thereby safeguarding those characteristics intrinsic in the Constitution from being altered by the mere exercise of legislative power (AIR 1973 SC 1461).

3.7JUDICIAL REVIEW AND FEDERALISM

The traditional concept of federalism is to build an independent judiciary in order to maintain the federal structure intact, because federalism includes the division of powers between the central government and the provincial governments, and occasionally disputes may arise between the

two or the provinces in relation to the terms of the division of powers and their corresponding regions of power All such disputes shall be resolved by reference to the Constitution, which is the supreme law of the territory and prescribes how powers are spread between the centre and the units. Justice requires an impartial arbiter to settle such disputes. A federal constitutional Supreme Court is such an arbiter and thus an essential part of a federal system. It is the Constitution's largest interpreter and acts as the Constitution's guardian.

3.8 THE RISE OF JUDICIAL SOVEREIGNTY

The primary responsibility of the Indian Supreme Court is to interpret and implement the 1950 Constitution. It includes 450 papers and 12 schedules at the recent count. It has been modified more than a hundred times since its initial implementation. It is reasonable to say that the Supreme Court, working under the aegis of this book-sized liberal constitution, has played a major and even crucial part in upholding India's liberal democratic institutions and upholding the rule of law. The judges of the Court, now number 26 by law, have played an autonomous position in judicial appointments and transfers for the Court over the years, maintained comprehensive judicial review of executive actions, and even proclaimed several constitutional amendments unconstitutional. The court they sit on is one of the most strong judicial bodies in the world with both beneficial and difficult consequences for democracy (Mehta 2007: 107). In instances of preventive detention, the Court has a comparatively weak record of questioning executive action. While the Court has usually maintained the right to free expression, more than 60 leeway has been provided to the state in prohibiting books that authorities fear may threaten public order. During the era of emergency rule proclaimed at the instigation of Prime Minister Indira Gandhi from June 1975 to March 1977, the Supreme Court shrank from its obligation and suddenly decided to agree with the suspension of Habeas Corpus's writ by the executive (Mehta 2007: 108). In addition to defending the fundamental freedoms that placed the 'liberal' in India's liberal

democracy, the Court has helped safeguard the integrity of the electoral system by ensuring the democratic personality of the polity. The Court has acted as a pretext for curbing the inclination of the central government to misuse Article 356 to sack elected officials of the state and instead install the rule of the president. Interventions by the Supreme Court also fostered democratic transparency by making political applicants fulfil more comprehensive disclosure standards.

The record of the Supreme Court is mixed in encouraging decentralized governance. On the one hand, by stating that the central government cannot reject a state government without a high limit of public justification, the Court has assured the integrity of Indian federalism. On the other side, courts across the nation were less receptive to state governments ' allegations from lesser levels of government. So far, the Supreme Court has proved incapable of clarifying the law in this region. While at first the social and economic rights listed by the Constitution were not considered justiciable, over the years, the Supreme Court has succeeded in applying a more meaningful concept of equality used by the courts to preserve, among others, the rights to health, education and shelter. The executive branch has reacted to one degree or another by at least attempting to create provisions to ensure these freedoms. His institution of Public Interest Litigation (PIL) was the greatest judicial innovation of the Court–and the most important vehicle for expanding its power. In PIL instances, the Court relaxes standing and pleading's ordinary legal conditions, which require a directly impacted party or parties to press for litigation, and instead enables anyone to approach it seeking correction of an alleged evil or injustice. In addition, the Court has extended its own authority in 61 PIL matters to the extent that it sometimes takes control of executive agency activities.

Check your Progress-5

1.What does the executive branch did?

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3.9 LET'S SUM UP

The Indian Judiciary is a relic of the British Raj's legal scheme based on the common law of English. It is made up of customs, precedents, and lawmaking. India's Constitution, enacted on January 26, 1950, sets the land law. The Indian Constitution has been drafted with components from Irish, French, American and British legislation as well as adhering to the United Nations ' human rights code. The Supreme Court is the country's largest court, followed by the different judiciary at the high court and district level. Judicial members are autonomous of the legislature and government executive branch. Historically, Arthashastra and Manusmriti ruled India such as two ancient texts providing legal advice. Prince countries governed the territory, the king being the supreme leader. Villages had panchayats to settle conflicts that acted as the judiciary. Legislation was based on religion, with Muslims and Hindus adhering to instructions given by their religious texts and rulers. A new common law system was launched after British colonization. India's Constitution went into force on January 26, 1950, and it turns out to be the longest constitution in any country, consisting of 444 articles, 94 amendments and 117,369 phrases. It is based primarily on the 1935 Government of India Act. It includes clauses on the partnership between the governments of the Federal and State and a citizen's freedoms. It also has some distinctive directives, such as only the federal government's distinctive authority to make constitutional amendments and the authority provided to the federal government in emergency rule. Modern law procedures are constantly changing in India. The Parliament, like the State, has the authority to make legislation. However, in the event of a dispute, the regulations laid out by the Parliament take precedence over state legislation. Courts have the authority to administer both state and central legislation. The enforcement of laws in India is controlled by the Ministry of Home Affairs. The majority of law enforcement is the state's responsibility, with police being its core enforcement agency. Among other things, the central government has the Central Investigation Bureau and the National Investigation Agency. A hierarchy follows the judiciary. At the apex is India's Supreme Court, below which are each state or territory's high courts. Below the High Courts there is a system

of Subordinate Courts, below which there are tiny Panchayat Courts governing civil matters and tiny crimes within a village or group of villages. Each state is split into judicial districts presided over by magistrates of the District and Sessions, including Munsifs, Civil Judges, and Sub-Judges. At the highest end, the Supreme Court has the president appointed a chief justice and a group of other judges. The President also appoints the Attorney General, who is in charge of reporting legal matters to the state. The Attorney General is entitled to hear in all Indian courts. The Solicitor General and the Additional Solicitor General are below him. In Indian law and the judiciary, there are separate branches dealing with distinct elements of life. The Indian Penal Code of 1860, drafted by the British, sets out criminal law in India. The 1973 Code of Criminal Procedures offers law enforcement practices. In 1960, jury trials were abolished, and capital punishment in India is still legal. Contract law, also known as mercantile law, governs contract entry and contract infringement. Except for Jammu & Kashmir, it refers to all countries. It is set out in the Indian Contract Act of September 1, 1872 and is India's most frequently used act of legal contracts. India's labor law is one of the world's most complicated and restrictive for employers, and it needs reform. It has about 55 domestic legislation and many more at the level of the state. It has both collective labor laws (like the 1947 Industrial Disputes Act) and individual labor legislation (like the 1948 Minimum Wages Act). As outlined in Article 300 of the Indian Constitution, Tort Law is characterized by the liability it places on countries. It primarily governs deaths in custody, atrocities by police, assassinations, illegal detention and disappearances. Tax law in India is a complicated collection of legislation. The 1961 Income Tax Act enables the central government to levy tax on revenue; customs and excise duties are also levied by the central government. In accordance with the VAT laws, the State is responsible for the sales tax.The Indian Trusts Act of 1882 codifies trust law. It does not recognize 'double ownership,' and a trust estate beneficiary is not the property's fair proprietor. It applies to all countries except for the Andaman and Nicobar Islands and Jammu and Kashmir. In India, family laws are complicated and based on religion. Muslims adopt Islamic such as Sharia legislation, Hindus have a somewhat less-defined set of family codes that also regulate Sikhs, Jains

and Buddhists, and Christians are ruled under Christian law, which has Canonical roots. In most countries, there is no uniform civil code (except Goa State, which has common law for marriages, divorces and adoptions) and most countries do not require the mandatory registration of marriages and divorces, although latest reforms have been directed at bringing about a more standardized set of laws regardless of religion. Recent changes have influenced legislation on custody, succession laws, problems of domestic violence, child marriage, and legislation on adoption. Nationality law is codified in accordance with the 1955 Citizenship Act and includes clauses on problems of citizenship. Although dual citizenship is forbidden, in 2004 the Parliament enacted a law allowing for a restricted dual citizenship called the Indian Overseas Citizen (OCI), in which the OCI has no participation in governance or voting, however. The Supreme Court was established in 1950. Chief Justice Harilal J. Kania and SaiyidFazl Ali, M. PatanjaliSastri, Mehr Chand Mahajan, Bijan Kumar Mukherjea and S.R.Das were the first judges appointed. The Supreme Court currently has a chief justice and 28 other judges appointed by India's president. The Constitution provides that judges, once appointed, may not be removed except by the President and a 2/3 majority in both Houses of Parliament in order to ensure the court's independence. Judges retire at 65 years of age and are dismissed from practicing in any Indian court. Besides being the country's largest appeal court, the Supreme Court is also the constitution's enforcer and interpreter. It hears appeals against high court choices, writes petitions concerning violations of human rights, and petitions submitted pursuant to Article 32 guaranteeing the right to constitutional remedies. It also has unique consultative jurisdiction over instances made pursuant to Article 143 of the Constitution by the President of India.

The Registry of the Supreme Court is headed by the General Registrar. Lawyers who can practice law before the Supreme Court are usually split into three classifications as follows:

Senior Advocates— those appointed by the Supreme Court or any High Court as such, owing to their ability to stand with the Bar, or special law knowledge.

Advocate-on-Record— only these are permitted to file a party with the Supreme Court for any document or appearance.

Other lawyers— these lawyers may appear and argue before the Court, but they are not permitted to file any records or matters.

English is the only language used by the Supreme Court in its business. Issues with the judiciary The average time spent in court in all cases is 4 minutes 55 seconds per case; however, there are severe backlogs in the Indian court system. The Delhi High Court is allegedly behind schedule for 466 years. Cases take decades to resolve, often to none's satisfaction. The case backlog is the consequence of a lack of magistrates. The population-to-judge ratio of India is one of the world's poorest. Additionally, corruption adds to the problem. According to Transparency International, an NGO that studies and collects statistics on socio-political corruption, judicial corruption in India is attributable to variables such as' delays in the handling of instances, lack of judges and complicated processes, all exacerbated by the predominance of fresh legislation.' Most instances that are stuck in the mid-process are violations of motor vehicles and small crimes.

3.10KEYWORDS

1. Litigation: The process of taking legal action.
2. Curbing: Lead (a dog being walked) near the curb to urinate or defecate, in order to avoid soiling buildings, pavements.
3. Legislation:The process of making or enacting laws.
4. Contravention:An action which offends against a law, treaty, or other ruling.

3.11QUESTIONS FOR REVIEW

1. How many High Courts in India have jurisdiction over more than one state, one thing to be remembering that Union territories not included?

2. Judicial Review in the Indian Constitution is based on which of the following?

3. In the Supreme Court of India, what is the number of Judges including the Chief Justice?

4. The Mumbai High Court does not have a bench at which one of the following places, (Hint – Panaji has a bench)

5. Which one of the following High Courts has the territorial over Andaman and Nicobar Islands?(Hint – Chennai, AP as well as Odisha don't have territorial)

3.12 SUGGESTED READINGS AND REFERENCES

1. https://shodhganga.inflibnet.ac.in/bitstream/10603/186111/8/08
2. https://sol.du.ac.in/course/view.php?id=239
3. http://www.rogerdarlington.me.uk/Indianpoliticalsystem.html
4. https://en.wikipedia.org/wiki/Politics_of_India

3.13ANSWERS TO CHECK YOUR PROGRESS

1. (Answer for Check your Progress-1 Q.1)

The political process is the method of formulating and managing public policy generally through communication between social groups and political organizations or between political management and public opinion based on the policies of the society concerned.

2. (Answer for Check your Progress-2 Q.1)

Legislation is an important component of public policy. In specific, the law includes specific legislation and more commonly specified provisions of constitutional or international law.

3. (Answer for Check your Progress-3 Q.1)

The traditional distinction that keeps legislatures as principled forums for balancing interests and courts is far less obvious than it appears.

4. (Answer for Check your Progress-4 Q.1)

In exercising its judicial review powers, the tribunal would zealously safeguard human rights, fundamental rights and the rights of people to life and freedom, as well as many non-statutory powers of government bodies with regard to their control of land and assets of multiple types that could be spent on construction, hospitals, highways and the like, or foreign assistance, or compensating victims of crimes.

5. (Answer for Check your Progress-5 Q.1)

The executive branch has responded to one degree or another by at least trying to establish measures to guarantee these liberties.

UNIT–4: JUDICIAL ACTIVISM AND PUBLIC INTEREST LITIGATION (PIL): THE CONSTITUTION AND THE COURT: SOME LAND MARK JUDGEMENTS

STRUCTURE

4.0 OBJECTIVES

After learning this unit based on "Judicial Activism and Public Interest Litigation (PIL): The Constitution and The Court: Some Land Mark Judgements", you can gain knowledge of about the following important topics:

- To know the Public Interest Litigation and the Scope of Judicial Review.
- To discuss the issues and Debates on Judicial Review.
- To know the Meaning, Development and Working of Judicial Activism.
- To discuss the Public Interest Litigation and Judicial Activism.

4.1 INTRODUCTION

(PIL) is submitted directly by a person or a group of individuals when it is believed that the government is undermining government interests. It is a fresh legal horizon in which a law court can initiate and implement action to serve and safeguard substantial public interest. PILs started in India in the late 1970s and flourished in the 80s. Justice VR Krishna Iyer and Justice PN Bhagwati, both Supreme Court of India judges, delivered landmark judgments that gave PIL fresh prospects. PIL is a method of acquiring justice for the individuals for voicing grievances of individuals through the legal process, according to Justice VR Krishna Iyer. PIL's objective is to provide access to the judiciary for the common individuals of this nation to achieve legal remedy for such grievances. Judicial activism implies that the apex court and other lesser courts are becoming activists and compelling the power to behave instead of judicial restraint. The judiciary can also guide the administration, its policies, and the government. One can see in the form of PILs the practice of judicial activism. The following can be mentioned as examples of some representative instances of judicial activism in India: I A PIL submitted by BirenderSangwan to decrease the cost of stents is one such case of judicial activism through which the cost of stents was reduced by around 84%. A PIL lodged by activist Harman Sidhu, based in Chandigarh, resulted in a ban on liquor close roads. In my view, the most prominent instance of judicial activism occurred when the top tribunal ordered the UPA government to set up a SIT to test Indians' stashed black money in overseas banks, but it failed to behave. The first thing the NDA government did after assuming authority, however, was to take this seriously. There are also cases where by creating legislation, the tribunal has infringed the function of the legislature. Such instances, in which the judiciary interfere with the executive's role by creating laws or directives equivalent to executive orders, can be called a judicial override. Some such instances are as follows: Bombay High Court orders cuts in Jolly LLB & the Bombay High Court had been approached by a few attorneys to cut some scenes in the movie that showed them in poor light. In their favour, the tribunal issued a judgment. This was a distinctive event where for the first time a tribunal took on the function of censorship.

Cricket reforms: a Mudgal panel and lodha committee were set up by the apex court to explore the betting charges and propose reforms. Now, for not adhering to the proposed reforms, the top tribunal has rejected the BCCI representatives. Striking the NJAC Act: the body suggested the National Judicial Appointments Commission (NJAC), which would have given it the authority to appoint magistrates to the greater judiciary. Passed by both Parliament Houses, it was called unconstitutional by the Supreme Court's Constitution Bench and is now abolished. Not long ago, the Supreme Court was harsh on both the government of the Union and the government of Uttar Pradesh about what it saw as their apathy in defending the Taj Mahal and said that since no one seemed to do anything to safeguard the monument, it would begin hearing the matter daily from July 31. "Taj can be shut down. You can demolish (it) if you like, and you can do away with it if you've already decided", a MB lokur Justice Bench and Deepak Gupta Justice said. The judges' comments do not appear to be German to the problem. The tribunal held on July 20 that third-party insurance will become compulsory for vehicles sold from September 1 for three years. These issues might have been left to the executive. If we analyse all of the above instances, we will wonder whether the public good is properly or substantially served and the problems are so varied that it appears that the top tribunal can and does interfere with public policy to the extent that the legislature and the executive become superfluous. After all, it is only these two state bodies that are accountable for framing and enforcing public good policies, and the function of the judiciary is to avoid any transgression of constitutional infringement and fundamental rights. In addition, such activist measures run the danger of undermining the power and picture of elected officials in the long run going against the spirit of democracy. The Constitution does not support judicial activism; it is a product designed exclusively by the judiciary in some nations. PIL's operative term is government or public interest. If this is not served, then PIL is wrong. When, in the name of judicial activism, the judiciary steps over the line of powers provided to it, it becomes a judicial override. It can be said that the judiciary then starts to nullify the constitutionally defined notion of the separation of powers. Black's law Dictionary describes judicial activism as "a philosophy of judicial decision-making by which

judges enable their private opinions on public policy, among other variables, to guide their choices." Lastly, Justice MarkandeyKatju issued some judgments calling for judicial introspection of his activist role in state affairs. In Uttar Pradesh vs.Jeet S Bisht's State case, he advised the judiciary of the risk of judicial activism by stating: therefore, the judiciary must exercise self-restraint and avoid the temptation to invade the domain of the legislature or the administrative or statutory authorities. It will increase its own prestige by practicing self-restraint. Of course, if a law obviously breaches some of the Constitution's regulations, it can be struck down, but otherwise it is not up to the tribunal to appeal the legislature's wisdom, nor can it change the law.

Check your Progress-1

1.When PIL is wrong?

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4.2 PUBLIC INTEREST LITIGATION AND THE SCOPE OF JUDICIAL REVIEW

There is no absence of legislation in India to protect' ecology and environment' and to contain and prevent pollution. I have previously studied some of the legislative acts in chapter III of my thesis to demonstrate that we have copious legislation to achieve that goal. But executive inaction in India is well recognized. Most countries have pollution control boards, but they have not been efficient in stopping water and air pollution. Municipalities are reluctant to fulfil their statutory responsibilities on the grounds of insufficient fondness. Moreover, the forest department is also unable to save the rapidly depleting biodiversity of the county, despite having its sufficient forest representatives and forest security force, along with appropriate maintenance fond. It is precisely in this context that the judiciary's

function becomes crucial. Over the past few years, environmental protection has become a matter of not only domestic concern but also of worldwide significance. It is now an established reality beyond any doubt that the very survival of humanity is at stake without a clean environment. The decline in environmental quality has been demonstrated by increasing pollution, loss of vegetable cover and biodiversity, excessive concentration of harmful chemicals in the ambient atmosphere and food chains, increasing risks of environmental accidents and life-supporting threats. This has attracted the attention of the entire world community and, therefore, they have decided to safeguard and improve the quality of the environment. How could the judiciary stay a silent spectator when the topic has gained great significance and become a matter of caution and judicial notice. In a developing country like ours, with uneducated masses, circumstances of abject poverty, where socio-consciousness has become a matter of caution and justice. In addition, the traditional role of interpretation and law enforcement, through a sequence of enlightening decisions, the judiciary can conduct the educational function of instilling consciousness of the huge issues of environmental degradation. The traditional' locus standi ' rule stipulates that the right to move the Supreme Court is only available to those whose fundamental rights are infringed.82 In other words, judicial redress is only available to a person who has suffered or is likely to suffer legal injury to the body, mind, reputation or property as a result of the infringement of his or her legal right or legal interest by the I am In brief, the individual who knocks at court doors must be a man who has been denied something that he has the right to request.

Check your Progress-2

1.Who can knock at court doors?

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4.3 ISSUES AND DEBATES ON JUDICIAL REVIEW

The birth of PIL in India was linked to the development of PIL in the United States, it was natural for academics to draw comparisons between the experience of the United States and the experience of India.53 One consequence of this comparison was that it was argued that PIL in India should be marked as personal action proceedings (SAL).54 Baxi was the main scientist who advocated such native PIL b labelling. First, the word'' social intervention'' likely meant the part that legislation in social engineering could / should play. However, given that judges rather than the legislature play a main part in PIL instances and that the law is judged law, one should not overestimate what courts can offer in a democracy through PIL / SAL.58 There is no doubt that courts can help to officially recognize the voices of minorities or destitute that might otherwise be overlooked, but it would be unrealistic to expect them to c

Second, as we will notice in the next chapter, the personality of the PIL in India has altered a lot in the second stage, as it is now not restricted to defending the interests of disadvantaged segments of society or remedying government oppression and corporate lawlessness. In reality, PIL's focus in India in the second stage has moved from poor to middle class and from redressing state exploitation of disadvantaged communities to requests for civic involvement in governance. Although there are still differences between how the PIL jurisprudence unfolded in the U.S. and India, the difference between the subject-matter or the basic objective of the PIL is not as much as it used to be when an argument was made to label PIL as SAL. A number of variables have led to the robust growth of PIL in India.74 the first factor mentioned above, i.e. the constitutional framework for FRs and DPs. It is clear that the Indian judiciary would have enjoyed a comparative advantage because of FRs and DPs in anchoring PIL vis-à-vis courts in those areas (such as the United Kingdom and' Australia') where there was no Bill of Rights. Second, several constitutional regulations relating to the Supreme Court's powers helped the Court develop creative and unconventional remedies, which in turn raised social standards. For example, a provision

allowing the Supreme Court to pass any order for'' doing complete justice'' proved more than practical in cases involving PIL.75 The Constitution also provides that the law declared by the Supreme Court is binding on all courts76 and that'' all civil and judicial authorities in the territory of India shall act in support of the Supreme Court'.'77 Thirdly, the rise of PIL cor. Fourthly, after the assassination of the then Prime Minister, Mrs Indira Gandhi in 1984, the era of coalition governments since the 1990s, and the increasing gap between constitutional commitment and reality, a comparatively fragile executive at the Centre offered a favourable atmosphere for PIL development. In other words, the judiciary attempted to fill in a vacuum of governance through PIL86 and attempted to do what the government's two branches should have done but did not. Last but not least, as a democratic nation, India's civil society readily seized the chance through PIL instances to engage in governance. Civil society also discovered that PIL could assist them to highlight social issues / causes much faster than through lengthy social campaigns to achieve the same outcome. However, PIL has resulted to fresh issues such as the unexpected rise in the workload of superior courts, the absence of judicial facilities to determine factual issues, the gap between promise and reality, the abuse of processes, friction and conflict with fellow public bodies, and the risks of judicial populism.

Check your Progress-3

1.What does India's civil society readily seize?

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4.4 THE SPHERE OF JUDICIARY

In the democratic governance scheme, a powerful, autonomous, impartial and well-organized judiciary plays a significant role. Not only does it prevent the arbitrary use of governmental power, it also protects citizens'

rights and freedoms. In addition, the judiciary has the extra function of constitutional guardian under the federal type of government. This perspective of an autonomous judiciary is an offshoot of the renowned doctrine of the separation of powers— the parliamentary powers of the Parliament and the judiciary powers of the Supreme Court, which is one of the constitution's three wide characteristics. The other ones are - the rule of law, i.e. the supremacy of law; and the allocation of powers among different levels of government, i.e. Central, Local and States. Montesquieu and Locke in Europe and Madison in the U.S. thought that the latter division of powers with controls between the three branches of the mint would guarantee the smooth functioning of the legal scheme. The fundamental assumption of the doctrine of separation of powers is restricted governmental role, restricted spending and restricted administrative structure. The doctrine also assured that the legislature would play a leading role and that the other two organs, i.e. the judiciary and administration, would be neutral. The doctrine was based on the logic that the legislature would take care of the interests of the majority of the population and that the judiciary would protect minority rights and that the administration would only have to implement the statutes adopted by the legislature. In India, the demand to separate the judiciary from the executive owes its origin as far back as Raja Rammohan Ray's times as a consequence of the response to the British rule that combined the two tasks to suppress the domestic movement. Because they were not worried with justice in order to maintain their authority fair or foul by all means.3 Soon after Rammohan Ray, a group of dedicated employees, of whom Mr.DadabhaiNaroji was the most prominent, took up the cause and established an organization in Bengal, Bombay and Madras for the purpose. The movement gained in volume and momentum with the spread of education and the Indian National Congress took up the topic in 1885. The public opinion on this demand was so powerful that despite the distinction of view between two organizations, the Constituent Assembly could not withstand it. While BakshiTekchand, RikSidwa and H.V. are one group. The separation was backed by Kamatu, the other group being T.T. K.M. Munshi and B. Krishnamachari. That was opposed to it. There was no provision for it in the original Draft Constitution, but Dr. B.R. Ambedkar introduced it in the form of an

amendment on 24 November 1948, due to the pressure of the public opinion, and thus a new Article 39A was proposed to the Draft. Later, the articles and Article 39A were renamed in the final draft. Thus, Article 50 of the Constitution becomes Article 50.

4.5 MEANING, DEVELOPMENT AND WORKING OF JUDICIAL ACTIVISM

A relatively recent development in the field of justice is the emergence of judicial activism, which is essentially a judicial action to realize social justice. According to Justice P.N. Bhagwati, the substantivizing of social justice is concerned with nothing but another type of constitutionalism. It seeks to free the judiciary from the limitations of traditional judicial procedures in the interests of social justice and permits or rather imposes a more vibrant interpretation of the constitutionally enshrined social values beyond what the constitutional framers had imagined. An excellent instance of judicial activism is seen in the Supreme Court's decision that legal aid to the poor, charged in criminal proceedings, is an important requirement of sensible, fair and fair proceedings and is implied in Article 21. His advocacy of the right to prompt trial, as well as his opinion that the right to life includes the right to live with fundamental human dignity and the right to live. MEANING OF JUDICIAL ACTIVISM Judicial activism is not a fresh phenomenon; back in 1893, Allahabad High Court Justice Mahmood issued a dissenting judgment that served as the seed of judicial activism in India. It was an under-trial case that couldn't afford to hire an attorney. So, the issue was whether by simply looking at his documents, the tribunal could decide his case. Justice Mahmood ruled that only when someone talks would the precondition of the case being heard be fulfilled. Judicial activism is not, in reality, a distinct concept from the usual operations of the judiciary. The term lexical as well as normal speaking activism implies' being active,' doing stuff with choice, and activism of speech should mean one who favours increased activity.In this context, as Justice Krishna lyer noted, each Judge is, or at least should be, an activist, either on the forward equipment or on the back. Judiciary

exercise can be of two kinds, i.e. either in support of or in opposition to legislative and executive policy decisions. But the latter pattern is generally seen as judicial activism. The essence of real judicial activism is to make choices that are in tune with the temperature and tempo of the times. As a result, an activist judge activates the legal system and makes it a crucial part of the socio-economic system. Judicial activism fosters or articulates the cause of social change such as freedom, equality or justice. It operates as an active catalyst in the constitutional system as opposed to the traditional notion of judiciary as a mere umpire. Judicial activism therefore relates to the authority of judicial review to deal with problems that have not traditionally been touched upon.

Judicial review is not a purely constitutional expression. It literally implies a superior court revising the decree or sentence of an inferior court. Under general legislation, it operates through appeal remedies, revision and the like, as prescribed by the land's procedural legislation, regardless of the prevailing political scheme. However, judicial review has a more technical importance in government legislation, especially in nations with 143 Constitutions written. It implies that the judiciary have the authority to test the validity of legislative and other governmental actions in those nations. Thus, both in a limited context and in a broader context, the term judicial review can be used. Judicial review is fundamentally collateral in its limited sense. It does not take into account the merits of the impound judgment, but only examines its constitutionality or its fundamental legality.

The assault is collateral. Here the argument is not that the impound judgment was incorrect in its merits, but that choices were either made without jurisdiction or contrary to the Constitution or to the basic conditions of a statue under which the administrative power acted. In its broader context, judicial review would also include appeals on the merits of an administrative or even civil or criminal court judgment. It would be open to review all the questions of reality and law, i.e. the merits of the entire situation. In reality, a greater tribunal is reconsidering the case. It is therefore generally a vertical examination. In this sort of assessment, an ongoing conflict may be between two private parties or between a

private party and the state or government power, but it is mostly a matter of personal law. But in essence, the smaller opinion is a matter of public law. Judicial review has obtained a limited use for all practical reasons to signify the authority of the judiciary to pass on the constitutionality of parliamentary acts that fall within their ordinary jurisdiction to implement such as they consider to be unconstitutional and hence collateral judicial review may be of two types depending on the nature of the State action against which it is directed. If it is a review of actions made by the State's executive department or administrative officials, it is called administrative action judicial review. It is called judicial review of legislation if it is a review of a statute of legislative or subordinate legislature. Both types of judicial review have much in common with regard to their origin and rationale, but they have developed in distinct ways. The fundamental distinction is the distinction between state rule and limited government. The former operates under parliamentary sovereignty, but the latter postulates legislative power's constitutional constraints. Reviewing administrative intervention is solely judicial, while reviewing legislation is semi-political, since it must test the validity of legislative policy on the constitutional anvil. The former is commonly used because the administrative action affects people at many more points that the validity of the laws is an important component of the rule of law. Therefore, the region of its practice expands to satisfy the felt needs of the times. The more the welfare state's administrative action expands, the greater the scope of its judicial review, on the other hand, the judicial review of legislation may or may not be an essential part of the rule of law, depending on the conditions obtained in a given country or company. Having understood the significance of judicial review, examining its genesis would be important here. It is usually claimed that the judicial review institution originated in the United States of America, but a more in-depth assessment shows that this is true only in a very restricted sense, as historically the origin of this scenario can be traced back to English legal history. The genesis of judicial review can be traced in Chief Justice Lord Coke's famous pronouncement in Dr. Bonham's case in which he claimed that a parliamentary act could be subject to judicial review and adjudicated void by the tribunal. However, the doctrine of the Judicial Review did not take root in England for two

reasons, this perspective was repeated by the next Chief Justice Hobart in 1615. First, Parliament's sovereignty has not broken any competitor, i.e. Parliament's power is absolute and uncontrolled. Second, British people's spirit of moderation assured the rule of law without judicial review. Thus, in England, the land of parliamentary sovereignty, no continuous impression was created. Therefore, the contemporary notion of judicial review in the United States is regarded to have come into being.It was in the case of Marbury v. Madison that the American Supreme Court's Chief Justice Marshall adopted the concept of judicial review judicially in 1803 by stating' law is what judges say it is.' The reputable judge like Taney, even Hungnes, Harlan, Stane, Warren and Burger reiterated this doctrine of judicial review as advocated by Chief Justice Marshall. It can therefore be concluded that the idea of judicial review sparked off in England but was only embraced in the USA as a notion of jurisprudence. In the contemporary democratic community, the fundamental problem of judicial review inherits within itself the obvious possibility of an antithesis between a rigid approach in reserving fundamental human freedoms and the legislature's efficient pursuit of a social welfare goal in line with the dominant socio-economic political variables. According to the Constitution of India, judicial review stands alone as a class. It represents a synthesis of the ideas of several World Constitutions, especially of the United Kingdom and the United States, processed and adapted to meet the specific situations arising from the prevailing socio-economic and political conditions in the country. Under the 1935 Government of India Act, the lack of a formal Bill of Rights in the constitutional document very efficiently restricted the scope of the review authority of the judiciary to an interpretation of the Act in view of the division between the Centre and the units of the States. In post-independent India, however, the judiciary was seen as an extension of freedoms and as an instrument of social revolution. Consequently, judicial review was regarded a prerequisite for the effective application of the Fundamental Rights and the Principles of State Policy. In India, in view of the regulatory framework taken by the constitutional framers, the correct position of the judiciary and its power of judicial review should be grasped. The governmental structure was a media outlet between the American judicial supremacy style and the English parliamentary

sovereignty principle.The constitutional framers embraced the British parliamentary government model and made Parliament the concentrate of the country's political power, but they did not make it a sovereign legislative body like their English counterpart. Although the Constitution expressly mentions the authority of judicial review, it does not imply one such as that of the United States Constitution. The phrase used, unlike in the United States, is 'legally defined procedure' and not 'due process of legislation.' It was supplied with defined and limited authority of the Central and State legislatures in the framework of the federal structure. In the long-established debate over the notion of individual rights in relation to the requirements of society, which characterized the Constituent Assembly's deliberations during the framing of most of the constitutional judicial review was largely circumscribed. Members of the Constituent Assembly agreed on a fundamental point that, under the new Constitution of India, judicial review should have a more direct basis than in the Constitution of the United States, where the doctrine was more' inferred' than' conferred' powers, and more implicit than expressed by constitutional provisions. It was suggested in the report of the Supreme Court's Adhoc Committee that a Supreme Court with jurisdiction to decide on the constitutional validity of legislation and acts may be considered as the required implication of any federal system. This was eventually expanded and interpreted on the touchstone of Fundamental Rights to the legislation of executive orders. In India's draft Constitution, this power of legal evaluation in relation to fundamental rights was formally expressed in Articles 5(2) and 25(1) and (2), which, when enacted by the representatives of the nation at the Constituent Assembly on 26 November 1949, became fresh Articles 13(2), 32(1) and (2), respectively, under India's Constitution. However, among the representatives of the Constituent Assembly there was a sharp dispute over the issue of reconciling the competing ideas of the nation's individual fundamental and basic outcomes and socio-economic needs. A compromise had to be reached between the two extreme viewpoints of individualism and socialism, and judicial review was attempted to be tempered by the desire to build a new society based on the notion of socio-economic welfare, which was recognized as the fundamental and indispensable precondition for safeguarding the rights and freedoms of

people. At least two major figures, namely K.M.Munshi, who wished its implementation, and AlladiKrishnaswamiAyyar, who opposed that step, expressed differences of view on the recognition or dismissal of the "due process of legislation" clause. Thus, the clause "due law process" became the "first causality." Article 21 of India's fresh Constitution (Article 15 of the Draft Constitution). It has been substituted by "except in accordance with the legal procedure." In a note Article to 15 of the Draft Constitution, the drafting committee justified and referred to Article 31 of the 1946 Constitution of Japan.1 One reason for restricting the scope of judicial review might be that the constitutional framers might be afraid that the unbridled force of judicial decision making might lead to a sequence of "judicial vagaries" and impede domestic leadership. As G. Austin puts it: the assembly formed an idol and then at least one of its weapons was fettered. Limitations to the review authority of the court.... In the title of the social revolution, however, they were drafted. 2 At the same time, the constitutional document included a cluster of provisions to limit the freedoms provided for in Articles 19, 21 and 31 to decrease the judicial review authority of the Supreme Court to' official views.' In addition to this, a relatively flexible amending method was introduced to enhance the popular representative's ultimate will with regard to the remaining constitutional constraints. Thus, the creators of the Constitution unconsciously sowed the seed of discord between the legislature and the judiciary in India. D. D. Basu rightly points out that:' the variables that have encouraged the development of judicial supremacy in the United States are either absent or not so prominent in our constitutional scheme. The power of judicial review of legislation has been specifically recognized in Articles 15, 32, 131, 216 and 137 of the Indian Constitution. Though tensions between the judiciary and the legislature and the executive were visible, there was no confrontation between the judiciary and the executive. During this era, judicial review failed to reach a happy consensus on constitutional protection of individual freedoms between the two ends of legislative penchant. "This tension, however, turned into conflict in 1967 when I. C. Goloknath v. State of Punjab (AIR 1967 SC 1943) questioned the constitutionality of the Constitution Act (17th Amendment) The Court ruled that Parliament had no authority to amend the Constitution incorporated in Part Ill,

thereby overruling the previous judgment of the Court in the Shankar Prasad case and in the Sajjan Singh case.The tide was turned, however, after Janata's government passed the Constitution Act (Forty-third Amendment) in December 1977, which rested on the pre-emergency situation. The unlimited power of Parliament to amend the Constitution was questioned in Minerva Mills v. Union of India, AIR 1980 SC 1789, which reverted to Parliament's unlimited power to amend the Constitution when it stated that the constitution's fundamental structure could not be changed. After the emergency, the judiciary showed some indications of activism, but the Supreme Court's judgment in the renowned Transfer case of the judges (S.P. Gupta v. Union of India, AIR 1980 SC 1 622) again raised the question of the executive-judicial relationship. Many individuals thought the "judicial restraint" deflected by those choices. However, the Court ruled in favour of the citizen in several other matters. The most significant aspect of the judgment in the case of the magistrates was that it set out the values of litigation in the public interest as opposed litigation in order to protect one's own interest thereby broadening the region of judicial review.

4.6 PUBLIC INTEREST LITIGATION AND JUDICIAL ACTIVISM

PIL and activism in the judiciary go hand in hand. The outcome of judicial activism is PIL itself. Under Article 32, there must first be a breach of a fundamental right before the Supreme Court can immediately entertain a PIL matter. In addition to other freedoms, life and personal freedom have been provided a very broad interpretation in Article 21, e.g. in the case of Francis Coralie Mullin v. Administrator, Union of Territory of Delhi (AIR 1981 SC746), where, through Bhagwati J., the Court noted that "we believe that the right to life involves the right to live with and with human dignity. NallaThampyTerah v. Union of India (AIR 1985 SC 135), RanganathMisra, J., observed, "This court has recently held the right to life not only to connote the existence of animals, but to have a much broader meaning to include the finer graces of human civilization (e.g. effective and secure means of

communication). The State may, of course, be obliged to guarantee that such legislation is observed for failure on the part of the State to enforce such legislation would amount to a denial of the correct five in respect of human dignity enshrined in Article 21. He argued that Haryana's central government and state could therefore be compelled to guarantee compliance with multiple social welfare and labour laws through a written petition under Article 32. In NeerajaChawdhary v. Madhya Pradesh State (AIR 1984 SC 1 099), Bhagwati, J., held that Articles 21 and 23 of the Constitution would require not only the identification and release of bonded labourers, but also their release rehabilitation. The direction expanded through a vigilance commission to chalk out recovery programs and oversee them, in which individuals proposed by the tribunal were to be taken as participants. The widest extent of the court's right to life and private freedom is most welcome. But then the point is that all Indian people's suffering and socio-economic deprivation, political mismanagement and corruption, and any other conceivable governmental intervention or inaction can be said to be in breach of Article 21. India being a welfare state, law already exists on most issues (and the current legislation can / should also be given the most extensive interpretation of issues not specifically supplied for in the general public interest). If, under the spacious plea that non-enforcement is in violation of Article 21, the court begins to enforce all such legislation, perhaps no state activity can be excluded as a PIL matter from the Supreme Court's jurisdiction. Its logical expansion could result in the tribunal taking over the country's overall administration from the executive. Are there any limitations to such judicial activism now that the issue arises? According to Archibald, two main concerns arise in the court's constitutional adjudication as a result of latest activism. First, there is the problem that the tribunal may sacrifice the authority of legitimacy that attacks choices within the traditional judicial sphere made on the grounds of standard legal requirements, thereby preventing it from fulfilling the smaller but nonetheless essential constitutional role that everyone assigns to it. And secondly, there is fear that excessive reliance on judiciary rather than self-government can deaden the feeling of moral and political accountability of people through democratic procedures.

In addition, the judiciary branch would be extremely susceptible to attack and reprisals from other branches of government without the strength of legitimacy. The Supreme Court's powers to order recognition and support not only for its choices but also for its role in government appear to rely on a sufficiently extensive conviction that it acts legitimacy, which is to perform the tasks allocated to it and only those functions as allocated. The conviction of this is the result of many voices, not all of which have the same weight: the opinion of the legal profession, the attitudes of the executive, the reaction of state governments, the media and the public. Of course, there are no fixed standards for assessing the legitimization of the Supreme Court's activist strategy, but it seems only fair to mention that several quarters of discordant notes have been sounded. It needs an autonomous survey to evaluate and evaluate the legitimization obtained in the nation by the PIL related activism. If the tribunal is the ultimate interpreter of its own powers, no judicial activism controls can be read other than its legitimization. Justice Landau of the Supreme Court of Israel proposed on the constraints of the justice process: with regard to the constraints of the judicial process, the judiciary do not have the required instruments to perform a thorough investigation into social and economic policy issues that may arise in the judicial review of parliamentary law. A tribunal may decide what should not be done, but what should be done now instead of the rejected alternative may still require a further decision on the subject. A tribunal is usually powerless in that regard because it does not have sword or purse authority. As far as the protection of human freedoms is concerned, the legislation is but a second line of defence that protects the citizen from governmental aggression and is no less vital-protecting society from inner disturbance. The first line of defence is the general spirit of law-obedience that prevails in a society and that spirit must be maintained by usually accepted concepts of lawfulness, morality and common decency. When that first line of defence weakens, on the second line a correspondingly greater strain is imposed, greater than that line was intended to bear and thus increases the risk of its collapse. If that is to occur, there is nothing left to safeguard society from anarchy. Salvation must come from reinforcing the moral constraints that have weakened so badly in any day. It's the mind that counts....

Judicial activism is a most good trend in constitutional interpretation. It makes the Constitution a living, dynamic document and allows the vast masses of our individuals to accommodate their ambitions. But it's got its limitations. In a scheme of government where the tribunal is the ultimate interpreter of the Constitution and its own powers, its constituencies and the consumers of the administration of justice must legitimize this activism. In any case, the delicate balance between the state's three organs must not be overloaded at any time in favour of any of them beyond tolerable limits. The Supreme Court must use highly sparingly the authority to punish for disdain, or for entertaining PIL and issuing instructions under it, or for cash compensation or exemplary expenses. That extreme region seems to be illegally detained and violent in custody. The standards must be properly created by the tribunal as to when the one or the other remedy is given. The law already provides the remedy for claiming compensation from the smallest judiciary for the breach of any right. In suitable instances, it should be pursued. However, delay deficiencies, heavy stamp duties and low compensation awards need to be corrected. In all administrative ills, the judiciary and the legal processes cannot be a response. The doctrine of power separation is based on sound logic and developed through lengthy experience with social organizations. Therefore, through judicial procedures alone, we should not seek enhancement, perhaps the better solution could be discovered in other changes. However, our law has not yet developed adequate principles of individual official responsibility for administrative mistakes, of course if the officer acts in good faith, the officer must be protected in all respects. But it only promotes and induces administrative irresponsibility and callousness if the agent can escape private responsibility even if he is grossly negligent, biased or acting without any authority. The administration in our country cannot be held accountable to all only by placing accountability on the State, accountability also has to be placed on individual policemen. In all PIL matters before the Supreme Court, the action or inaction resulting in the breach of Fundamental Rights has been the result of the negligence, bias, callousness or crushing of individual policemen, whether it is lengthy detention of underground inmates, custodial violence, non-implementation oflabour laws, non-identification and non-release of

bonded labour or any other. The individual functionary will hardly alter his methods if all that eventually occurs is that only the State is held accountable as an amorphous entity.

Check your Progress-4

1.The doctrine of power separation is based on?

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4.7 LANDMARK JUDGEMENTS

In today's common law systems, Landmark court judgments set precedents that determine an important fresh legal principle or idea, or otherwise significantly influence the interpretation of current law. Leading case' is frequently used in the United Kingdom and other Commonwealth jurisdictions rather than' landmark case' as used in the United States. In Commonwealth countries, a reported decision is said to be a leading decision when it has usually been considered a settlement of the law of the matter. In 1914, Canadian jurist Augustus Henry Frazer Lefroy said "a' leading case' one that settles the law on some significant point." The law can be settled in more than one manner by a leading decision. This can be done by: distinguishing a fresh principle that refines a previous principle, thus moving away from previous exercise without violating the stare decision rule; establishing a "test" such as the Oakes test or the Bolam test. Sometimes only one court ruling has been produced with respect to a specific clause of a written constitution. This decision is necessarily the leading case until further rulings are produced. For example, in Canada," The leading case on voting rights and re-adjustment of electoral boundaries is Carter. Indeed, Carter is the only case of controversial electoral boundaries that has reached the Supreme Court." The degree to which such a leading case can be said to have"

settled "the law is less than in situations where many rulings have reaffirmed the same principle.

4.8 LET'S SUM UP

The judicial activism expressed in PIL's strategy paves the way for the involvement of publicly spirited and enlightened individuals in India's growth process and shows the potential of the legal system to bring justice to the poor and oppressed. The approach has highlighted many of India's still widespread medieval methods such as prisoner relief, women's plight in protective households, victims of flesh trade and kids of youth organizations, and exploitation of bonded and migrant workers, untouchables, tribal, etc. The effort was created to demonstrate how the Supreme Court emerges as the guardian of the rights and freedoms of the victims of repression, cruelty and torture when dealing with such instances. Thus, by simplifying the highest technical and anachronistic procedures, India's Supreme Court has taken a goal-oriented approach in the interests of justice in its activist role vis-à-vis PIL. By broadening the reach of Article 32 and accelerating the socio-economic revolutionary process, it brought justice to the doorstep of the fragile, unprivileged and exploitative segment of society and thus revolutionized constitutional law in the 1980s. In the civil justice system, PIL has a significant part to play in providing a justice ladder to disadvantaged parts of society, some of whom may not even be well informed about their freedoms. It also offers an avenue for enforcing diffused freedoms for which it is either hard to define an aggrieved individual or where there is no incentive for aggrieved individuals to knock at court gates. By maintaining the government responsible, PIL could also lead to good governance. Last but not least, PIL allows civil society to play an active part in spreading social awareness of human rights, giving voice to marginalized parts of society, and enabling them to participate in public decision-making. As I have attempted to demonstrate, with regard to the Indian experience, that all or many of these significant policy goals could be achieved by PIL. However, the experience of Indian PIL also demonstrates us that ensuring that PIL does not become a backdoor to join the temple of

justice in order to fulfil personal interests, settle political scores or simply achieve simple publicity is critical. Furthermore, courts should not use PIL as a tool to operate the nation on a daily basis or enter the executive and legislature's lawful domain. The way forward, therefore, is to strike a balance in enabling lawful PIL instances and discouraging frivolous ones for both India and other jurisdictions. One way of achieving this goal might be to limit PIL mainly to those instances where some kind of disability undermines access to justice. The other helpful tool could be offering financial disincentives to those discovered to use PIL for subsequent reasons. At the same moment, if some kind of financial incentives — e.g., it is worth considering. Protected price order, legal assistance, pro bono litigation, PIL civil society financing and amicus curie briefs should be provided in order not to discourage lawful PIL cases. This is crucial because, considering the initial underlying rationale for PIL, prospective plaintiffs are unlikely to be always resourceful.

Check your Progress-5

1.What is the advantage of PIL to civil society?

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4.9 KEYWORDS

5. Deliberations: A discussion and consideration by a group of persons (such as a jury or legislature) of the reasons for and against a measure.
6. Jurisdictions: The official power to make legal decisions and judgements.
7. Callousness: Insensitive and cruel disregard for others.
8. Lawlessness: A state of disorder due to a disregard of the law.

4.10 QUESTIONS FOR REVIEW

1. What is PIL's focus in India?

2. What promotes and induces administrative irresponsibility?

3. What does Indian PIL demonstrates?

4. What does the judicial activism expressed in PIL?

5. The unlimited power of Parliament to amend the Constitution was questioned by?

4.11 SUGGESTED READINGS AND REFERENCES

5. https://www.researchgate.net/publication/315028329
6. https://www.jstor.org/stable/840090?seq=1#
7. The activism in India topic reference taken from academia https://www.academia.edu/2148025/JUDICIAL_ACTIVISM_IN_INDIA_
8. http://www.legalservicesindia.com/article/1902/role-of-judiciary-in-strengthening-PIL.html

4.12 ANSWERS TO CHECK YOUR PROGRESS

1. (Answer for Check your Progress-1 Q.1)

PIL's operative term is government or public interest. If this is not served, then PIL is wrong.

2. (Answer for Check your Progress-2 Q.1)

An individual who knocks at court doors must be a man who has been denied something that he has the right to request.

3. (Answer for Check your Progress-3 Q.1)

India’s civil society readily seized the chance through PIL instances to engage in governance.

4. (Answer for Check your Progress-4 Q.1)

The doctrine of power separation is based on sound logic and developed through lengthy experience with social organizations.

5. (Answer for Check your Progress-5 Q.1)

PIL allows civil society to play an active part in spreading social awareness of human rights, giving voice to marginalized parts of society, and enabling them to participate in public decision-making.

UNIT–5: AN ANALYTICAL STUDY OF:FUNDAMENTAL RIGHTS,SECULARISM,MINORITY REPRESENTATION

STRUCTURE

5.0 OBJECTIVES

After learning this unit based on "An Analytical Study of: Fundamental Rights, Secularism, Minority Representation", you can learn about the following topics:

- To know the Fundamental Rights.

- To discuss the Individual Rights and Regime.
- To now about Secularism.
- To know Minority Representation.

5.1 INTRODUCTION

It is usually recognized that the Constitution includes regulations governing, on the one side, the organisation and practice of state authority and, on the other, interactions between the people and the State. The laws that stipulate and control the relationship between the State and its people and, more usually, the relationship between the controlling and the governed are defined as government liberties or fundamental rights or human rights.

Fundamental rights determine the proportion of liberty that members of a particular community have in relation to state authority, thus limiting the magnitude of every human being's self-existence and self-determination. It would also be helpful to explain that fundamental rights have enhanced official authority when formulated in the Constitution. This means that they cannot be abrogated or altered by a formal law or any legislative act of the executive power, but they set the boundaries and the legal framework within which state officials should operate in relation to their relationship with the people.

Fundamental rights, in this context, have an interdisciplinary legal character as they lay down the main laws of administrative law, criminal law, labor law, civil law, as well as general procedural law. The results of political science, constitutional history and political sociology are helpful in relation to traditional techniques of legal interpretation for the notional approach towards the fundamental rights.

The enrichment of the list of fundamental rights and the re-conception of the content of the freedoms laid down in the Constitution are supported by regulations of international law, which are endorsed in accordance with the procedure laid down in Article 28 of the year 1975, 1986 and 2001 Constitution and are applicable as national law. An instance is Legislative Decree 53/of the year 1974, which transposed the European

Convention on Human Rights (Rome Convention of the year 1950) into Greek law, whose official validity exceeds any opposite provision of Greek law implemented either by official law or by regulatory act of executive power.

Secularism plays an important role in protecting the order of the state. The evolving forms state order over the era in world history showed higher turbulence in the name of secularism. Starting from ancient times, there are numerous scholars who attempt to emulate secular lifestyles, but religious fundamentalism is a universal in various forms that poses a significant danger to secular lifestyles, and it also threatens human rights and world peace.

However, many concepts that have formed the foundation of contemporary democratic societies, such as civil society, citizenship, human rights and liberties, secularism and tolerance, have been under serious scrutiny over the past 3 centuries. Deep disputes occur in many societies around religious issues and equality.

Religious collectives often demand the right to self-determination of problems that they consider to be their own, and these requirements contradict individual rights to, once again, freedom of religion. Thus, these are conflicts between religion and religion. Today, there are plenty of disputes all over the globe around religious freedom. These are not completely new to many societies, states, courts, and academics.

India is declared as a country that celebrates ‘unity-in-diversity’ that is an ethnic and cultural plurality and multi-religious composition, embedded in a shared historical experience and political framework. To celebrate this variety, it used the vanguard of secularism. For about 4 centuries, the interrelationship between diversity and secularism has been an essential part of India’s political architecture. His metamorphic interpretations, however, developed a conflict between secular ideology and rights of minorities.The indications of this predicament in state-to-society-to-religion relations include the precarious condition of India’s religious minority groups, especially violence against Muslims in the year 2002 and Christians in the year 2013. Moreover, the presence of

religion-specific private legislation, political party affiliation with fundamentalist religious organisations, and the rallying behind Hindutva's philosophy of a substantial percentage of the Hindu Dispersion are also indicative of the future conflict.

It is a matter of political and academic discussion whether the state can resolve disputes and relieve tension or is itself part of the issue. Because of the country's aspiration for regional governance, an assessment of the Indian experience of the minority issue, especially the religious ones, is relevant in this context.

Check your Progress-1

1.What is usually recognized?

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5.2FUNDAMENTAL RIGHTS

5.2.1 Distinction Of Fundamental Rights

The word "Fundamental rights" implies the ability granted by relevant legislation to fulfil interests related to the practice of State power, provided that on the one hand there is a person and on the other hand there is a State power officer acting in that dominant capacity. Including individual, political and social rights are fundamental rights. Individual are the fundamental rights with adverse content that negatively assure the legal status and create a state energy abstention claim.

The fundamental rights with active content that create a claim for the holder's involvement in state power are political. Social are positive content fundamentalrights which create a claim for the provision of certain services and a claim for economic provisions. The above

classification of fundamental rights, however, is schematic and relative, as the three kinds are complementary to each other, as they impact each other's security and practice.

5.2.2 Importance Of Fundamental Rights

Individual freedom in ancient Greece was a real state and not a legal safeguard, checked if we remember the words of Aristotle "alternately to rule and be ruled." There is a lengthy path to legal safeguarding of fundamental rights. Its point of starting was in the late year of the Middle Ages, when the Church and later the Monarch emancipated people. During this era, social and economic components were formulated that would lead to the difference between political society andprivate society.

In time, the growth of trade and economic transactions influenced the bourgeoisie, which was legally unprotected toward the arbitrariness of the monarch's authoritarian power, being the holder of accumulated capital. The requirements it raised were ownership andprotection offreedom. The bourgeoisie's requirements were political decisions, enforced in some nations which was France and accepted in others that is in England.

They were then incorporated into the Constitution in order to preserve their validity for these decisions. Freedom is safeguarded in a dual way at the stage of basic freedoms: first, as autonomy and, second, as involvement. Individual rights are regarded autonomy, and involvement is regarded in political rights. The former, being "human rights," ensures the state power's abstention and the latter, being "citizen's rights," ensures involvement in shaping and exercising political power.

Thus, the first 18thcentury agreements involve individual and political rights. People have been "personal beings" and become "political beings." The Constitution only safeguarded social rights after the World War I.

Check your Progress-2

1.What does the 18th century agreements involve?

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5.3 INDIVIDUAL RIGHTS AND REGIME

Regime is the systematic way of exercising and constituted the state power. It is called liberal the regime that guarantees individual liberties. Modern systems are liberal to the extent that they guarantee individual and democratic rights to the extent that they guarantee political rights, with the concept of universal vote operating in parallel. Democratic regimes tend towards their citizens' self-determination, which is favoured both by participating in the shaping and exercise of state authority and by protecting individual rights.

However, the congruence of leaders and topics in contemporary pluralist regimes is impractical, which is impossible for individuals to unanimously self-determine. If this finding is true and genuine, then the establishment and protection of individual rights is a sine qua non condition for the contemporary democratic regime, as individual rights guarantee that minorities are protected.

Moreover, it has lately been noted that when it is lowered to a privilege, liberty loses its efficacy; in other words, liberty should be guaranteed in favour of those who disagree with the majority. Moreover, the unadulterated exercise of political rights is guaranteed by the individual rights in their entirety.

Check your Progress-3

1.What do you mean by regime?

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5.4 SECULARISM

5.4.1 Origin Of Secularism

The emergence of secularism can be traced back to the social and political condition of the 17thand 18thcenturies in Europe. The word itself was invented by Holyoake in 1851, but in the context of the dispute between Church and State, which began much sooner, the development of the idea must be understood.

It was through this dispute that the fields of temporal and spiritual officials were gradually delimited and that led to the evolution of the different values connected with secularism, that is. Accordingly, liberty of religion and conscience, tolerance, a democratic concept of citizenship, etc., it would be appropriate to briefly trace the historical conflict between the Church and the Western State.

The question of the connection between religion and the State arose with the increase of Christianity, with its difference between the spiritual and the temporal, "Render therefore to Caesar the stuff that belong to Caesar; and to God the stuff that belong to God." Until the Milan Edict (313 A.D.), Christians were persecuted constantly for refusing to recognize the Emperor's divinity. It became created as the State religion of the Roman Empire with the transformation of Constantine to Christianity.

Christianity itself, which had declared the right to believe, became intolerant of other religions. While this close alliance, on the one side, resulted to the adoption of Christianity that had previously been a taboo.

On the other hand, it led to conflicts between the Pope and the Emperors and to the active interference of the State and the Church through the Gelanasian theory of Pope Gelasius I (495-496 A.D). This theory tried to establish a "dualism of authority" with respect to the two spheres, while preserving the spiritual power as the two's higher.

Over the next few decades, the war between the two persisted. It was mainly a manifestation of interests and roles conflict. In 800 A.D., for example. The Pope had appointed Charlemagne (Emperor of the Frankish Empire), but Charlemagne himself named his son as his successor to assert his supremacy. The period after Charlemagne's empire's disintegration was marked by political and moral decline. The decline of such values also impacted the Church.

With the appointment of a number of reform-seeking Popes, a reforming trend started within the Church. One of the main objectives of their reform was to emancipate the ecclesiastical power from the temporal authority, resulting in the 11thcentury investiture controversy. The main issue was the role of the temporal power in the selection of Bishops. This emancipation involved a significant decline in temporal power over the Church.

With vast resources and authority, the Church tended to assume the roles of a huge supranational power. In the Roman Empire, it also played a crucial part as the Pope had to crown the Emperor. The state-church fight for supremacy continued throughout the Middle Ages. The Church's authority was further strengthened by the clash between Frederic II, Emperor of the Holy Roman Empire as well as King of Sicily, and the Papacy, culminating in the deposition of the former and subsequent death in 1250 A.D.

In the dispute between Pope Boniface VIII and Philip IV, King of France over the taxation of the clergy in which the latter arose triumphant, this fight took another turn. The Church stayed influential despite the decisive win. In the Middle Ages, the concept of religious freedom and tolerance was almost unknown. It was the medieval Church's obligation

Augustine and Aquinas' thoughts about heresy as a crime and death

penalty as a punishment for such a crime prevailed, inspired Marsiglio of Padua's assault on Papal supremacy and called for a transfer of power from the Church to the State in his book Defensor Pacis. Some rulers tried to restrict the Papal power over the Church in their lands, thus limiting the Church's authority.

The Church itself suffered from dissensions and abuses that led to the 16thcentury Protestant Reformation under Luther, Calvin, and others. As the seat of such power, Luther assaulted the Catholic power and the papacy. He championed Church subordination to the State and tended to view religion as simply an element of state policy. But he did not put forward any fresh concept of liberty of religion.

Indeed, he even supported the persecution of heretics and the imposition of uniformity of religion because the magistrate had an obligation to "avoid divisions among his subjects." The Calvinist wing of the Protestant Reformation emphasized the autonomy of the Church and favoured a policy of revolt against "ungodly laws" in support of "real faith." It thus generated militant fervour and "had significantly contributed to complicating and embittering the religious disputes of the 16thand 17thcenturies." Geneva, Calvin's own town, was theocratic.

The governing principle even during the Protestant Reformation was' cujus region, ejus religio' (whatever the ruler's religion would be the state's religion). Religious minorities were "encouraged or forced to immigrate to states that professed their own religion," even during the Reformation. The church was considered superior to the state even until the end of the Middle Ages.

Freedom of religion was rejected as late as the 16thcentury, and even enlightened politicians like Sir Thomas More advocated the persecution of heretics. More advocated heretics' conservation as vital "not only for the conservation of true religion, but also for the cohesion of civil society itself."

However, the Reformation's fundamental values such as "the right to rebel against the old ecclesiastical power and unrestrictedly examine the truths of religion, and the concept of a direct connection between God

and man, obviating the need for mediation by a charismatic church," led to higher religious freedom. The Reformation also gave monarchs the chance to assert their independence from any internal power, whether spiritual or temporal, and to work towards religious freedom and tolerance.

In England, for example, Henry VIII rebelled against the Church's power to set up the Church of England, simultaneously assuming the title of 'Defender of the Faith.' The existence of large religious minorities in France and England also had the impact of implementing a "understanding of citizenship not dependent on a common religious faith." Theoretically, it was Machiavelli who first segregated politics from religion in the sixteenth century and affirmed the supremacy of political power, while emphasizing the obligation of autonomous rule of the Prince. Toleration was highlighted in the 16thcentury by Bodin and in his Letter on Toleration by Locke in the seventeenth century.

However, the toleration of Locke did not come under the purview of Catholics and atheists. With the emergence of the enlightenment process in the seventeenth century, scholars such as Descartes, Hobbes, Spinoza and Leibniz represented the "first sustained attempt to build a rational picture of the universe on the basis of scientifically established knowledge" and emphasized human values. The Renaissance scientists and philosophers were influenced by the growth of modern science and the spirit of reasoned investigation.

The progressive development and development of religious concepts. Freedom and tolerance were a move in the direction of secularism. Rousseau and Kant supported enlightenment in the 18thcentury, leading to enhanced rationalism and decreasing superstitions and dogmas. The European leaders, attempting to reconstruct their State on the grounds of the doctrines of the rationalist intellectuals of the Enlightenment of the French Revolution of the year 1789, based on the political dogma of popular sovereignty, coupled with the creation of the nation-state, led in the deprivation of the church of the last remains of supremacy while allowing the State to control the affairs of the nation-state

Napoleon amply proved this by refusing to be crowned by the pope, rather than performing the ceremony himself. A widely humanistic approach in matters of state policy became the predominant factor.

Throughout the nineteenth century, political philosophers like Bentham and Mill supported the values of religious freedom and toleration. Thus, the British utilitarian were "the promoters of secularism philosophically." All of this allowed the environment for secularism to be established. Secularism arose in the late 19thcentury as a doctrine, particularly in Holyoake's works.

Secularization was, however, not complete for freedom of religion was limited. Even inthe 19th century, Gladstone defended the imposition of the Protestant religion uponthe people of Ireland, declaring it to be beneficial to them, whether they knew it or not. "Shall we, then, purchase their applause at the expense of their substantial, nay theirspiritual interests?" Religious tolerance was thus frequently denied. In France, the lateryears of the revolution were marked by persecution of heretics. In England, it was notuntil the year 1829 that the legal disabilities of Catholic were removed.

The advent of secularism led from a gradual delimitation over a lengthy period of time of the realms of the temporal and the spiritual, which resulted in the Western institutionalization of the secular state. However, this does not mean that the problem of the temporal-spiritual connection has been resolved once and for all. The issue remains in different forms and has been addressed in a more or less unique way by each State in accordance with its specific history and institutions.

A broad government discussion has evoked the notion and practice of secularism in India as it has developed since independence. Before addressing the significant issues and issues that threaten secularism in India, it would be appropriate to establish a theoretical structure on the grounds of which the debate will continue in the following sections. Examining the differences in secularism would also be appropriate. Secularism was interpreted differently as a notion. On the one hand, the term secular has been contrasted with the sacred or the spiritual as

opposed to the mundane; and on the other hand, it is interpreted as a continuing trend or condition over a period of time.

Expositions on secularism differ from a rightly anti-religious definition of secularism, to indifference in religious matters, to equal consideration for all religious, secularism is usually described by the Encyclopaedia Britannica in terms of state and religion separation. Secularism as a modern concept was born in Britain, for the first time it was Holyoke who used the word "secularism," and it was he who made its systematic formulation mainly. Charles Bred laugh further elaborated his fundamental principles and agreed with Holyoke nearly.

Holyoke's secularism was but a deliberate affirmation of Westerners 'objectives and urges during the 19thcentury. They, in turn, were the result of the renaissance that affirmed the dignity of the individual and science, as well as the nineteenth-century liberalism.

5.4.2 Meaning Of Secularism

In politics today, both Indian and international are as confusing, abused and misunderstood as secularism, perhaps few other words of frequent use. It is thought that the West is the cradle of this idea. But, as we will soon see, secularism is described in Western dictionaries as something contrary to religion, something that has nothing to do with God or anything supernatural or transcendental.

In order to have a benchmark against which to compare the Indian version, it is vital to identify secularism before introducing the case of Indian secularism. Simply put, secularism is state and religion separation, or more generally zero state interference in religion matters, and vice versa. This means that the state treats all citizens equally, irrespective of religious beliefs. Secularism implies that in the eyes of the law, everyone is considered equal. It can be traced back to the Western perspective of the globe.

It is, therefore, important to understand its philosophical base to fully appreciate its connotation, its importance and its limitations. Before considering the topic under discussion it would be naturally appropriate

to briefly notice the meaning of the word ‘secular’ and ‘secularism’. The word is a Renaissance and post-Renaissance product and has not always meant the same to all people.

Secularism is the same as a hat lost its initial shape because it assumes the shape of the head it was put on. Hence, distinct individual views it as deferential angles; its entire significance is hard to understand. It was viewed from their various points of perspective by men of philosophy, ethics, religion and social science and provided their definition. Secularism is this century’s catch word and watchword. It has demonstrated to be a hydra of political science like socialism and democracy.

5.4.3 Principle Of Secularism

Secularism’s vital principle is to seek human enhancement through material means alone. It maintains that such means are the more essential because they are closer to each other and that they are sufficient to secure the required end, separately and in themselves.

The Encyclopaedia Americana has defined it as an ethical system “based on the principles of natural morality and independent of revealed religion or supernaturalism.” The principle of secularism is a theory that does not concern religion, God and the unknown world.

Secularism emerged and evolved at a time when the relationship between science and religion was starting to be seen as sharply opposed. With that concept in harmony. It declared this life’s independence and can be preserved and tested in experience by reason at job. It conceived that just as mathematics, physics, and chemistry were “secular sciences,” it would be possible to establish a secular theory of conduct and welfare and life on the same lines, and to add the instruction of conscience to science instruction in a similar and similar way.

5.4.4 Secularism And Secular State

When secularism is actively applied to all of a state’s significant matters. We call it a “secular government” Such a government is entirely non-religious in the sense that it has no official religion of its own is entirely

indifferent to all religious followed in their personal lives by its people. It gives every person the liberty in his private lives to follow any religion or religion. It does not force him to encourage any religion by paying taxes or other means for its prorogation,

If the person chooses to renounce his own religion and adopt another religion, he can do so freely. A secular state does not dictate to its people any religious views, nor does it force them to profess a specific religion or religion. A secular state does not imply an irreligious state, but it implies that it will stay neutral in matters of religion.

The state will have no religion of its own i.e. it will encourage any religion and interfere with none at the same moment. Secularism or reflects a non-discrimination religious policy and equal freedom for all, including believers and non-believers. Although it connotes irrelevance to religions and exclusion from religion and indifference. Such a wall of separation does not necessarily involve its logical delineation in the religion-ridden globe.

A secular state is a state that ensures liberty of religion for individuals and corporations. It sees person as a citizen regardless of religion, i.e. it is not constitutionally linked to a specific religion, providing for the guarantee of religious freedom for all individuals and organizations subject to lawful constraints in the interests of safe, government order and morality.

The perfect secular society, although all members of the community confess to one faith, will not have a state religion. Apostasy or heresy are not punished by liberal society. Citizenship is not dependent on adherence to a certain religion in a liberal democracy. Religion is not a constitutive element of citizenship. In many democratic states, this principle is widely recognized today.

Equally well accepted is that the government cannot penalize people or individuals within the jurisdiction in a liberal democracy because they profess a faith that is not shared by a majority of their fellow people. It is also established that citizens in a liberal democracy appreciate the liberty to express their religious opinions and form organizations that are

compatible with those opinions, without fear of penalty or civic disability.

It is also commonly recognized that liberal democracies are unable to compel worship services to perform religious acts or attend. Liberal democratic theory takes on the significance of a sharp demarcation between state and private sphere in order to differentiate between state and private action.

5.4.5 The Role Of Religion

In the above titles, the tension between state and religion in its wider sense has been discussed more or less, now it would be suitable to restrict the scope to the role of religion in the public sphere. Specifically, how should people debate and discuss government affairs in a contemporary pluralist democracy? What are the reasons for parliamentary discussion, judicial views or administrative decisions?

There is broad consensus that the state should not, at least not without very excellent reason, censor public discussion about politics. But when it comes to the problem of religion visa-a-visa government discussion; in political discussion, what concept should people aspire to. Some have asserted, for instance, that religiously driven political discussion should be permitted in the public sphere, while others argue that religious voices should be completely excluded. Others argue that an ideal of political morality should reflect liberty of speech for all in the government discussion, provided that religious reasons are subject to equal scrutiny as any other civic reason.

Religion-politics interaction was the subject of debate among theology scholars and academics. As they are regulated by law, these complex relationships between religion and the state are often characterized by discord rather than agreement. There are three opinions on the role of religion in the public sphere at the danger of a great deal of generalization.80 The first stance argues that religious involvement in public political discourse is not likely to undermine the constitutional principle of separating religion and state.On the contrary, it would be

hard to square a ban on religious expression or religious reasons with the secular values of free speech and undemocratic rings.

Lastly, by and large, the Indian ethnic configuration manifests heterogeneity of religion, meaning that most significant ethnic groups are not described or recognized by a single religion. This non-corresponding of religion and ethnicity appears to be good, as it inhibits religion politization in the government discourse.

5.4.6 Importance Of Secularism

In order for a nation to operate democratically, secularism is essential. There will be more than one religious community residing in almost all nations of the globe. There will most probably be one group within these religious organizations that is in a majority. If this religious majority group has access to state authority, then this power and economic resources could readily be used to discriminate against and persecute people of other religions.

This majority tyranny could lead to discrimination, coercion, and sometimes even the killing of religious minorities. The majority could prohibit minorities from practicing their religions quite readily. Any type of religious-based domination violates the freedoms guaranteed to each and every citizen by a democratic community irrespective of their religion.

Therefore, majority tyranny and the resulting infringement of fundamental rights is one reason why separating state and religion in democratic societies is essential. Another reason why separating religion from the state in democratic societies is essential is because we also need to safeguard people’s liberty to leave their religion, embrace another religion or have the liberty to interpret religious doctrines differently.

Secularism is a concept involving two fundamental proposals. The first is that the state is strictly separated from religious organizations. The second is that before the law, individuals of distinct religions and views are equivalent.

Check your Progress-4

1.What is secularism?

5.5 MINORITY REPRESENTATION

5.5.1 Minorities Definition

The demand for a Constituent Assembly elected on the basis of universal adult franchise hadbeen reiterated in Congress resolutions since 1934. The Muslim League and the ScheduledCaste Federation had been less enthusiastic about such a body, holding that it would entrenchCongress dominance over the transfer of power from colonial rule. From the 1940s onwards,the British had been increasingly receptive to the idea of a Constituent Assembly.

Pursuant to the Cabinet Mission Plan of 16thMay of the year 1946, elections were held to the Constituent Assembly in the month of July 1946. The Plan had specified that' the assignment of sovereignty to the Indian people on the grounds of a constitution framed by the Assembly would be subject to appropriate regulations for the protection of minorities being produced.'

The Assembly was elected by provinciallegislatures that had been constituted in December 1945. Members of three communities,Muslim, Sikh and General (Hindus and all others) elected their representatives separately, bythe single transferable vote system of proportional representation.

The Congress and the MuslimLeague won an overwhelming proportion of General and Muslim places respectively, reflectingthe composition of provincial legislatures, with the Congress majority in the Assembly rising to82 percent after the partition of the country.

5.5.2 Socio-Economic Disparities

The complicated Indian social fabric that is characterizedby social ostracism on the grounds of caste, ethnicity andreligion tends to confirm

the susceptibility of the minoritycommunities to discriminatory practices: exclusion, violencedue to their marginalized position, poverty and low politicalrepresentation.

The minorities' whether religion-based orrecognized as under-privileged classes, remain marginalizedin the socio-economic milieu. In this backdrop, the ideal of 'secularism' offers glue to the Indian diversity but stays shortof serving as the vehicle of equal opportunities or evenprogress for various communities in the arena.

The Indian constitution seeks to secure the minoritygroups and other socially marginalized groups while effortsunder this umbrella have proved insufficient in the redress ofgrievances among different communities. The provisions donot ipso facto apply on the religion-based minorities, a fargreater reality in the Indian scenario.

The constitutionguarantees fundamental rights of the citizens in Part IIIwithout any discrimination, whereas Article 29 proclaims therights of minorities for maintaining their distinct culture orlanguage. Similarly, Article 330 and 335 Part 16 reserve seatsfor the disadvantaged social groups (ST, SC and OBCs) in thegovernment jobs and the Indian parliament.

Under thissystem of compensatory discrimination, a total of 49.5% of theseats are reserved in the form of quotas for the ST, SC andOBCs, out of which 27% are reserved for the OBCs, 15% for theST and 7.5% for SC.

However, there are no special provisionsprovided for securing minority groups because the reservationpolicy tends to take in its domain the marginalizedcommunities in a certain social group, not the religious orlinguistic minority groups until they fall in the category of theST, SC or OBCs because of their disadvantaged position.

5.5.3 Political Representation Of Minorities

The political representation of minorities in India has beenvictim to majoritarian secular debate, quota controversy,discriminative elites and abuse of the system by the upperclasses. The government of India has enacted variouslegislations, for ensuring smooth functioning of

Indiandemocracy and elimination of the fear of encroachment ofminority rights.

Article 330, Part 16, of the Indianconstitution, calls for the reservation of seats in each state forthe marginalized groups (SC and ST) in the lower House of theIndian Parliament, in proportion to the size of theirpopulation in the respective provinces. That makes itobligatory on the SC and ST groups to contest elections in thereserved constituencies.

The secular identity of the Indian state excludes thepossibility of religion-based reservation of seats in theelectoral process and provides reservations to lower castes touplift their economic status. It assumes that Muslims, forexample, are a community (not a minority in the classicalsense) in the multicultural mosaic, and they will gain strengthequal to the others while operating in India's political arena.

Conversely, the electoral report card has been dismal. In 1952,Muslim representation in the Parliament was 4.3 per cent andthe highest it soared was in the Parliament during 1984-89period when it stood at 8.4 per cent. At one point, it dipped to2.9 per cent. Comparing the results of 15th and 16th Lok Sabhaelections, the Muslim representation, despite being the largestminority, is at the lowest ebb.

It is just 23 seats which meansonly 4% representation for a community that constitutes 14%of the population. The number of Muslim MPs had alwaysremained between 20 to 30 except in 1980 when it was thehighest 51 Muslim MPs and in 1984 the number was 48.

Check your Progress-5

1.What were number of Muslim MPs?

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5.6 LET'S SUM UP

The preceding outline attempted to make a concisepresentation of the general reasoning on the safeguarding, protectionand restrictions of fundamental right. A central point in thispresentation is the constitutionally enacted suspension of the force offundamental rights. However, the conditions set by article 48 requirethe investigation into the concept of "national security". This concept,although much debated, remains unclear and largely ambiguous,especially when account is taken of the fact that, being part of theConstitution, it does not have a descriptive-ascertaining characteronly, but also a formative content, recalling and underlining the twoway relationship between law and politics, since it touches on both.Its clarification provides elements that delimit both the politicaldimension of law and the legal dimension of politics.

5.7 KEYWORDS

5. Stipulate: Demand or specify (a requirement), typically as part of a bargain or agreement.
6. Abrogated: Repeal or do away with (a law, right, or formal agreement).
7. Precarious: Not securely held or in position; dangerously likely to fall or collapse.
8. Abstention: An instance of declining to vote for or against a proposal or motion.
9. Ecclesiastical: Relating to the Christian Church or its clergy.

5.8 QUESTIONS FOR REVIEW

5. What do you mean by the term fundamental rights?
6. Explain in brief the fundamental rights.
7. What do you mean by socio-economic disparities?
8. Define minorities.

5.9 SUGGESTED READINGS AND REFERENCES

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5.10 ANSWERS TO CHECK YOUR PROGRESS

1. (Answer for Check your Progress-1 Q.1)

It is usually recognized that the Constitution includes regulations governing, on the one side, the organisation and practice of state authority and, on the other, interactions between the people and the State.

2. (Answer for Check your Progress-2 Q.1)

Thus, the first 18thcentury agreements involve individual and political rights. People have been "personal beings" and become "political beings." The Constitution only safeguarded social rights after the World War I.

3. (Answer for Check your Progress-3 Q.1)

Regime is the systematic way of exercising and constituted the state power. It is called liberal the regime that guarantees individual liberties.

4. (Answer for Check your Progress-4 Q.1)

Secularism is a concept involving two fundamental proposals. The first is that the state is strictly separated from religious organizations. The second is that before the law, individuals of distinct religions and views are equivalent.

5. (Answer for Check your Progress-5 Q.1)

The number of Muslim MPs had alwaysremained between 20 to 30 except in 1980 when it was thehighest 51 Muslim MPs and in 1984 the number was 48.

UNIT–6: AN ANALYTICAL STUDY OF WOMEN, THIRD GENDER, POLITICAL CORRUPTION

STRUCTURE

6.1 OBJECTIVES

After learning this unit based on "An Analytical Study of Women, Third Gender, Political Corruption", you can gain knowledge of about the following important topics:

- To know the Power of Indian Women in Politics.
- To discuss the Third Gender, past and present scenario.
- To discuss about the Corruption biggest issue in India.

6.1 INTRODUCTION

The term 'political involvement' has a very broad meaning. It is linked not only to 'right to vote,' but also to involvement in: decision-making process, political activism, political awareness, etc. Women in India are more involved in voting, running for government offices and lower-level political parties than males. The greatest regions of women's political participation are political activism and voting. The Indian government has instituted seat reservations in local governments to combat gender inequality in politics. Women's turnout at India's general election was 65.63 percent, compared to men's turnout of 67.09 percent. In terms of women's representation in Parliament, India ranks 20thfrom the bottom. India's Constitution seeks to eliminate gender inequalities by banning sex-and class-based discrimination, banning trafficking in human beings and forced labor, and reserving women's elected positions. India's government has directed government and local governments to encourage equality by class and gender, including equal pay and free legal assistance, humane working conditions and maternity relief, labor and education rights, and increasing living standards. In the early 20thcentury, women participated significantly in the Indian independence movement and argued for independence from Britain. In the form of constitutional rights, independence brought gender equality, but historically women's political involvement stayed small.

Transgender is usually described for individuals who do not conform to their organic sex with gender identification, gender expression or behaviour. Transgender may also include males and females who do not perceive their initially allocated intercourse, which includes eunuchs who define themselves as 'third sex' in this written petition and who no longer recognize themselves as either male or female. Hijras aren't people with an anatomy look unique function and psychologically, they're also not ladies now, even though they're like females without a lady duplicate organ and no menstruation. In India, 'Hijra' is a popular word used to define transgender people, transgender individuals, pass-dressers, eunuchs, and transvestites. Campaigners claim they live on the fringes of society, in poverty on a regular basis, ostracized because of

their gender identity. Maximum create a living by singing and dancing or by praying and prostituting. Because 'hijras' no longer have the ability to reproduce as either boys or women, they are neither males nor women and pretend to be a 'third gender' institution. Now come to the 'Transgender' Transgender is a time frame for people whose gender identity, gender expression or behaviour is no longer in line with that generally related to the intercourse they were assigned to at first. Gender identity relates to someone's inner experience of being a male, a female or something else; gender expression relates to the way in which an individual communicates gender identification to others through behaviour, apparel, hairstyles, voice or frame features. 'Trans' is used as a shorthand for 'transgender' every so often, at the same moment as transgender is generally a good word to apply; now not every person whose appearance or behaviour is non-gender-compliant will choose as a transgender man or female. In renowned culture, academia, and technology, the methods of transgender human beings are constantly changing, especially as the consciousness, comprehension, and openness of individuals to transgender individuals and their studies develop. In our culture, transgender include all races, ethnicity, non-secular and social guidelines, yet they have never enjoyed a first-rate lifestyle because of 'what they are' and 'how they are.' Due to the inflexible, forced conformity to sexual dimorphism during the recorded documents, they are subjected to confusion and pain. They can deal with societal stigma, discrimination, and rejection of their civil and human rights. Discrimination against them has been linked to elevated charges for substance abuse and suicide, and they deal with widespread discrimination in the areas of family life, social life, accommodation, education, health, etc. Section 377 of the IPC established a position within the Indian Penal Code, 1860, before the Criminal Tribes Act was enacted, which criminalized all penile-non-vagina Reference may be produced to the Allahabad High Court docket judgement in Queen Empress v. Khairati in the year 1884 ILR 6 ALL 204, in which a transgender person is detained and prosecuted pursuant to Section 377 on the suspicion that he has changed to a' usual sodomite' and is subsequently acquitted on appeal. Compared to the historical cases in India where transgender community had a strong ancestral presence in

our united states in Hindu mythology and various non-secular texts, this judicial regulation performs. Hijras also played a prominent role in Islamic International's royal courts, especially in medieval India's Ottoman empires and Mughal rule. But the modest circumstances of the transgender groups have been remedied through a move made by using the National Prison Services Authority, established under the 1997 Legal Services Authority Act, to give free legal products to the weaker and other marginalized segments of society, advocating their reason. In their transgender identity, transgender human beings revel in ways that are diffused and can turn out to be private to their transgender identity at any era. Some may trace their transgender identities and returned feelings to their earliest memories. In their assigned sex, they will have indistinct emotions of 'not becoming in' with humans or specific needs to be something apart from their assigned intercourse. Others become private to their transgender identities or start exploring and revelling during adolescence or tons later in life in gender-non-conforming attitudes and behaviours. Some include their transgender feelings, while others are struggling with shame or confusion feelings. People who later transition into life may have struggled to be healthy in competence as their most efficient assigned sex later facing discontent with their life. Specifically, some transgender people, transsexuals, face extreme discontent with their birth-assigned sex, body-sex features, or gender-associated position. These individuals often try to discover remedies that support gender. From women in politics, transgender and now come to the critical thing of this unit that is 'Corruption'. Not only has corruption become an omnipresent element of Indian politics, it has also become an increasingly significant factor in Indian elections. The Indian state's comprehensive function in offering services and encouraging economic development has always established the chance for the personal advantage of using government funds. As public company regulation was expanded in the 1960s and corporate donations were prohibited in 1969, trading financial favours for underground contributions to political parties became an increasingly prevalent political practice. Corruption became connected with the occupants of India's greatest political system echelons during the 1980s and 1990s. Scandals rocked the government of Rajiv Gandhi, as was the P.V. government. Narasimha Rao. Politicians

have become so strongly recognized with corruption in the public eye that a Times of India survey of 1,554 adolescents in six metropolitan towns discovered that 98 percent of the public believe politicians and ministers are corrupt, with 85 percent finding corruption is on the rise. In India in the 1990s, the prominence of political corruption is hardly unique to India. There has also been corruption in other nations that has rocked their political systems. What is noteworthy about India is its electorate's constant anti-incumbent sentiment. Since Indira's 1971 'garibi hatao' election victory, in the central government, only one governing party has been re-elected to authority.In a significant sense, the exception demonstrates the rule because Congress (I) won re-election in 1984 in no tiny measure because in Rajiv Gandhi the electorate saw a' Mr.' Clean 'that would lead a fresh generation of politicians to clean up the political system. Anti-incumbent sentiment is just as strong at the state level, where the ruling parties of all political persuasions lost eleven of thirteen legislative assembly elections held between 1991 and spring 1995 in India's major states. In easy terms, corruption can be defined as' a bribery act.' Corruption is described as using public office for personal benefits in a manner that constitutes an infringement of the law or a deviation from society's norms. Corruption scales may be Grand, Middling or Petty and bribe payment may be due to collusion between the bribe taker and the bribe giver, owing to coercion or even anticipatory. This was Mahatma Gandhi's outburst against rampant corruption formed in 1937 in six states in Congress ministries under the 1935 Act. However, Gandhi's followers overlooked his concern about post-Independence India bribery when they came to power. The individuals have been so immune to corruption for over sixty years of democratic rule that they have learned how to live with the scheme, even though this disease's cancerous growth may eventually kill it. The Tehelka episode overburdened the country's political atmosphere, but it revealed hardly anything new to the individuals of this largest democratic polity. Politicians are fully conscious of corruption and nepotism as the primary factors behind the collapse of the Roman Empire, the French Revolution, the October Revolution in Russia, Chiang Kai-Shek's collapse on China's continent, and even the defeat of India's powerful Congress party. But they're not willing to take any lesson from history.

Check your Progress-1

1.What is meaning of 'Political involvement'?

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6.2 WOMEN IN POLITICS IN INDIA

Women's voting turnout was high in the latest elections to the assembly. In 52 Madhya Pradesh constituencies and 24 Chhattisgarh constituencies, more women than men appeared at polling booths. In addition, the winner ratio was higher for women compared to their male counterparts compared to the number of fielded candidates. This is interesting when we notice that women's representation in these states 'assemblies is abysmal. Calculations that made using the available data revealed that the higher female turnout in Madhya Pradesh's 52 constituencies significantly determined the electoral outcome pattern. In MP, a total of 114 seats were won by Congress against the BJP's 109 constituencies. Surprisingly, the BJP actually received a larger proportion of votes almost 41.09% than Congress which is 40.89%. But the distinction between woman and male voter turnout, which in constituencies such as Sihawal and Chitrakoot was higher than 5 percent, was probable to result in a change of guard. Similar is the case of Chhattisgarh, particularly in the Bastar region constituencies where the CPI (Maoist) holds a considerable hold and calls for a boycott of the elections. Women's voting turnout in all these seats was higher than men. This has enormous consequences not only for the region of Bastar but for the Maoists and the nation as a whole. Bastar's women sent a signal to political parties about the importance of peace in the region and the need for rights-based development by turning out to vote in larger numbers. Despite the increase in women's participation in the electoral process during the recent elections to the Assembly, the total number of women elected has declined compared to 2013. According to data compiled by the

Association for Democratic Reforms and the Center for Policy Research, there are only 62 women among the 678 elected assembly members in the elections. At the previous election, it was 77. In 2018, the total number of women MLAs fell to 9% from 11% in 2013. Let's look at the facts about women's parliamentary representation. According to the IPU, females hold only 23.4% of parliamentary seats worldwide. In India, because of the patriarchal social system, females have historically been denied their rightful share of governance. Structural inequalities such as class and caste complicate discrimination on the basis of gender. India is one of the world's few democratic countries that provided women with early voting rights. In our three-tier panchayat scheme, women hold 46 percent of the posts. However, the same is not expressed in parliamentary and assembly number of females. In India, Parliament's percentage of women is lower than that of most South Asian nations. The data shows that there has been a gradually increasing trend in women's parliamentary participation since the 10th general election. 11.8% of those elected were females in the 2014 Lok Sabha elections. The percentage of women in Rajya Sabha is about 11. India ranks 88th among 181 nations in terms of the proportion of females in ministerial roles and there are six females in the Union Cabinet. Although the number of females contesting the Lok Sabha in elections is rising, the proportion of winning applicants does not reflect the same. Even Sudan (30.5%) and Pakistan (20.6%) have better female parliamentary representation than India. Women's representation in assemblies is even less than in parliament. There are only about 9% of MLAs in our states 'assemblies. In the event of Legislative Councils, where about 5% are females, this is much less. The Women's Reservation Bill or the Constitution in the 108th Amendment Bill, 2008, aimed at providing a one-third seat reservation in Lok Sabha and all Legislative Assemblies, has lapsed. We need to address various factors such as political parties 'unwillingness to reserve women, patriarchy in our society, criminalization and corruption in politics, and political dynasties to ensure better women's representation in politics. The parties 'reluctance to give women equal share when it comes to power and authority and their lack of commitment is an indicator of male hegemony. It also represents the politics 'gender rigidity in India. Wherever women have a

better representation in the decision-making process, there are better opportunities for overall socio-economic development, it has also been observed globally and in India. It's high time we ensure higher women's inclusion in governance and achieve gender equality, especially in politics at state level.

6.2.1 History

During the independence movement, women were visible and active as nationalists, and as symbols of 'Mother India'. Gandhi, in particular, was instrumental in creating space for women through his non-violence and some would argue feminized mode of protest.35 Gandhi's legendary salt march36 initially excluded women, but due to demands from women nationalists he later realized the power of women organizers at the local level. His inclusion of women, however, was not located within a gender equality framework, but was a means to achieving a stronger and unified Indian state. The inclusion of women in the nationalist movement was also to debunk the British colonial assertion of 'needing to save the poor, vulnerable women' of pro-independence India. As in many nationalist movements, women in India took part in the struggle, in turn propelling a women's rights movement. And, as seen historically in many post-colonial countries, the nationalist women's movement in India was confronted by the rebuilding of a patriarchal nationalist state. Women revolutionaries gave way to their male counterparts who (as a result of Partition politics) created a strong, male, and Hindu 'New India'.The first post-independence Lok Sabha (the People's Council or the Parliament) had 4.4 percent women.37the period between the early 1940's and late 1970's saw an emergence of the Indian women's movement, but it was not until the 1980s that the women's movement gained real momentum.

Check your Progress-2

1. During the independence movement, women were symbols of whom?

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6.2.2 Reservation At The Panchayat Level

The Status of Women Committee in India was created in 1976 and a report was released recommending a rise in elected women at the grassroots level, which led to the implementation of the 33.3 percent reservation at the Panchayat level in 1988. It was only in 1993 that the suggested reservation at the Panchayat (village level governing councils) was made a reality by an amendment to the constitution.Manystudies have been performed over the past two centuries since the reservation for females in elected Panchayats was adopted to look at the effect of this policy. A study undertaken in 2008 revealed that females made up nearly 50% of all Indian village councils. The number of women members has definitely risen at the grassroots level; however, questions stay about their decision-making authority within councils. A research by the Institute of Management Studies (Calcutta) and the Massachusetts Institute of Technology (MIT) in West Bengal and Rajasthan discovered that there were more solid water, irrigation and infrastructure programs where Panchayat females were involved. The research concludes that it was more useful for the society in Panchayats where females were present than in Panchayats where females were absent. A research by The Accountability Initiative also says that women's involvement in the bigger council grew nearly 3% in one year in Panchayats with female presidents.40 the reason for the rise in women's involvement is linked with two possible variables: first, women's officials exemplified fresh opportunities for change; and second, women rulers addressed problems that would lead to change.

Check your Progress-3

1.What were the research made by A research by the Institute of Management Studies (Calcutta) and the Massachusetts Institute of Technology?

6.2.3 Cast And Class Politics

Political complexities in India are integrated in identities of class, caste, and religion. An assessment by the Indian Parliament's International Idea of Women between 1991 and 1996 discovered that among the tiny amount of female's parliamentarians, a disproportionate amount represented the Brahmin caste (the greater caste in the Hindu caste system).41 most local authorities stay mainly patriarchal and caste-based institutions, hampering inclusive governance.Class, age, and caste all have important impacts in their political life for women leaders.India is one of the few nations in the globe in which a female leader has been elected. During her moment in office, Indira Gandhi was among the very few women rulers in the globe. Her role as prime minister, however, was not seen as a victory for India's women's motion. She was Jawaharlal Nehru's granddaughter, representing her family's political dynasty.In addition, her contentious political movements during the proclaimed emergency period (1975-1977) suppressed dissent, forcing many of the radical women's rights movements to go underground.43 India appointed its first woman president, Ms.PratibhaPatil, in 2007. While the president has a predominantly ceremonial position in Indian politics, the election of Ms.Patil was considered a symbolic move toward a more equitable representation of females at the greatest levels of government.Despite the quickly evolving representation of females and reduced caste members in Indian politics, the complexities of caste politics continue to govern representation. An interesting case study is Mayawati, Utter Pradesh's chief minister. Mayawati, a female and a Dalit caste member, was the youngest chief minister when first elected, and the only female elected as chief minister was Dalit. While Mayawati represents the transcendence of India's caste system, her political career is unfortunately tainted with allegations of corruption, extravagant expenditure, and little beneficial

effect on the realities of caste and class obstacles for males and females in her state.

6.2.4 Reservation For Women – 33%

The April 2010 Women's Bill, which provides reservations of 33.3 percent to women at all levels of Indian politics, took 14 years after its introduction to lastly pass the Rajya Sabha (the upper house of parliament). The Lok Sabha (the lower house of parliament) still has to pass it.The reservation bill will provide 181 of the 543 seats at the level of Parliament and 1,370 of the 4,109 seats at the level of the State Assembly.44 This is a historic move in the Indian political landscape, as females presently hold less than 10% of the seats in the NationalParliament.45 The Women's Bill will also considerably alter the demographics of class and ethnicity among women leaders. It will generate a route for lower-class females and castes (now limited to local-level governance) to join governments at the state and national level. Besides the current reservations for scheduled castes and scheduled tribes, one third of the applicants for SC and ST must be females. Other members of the Backward Class (OBC) are not included in the reservation because of the broad discrepancy over who represents OBC and the absence of current OBC population information.The two primary arguments against the bill are that it will only benefit elite females (especially in domestic politics) and that reservations should be made for Dalit, minorities (especially Muslim women), and OBCs. However, the bill's proponents disagree with quotas being created within the current 33% female quota in parliament, as there are already SC and ST quotas.The bill requires all political parties to reserve a third of their women's election ticket, including in the already mandated SC and ST reservations. Inadvertently, this will generate opportunities for reduced caste and class females to join politics at the state and national level. The passage and execution of the Women's Bill, and its effect on the current obstacles to gender, class, and caste, is yet to be realized, but one thing is evident: India's politics are moving nearer than ever to fair integration.

6.3 THIRD GENDER

Third sex or third sex is a notion that categorizes people as neither man nor female, either by themselves or by culture. In societies, it is also a social category that recognizes three or more genders. Usually, the word 'third' means 'other;' some anthropologists and sociologists have defined certain genders. Biology determines whether the chromosomal and anatomical sex of a human is male, female, or one of the rare variations that can create a degree of ambiguity known as intersex. However, in the particular culture in which they live, the state of personal identification as, or being identified by society as, a man, a woman, or another, is usually also defined by the gender identity and gender role of the individual. Not all cultures have gender roles that are strictly defined. A third or fourth gender can constitute very different things in distinct societies. To indigenous Hawaiians and Tahitians, Mahu is a man-woman intermediate state, or an 'indeterminate sex individual.' South-western US traditional Dine recognizes four genders: female woman, male woman, female man, male man. Also used was the word 'third gender' to describe Indian hijras who acquired legal identity and sworn virgins. While discovered in a number of non-Western societies, 'third,''fourth,' and 'some' sex roles are still somewhat new to mainstream western culture and conceptual thinking. In contemporary LGBT or queer subcultures, the notion is most probable to be embraced. While mainstream Western academics particularly anthropologists who have attempted to write about Native American and South Asian 'sex variant' or two-spirit individuals have often sought to comprehend the word 'third sex' only in the language of the contemporary LGBT society, other academics, particularly indigenous scholars stress the absence of cultural knowledge and context among mainstream academics.

6.3.1 Introduction

THE TRANSGENDER community in India was an unknown part of culture and faced profound and omnipresent discrimination, despite protection under numerous constitutional regulations. In April 2014, in

its landmark judgement of NALSA v. Union of India1 which is hereinafter the decision of NALSA, the Supreme Court initiated the recognition of the transgender community's multiple civil and political rights. The genesis of this recognition lies in the recognition of the equal value of each individual and the right of choice provided to an individual who is the inseparable component of human rights. The judgement was issued by a Supreme Court of India division bench consisting of K.S. Radhakrishnan J and Dr. A.K. Sikri J. In a written petition on behalf of the transgender group, the National Legal Services Authority (NALSA) approached the tribunal. Their main argument was against enforced state hetronormativity3 and recognition under Indian law of only binary male and female genders. The petitioners sought legal steps in line with the numerous constitutional rights to meet the requirements of the transgender. The tribunal outlined the trauma suffered by the members of this group while drawing the historical and cultural importance of transgender organizations. The judgment distinguished between the notion of sex and gender identity, referring to an individual self-identification as a group recognized as a person, female, transgender or other. The tribunal referred to numerous global efforts4, including the principles of Yogyakarta5 and the basic freedoms under Part III of India's Constitution, to recognize the transgender 'rights. The tribunal ruled that, in relation to binary sex, hijra, eunuchs, aravanis and thirunangi, kothi, jogtas / jogappas, shiv-shakthis, etc. The tribunal also acknowledged the right to self-determination of transgender. In addition to other important instructions, the tribunal directed the state to treat transgender as socially and educationally backward groups (hereafter SEBCs) and to extend all types of reservations as accessible to members of the category Other Backward Classes (hereafter OBCs).Reservation was seen as a beneficial step in countering the systemic discrimination experienced by members of this society and emancipating them from religious, social and cultural prejudice stigma. The document tries to investigate both the theoretical and legal viability of transgender being included in the OBC list. The document is primarily argumentative in nature and claims that, at the constitutional stage, the transgender reservation within OBC's purview is deeply faulty. Furthermore, the ambiguity regarding the beneficiaries of the judgement throughout the

judgement makes OBC reservation execution highly difficult and susceptible to several difficulties. Furthermore, the article also explores the different social difficulties of effectively implementing reservations from within and outside the transgender community. The paper concludes with suggestions and a possible way forward, taking into account the transgender 'overall upliftment and social integration into the mainstream. The role performs by Indian transgender as street performers - singing, dancing, and performing blessings for donations. It is also traditional to have Indian transgender perform at weddings and baby blessings.

Check your Progress-4

1.What are the roles perform by Indian "Transgender"?

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6.3.2 Meaning Of Transgender

Knowing reservation beneficiaries is important for adequate execution of the reservation.It is therefore essential to know the significance and definition of the word 'transgender,' particularly in the context advocated by the judgment of NALSA. Generally speaking, the term transgender relates to individuals who deviate from social gendernorms.33 Typically, a transgender individual is someone whose sense of sex is distinct from their physical features or the sex attributed to him at the moment of birth.34 It is mainly a Western word of origin and is now used as a paraglide in the sense that it relates to all gender-variant individuals. The term includes transsexuality, heterosexual transvestism, gay drag, butch lesbianism, and non-European identities such as the Native American breached or the Indian Hijra, but is not limited to.A report prepared by the United Nations Development Program (UNDP) states that the term transgender is broad enough to include pre-operative, post-operative and

non-operative' transsexual' people (who identify strongly with the sex opposite to their biological sex), male and female' cross-dressers' and male and female people, regardless of their sexual orientation, whose appearance or characteristics are pe. Scholars have stated that there are in reality many who do not belong to any of the organizations but are individual transgender. In contrast to their biological sex, transgender people may live full-or part-time in the gender role.39 However, many have frowned upon the use of the term ' foreigner' in the Indian context, owing to its Western origin, which presumed the existence of male-to-female and female-to-male binary, whereas some hijras prefer to be referred to as the third gender and other categories.Germane in this debate is the need to comprehend in NALSA judgment the Supreme Court's use of the word transgender and hijra, eunuchs, etc. Whether the decision takes into account the broader transgender notion or specifically restricts it to hijras, eunuchs, etc.? Perplexity arises with the inconsistency in the use of both terms, i.e. transgender and hijra are synonymously used in some places of judgment, implying that only hijras, eunuchs, etc. are to be regarded as transgender, whereas transgender is also used as an umbrella term in other places, including hijras and other categories. This incoherence is evident throughout the judgement, making it highly hard to conceive of the judgment's targeted beneficiaries.Let us first look at those areas of the judgement where a broader connotation has been assigned to transgender. Paragraph 11 of the decision makes it clear that hijras are' included' within the transgender as one of the classifications. Additionally, there are other sections of the judgment where the word transgender is usually used and is not eligible with the use of hijra or eunuchs, leading to the perception that the judgment is usually focused on transgender. Say, for example, paragraphs 49 and 53 of the judgement, which speak of the need to recognize transgender rights in accordance with global conventions and fundamental rights guaranteed under the Indian Constitution, portray transgender as a broader word, without any reference to hijra, eunuch, etc.Most importantly, paragraph 60, which declares transgender to be socially and educationally backward and legally entitled to reserve under Articles 15(4) and 16(4), also mentions in a broader undertone the word ' transgender' (and does not mention hijra etc.). The same is reflected in

the instructions provided under paragraph 129 of the judgement. The first direction refers only to hijra, eunuchs, etc. (related to their right to be treated as a third gender), the second direction refers to transgender (right to gender self-identification) and the third direction which offers for reservation utilizes the word' them,' meaning that the advantages of reservation are generally directed to transgender, including but not to rest. In the Indian scenario, the use of the word' comprise' suggests exclusivity in the significance of transgenders.45 In addition, paragraph 44 of the judgment limits Indian transgender identities and cultures to hijras, eunuchs, aravanis and thirunangi, kothi, jogtas / jogappas, shiv-shakthis on the same lines. In addition, A.K., in paragraph 109 of the judgement. Sikri J, very categorically says as follows: [W] e makes it clear at the beginning that when we address the issue of conferring separate identity, as described above, we are restrictive in our significance to be provided to the TG society, i.e. hijra, etc. (Mine emphasis) There are serious flaws and ambiguities in the judgment, particularly in the definition of the beneficiaries of the judgment. Even if we consider that' transgender' in particular have the right to reserve as OBC (as per the direction of the court in paragraph 129), the restrictive significance of transgender elsewhere in the decision makes it extremely questionable. What can be understood is that the decision certainly applies to hijras and individuals with intersex differences, but the applicability of the judgement to other transgender is a question that needs clarification.46 This clearly illustrates an inconsistency that runs through the entire judgement with regard to the precise significance and connotation of the word transgender, which is of the utmost significance, particularly when it comes to the case However, a wider interpretation of the judgement leads us to think that hijras etc are the focus of the judgement, which is further stressed by the constraints imposed by Sikri J, who leaves gays, lesbians, bisexuals outside the scope of the word transgender.47 In a clarification requested by the central government, the Supreme Court reaffirmed the same.48 This was criticized f. Satya, a transgender, calls the decision incomplete and criticizes it for ignoring the non-traditional transgender community.51 Although in Article 15(1) and 16(1) of the Constitution the reservation is made to transgender as a horizontal reservation, it is of utmost significance to identify the

beneficiaries.In the judgement, the ambiguous significance of transgender generates a difference between hijra etc. and other transgender non-traditional individuals. Such differentiation is arbitrary and omits other variations of gender that face equal, if not greater, discrimination in the social set-up and are deprived of reservation advantages without any intelligible differentiation. The lack of clarity on the comprehension of hijras is another predicament with the judgement. For example, in paragraph 11, the tribunal defines them as 'not men by virtue of their anatomy and appearance' whereas, in paragraph 44, they are referred to as' biological males who, in due course, dismiss their masculine identity in order to recognize themselves either as females, not as men or between men and females.' Furthermore, paragraph 82(1) indicates that transgender or hijra individuals are born with bodies incorporating b. Satya further expresses dissatisfaction with the term 'genital anatomy problem' used by the tribunal and states that if this is 'what distinguishes transgender individuals from males and females, then this decision has failed to contest the very basic concepts of gender.' Therefore, the above debate enables us to conclude that the decision on the beneficiaries is mainly vague. It certainly applies to the society of hijra and so on, but it is a matter of uncertainty for another transgender. Without commenting on the viability or validity of such a reservation, it is asserted that such a difference is unfounded and runs counter to the spirit of different constitutional clauses.

6.3.3 Reservation

The problem has been subject to both appreciation and criticism in the three years since the impetus was given to the discussion on transgender and their reservation in NALSA judgement on April 15, 2014. The Central Government's latest clarification exposes the ambiguity that prevails in the judgement and has also served as a reason for further action to delay. The problems intertwined with the transgender reservation are numerous in themselves. Legislative, theoretical, legal and practical problems surround the argument of making reservations as OBCs to transgender.Due to the lack of any reservation provisions in the Transgender Persons (Protection of Rights) Bill, 2016, introduced by the Minister for Social Justice and Empowerment, the legislative effort to

reserve transgender has fallen short. The absence of reservation provisions is despite NCBC's suggestion to include transgender in the main list of OBCs. The reservation aspect stand of the centre appears to be indeterminate due to the strong resistance of the OBC organizations fearing a decrease in the size of their current piece of the metaphorical pie. It should be noted that prior to the 2 pieces The Bill describes transgender more from a biological point of view than from a psychological point of view. This seems to reflect the carrying forward of the restrictive interpretation at locations in the NALSA judgement. In the 43rd Report, the Parliamentary Standing Committee on Social Justice and Empowerment chaired by Ramesh Bais indicated that the concept of transgender is' unscientific and primitive and based on biological attributes.' Furthermore, it fails to recognize that many individuals are born with ambiguous or typical sexual organs, external or internal, and are identified as male, female or inner. Accordingly, the bill combines gender, which is a social structure, with biological sex as opposed to the expansive definition provided for in paragraph 11 of the judgment. Furthermore, the definition of transgender in the Bill leaves out persons who are cross-dressed or undergoing sex reassignment surgery, although the NALSA judgment (in paragraph 11) considers them to be transgender. Therefore, the question remains, Before taking a crucial position on the problem of reserving transgender as OBCs, we must take into account the social and financial context surrounding the problem. It wouldn't be too far-fetched to increase the question,' What happens if an individual undergoes surgery for sex reassignment or cross dresses to take advantage of the job reservation economically? Would that individual still profit from the booking? Furthermore, reserving transgender in government articles such as police, military, military etc. that ban their appointment on political or medical basis becomes a conundrum of utmost importance. This is particularly important given the latest situation in which the Indian Navy terminated a transgender sailor's services after undergoing a sex reassignment surgery. Another element that needs attention is the applicability of creamy layer to transgender once reservations are made as OBC. In the NALSA judgement, the apex court used reservation as a means of remedying the century-old transgender injustice. Economic factors should therefore play

no part in the discrimination experienced by the transgender. However, the incorporation of transgender within OBCs will necessarily require the creamy layer idea to be applicable, which in-turn will nullify the item requested by the Supreme Court in NALSA's judgement. In addition, some have pointed out that Dalit transgender people do not wish to be classified as OBCs, as they will lose out on the benefits granted to SC / ST categories. Similarly, it has been pointed out that some upper caste transgenderism and hijra leaders do not wish to be classified asOBCs. The urgency of clarity on this issue is highlighted by the petitions submitted before some high-ranking leaders. In Aslam Pasha UrfChandini v. Karnataka State, as well as Swapna v. Chief Secretary, the petitioners who belonged to the third gender asked the tribunal to issue instructions to the respective state governments to reserve the transgender by issuing a mandamus letter. However, the judiciary rejected the petitions saying that the Supreme Court had decided the matter and held that the petitioners were seeking an administrative intervention rather than a judicial interpretation that could only be given by the Legislature.In the light of the above discussion, it can be said that the government needs to fill several gaps in the 'class' and 'gender' debate before giving reservations to transgender. There are therefore several alternatives to explore, and both central and state governments need to deliberate efficiently before any reservation scheme or affirmative action can be reached.

6.4 CORRUPTION

Corruption is a constant in culture and happens in all cultures; however, this phenomenon has only started to be seriously explored in the last twenty years. It has many distinct forms and many distinct impacts on both the economy and society as a whole. Policy and economic environment, professional ethics and morality and, of course, practices, customs, tradition and demography are among the most prevalent causes of corruption. Its impacts on the economy and on the wider community as well are well investigated, but not yet entirely. Consequently, corruption inhibits economic growth and Impacts Company, jobs and

investment activities. It also decreases tax revenue and multiple economic aid programs 'efficiency'. A large degree of corruption in terms of reducing confidence in law and the rule of law, education and consequently quality of life such as access to infrastructure, health care, influence the wider community. There is also no clear response as to how to cope with corruption. In another nation or region, something that operates will not necessarily be effective. This section attempts to answer at least a few questions about corruption and its causes, its effects and how to be successful in dealing with it.

6.4.1 Corruption As A Challenge

Indian corruption is a result of the bureaucratic, political and criminal nexus. It was noted that "mafia raj" consists of municipal and other public authorities, elected politicians, judicial officers, real estate developers and law enforcement officials in towns and villages throughout India, buy, create and sell property illegally. Many state-funded buildings operations in India, such as road building, are dominated by building mafia, which are groups of corrupt representatives of public works, vendors of equipment, politicians, and construction contractors. It is now well acknowledged that the State is primarily accountable for formulating and implementing good governance and human rights policies. Good governance is an important consideration. The agenda for good governance involves the protection of human rights and the promotion of the rule of law. If corruption is prevalent in government, both of these tasks will not be fully fulfilled. It is essential that organizations such as the NHRC provide a structure for dealing with instances of corrupt acts by people and organizations resulting in violations of human rights. The major challenge is that corruption is a powerful violator of human rights, especially individual and state financial and social rights. Not only does it weaken development and growth, it also hinders attempts directed at eradicating poverty, socio-economic transformation and creating an egalitarian society in line with the State Policy Directive Principles. Major issues facing countries to curb corruption are poverty that hinders economic and social development. Corruption wakes up education and health systems, depriving individuals of the fundamental construction blocks of decent

life; undermines democracy by distorting electoral procedures and undermining institutions of government that can lead to political instability; exacerbates inequality and injustice by perverting the rule of law and punishing victims of crime by corrupt rulings. Major scandals like the 2 G spectrum scam, misappropriations of the Commonwealth Games, Adarsh residential scandal, and cash-for-vote scam have dented the political class's credibility severely. Public discontent with the nation's present inefficient and arbitrary decision-making scheme seems to be high after independence at all times. India faces basic difficulties that need to be addressed on a priority basis. The present governance system is so awful that honest individuals are unable to increase their voices. Unfortunately, at the root level, the political class has lost authority to deal with this severe problem. In dealing with corruption, there are several issues because corruption can be seen at different levels. It may be present at the political, corporate and bureaucratic levels, and may also be responsible for criminalizing politics. Winning the elections becomes a single obsession for most political parties, and increasing election expenses are often said to be a major cause of political corruption. Furthermore, the product of a consumerist culture is a costly and lavish lifestyle, and politicians are also part of the same culture. The press has been filled with reports of scams and scandals in the last few years. A big percentage of senior civil servants are thought to be either dishonest on their own or behave as accomplices, conduits or agents for corrupt ministers in many nations. At lesser levels of bureaucracy, corruption usually takes the form of velocity cash to accelerate approvals and provide (or not withhold) lawful services (for example, in utilities such as telephones, electricity boards and civic services). At different levels of public hierarchy elected politicians, greater bureaucracy, and reduced bureaucracy, there is an interlocking of corruption. Politics criminalization starts with politicians seeking help from criminals, especially in the battle against elections. This implies, on the one side, using' cash power' and' muscle power' by leaders and, on the other, helping and supporting offences and sheltering criminals, which in turn contributes to the politicization of the administration, especially the police and the election of people with criminal records and their consequent occupation of locations of honour and status. Existing

literature on political science and economics has recommended that transparency of information is essential for controlling corruption. Many studies link accessibility of data and Internet access to corruption incidence. Schroth and Sharma (2003) stress that corruption can be reduced by merging the power of technology with the law, as the internet can provide access to corrupt practices information. Roberts (2006) found that the Internet significantly reduced the cost of distributing, collecting and accessing government information, thereby promoting transparency in international practices. Few empirical surveys have assessed whether internet access addresses corruption's key problems. DiRienzo et al. (2007) uses data on corruption cluster analysis, which shows a worldwide pattern 'nations with comparable cultural, economic and institutional backgrounds and access to information also experience comparable rates of corruption.' The Internet is a valuable resource in e-government projects, but some academics question e-governance effectiveness. Bhatnagar (2003) claims that e-government is less successful in curbing corruption unless a pre-existing legal framework supports information freedom. Bertot et al. (2010) argues that cultures with overwhelming disparities in authority are more susceptible to transparency, limiting the usefulness of e-governance. Accessibility of information through internet access does not automatically translate people into adequate use to demand accountability from the state, particularly when the average citizen lacks political power. To sum up, corruption is an illegal practice. Corruption is the most serious issue that undermines government efforts worldwide to address the most persistent issues in the world such as political stability, health and welfare, sustainable economic development, international trade and investment, climate change and poverty. Corruption is a serious consequence of mismanagement. Consistently, a nation with widespread corruption has low investment rates, bad economic growth and limited human development.

6.4.2 Lokpal Bill

For over five centuries now, the concept of an anti-corruption body and an ombudsman to examine accusations of corruption against administrators, including lawmakers, has floated around. It lastly took

shape when the 2013 Lokpal and Lokayukta Bill passed in Lok Sabha on December 18, 2013, but only after a nationwide protest led by India Against Corruption, activist Anna Hazare's civil society movement.Although a Bill was drawn up between 1968 and 2011 to set up an anti-corruption body as many as eight times, the Lokpal and Lokayukta Bill, 2011, stand as the basis for the Lokpal Act in its current form. This Bill was suggested by a group of ministers chaired by Pranab Mukherjee, to which the Standing Committee made significant changes. The amended Bill, called the 2013 Lokpal and Lokayukta Bill, was enacted by Parliament with the assistance of all significant political parties, with the exception of the Samajwadi party, making it the 2013 Lokpal Act. The Act permits the establishment at the Centre of an anti-corruption ombudsman called Lokpal and at the state level of Lokayukta. The Lokpal will be made up of one chairman and a maximum of eight employees. The Lokpal will cover all categories, including the Prime Minister, of public servants. But the armed forces are not under Lokpal's ambit. The Act also includes provisions for the attachment and confiscation of assets obtained through corrupt means, even though the prosecution is pending. States will be required to implement Lokayukta within one year of the Act.

6.4.3 Right To Information Act

Right to Information Act 2005 requires timely reaction to demands from citizens for data from the govt. It is an initiative made by the Department of Personnel and Training, the Ministry of Personnel, Public Grievances and Pensions to provide citizens with an RTI portal gateway to quickly search data on the details of the first Appellate Authorities, PIOs, etc., among others, in addition to accessing RTI associated information / disclosures released on the internet by multiple public authorities under the government.

Check your Progress-5

1.What is meant by "Right to information act"?

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6.5 LET'S SUM UP

In this unit "An Analytical Study of Women Third Gender Political Corruption", we get all the important glimpse of the major topics such as Women in politics, Indian transgender in the past and present view, corruption issues. The topics have endless issues, they vary location to location. Government of India, making efforts to make India Corruption free but for that, they need huge support of all parties which is difficult as per current scenario.

6.6 KEYWORDS

9. Rendition: The practice of sending a foreign criminal or terrorist suspect covertly to be interrogated in a country with less rigorous regulations for the humane treatment of prisoners.

10. Annihilation: Complete destruction or obliteration.

11. Troopers:A private soldier in a cavalry or armoured unit.

12. Unequivocally:In a way that is total or expressed very clearly with no doubt.

6.7 QUESTIONS FOR REVIEW

1. What are women's studies in politics and why is it relevant?

2. What is the difference between women's studies and gender studies?

3. How's the life of transgender in India?

4. What is the current Scenario of Corruption in India?

5. What are the features of the "Right Information Act"?

6.8 SUGGESTED READINGS AND REFERENCES

1. The Brief on "Right to Information Act"
2. www.wikipedia.com / Transgender.
3. Laws relating to Third Gender in India. https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1808&context=auilr
4. "Indian Women in Politics".

6.9 ANSWERS TO CHECK YOUR PROGRESS

1. (Answer for Check your Progress-1 Q.1)

The term 'political involvement' has a very broad meaning. It is linked not only to' right to vote,' but also to involvement in: decision-making process, political activism, political awareness, etc.

2. (Answer for Check your Progress-2 Q.1)

During the independence movement, women were visible and active as nationalists, and as symbols of 'Mother India'. Gandhi, in particular, was instrumental in creating space for women through his non-violence and some would argue feminized mode of protest.

3. (Answer for Check your Progress-3 Q.1)

A research by the Institute of Management Studies (Calcutta) and the Massachusetts Institute of Technology (MIT) in West Bengal and Rajasthan discovered that there were more solid water, irrigation and infrastructure programs where Panchayat females were involved.

4. (Answer for Check your Progress-4 Q.1)

As street performers - singing, dancing, and performing blessings for donations. It is also traditional to have Indian transgender perform at weddings and baby blessings.

5. (Answer for Check your Progress-5 Q.1)

Right to Information (RTI) is an act of the Indian Parliament to provide for the establishment of the practical system of citizens 'right to data and to replace the former Freedom of Information Act, 2002.

UNIT-7:PARLIAMENT VS. JUDICIARY: POWER AND ROLE OF LAW MAKING IN PROGRESSIVE AND VIGILANT DEMOCRACY

STRUCTURE

7.0 OBJECTIVES

After learning this unit based on "Parliament vs. Judiciary: Power and Role of Law Making in Progressive and Vigilant Democracy", you can learn about the following topics:

- To understand the concept of judiciary
- To study the background of judiciary and the parliament.
- To study different roles of judiciary.
- To study of types of bills.

7.1 INTRODUCTION

India has the well governed and most powerful judiciaries. Also, supreme court of India plays significant role in Indian political economy.in a society, which is polarized and fractured on communal lines, and where ideology has reached a vanishing section, has become an institution on whose legitimacy there seems to be a national consensus. It was despised by the development and environment activists for its pro establishment stand. By the hind militants for its secularist stand by educationist for its pro-privatization stand on education sector, by the secularist for its soft Hindutva stand and by leftist for its decision not to intervenes in the government's decision to disinvest from a public sector unit.

The fundamental law of country in Indian constitution had been drafted with the four-fold objective of securing justice, equality, liberty, fraternity to all the Indian citizens. The India's constitution has allocated different distinct powers and functions to the legislature, judiciary and executive. These organs play a significant role in the accomplishment of objectives. Basically, from tradition the executive implements the law, legislature who makes the law and the third organ which is judiciary who interprets and adjudicates the law. Though, there is no compulsion for application of theory of checks and balance in India, the constitution has drawn some limits and boundaries in respect to these three organs power.

The higher judiciary in India has been assigned a significant role in many areas such as interpretation of the law which is made by legislative, upholding the federal principle, testing out the such law's validity and importantly in protecting the fundamental rights of the residences. The supreme court of country stand out at the topmost of the court's hierarchy which is constituted under the constitution. It is the last arbiter to upholding the federal principle, executive action and enforcement of fundamental rights of the residences.

A vital issue in Indian judiciary that has assumed importance in recent has been the activist role in supreme court of the India. "judicial activism" an expression has excluded a proper definition as its means

different things to different peoples. It might seem as dynamism to judges, judicial legislation to some others and it may be an effort to bring "social revolution" through the judiciary.

The constitutional mandates to the judiciary are that while exercising its functions and powers, it should keep in view he social and economic objectives which the constitution seeks to protects, promote as embodied in the law. When each three organs of constitution appreciate and respect the role of the organs and functions within its on parameter, the harmony which would be the resultant product would go a long way in bringing out many socio-economic changes in country.

Check your Progress-1

1. What is the vital issue in the Indian judiciary?

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7.2 BACKGROUND

India's parliament system has developed and originated from British colonial administration because of India's demand for greater representation in India's government.

During the rule of East India company, the first legislative body has come to force when council of governor of India had both functions I.e. legislative responsibilities and functions. act conducted in year 1833 "the charter act" has changed the whole structure of governor to legislative council for all the British territories from general council in India.

By the Imperial legislative council pursuant to the act of Indian council in year1861, the governor of general council was succeeding in order to make legislative body more functionable and representative modifications were made in year 1892 and 1909.

As according to, UK parliaments website's section "living heritage" two Indian council acts were taken in respective year 1892 and 1909, which allowed small number of Indian which is 39 in 1892 and 135 in 1909. These are elected to the both councils, imperial legislative and provincial one.

In 1909 years, act ensures that all the selected representatives were chosen by groups of Indian electors as a group of specific religious and social group, like as Muslims or landowners. Governor was not at all responsible for chosen representative's and council remained advisory only. The acts in years 892 and 1909 by parliament legislation did not effectively address the varied scale dissatisfaction with British government rule.

In year 1919, pursuant to India's government act 1919, has passes the Montagu - Chelmsford reforms, which introduced a dual legislature, lower house known as central assembly while upper house is like council of state.

Foundation of India's federal structure was laid by government of India act in year 1935. This act also established dual federal legislature comprising federal assembly and council of state.

The constituent assembly became the India's first sovereign legislature after independence of India. Under the plan of recommended by the cabinet mission that called for developing constitution of India after the entire assembly was formed. In the chairmanship of Dr. Ambedkar the drafting committee was set by the assembly of constituent. It took long span of two months and eleven months to complete the drafting of constitution.

In year 1949, 26th November, the India's constitution was adopted and next to thaton 26th January 1950, India's constitution came into force. Until year 1952 when newer parliament was founded, the assembly of constituent continued as a provisional legislature of country.

The current parliament of India was formed the pursuant, which stipulated that the "there shall be union parliament, which may consist of

president and two houses to be known as house of people and council of state.

The parliament of house is positioned in India's capital "New Delhi" in which reception of office building, the sansadiya gyanpeeth, annex to house of parliament, and extensive lawns.

In year 1919, the government of India act prompted the necessity for constructing a building of house the central governmental assembly, which is then used to house the recent parliament. Construction of building was done by two different architects, "who were responsible for construction and planning of Delhi as according to website of parliament.

Check your Progress-2

1. What was laid in year 1935?

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7.3 PARLIAMENTARY SOVEREIGNTY VS. JUDICIAL REVIEW

Disputes between the judiciary and the other two branches have been Common in Indian political life. The basic question in the conflict between Parliament and Judiciary is "Do we have the Rule of Laws or the Rule of Men?".

During the Supreme Court's initial 17 years of existence, when it was supposedly in its restrained span, it also struck down 128 pieces of government.

Out of the initial 45 constitutional amendments, about half were targeted at curbing judicial power. The 104th constitutional amendment is designed to reverse the result of the Inamdar Case, in which the Court ruled unconstitutional the central government's effort to control who is

admitted to half of all the seats in private institutions of higher education every year and to set the fees that these schools could charge.

If the frequency of amendments meant to reverse Supreme Court decisions is significant, so is the legislative assumption that amendments are needed at all. Court decisions may infuriate Parliament, in other words, but Parliament thinks that they cannot simply be ignored. Even during the 1975-77 emergency, the government took care to curtail the authority of the courts by formally legal means. This deference has ensured that even constitutional amendments have not been able to alter the basic structure of the Constitution and the formal allocation of powers within it.

The foregoing suggests that there is profound inner conflict at the heart of Indian constitutionalism. The Court has declared itself to be the ultimate judge, the final arbiter, and has even assumed the power to override duly enacted constitutional arrangements. Yet in a polity where parts of the Constitution can be amended by as little as a majority vote of each of the two houses of Parliament, there is no reason to suppose that a court decision regarding the constitutionality of a particular matter will suffice to remove it from the political agenda. In India, Parliament and the judiciary have been and are likely to remain competitors when it comes to interpreting the Constitution. It is by no means settled who has the final word.

The decisions of each are episodes in an iterative game of action response-rejoinder that can be played out any number of times Parliament can pass a law, the courts can strike it down, Parliament can try to circumvent the courts by amending the Constitution, the courts can pronounce that Parliament's amendment power does not apply to the case, and others.

It is true that the 1990s saw no full-scale parliamentary assault on the courts' interpretation of what the "basic structure" doctrine requires, but that was an accidental side effect of a fragmented political system in which no one party could achieve dominance in Parliament. Should any party gain enough parliamentary majority to wield the amendment

power, the judicial-legislative tussle will almost certainly resume, and it is impossible to predict what the outcome will be, either in the nearer or the longer term.

The judicialization of politics and the politicisation of the judiciary turn out to be two sides of the same coin. The power and legitimacy that judiciary of the India most likely flow not from the constitutional consistent and clear vision, but from its opposite side. The Supreme Court in particular has given enough players enough partial victories to leave them feeling as if they have a stake in keeping the game of political give as well as take going.

In the initial after-independence years, the Supreme Court tried to block legislation of land-reform, almost denied that the Constitution needs due process, and gave serious scrutiny to government regulation of publications. The response of government's was typically to seek a modification of the Constitution, which helps to elaborate why India's basic law is so modified. During the late 1960s and early 1970s, the judiciary struck down major planks of Indira Gandhi's development agenda, including her scheme for nationalising the banks.

This era witnessed the claims of the court has made that parliament nit even via modifications override the fundamental rights which are explained in part III of the Constitution.

Afterwards, the Court will revise and extend the claim that to argue that the legislature may not, as through modifications done, and it override the "basic structure" of the India's Constitution. Still, when Prime Minister Gandhi declared her State of Emergency on 25th of June 1975, suspended Article 21 of the Constitution and had hundreds of people detained by executive order, the Supreme Court overruled 9 High Courts and upheld her actions Despite the Court continued to emerge stronger over judicial appointments. Judges then framed interpretations that would lay a constitutional basis for upcoming judicial offers to control the powers of the other two branches. Supreme Court has also managed to legitimise itself for the forum of last resort of governmental accountability's questions, but also as a government's institution. The

Court's Public Interest Litigation initiatives allowed judges to make policy and demand that executive officials carry it out.

The Article 124 of Constitution's is uncertain on judicial appointments, which calling for consultation between the judiciary and executive but leaving it uncertain again. In a decision in The Third Judges' Case (1993), the Supreme Court held that the power to name new judges to the highest bench rests primarily with the chief justice and the next four most senior Supreme Court's justices itself. Extensive consultations with the executive are required, but in the end the Court's highest-ranking jurists have the lion's share of the appointment power Thus the Court may have secured its autonomy at a cost to its transparency and perhaps its legitimacy as well.

It appears that Parliament and the Supreme Court largely differed in their respective approaches to significant issues having bearing on socioeconomic transformation of society. A background study of several constitutional amendments reveals that these amendments were necessitated by the urgency to counteract the effect of the decisions of the Supreme Court in a number of cases wherein the Court struck down progressive legislations, including land reforms ones, enacted by the State legislatures, which were considered so essential for bringing about radical changes in our agrarian system and thereby reducing disparity in income and wealth, the Supreme Court itself changed its own decisions within a brief span of time on the same issue (Chatterjee 1998: 97). It is within the province of Supreme Court to reverse its recent decisions. But frequent shift in stand on the part of the apex court of the country leads to uncertainty, making it difficult for Parliament and the executive to follow a well-planned long-term policy.

From a perusal of the working of Supreme Court since independence, two major conclusions having bearing upon the legislature may be drawn up. Firstly, the Supreme Court has almost consistently taken up positions contrary to those held by Parliament and has nullified many progressive legislations intended to bring about a socialistic transformation of Indian society in a peaceful way. Secondly, the Court has put the whole state of

the law and, in particular, constitutional law into a state of uncertainty by reversing continuously its own decisions.

When Parliament proceeded to legislate or the executive branch of government sought to pass an executive order on the basis of existing decisions of the Court, the latter set aside the law or the government order by reversing its own previous decisions. This led to a total uncertainty about the state of law. In fact, the judiciary sat over the verdict of Parliament on issues relating to social and economic justice, and this led to conflict, real or apparent, between the Parliament and judiciary. The slugfest between Parliament and Judiciary has, in fact, turned into a tussle between Civil and Political Rights (FR) on the one hand and the Economic and Social Rights (DPSP) on the Another side, the Court support the former one.

Check your Progress-3

1.What is the 104th constitutional amendment being designed for?

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7.4 LEGISLATIVE PROCESS

For bill become a law in India, it undergoes three stages in each of the house of the parliament, as elaborated on the Lok Sabha web page, the initial stage consists of introduction to bill which is completed on motion moved by minister or either a member. At the another (second) stage, any of the motion is done out of:

1. Bill can be taking into considerations
2. Bill can be referring to selecting house's committee.
3. Also, it can be referring to joint two house's committee.
4. Bill can be circulating for the elicited opinions.

7.4.1 .Forms And Types Of Bill

Generally, there are two types of bills, one is government bill which is sponsored by government minister and other is private member's bill in which bill is originate from parliament member.

As, according to website of Lok Sabha bills are again classified broadly into:

1. The bills which are embodying on new policies I.e. Original bills.
2. The bills which seeks to modify or bills which revise for existing arts I.e. Modified bills.
3. The bills which are consolidate the already existence laws on specific object I.e. Consolidating bills.
4. The bills which are continue an expiring act I.e. laws of expiring.
5. The bills which are repeal already existing acts I.e. repealing bills.
6. The bills which are replace to ordinances.
7. Modified Constitution bills.
8. Money and economical bills.

Types of the bills:

A. Constitution modifications bills –

These bills are seeking to modify the constitution as according to the procedure which is specified in the constitution.

This bill is also further classified in three types which includes:

1) Need special majority for their passage in each house I.e. Lok Sabha and Rajya Sabha. – which simply means majority of the overall peoples of parliament's house and not by majority of nor less than peoples of the house of parliament of two – third members and voting.
2) Need simple majority for their passage in each house I.e. Lok Sabha and Rajya Sabha.

3) Need special type of majority for their past and approval by government legislature of not less than states about one half. The constitutions modified bills comes under the article of 368 can be introduced in both the houses of parliament and bill has to be passed by both house by special majority.

B. Money bills –

If bill only contains provisions regarding to taxation, matter of borrowing money from government, or the expenditure then it is said to be money bill. Money bill can be announced by the president and only in Lok Sabha and it must be passed in Lok Sabha by general majority of the present members and voting. Money bills then passed to Rajya Sabha with the proper certification, Rajya Sabha can no deny the money bill and nor it modified by its own powers and bill must be within the 14 days of period from the day its receipt and return to Lok Sabha.

C. Financial bills –

The bills which consist of some provisions related to expenditure and taxation, and extra contains others provisions regarding any matter is generally known as financial bills.

Those bills which involves expenditure by the government also addresses the other issues, these are the financial bills. They are again further classified in to A and B type of bill.

As according to house of parliament Rajya Sabha, category A consist of bills with provisions of dealing any matter specified in sub clauses. And not related to matters like remission, abolition, changes, modifications of taxes, impositions, etc. And these bills ae only introduced in Lok Sabha and only by president. It is as like the ordinary bills and it has no powers of the house I.e. Rajya Sabha.

Category B of bill of financial bills are treated like as an ordinary one, and these bills are introduced in both the houses of the parliament i.e. Lok Sabha and Rajya Sabha.

D. Ordinary type of bills –

These bills are legislation kind of concerned bills with matters than those topics covered by financial bills, money bills and constitution modified bills.

7.4.2. Overview Of The Process

The bill is taking into considerations as it introduced to joint or select the committee. The third stage consist of confession on the discussion of motion that bill is passed or rejected by vote or voice vote.

These stages are next classified in:

1. Introduction to bill –

This is the initial stage of the legislative process after adopting motion for leave to bill introduction in both the house in parliament that is Rajya Sabha and Lok Sabha. Money bills are announced in look Sabha only while ordinary or modified bills are introduced in either the parliament's houses.

A bill can be introduced by government minister and he has seven days of notice in written for his intension to move for the introduction to bill.

2. First reading –

In this phase, parliament members have raised the objections on certain grounds, the procedure for opposing the initial stage whoever the opposed the introduction to bill has given a notice for that effect in which clear objections are specifying on which bill is included.

After that motion is put to that the vote of the house of parliament, then speaker may have to permit the full discussion thereafter. It is accepted in Lok Sabha that the speaker does not need to give any ruling over the point bill is constitutionally within the whole legislative competence.

3. Second (another) reading –

This stage consisting further two stages, as DRSC has submitted their report to related house and bill tis take up for the further discussion.

The first stage of the second reading is started with the discussion, and it is open for selecting committee or joint committee are considered. And by the members of after modifications are introduced to various clauses.

The second phase of the second reading includes clause by consideration of the bill as according to reported in look Sabha. Debates take place on every bill's clause and modifications can be done and move.

4. Committee selection stage.
5. Third (last) stage –

In this stage, member can be moving the bill which passed, and all the debate is confine to arguments for support or rejection of the bill without referred to the details.

Only verbal, formal modifications are allowing to move at this third stage. After passing the bill, voting of members is essential.

6. Presidential Assent–

It is the last stage of the legislative process, as of before bill became part of India's law, the president can be with holding the assent to a bill, in case bill is not the money bill, it can be return by president. And he is restricted to assent to a modification of the constitution bill which are presented to president for assent.

Check your Progress-4

1. What is assent of the president?

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7.5 JUDICIARY UNDER INDIAN CONSTITUTION

On 26th of the January, 1950, the India's constitution was coming int o effect and which was drafted by the Assembly of the Constituent. It contains countable provisions that deal with function, structure and Judiciary's powers. It founded a united system in all the states and Union Territories. It virtually introduced a three-stage judicial system which is the highest court of the India. The Supreme Court of country the high courts, and a subordinate judiciary in every state and Union Territories consisting of many hierarchies. Yet, the constitution of India consists of specific provisions regarding only to the Supreme and High Courts and it leaves the secondary judiciary to states. The position of the Supreme Court under the constitution came up for consideration before the Constituent Assembly at a very early age. Almost simultaneously with the appointment of the union constitution committee, a special committee was setup to consider and report on the constitution and power of the Supreme Court.

This committee consisted of S. Varadachari, Alladi Krishna Swami Ayyar, B.L. Mitter, K.M. Munshi and B.N. Rau. The committee sent its report11 on May 21, 1947. Its recommendations were mainly based on the provisions of the Act of 1935. So, it is submitted that the judiciary plays a vital and key role in constitutional democracies. The degree of intervention by the judiciary may depending on the legal system followed in different countries likes as in Britain where there is no written constitution, the judiciary may exercise only a limited power of judicial review vis-a-vis the delegated legislation and ministerial action of the government. The role of the British judiciary is basically law application and low-interpretation. In USA the judiciary is considered to be supreme, among the three organs of the state which are the executive, the legislature, and the judiciary. This has become possible not because there is a written section in the constitution to enable the judiciary to check the other two organs if they indulge in any excesses. In India the judiciary has come to exercise vast powers of judicial review in respect of the legislative and executive functions of the state and of the

judiciary's judicial actions. The Supreme Court and the High Court's not only act as the arbiters to determine disputes that may arise between the centre and states but also protect and enforce the vital rights of the peoples in contrast to the action of the states. They also interpret the laws made by the legislature and they have the final say in the validity of any legislative or executive action of the state if it contravenes or reduces the vital rights of citizens. It is a unique feature identified only with the Indian higher judiciary that it has the power to determine the validity of constitutional amendments which perhaps is seen nowhere under any other constitution, written or unwritten. This power of judicial review is also vested by the judiciary by implication, even in certain quasi-judicial bodies like administrative tribunals. Thus, the judiciary basically performs one or number of the following functions in democracies of the constitution.

1) Interpreting the constitution final with due difference to the wishes of the framers of the constitution.
2) Upholding the federal principle of maintaining the balance between the various organs of Government and also the centre and the states by whichever name they are called, (Particularly in Federal Constitutions).
3) Guarding and protecting the vital rights of the citizens.
4) Testing the validity of legislative, quasi-legislative, executive or quasi-judicial action of the store on the touch stone of the constitution and
5) Interpreting and Applying the laws of the government. Article 226 and 32 confer on the Supreme and the High Court respectively the power to issue direction for achieving the objectives of those articles.

The court have issued directions for various purposes. In public interest litigation, the Supreme Court and the High Courts have issued directions for appointing committees or for asking the government to carry out a scheme. They may constitute specific orders to the parties to do or not to do something. For example, directions in the Azad Rickshaw Puller case asked the Punjab National Bank to advance loans to the Rickshaw

Pullers and contained a whole scheme for the repayment to such loans. Directions in common cause.

India provided for how blood should be collected, stored and given for transfusion and how blood transfusion could be made free from hazards. Directions were gives to the government to disseminate knowledge about environment through sliders in cinema theatre's or special lesson in school or college. The Supreme Court laid down direction as to how children of prostitutes should be educated. Some of these directions have legislative effect. Law making by the Supreme Court through directions has belied the legal theory regarding ratio decedent and obiter dicter. In a case Chief Justice J.S. Verma said "The important responsibility for assuring the dignity and safety of the citizens through appropriate legislation, and the formation of a mechanism for its enforcement is of the executive and the legislature. When, however illustrations of violation of vital right of the citizens taken place then some of the guidelines should be laid down as for the safety of this right for filling the legislative vacuum.

7.6 DEVELOPMENT OF JUDICIAL ACTIVISM

It is quite hard to trace out the source or origin of the judiciary activism. As from the judiciary of the country has arisen to identify as a separate and independent organ of the government under act of government which is held in 1935. It will be practical to scanning the span subsequent to year 1935 for trace out the origin. Yet, there are some cases where judges of high courts founded under the cat of Indian government in 1861, which exhibited some of flares of the activism of judiciary.

The original concept of judicial activism can be seemed to be reflecting back from the trends exemplified by orders of supreme court of the country which are as follows:

a) Since from the year 1973, judiciary has the claims the power to nullify on substantive grounds when modified made by

amendment body to the constitutions and if it changed to "the original structure of the constitution". This structure of 18 judicial control has been known to Indian's court only.

b) Uncertain privileges have been 19 which brought under the judicial review.

c) After exercising by the supreme court and high court the judicial powers are review and recognised by 20 other courts.

So, these are some of the example so the judicial activism and thus seems it difficult to trace out the origin of judicial activism in India. Activism can be changed as according to the area changes like guarding the vital rights, interpreting the constitution of the India, expansion of the scopes, etc.

As of now it is quiet needed to analyse the definition, reasons, the frame works, Indian perspective of the activism and the different dimensions. At last it has stated as there is no perfect definition of the judicial activism which is accepted by all. Yet, there is country who accepted the related problems, processes of the political issues and development of the nation.

In other words, we can say it out that judicial activism can be stated as it deals with the political role which is played by the judiciary of the country as like the other two branches of the state which are, The executive and the legislative ones.

7.7 ACCESS AND DEMOCRATIZATION OF THE JUDICIAL PROCESS

As, begins from the mid of seventies, a hormone known as "judicial activism" which is forced to the stream of judiciary through requirement and sudden come to revolutionary change in the outlook of the India's judiciary.

Until then, a generally consertive, culture bound institution become sensitive to requirement of weaker sections, broken and traditionally troubled classes of the country.

It is lack of the executive inaction and legislative thinking which is coupled with manipulation of the masses by the opportune few which made a 22nd section of Indian judiciary, which some down almost to extend the helping hand for the essentials one.

PIL which is publicly known as public interest law, it has been explained by the supreme court as a strategy of legal help movement and it is intended to bring justice in the reach of poor common peoples who has problem with the low visibility in humanity's area.

Check your Progress-5

1.What is PIL?

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7.8 ROLE OF JUDICIARY IN DEMOCRACY

It has been near about six decades that we witnessed the well – entrenched judicial system apart from codified and elaborated procedural laws from the British rulers. These laws stood out when the test of time, therefore we adopted them with all the suitable corrections wherever required. Over the years fine adjusted to the judicial administration so one can meet the requirements of varying times and aspirations of modern and modified India.

The original concept of governance per the old human civilization, governance is merely meaning the procedure of decision making or the procedure by which decisions are take out for implementation. Governance quality basically depends upon the large measures in clemency shown by the respected subjects.

Good governance or judiciary signifies the way in administrations and thus, improving the standard of living of the peoples just by making availability of the things, amenities which are essentials for the peoples, also, it's also gives opportunity and security to them. As, according to United nations commission on the human rights, good judiciary has the must comprises of key attributes like as Responsibility, transparency, accountability, participation, responsiveness to the needy peoples. Government is expecting fully accountable to its citizens and also full fill their commitment's, transparency is utilization of the government sources, and provide an equitable atmosphere which contributes to the individual's total growth.

Troika which means democracy, judiciary and the liberty together represent and globally accepted and became the index of the society. Democracy has been the involve by the centuries of the experiences among the peoples, who actually care for human rights, dignity as the most acceptable form of good democracy.

Fundamental principles of the governance by the fundamental rights have the adjustments through the legislative measures, executive actions and the judicial pronouncements.

So, purpose of fundamental rights to be on one and fundamental principles to on another hand is to providing the environment which will ensures the growth and development of each individual. Also, the rights guarantee to life, liberty, rights which are against the torture, or the rights against the in human degrading torture of treatment, rights against the outrageous on individual's dignity, rights against the retrospectivity of law, rights against the dual jeopardy, etc.

Indian judiciary has overzealously guarded the fundamentals rights for the existence of humans. Paradigm of judiciary system in India is the basic testimony to the manner in which Indian judiciary contributes its to the good governance.

The role of Indian judiciary is vital and crucial in development as well as evolution of the society in general and also ensuring the good governance.

7.9 LET'S SUM UP

India has the well governed and most powerful judiciaries and parliament. Also, supreme court of India plays significant role in Indian political economy.The fundamental law of country in Indian constitution had been drafted with the four-fold objective of securing justice, equality, liberty, fraternity to all the Indian citizens. The India's constitution has allocated different distinct powers and functions to the legislature, judiciary and executive.India's parliament system has developed and originated from British colonial administration because of India's demand for greater representation in India's government. However, illustrations of violation of vital right of the citizens taken place then some of the guidelines should be laid down as for the safety of this right for filling the legislature.The role of Indian judiciary is vital and crucial in development as well as evolution of the society in general and also ensuring the good governance.

7.10 KEYWORDS

7. Constitution: An aggregate of fundamental principles.
8. Sovereignty: it is power of authority.
9. Legislative: relating to have a power for making laws.
10. Judiciary: System of court which applies the law in the country.
11. Independence: A state of being independent.
12. Liberty: A state of being free with in the society.

7.11 QUESTIONS FOR REVIEW

5. State judiciary.
6. What are the three types of the bills used in house of parliament?
7. What is PIL stand for?
8. What is the role of judiciary in democracy?

7.12 SUGGESTED READINGS AND REFERENCES

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7.13 ANSWERS TO CHECK YOUR PROGRESS

1. (Answer for Check your Progress-1 Q.1)

A vital issue in Indian judiciary that has assumed importance in recent has been the activist role in supreme court of the India. “judicial activism” an expression has excluded a proper definition as its means different things to different peoples.

2. (Answer for Check your Progress-2 Q.1)

Foundation of India’s federal structure was laid by government of India act in year 1935. This act also established dual federal legislature comprising federal assembly and council of state.

3. (Answer for Check your Progress-3 Q.1)

The 104th constitutional amendment is designed to reverse the result of the Inamdar Case, in which the Court ruled unconstitutional the central government's effort to control who is admitted to half of all the seats in private institutions of higher education every year and to set the fees that these schools could charge.

4.(Answer for Check your Progress-4 Q.1)

It is the last stage of the legislative process, as of before bill became part of India's law, the president can be with holding the assent to a bill, in case bill is not the money bill, it can be return by president. '

5.(Answer for Check your Progress-5 Q.1)

PIL which is publicly known as public interest law, it has been explained by the supreme court as a strategy of legal help movement and it is intended to bring justice in the reach of poor common peoples who has problem with the low visibility in humanity's area.