DIRECTORATE OF DISTANCE EDUCATION

UNIVERSITY OF NORTH BENGAL

MASTER OF ARTS-POLITICAL SCIENCE

SEMESTER -I

CONSTITUTIONAL PROCESS IN INDIA

CORE-102

BLOCK-2

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

Unit 1. Constitution of Constituent Assembly and Debates in Constituent Assembly on the Indian States.

Unit 2. Concept and Status of Indian Federalism: A Comprehensive Analysis.

Unit 3. Judiciary and the Political Process in India: An Introduction.

Unit 4. Judicial Activism and Public Interest Litigation (PIL): The Constitution and the Court: Some Land mark judgments.

Unit 5. An analytical study of Fundamental Rights, Secularism and Minority Representation.

Unit 6. An analytical study of Women, Third gender, Political Corruption etc.

Unit 7. Parliament vs. Judiciary: Power and role of law making in progressive and vigilant democracy.

BLOCK-2

BLOCK-2: CONSTITUTIONAL PROCESS IN INDIA

Introduction tom Block

In this block, we will go through the composition, functions, powers and modern changes of Election Commission along with electoral reforms, challenges, and some important judgments. We will also learn about the evolution and development of democratic decentralization in India.

Unit 8 deals with the composition, functions and model code of conduct of Election Commission of India.
Unit 9 explains the powers and modern changes of the Election Commission of India.
Unit 10 explains the electoral reforms, challenges and some important judgments of the Election Commission of India. Also learn about some issues in electoral politics, its history, and reforms.
Unit 11 deals with the evolution and development of democratic decentralization in India and the powers and functions of Panchayati Raj institutions.
Unit 12 explains the contribution, responsibility, and challenges for democratic decentralization.
Unit 13 explains the development of the Legal System in Hindu, Medieval, British period and legal system after independence.
Unit 14 deals with the Legal profession, education and manifestations of legal literature.

UNIT-8:ELECTION COMMISSION: COMPOSITION AND FUNCTIONS

STRUCTURE

8.0 OBJECTIVES

After learning this unit based on"Election Commission: Composition and Functions", you can learn about the following topics:

- To know the Election Commission of India Model Code of Conduct.
- To discuss about the Composition of Election Commission.

8.1 INTRODUCTION

Independent India's elections are conceived as both the beginning and the culmination of its democratic parliamentary process. When it was conceived in colonial India, the concept of parliamentary and electoral democracy was an interesting scheme. But in the course of the country's domestic freedom movement, it got sustenance and strength.

The technique of governance in ancient India was completely distinct. Except the Vedic of the early days. In the past, the status of the kings was hereditary, and the Samitis and Sabhas, even in the republic, were aristocratic. On the other side, the village councils and caste panchayats consisted of village elders and notables, deriving their power from consensus rather than through an election mode.

Consequently, monarchical regimes were the foundation of ancient and medieval India. The introduction of the electoral concept in the nation with the establishment of representative institutions was left to the British rulers.

Although the British rulers' strategy prior to 1857 was to propagate the values connected with liberal society through English education in India, the disastrous events of 1857 led in a policy reversal. Some of the top authorities and dignitaries, such as Lord Ripon, declared their dedication to the summum bonum of liberal constitutional democracy, but hard-bred bureaucrats who formed the country's government and administration were committed to autocratic rule procedures.

"India has never been a country in the era of history. It was an aggregate of different tribes, district groups, and small despotism". Laing, Finance member of India's parliament, epitomized the faith that upheld the British empire in India and, broadly speaking, guided the British rulers' strategy, but the two world wars hurried India's march to a responsible anda more representative government.

The gradual progress of the country towards accountable governance was followed by its representative political institutions' phases of growth.

Check your Progress-1

1.What was the British ruler's strategy?

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8.2ELECTION COMMISSION OF INDIA MODEL CODE OF CONDUCT

Like their predecessor constitutionalists, the fathers of the Indian Constitution held free, regular, and secret legislative elections on the grounds of adult franchise as an important basis for the union and state-level democratic parliamentary governments. The representation electoral theory was thus an intrinsic characteristic of the country's democratic political system.

Also affected by the governmental or accountability theory of representation was the practice of parliamentary representation in the nation. The unique feature of the British pattern of government, which influenced our constitution-makers' thinking, was the responsibility of the parliamentary executive specifically, the popularly elected houseand representatives to the representative or constituency, and not the day-to-day minute parliamentary and constitutional control.

However, the mandate and the concepts of representation did not impress the previous constitutionalists and politicians as well as the constitution-makers. Gandhiji did not accept the participation hypothesis that he subscribed to as a precondition for agreeing to the parliamentary government's plan in the nation, nor did Gandhiji's persuasions on the problem solely influence the constitution-makers. The twin ideological supports of the adult franchise theory were individual freedom landing human equality, although formal.

Of these, the concept of individual liberty was the heritage inherited from the liberals in the national liberal movement by the parents of the Constitution, while Gandhiji left to them the concept of human equality. "Men, as well as females',wrote Johan Stuart Mill, whose thinking had a major impact on the Indian liberals' ideology,"do not need political rights in order to rule, but in order not to be misgoverned.

Most masculine sex are, and will be, none other than workers in corn fields or producers throughout their life, but this does not make the suffrage less desirable for them, nor their claim to it less attractive, unless they are inclined to use it badly. No one pretends to believe that a female is going to use the suffrage badly. The worst thing that is said is that at the bidding of their masculine relationships they would vote to more dependents.

If so, let it be so. Excessivevirtuous will be done if they think for themselves, and if they don't, no damage. It's a good thing for people to take off their restraints, even though they didn't want to walk. However, to Gandhiji, franchise was a tool of self-defence and a power to regulate conditions on which a person lives in social relationships with other people.

The Election Commission's final shape was the outcome of a memorable discussion and discussion. The initial thinking visualized a kind of central electoral authority-one body conducting parliamentary elections and each state having their own set-up for comparable reasons. The President of India was to appoint for his state a comparable body to be appointed by the Central Election Commission and Governor. India's draft constitution had such an apex level body concept.

The superintendence, direction and control of all parliamentary elections and elections of the President's and Vice-President's offices held under this Constitution, including the appointment of election tribunals for the judgment of doubts and conflicts resulting from or in connection with parliamentary elections, were to be entrusted to a Commission to be appointed by the President.

For the time being, the superintendence, direction and control of all elections to a State's Legislature, specified in Part I of the First Schedule, and of elections to the State Governor's Office, were to be conducted through a panel set up for that purpose.

The appointment, pursuant to this Constitution, of a Governor of the State, including the appointment of election tribunals for the decision of doubts and disputes arising out of or in connection with relations with the Legislature of such State, was to be entrusted to a Commission as set out in the Constitution. Subject to the provisions of this Constitution, Parliament may, from time to time, make provision by law on all matters relating to or relating to elections to either House of Parliament, including matters necessary to ensure that the two House of Parliament are properly constituted and that constituencies are delimited.

8.2.1 General Conduct

1 No party or candidate shall engage in any activity that may aggravate current distinctions or generate mutual hatred or tension between distinct religious or linguistic castes and groups.

2 Other political parties' criticism, if it is produced, shall be restricted to their policies and programs, previous records and work. Candidates and parties shall refrain from criticizing all elements of personal life that are not linked to the government operations of other party officials or employees. Criticism on the basis of unverified accusations or distortions of other sides or their employees shall be prevented.

3 There will be no call for casting or collective emotions to secure votes. Mosques, churches, temples or other places of worship are not to be used as a forum for the propaganda of elections.

4 All parties and applicants shall scrupulously prevent all operations that are "corrupt practices" and offenses under the electoral law, such as the bribing of electors, the intimidation of electors, the impersonation of electors, the holding of government conferences within 100 meters of polling stations, the holding of government conferences within 48 hours of the closing hour of the survey and transport and transportation.

5 Each individual's correct to peaceful and undisturbed home-life shall be respected, however much his political views or activities may resent the political parties or candidates. Under no conditions shall it be recourse to organize protests or picketing before individuals' homes in protest against their views or activities.

6 No political party or candidate shall allow his or her supporters to use the land, building, compound wall, etc. of any individual without his or her permission to erect flag staff, suspend banners, paste notices, write slogans, etc.

7 Political parties and applicants shall guarantee that their followers do not generate obstacles in other parties' organized conferences and processions or break them up. Workers or sympathizers of one political party shall not generate disturbances at government conferences organized by another political party by posing oral or written questions or distributing their own party flyers. Processions shall not be removed by one party at locations where other party holds meetings. Workers of another Party shall not remove posters published by one party.

Check your Progress-2

1. State the first step in the general conduct.

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8.2.2 Meetings

1. The Party or candidate shall inform the local police authorities of the location and time of any suggested session well in time to allow the police to arrange for traffic control and peace and order.
2. A Party or candidate shall make a preliminary determination as to whether there are any restrictive or prohibitor orders in force at the suggested meeting location. If such commands occur, they will be strictly followed. If any exemption from such orders is needed, well in time it shall be applied for and acquired.
3. Where approval or license is to be obtained in association with any suggested session for the use of loudspeakers or any other

facility, the Party or applicant shall apply to the authority involved well in advance and receive such approval or license.

4. Meeting organizers shall invariably seek police assistance on duty to deal with individuals who disturb a meeting or otherwise attempt to generate disorder. Organizers are not to take action against such individuals themselves.

8.2.3 Processions

1. A Party or candidate organizing a procession shall decide in advance the time and location of commencement of the procession, the route to be followed, and the time and location of termination of the procession. No deviation from the program will normally occur.
2. The organizers shall provide the program's local police authorities with advance intimation in order to allow the program to make the required provisions.
3. The organizers shall determine whether any restrictive orders are in force in the locations through which the procession is to pass and comply with the limitations unless the competent authority specifically exempts them. There must also be careful adherence to any traffic laws or limitations.
4. The organizers must take measures in advance to organize the procession's passage so that traffic is not blocked or hampered. If the procession is very long.It should be organized in appropriate length sections, so that at convenient intervals, particularly at points where the procession has to pass highway intersections, the passage of stopped traffic could be permitted through phases thus avoiding severe traffic congestion.
5. Processions shall be controlled in such a way as to maintain as far as possible to the right of the highway and strict compliance with the direction and guidance of the duty police.
6. If two or more political parties or applicants suggest processions on the same road or sections of it at approximately the same moment, the organizers shall make contact well in advance and decide on the policies to be taken to guarantee that the processions do not clash or cause traffic barriers. A satisfactory

agreement will be reached with local police assistance. The sides shall contact the police for this purpose as quickly as possible.

7. When it comes to precisionists carrying documents that may be misused by undesirable parts, especially in moments of excitement, the political parties or candidates shall exercise as much control as possible.
8. No political party or candidate shall face the carrying of figures designed to portray members of other political parties or their leaders, burning in public such effigies and other kinds of protest.

8.2.4 Polling Day

All political parties and the candidates shall:

1 Work with election officers to ensure that voters exercise their franchise without annoyance or interference with peaceful and orderly polling and full freedom.

2 Provide their approved staff with suitable badges or identity cards.

3 Agree that their identification cards are on plain white paper and do not contain any sign, name of the applicant or name of the party.

4 Refrain from serving or distributing liquor on and during the 24 hours preceding polling day.

5 Do not allow the collection of unnecessary crowds near the camps set up by the political parties and candidates near the polling booths to avoid confrontation and tension between staff and sympathizers of party and candidate.

6 Make sure the candidate’s camps are simple. There shall be no display of posters, flags, symbols or other propaganda material. It is not possible to serve eatables or crowds in camps.

7 Cooperate with the authorities in fulfilling the constraints to be placed on the plying of vehicles on polling day and obtain permits for them to be displayed prominently on those vehicles.

8.2.5 Polling Booth

With the exception of the electorate, no one shall enter polling booths without a valid pass from the Election Commission.

Check your Progress-3

1.What is the rule of polling booth?

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8.2.6 Observers

Observers are appointed by the election commission. If the applicants or their agents have any particular complaints or problems concerning election behaviour, they may take the same to the Observer's notice.

Check your Progress-4

1.What are the observers appointed for?

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8.2.7 Party In Power

Whether at the Center or in the State or States concerned, the Party in authority shall guarantee that no reason for any complaint is provided that it has used its official position for the purposes of its election campaign and in specific:

1. The ministers shall not combine their official visit with electioneering job and during the electioneering job they shall not use formal equipment or staff.
2. Government transportation, including official aircraft, cars, equipment and staff, shall not be used to advance the party's interest.
3. Public places like maidans etc. are not to be monopolized by

themselves for holding election meetings and using helipads for air-flights in connection with elections. The use of such places and facilities on the same terms and conditions under which they are used by the party in power shall be allowed to other parties and candidates.

4. Rest houses, dak bungalows or other government housing shall not be monopolized by the party in authority or its applicants, and such accommodation may be used fairly by other parties and applicants, but no party or candidate shall use or be permitted to use such lodging, including such facilities as a campaign office or to hold any government conference.
5. Issue of publicity at the expense of government officials in journals and other media and misuse of formal mass media during the election period for partisan coverage of political news and publicity on accomplishments with a perspective to furtheringthe prospects of theparty in power shall be scrupulously avoided.
6. Ministers and other officials from the moment elections are announced by the Commission shall not sanction grants / payments from discretionary resources.
7. The ministers of the central or state government shall not enter any polling station or counting location except as a candidate or elector or authorized officer.

Since the Commission announces elections, ministers and other officials are not allowed to:

1. Announce in any form or promise any financial grant.
2. With the exception of civil servants, initiatives or schemes of any kind lay foundation stones etc.
3. Make any pledge of road construction, drinking water supply, etc.
4. Make any ad-hoc appointments in government, public undertakings, etc. that may influence the electorate in favour of the Power group.

8.3 COMPOSITION OF ELECTION COMMISSION

Two distinct suggestions on the structure of the Election Commission were put forward before the drafting commission of the constituent assembly;

1. Either to have a continuous body offour representatives or five,
2. To have an Adhoc body established at peak voting activity. Eventually, the drafting committee decided to lead a middle course.

The commission was in favour of having the Chief Electoral Commissioner permanently in the office heading the Election Commission, which would be a permanent nucleus for arranging and conducting by-elections, as well as arranging for General Elections to be held in early dissolutions instances.

8.3.1 Article 324 And The Election Commission

1. The composition of the election commission is dealt with in Article 324 of the Constitution. According to Article 324(2), the Election Commission shall comprise of the Chief Election Commissioner and the other Election Commissioners. Article 324(3) requires the Chief Electoral Commissioner to behave as the Chairman of the Election Commission when there is an election commissioner other than the Chief Electoral Commissioner.
2. Article 324(4) provides for the appointment by the President of the Regional Commissioners to carry out the duties provided for in Article 324(1) of the Constitution. Under Clause (2) of the Ajrt.324, the Election Commission operates separately and impartially without any fear of disapproval by the legislature or the executive.
3. The wage and terms of service of the Chief Election Commissioner and other Election Commissioners shall be determined by the President subject to statutory provisions and

the Constitutional guarantee that the terms of service of the Chief Election Commissioner after his appointment shall not vary to his disadvantage.

4. Article 324(6) stipulates that, where required by the Election Commission, the President or the Governor of the State shall make accessible to the Election Commissioner or the Regional Commissioner the employees required to fulfil the duties conferred on the Election Commission.
5. The debate in the constituent assembly made it abundantly apparent that the constitutional framers wanted the election commission to be a genuinely independent body, free of any kind of executive control or interference.
6. Accordingly, Article 324(5) provides that, topic to the demands of any law made by Parliament, the terms of service and tenure of the office of the Election Commissioner and the Regional Commissioners shall be such as the President may, by rule, determine. Except on the recommendation of the Chief Election Commissioner, Election Commissioners and Regional Election Commissioners cannot be removed from Office.

Check your Progress-5

1.What does the article 324 (6) stipulates?

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8.3.2 Service Conditions Of Chief Election: Commissioner

The Chief Election Commissioner's tenure is independent of the discretion of the executive. The Chief Election Commissioner's terms of service after his appointment shall not be diverse to his disadvantage.

This protection is analogous to the Supreme Court judge's scrutiny of office tenure. Sometimes, as far as symbol instances are concerned, the

Election Commission also functions as a Court. The chief election commissioner's appointment is created by the president, and an Indian government officer who has retired as government secretary is usually selected.

The first Chief Electoral Commissioner was Sukumar Sen, a retired I.C.S. officer who was selected after retired secretaries of law, secretaries of cabinet, etc. The current Chief Electoral Commissioner is a retired Secretary of the Cabinet. In order to ally such concerns, it is better to create provisions in the Constitution that the appointment of this high office may be made by a panel of Supreme Court Judges or High Court Judges who are young enough to bear the duty and that Parliament should approve his appointment.

Check your Progress-6

1.What is the Chief Election Commissioner's tenure?

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8.3.3 Multi-Membership Of Election Commission

The Government was fully within its jurisdiction to constitute a multimember commission. The presidential notification, did not reduce the role ofor powers ofthe ChiefElection Commissioner.

In its 1972 reports, the Joint Committee on Amendments to Election Law, which had thoroughly addressed the issue, unanimously suggested that the Election Commission be a multi-member body. All political rulers and constitutional specialists favoured a multi-member committee consisting of carefully selected individuals who should be able to cohesively operate and settle any contentious problems rapidly through debates.

The Office of the Election Commissioner's organizational and administrative structure varies from state to state based on the size of the state and the amount of job engaged. The Chief Electoral Officer's office is usually component of the Secretariat of State Government at the State Headquarters.

Clause (6) Article 324 stipulates that, where required by the Election Commission, the President or the Governor of the State shall make accessible to the Election Commission or the Regional Commissioner the employees required to fulfil the duties conferred on the Election Commission.

The amazing strength given over the Democratic process by the Election Commissioner calls for urgent constitutional amendment before the successor of the Chief Election Commissioner is appointed. Sri Jayaprakash Narain's Tarkunde commission on electoral reforms presented its report on February 9th, 1975 and its significant suggestions are:

1. The Election Commission should be a multi-member body of undoubtedly integral individuals, such as the judges of the Supreme Court and the High Courts. They should be chosen by a board made up of India's chief justice, the prime minister, and opposition leader; or an opposition representative acceptable to all parties in the Lok Sabha.
2. The Election Commission's position should be analogous to that of the Union Public Service Commission at the centre and sub-clause 2 of Article 324 concerning the appointment of other Commissioners including the appointment of the Regional Commissioners.
3. The unanimous recommendations of the Joint Parliamentary Committee on Electoral Reforms (1972) should be implemented in whichthe members ofthe ruling party were also present, should be implemented.

The following rules are essential for the smooth working of the Commission's deliberations and also to promote the cause of free and fair elections:

1 The Election Commission should not deviate from the Cardinal values of working harmoniously, always bringing to bear in the objectivity of their deliberation the need for the rule of law to be applied.

2 It should understand that the fundamental values of democratic elections could only be served through coordination and collaboration and not conflict with the Governments, both at the Center and the States and the Electoral Machinery at all levels.

3 The Commission should not forget that it could be ensured that the Commission would carry out its tasks without fear and favour, by placing all political parties in trust and operating publicly.

4 The Commission should recognize obviously that it is an autonomous constitutional body totally isolated from government control, and this idea should always guide its deliberations ; in this context, there is no harm for this purpose only in learning helpful lessons from the Pakistan Election Commission, which lately acted boldly in certain matters without fear or favour.

5 It is advisable and desirable to set up a permanent committee, some kind of advisory committee, consisting of members of domestic parties to assist and advise the Commission on all the important parties involved in conducting elections.

6 It is anticipated that the Election Commission will be firm in enforcing the requirements of the code of conduct model with a unique reference item VH-party in the authority of the code of conduct model.

8.4 LET'S SUM UP

"India has never been a country in the era of history. It was an aggregate of different tribes, district groups, and small despotism". Laing, Finance member of India's parliament, epitomized the faith that upheld the British empire in India and, broadly speaking, guided the British rulers'

strategy, but the two world wars hurried India's march to a responsible and a more representative government.

Independent India's elections are conceived as both the beginning and the culmination of its democratic parliamentary process. When it was conceived in colonial India, the concept of parliamentary and electoral democracy was an exotic scheme. But in the course of the country's domestic freedom movement, it got sustenance and strength.

The Election Commission's final shape was the outcome of a memorable discussion and discussion. The initial thinking visualized a kind of central electoral authority-one body conducting parliamentary elections and each state having their own set-up for comparable reasons. The President of India was to appoint for his state a comparable body to be appointed by the Central Election Commission and Governor. India's draft constitution had such an apex level body concept.

The Chief Election Commissioner's tenure is independent of the discretion of the executive. The Chief Election Commissioner's terms of service after his appointment shall not be diverse to his disadvantage.

The Office of the Election Commissioner's organizational and administrative structure varies from state to state based on the size of the state and the amount of job engaged. The Chief Electoral Officer's office is usually component of the Secretariat of State Government at the State Headquarters.

8.5 KEYWORDS

1. Culmination: The highest or climactic point of something, especially as attained after a long time.
2. Consensus: A general agreement.
3. Epitomize: Be a perfect example of.
4. Tribunal: A body established to settle certain types of dispute.

5. Scrupulously:In a very careful and thorough way.

8.6 QUESTIONS FOR REVIEW

1. What is the model code of conduct?
2. Explain in brief the general conduct.
3. Explain the steps in meetings.
4. Explain the processions.
5. What are the duties of the political parties and the candidates on the polling day?

8.7 SUGGESTED READINGS AND REFERENCES

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3. Shiva Rao. B. TOE FRAMING OF INDIA'S CONSTITUTION: ASTUDY: 460 (1968).
4. Dr. Ambedkar's speech VIII Constitutional Assembly Debate, 15th June,1949.
5. GovindanKutty.K. "Seshan: An Intimate Story": 241 (1995). 25. AIR -1978-SC-851.

8.8 ANSWERS TO CHECK YOUR PROGRESS

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

The British rulers' strategy prior to 1857 was to propagate the values connected with liberal society through English education in India, the disastrous events of 1857 led in a policy reversal.

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

No party or candidate shall engage in any activity that may aggravate current distinctions or generate mutual hatred or tension between distinct religious or linguistic castes and groups.

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

With the exception of the electorate, no one shall enter polling booths without a valid pass from the Election Commission.

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

Observers are appointed by the election commission. If the applicants or their agents have any particular complaints or problems concerning election behaviour, they may take the same to the Observer's notice.

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

Article 324(6) stipulates that, where required by the Election Commission, the President or the Governor of the State shall make accessible to the Election Commissioner or the Regional Commissioner the employees required to fulfil the duties conferred on the Election Commission.

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

The Chief Election Commissioner's tenure is independent of the discretion of the executive. The Chief Election Commissioner's terms of service after his appointment shall not be diverse to his disadvantage.

UNIT-9: POWERS OF ELECTION COMMISSION AND MODERN CHANGES

STRUCTURE

9.0 OBJECTIVES

After learning this unit based on "Powers of Election Commission and Modern Changes", you can gain knowledge of about the following important topics:

- To discuss the Composition of Election Commission.
- To know about the Powers of Election Commission and Modern Changes.

9.1 INTRODUCTION

Independent India's elections are conceived as both the beginning and the culmination of its democratic parliamentary process. When it was

conceived in colonial India, the concept of parliamentary and electoral democracy was an exotic scheme. But in the course of the country's domestic freedom movement, it got sustenance and strength.

The technique of governance in ancient India was completely distinct. Except the Vedic of the early days. Period, the status of the kings was hereditary, and the Samitis and Sabha were aristocratic bodies, even in the republic. Village councils and caste panchayats, on the other hand, consisted of village elders and nobles, deriving their authority from consensus rather than by way of election.

Consequently, monarchical regimes were the cornerstone of ancient and medieval India. The introduction of the electoral concept in the nation with the establishment of representative institutions was left to the British rulers. Although the British rulers' strategy prior to 1857 was to propagate the values connected with liberal society through English education in India, the cataclysmic events of 1857 led in a policy reversal.

Some of the top authorities and dignitaries, such as Lord Ripon, declared their dedication to the summumbonum of liberal constitutional democracy, but hard-bred bureaucrats who formed the country's government and administration were committed to autocratic rule procedures. "India has never been a country in the era of history.

It was an aggregate of different tribes, district groups, and small despotism. Laing, Finance member of India's parliament, epitomized the faith that upheld the British empire in India and, broadly speaking, guided the British rulers' strategy, but the two world wars hurried India's march to a responsible and, in turn, a more representative government.

The Election Commission is set up as an independent body to guarantee free, fair and impartial elections that are even isolated from political pressure and executive power. The Commission is established as a permanent body under Article 324(1) of the Indian Constitution. Throughout India, the Commission has jurisdiction over parliamentary elections, state legislature, presidential offices, and vice president.

The Election Commission is created as an all-India body rather than distinct bodies for overseeing and conducting elections in each state because some countries in India consist of a blended population that involves both indigenous people and others who may be culturally, racially, linguistically distinct from that of indigenous people. In order to avoid any kind of injustice being done to any segment of individuals, it was created as a single central body that would be free from local influences and pressures and regulate the entire country's electoral machinery.

The gradual progress of the country towards accountable governance was followed by the advancement of its representative political organizations.

Check your Progress-1

1.What is Independent India's conceived as?

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9.2 COMPOSITION OF ELECTION COMMISSION

As of now, the Election Commission consists of a Chief Election Commissioner and two Election Commissioners. Article 324 of Indian Constitution confers power on the President to appoint Election Commissioners and "such other Commissioners" as he may from time to time fix. These Commissioners are appointed for the time period of 6 years, or up to the age of 65 years.

The removal procedure of the Chief Election Commissioner from office resembles the procedure of removal of a Judge of Supreme Court. The salary payable to Chief Election Commissioner is also equal to that of a Judge of Supreme Court. The grounds for the removal of Chief Election Commissioner includes misconduct or incapacity if two third members in

both Lok Sabha and Rajya Sabha give their consent to the decision. Other Election Commissioners can be removed by the President on the recommendation by the Chief Election Commissioner.

Two distinct suggestions on the structure of the Election Commission were put forward before the drafting commission of the constituent assembly:

3. Either to have a continuous body of four representatives or five,
4. To have an Adhoc body established at peak voting activity. Eventually, the drafting committee decided to lead a middle course.

The commission was in favour of having the Chief Electoral Commissioner permanently in the office heading the Election Commission, which would be a permanent nucleus for arranging and conducting by-elections, as well as arranging for General Elections to be held in early dissolutions instances.

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7. The composition of the election commission is dealt with in Article 324 of the Constitution. According to Article 324(2), the Election Commission shall comprise of the Chief Election Commissioner and the other Election Commissioners. Article 324(3) requires the Chief Electoral Commissioner to behave as the Chairman of the Election Commission when there is an election commissioner other than the Chief Electoral Commissioner.
8. Article 324(4) provides for the appointment by the President of the Regional Commissioners to carry out the duties provided for in Article 324(1) of the Constitution. Under Clause (2) of the Ajrt.324, the Election Commission operates separately and impartially without any fear of disapproval by the legislature or the executive.
9. The wage and terms of service of the Chief Election Commissioner and other Election Commissioners shall be determined by the President subject to statutory provisions and

the Constitutional guarantee that the terms of service of the Chief Election Commissioner after his appointment shall not vary to his disadvantage.

10. Article 324(6) stipulates that, where required by the Election Commission, the President or the Governor of the State shall make accessible to the Election Commissioner or the Regional Commissioner the employees required to fulfil the duties conferred on the Election Commission.
11. The debate in the constituent assembly made it abundantly apparent that the constitutional framers wanted the election commission to be a genuinely independent body, free of any kind of executive control or interference.
12. Accordingly, Article 324(5) provides that, topic to the demands of any law made by Parliament, the terms of service and tenure of the office of the Election Commissioner and the Regional Commissioners shall be such as the President may, by rule, determine. Except on the recommendation of the Chief Election Commissioner, Election Commissioners and Regional Election Commissioners cannot be removed from Office.

9.2.2 Service Conditions Of Chief Election: Commissioner

The Chief Election Commissioner's tenure is independent of the discretion of the executive. The Chief Election Commissioner's terms of service after his appointment shall not be diverse to his disadvantage.

This protection is analogous to the Supreme Court judge's scrutiny of office tenure. Sometimes, as far as symbol instances are concerned, the Election Commission also functions as a Court. The chief election commissioner's appointment is created by the president, and an Indian government officer who has retired as government secretary is usually selected.

The first Chief Electoral Commissioner was Sukumar Sen, a retired I.C.S. officer who was selected after retired secretaries of law, secretaries of cabinet, etc. The current Chief Electoral Commissioner is a retired

Secretary of the Cabinet. In order to ally such concerns, it is better to create provisions in the Constitution that the appointment of this high office may be made by a panel of Supreme Court Judges or High Court Judges who are young enough to bear the duty and that Parliament should approve his appointment.

9.2.3 Multi-Membership Of Election Commission

The Government was fully within its jurisdiction to constitute a multimember commission. The presidential notification, did not reduce the role ofor powers ofthe ChiefElection Commissioner.

In its 1972 reports, the Joint Committee on Amendments to Election Law, which had thoroughly addressed the issue, unanimously suggested that the Election Commission be a multi-member body. All political rulers and constitutional specialists favoured a multi-member committee consisting of carefully selected individuals who should be able to cohesively operate and settle any contentious problems rapidly through debates.

The Office of the Election Commissioner's organizational and administrative structure varies from state to state based on the size of the state and the amount of job engaged. The Chief Electoral Officer's office is usually component of the Secretariat of State Government at the State Headquarters.

Clause (6) Article 324 stipulates that, where required by the Election Commission, the President or the Governor of the State shall make accessible to the Election Commission or the Regional Commissioner the employees required to fulfil the duties conferred on the Election Commission.

The amazing strength given over the Democratic process by the Election Commissioner calls for urgent constitutional amendment before the successor of the Chief Election Commissioner is appointed. Sri JayaprakashNarain'sTarkunde commission on electoral reforms presented its report on February 9th, 1975 and its significant suggestions are:

4. The Election Commission should be a multi-member body of undoubtedly integral individuals, such as the judges of the Supreme Court and the High Courts. They should be chosen by a board made up of India's chief justice, the prime minister, and opposition leader; or an opposition representative acceptable to all parties in the Lok Sabha.
5. The Election Commission's position should be analogous to that of the Union Public Service Commission at the centre and sub-clause 2 of Article 324 concerning the appointment of other Commissioners including the appointment of the Regional Commissioners.
6. The unanimous recommendations of the Joint Parliamentary Committee on Electoral Reforms (1972) should be implemented in which the members of the ruling party were also present, should be implemented.

The following rules are essential for the smooth working of the Commission's deliberations and also to promote the cause of free and fair elections:

7 The Election Commission should not deviate from the Cardinal values of working harmoniously, always bringing to bear in the objectivity of their deliberation the need for the rule of law to be applied.

8 It should understand that the fundamental values of democratic elections could only be served through coordination and collaboration and not conflict with the Governments, both at the Center and the States and the Electoral Machinery at all levels.

9 The Commission should not forget that it could be ensured that the Commission would carry out its tasks without fear and favour, by placing all political parties in trust and operating publicly.

10 The Commission should recognize obviously that it is an autonomous constitutional body totally isolated from government control, and this idea should always guide its deliberations; in this context, there is no harm for this purpose only in learning helpful

lessons from the Pakistan Election Commission, which lately acted boldly in certain matters without fear or favour.

11 It is advisable and desirable to set up a permanent committee, some kind of advisory committee, consisting of members of domestic parties to assist and advise the Commission on all the important parties involved in conducting elections.

12 It is anticipated that the Election Commission will be firm in enforcing the requirements of the code of conduct model with a unique reference item VH-party in the authority of the code of conduct model.

9.2.4 T. N. Seshan Vs Union Of India: An Appraisal

Supreme Court decision in T. N. Seshan lastly closed the much-debated controversy over the establishment of the Multi-Member Election Commission by declaring the presidential order establishing a Multi-Member Election Commission to be valid.

The Supreme Court's comments in T. N. Seshan is notable about the role of the election commission and the significance of its view. T. Specific problems related to the constitutional and statutory provisions were brought before the Supreme Court by N. Seshan. First of all, T. N. Seshan's case gave the Supreme Court a chance to highlight the significance of Article 324 and the 1951 Law on the Representation of the Peoples.

It also supplied the tribunal with a fertile ground to clarify the need for an autonomous election commission, staffed with high-ranking and integrity individuals to guarantee free and fair polling in the Indian Electoral process.The attention of the Supreme Court T. N. Seshan is drawn mainly on the following issues.

The issues involved is this case were:

1. Constitutionality of the Chief Electoral Commissioner and other Election Commissioners (Terms of Service) Amendment

Ordinance, 1993, providing for a multi-member Election Commission under Art. 324.

2. Role of the Chief Election Commissioner in Multi-member Election Commission.
3. Removal of Election Commissioners from office on recommendation of CEC.
4. Status of Chief Election Commissioner vis-a-vis Election Commissioners and Regional Commissioners.

In T, the Supreme Court. N. Seshan argued that the system of Article 324 was that there would be a permanent body to be called the Chief Electoral Commissioner with a continuous incumbent. Therefore, if the president considers it appropriate to appoint one or more Election Commissioners, the Election Commissioner may be a single member body or a multi-member body.

In its view, the supreme court rightly ruled that the Chief Election Commissioner did not enjoy superior status to election commissars. But Article 324 provides for a permanent body, namely the Chief Election Commissioner, to be headed by a permanent incumbent.

Therefore, he had to be treated differently in order to maintain and protect his independence, because without a CEC there can be no election commission. This is not the case with other commissioners of the election. They're not incumbents permanently. The CEC's terms of service are similar to those of the judges of the Supreme Court, namely:

(i) The provisions that he can be removed from Office in like manner and on like grounds as a judge of the Supreme Court.
(ii) His conditions of service shall not be varied to his disadvantage after appointment.

The Supreme Court on the role of the Election Commission in India maintained that the constitution makers entrusted to a Commission called the Election Commission and an individual the task of conducting all elections in the nation. It may be that, if it is a single-member body, the CEC may need to take the choices, but they will still be the Election

Commission's choices. Projecting the person and eclipse the Election Commission would be incorrect.

No one can be above the organization he should serve. It would be a serious error to project the person as more powerful than the organization; hence, even if the Election Commission is a single member body, the CEC is simply a functionary of that body to put it differently, the commission's alter ego and no more. And the CEC is required to behave as its chairperson if it is a multi-member body. Considering the significance of the term "Chairman," it was described differently in dictionaries as an individual selected to preside over conferences or as a chairman, etc.

This office's nature and responsibilities may rely heavily on the nature of the company to be transacted, but by a large these would be a chairman's functions. He must conduct himself in such a way at the conferences chaired by him that he can gain his colleagues 'trust in the Commission and take them with him. Thus, a chairperson may find it hard to accomplish if he believes that his subordinates are others who are members of the committee.

The Commission will take choices with one voice pursuant to sub-sections (1) and (2) of section 10 of the Amendment Act. This is the purpose of the Amendment Act Section 10. The Election Commission is not the only body that is unworkable as a multi-member Election Commission. It all relies on the chairman's and his members' approach.

On the question of removing Election Commissioners and Regional Commissioners, the court argued that once appointed the Election Commissioners and Regional Commissioners cannot be removed from the office before the expiry of their tenure except on the Chief Election Commissioner's suggestions. This is because this privilege has been conferred on the CEC to guarantee that political or executive bosses of the day are not at the mercy of the election commissioners as well as regional commissioners.

Therefore, if the CEC were to exercise the authority in accordance with its whim and caprice, the CEC itself would become a tool of oppression

and would ruin the independence of the Election Commissioners and the Regional Commissioners if they were to operate under the CEC's threat of recommending their removal. This authority must therefore only be exercised by the CEC if there are valid reasons for the efficient functioning of the Election Commission.

Concerning the CEC status vis-a-vis E. Cs', the tribunal concluded that the CEC does not enjoy superior status to the commissioners of the election. Although it is in the case of the CEC that the first provision to clause (5) of Article 324 stipulates that conditions of service cannot be ranked to the disadvantage of the CEC after its appointment, whereas such protection is not transferred to Election Commissioners but, by virtue of the CEC and E.C's ordinance, is put on an equal footing in the issue of income, etc.

In the case of election commissioners, that's not the case, but this is not Indica to give the CEC a higher status. The tribunal in the T. N. Seshan obviously argued that CEC is not given a superior status and that the amending Ordinance / Act dealing with CEC is not unconstitutional.

As a consequence, the tribunal is the immediate case upheld in its entirety by the contested Ordinance / Act. The government made the choice to make the Election Commission a multi-member following some latest contentious choices taken by the Chief Election Commission, which in August 1993 generated a serious confrontation between the Election Commission and the government.

The Chief Electoral Commissioner has delayed certain by-elections and biennial elections to the Rajya Sabha and state legislature councils unless there is some "unresolved" conflict over the Commission's exclusive powers and privileges to "direct" the government over the deployment of Central Police at the moment of an election. The Commission asserted exclusive jurisdiction to take disciplinary action against the polling employees. As if to remove any future ambiguity regarding the president's power for such appointments, the Court set out:

"The Question whether it is necessary to appoint other Election Commissioners besides the Chief Election Commissioner is for the Government to decide and that it is not justifiable matter."

The apex court verdict concludes a contentious chapter in Indian Elections leadership that began almost simultaneously with the constitutional appointment of the chief election commissioner. A hierarchy of constitutional officials is not provided for in the constitution. Specific duties were provided to the police.

In the Supreme at this time. Court cases The Constitution created the Commission to operate within the framework of the administrative framework of the federal government and the power of democratically elected governments. Article 324(6) obviously stipulates that Article 328 gives for the status of the Legislative as matters relating to elections to state legislatures are not referred to Parliament. The' Vertical' Commission has extended the paper job of field functionaries 'manifold and the key observers 'excessive deputation and lastly the status administration functionary.

The Commission of Election. A political process has to be handled by the administration. In the work under their responsibility, the Deputy Election Commissioners shall ensure that the orders issued by the Commission comply with Sections 9 and 10 of the 1991 Chief Election Commissioner and other Election Commissioners (Conditions of Service) Act, as amended by the 1994 Act.

The two Commissioners have been refused access to any official document since the appointment of the other two Election Commissioners in 1993, as the Chief Election Commissioner issued a decree that stopped his staff from having anything to do with the two Commissioners. The issue of the functioning of the multi-member Election Commission was discussed in the only judgment delivered on this topic.

It was found that it is hard to reconcile the judge's views on the Chief Election Commissioner's powers and the decision-making mode in the multi-member commission whose obligation is to perform the election.

There are many other problems that need to be addressed in order to cure the pollution syndrome.That may remain larger for India today and boast that it is the biggest democracy. Even the Election Commission should be autonomous of this ombudsman. College of three or five representatives must be the Election Commission itself. A high-level panel must select the Chief Election Commission and other Commissioners, the ombudsman who oversees the work of political parties and the other higher-level staff.

The Commission of three should operate harmoniously with decency and decorum is the government dealings of the Commission. In other words, the Commission should not act publicly quarrelling and rushing to the Court for the final judgment like defiant kids. The Commission should be properly distributed among the three. The apex court's decision upholding the presidential order on the appointment of two Election Commissars with powers as per those of the Chief Election Commissars with powers as per those of the Chief Election Commissar was not surprising.While no surprise has come to the Constitution. Although the constitution has always provided for a multi-member election commission, in latest years the idea has become more relevant in the age of coalition politics and multiplicity of political parties.

The Ordinance offers in particular that the "Shall as far as possible be unanimous" choice of the three members of the Election Commission. However, in the event of a difference of view between the Chief Electoral Commissioner and other Election Commissioners, the matter "shall be decided by the majority opinion." The president's Ordinance offers that the distribution of company or work between the Chief Election Commissioner and other Election Commissioners shall be carried out in accordance with the Business Act and Rules. In terms of status and other conditions of service, the ordinance revised the law and equated the two election commissioners with the chief election commissioners.

Also spurred by the Supreme Court ruling in the S was the choice to have a Multi-Member Commission. S. Dhanoa Vs Union of Indian case in which it was noted that when an organization such as the Election

Commission is entrusted with essential tasks and has exclusive and uncontrolled powers to carry them out, it is both essential and desirable that the powers not be exercised by one person. It proves everything to democratic rule tenants.The choice by the government to have a multi-member Election Commission is far-reaching. It removes the component of a one-man show in such a significant function as conducting parliamentary and state legislatures elections while he would no longer have "unbridled" powers as the Chief Election Commission being the Supreme.

Check your Progress-2

1. Explain the choice of the government.

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9.3 POWERS OF ELECTION COMMISSION AND MODERN CHANGES

The Election Commission has to cope with a multitude of administrative issues and practical issues that do not involve policy issues and keep in touch with the Center and States administrative officials. This is the Commission's one part of job. And above all, there is a duty to oversee the entire electoral process and to ensure its integrity and effectiveness, which clearly has to rest with the Chief Election Commissioner himself, sharing heavy duties with peers does not require loss of prestige or diminishing the power as the head of an institution.

It may be added that if extra statutory powers are to be provided to the Commission, as it should carry out the broad scope of its constitutional duties with the same enlargement that may be needed.

According to the Representation of the People Act, 1951, the powers of the Election Commission with inquiries as to disqualifications of

employees in connection with the issuance of any views to the President pursuant to Article 103 or to the Governor pursuant to Article 192 of Section 14 of the Government of the Union Territory Act, 1963.

The Election Commission considers it necessary or appropriate to conduct an enquiry, and the Commission is satisfied that it cannot arrive at a decisive opinion on the basis of the enquiry as the matter under investigation shall have the powers of the civil court for the purpose of such enquiry while proceeding with a lawsuit under the Civil Procedure Code, 1908.

The commission shall also be empowered to require any individual subject to any privilege that that individual may claim under any law for the time being in force to provide data on such matters as the commission's opinion is considered to be a judicial proceeding within the significance of chapter 193 and section 228 of the Indian Penal Code. The Election Commission has the authority to regulate its own procedure.

The constitutional powers of superintendence, direction and control of the Election Commission can become fully efficient. Thus, the power of superintendence, direction and control of elections is in the hands of the Chief Electoral Commissar and the members of the Election Commissars as the president may determine the Legislative Assembly of each state before each election of the house of people. The Central Government has already recognized the need to have Regional Commissioners and a provision in the law to allow delegation of powers to them.

The Election Commission has the authority to perform all elections, advising the President on the disqualification of any Member of Parliament or Governor on the disqualification of a Member of the Legislative State. The Election Commission has the authority to correct the error in preparing electoral rolls for a constituency that included an area not belonging to it.

Like this, consideration has been given to the scope of the powers of the commissioner. Art 324(1) relates to the tasks of the committee; while interpreting the phrase, the tribunal held that it included powers as well

as responsibilities and noted that "it is incomprehensible that an individual or body could perform any tasks without exercising powers and responsibilities being integrated with the function." Accordingly, it was held that the cancelation of the entire survey was covered by Art 324, if not by itself. The Supreme Court, while setting aside a petition for election, had an opportunity to consider the legal and constitutional stance of the Commission's scope of powers as follows:

1. When there is no legislation made by parliament or rule made under the said legislation the commission is free to pass any orders in respect of the conduct of elections.
2. Where there is an Act and express Rules made there under, it is not open to the commission to over side the Act or the Rules and pass orders in direct disobedience to the mandate contained in the Rules. In other words, the powers of the Commission are meant to supplement rather than supplant the law (both statute and Rules) is the matter of Superintendence, direction and control as provided by Art.324.
3. Where the act or the rules are silent the commission has no doubt plenary powers under Art.324 to give any direction in respect of the Conduct of elections.
4. Where a particular direction by the commission is submitted to the government for approval, as required by the rules, it is not open to the commission to go ahead with implementation of it at its own sweet will even if the approval of the government is not given.

The government chooses to limit the powers of the polling board. In a press section, the union government rejected reports that it was planning to introduce a constitutional amendment to curtail the Election Commission's authority on the problem of contentions pertaining to the jurisdiction of commissions to discipline elected officials. Maintaining that the "current legal provisions were sufficient to cope with all the appropriate problems and that the government met the Election Commission's criteria for smooth behaviour of elections.

Instead of applying the constitutional requirements of appointing Election Commissioners, the Central Government in 1951-52 named two Regional Commissioners for a period of six months to make the Election Commission part of its Secretariat. Even though India's president approved four regional commissioners, no regional commissioners were named later.

Section 19-A of the People's Representation Act, 1951 deals with the Election Commission's working delegations. The functions of the Election Commission under the Constitution, the Representation of the People Act, 1950 (43 of 1950) and this Act or the rules laid down therein may be exercised by a Deputy Election Commissioner or by the Secretary to the Election Commission, subject to such general instructions, if any, as may be given by the Election Commission on this behalf.

The functions of the Election Commission under Section 19-A that were assigned solely to the Chief Election Commissioner, or to the Deputy Election Commissioner, or to the Election Commission Secretary.

The Constitution created the Election Commission, an independent body free of political or executive impact, to guarantee free and fair elections. The committee is a body of all India with jurisdiction over parliamentary elections. To avoid injustice from being alone with any segment of the individuals, it was believed best to have one control body that would be free of local influences and control over the country's entire electoral equipment. The Election Commission plays a key role in the country's electoral system.

The architect of the Indian constitution attached considerable significance to an independent electoral machinery for the conduct of elections. This is clear from the reports of various committees of the constituent assembly.

At one stage, the "Fundamental Rights Sub-Committee" also unanimously agreed that the independence of elections and avoidance of interference by the executive in Legislative elections might by regarded

as a Fundamental Right and include in the Chapter dealing with the subject. The Sub-Committee also resolved.

1. That universal adult franchise must be granted by the constitution.
2. That elections should be free, secret and periodic.
3. That elections should be managed by an independent commission set up under Union Law.

"To guarantee fair and free elections, it is vital that the election work be spread over the length and breadth of the nation and that this election work be performed even in distant villages in order to inspire people's trust." The development of the Election Commission may even "function as a barrier to effectiveness and velocity in the workplace." Therefore, electoral equipment should' be wide, pyramid-based and not too heavy and conical.

It should be such that in every nook and comer of the nation it can work efficiently, rapidly, independently and impartially. A Deputy Election Commissioner or a 4Secretary to the Election Commission, subject to such general or special directions, may also perform the functions of the Election Commission under the Constitution and the electoral laws. Not only should the Commission be an independent and autonomous organization, but it should be free in any matter from any similarity of executive command or impact. After full account, the Commission suggested that a provision be inserted in the Representation of the People Act, 1951, somewhat along the following lines.

"No court shall take cognizance of any of the offence punishable under sections 129, 134, 134(A) and 136 of this Act except with the previous sanction of the election Commission or the Chief Electoral Officer of the State or the State Government concerned.25 The Commission should certainly have the power to have enquiries made immediately through an agency of its choice andpending enquiry to have the country suspended and declaration of the result withheld.

The Supreme Court's verdict is certain cases, to curb Chief Election Commissioner's "whims and Fancies", however certain institutional

changes that the Chief Election Commission brought about will remain in force.

The Chief Election Commissioner's function was limited; run the election machinery in accordance with the existing law of the land. As a first step, the Chief Election Commissioner sought to restore to the Election Commission the powers conferred on it by the Constitution. The Election Commission has every right to audit the election expenses of every contesting candidate in the Elections, according to Section 77 of the Representation of the people Act, 1951.The Supreme Court has observed in the case of Mohinder Singh Gill and others vs Chief Election Commissioner and others 28 that:

"The constitution contemplates a free and fair election and vests comprehensive responsibilities of superintendence, direction and control of theconduct of elections in the Election Commission. This responsibility may cover powers, duties and functions of many sorts, administrative or other, depending upon the circumstances.

Where law is silent Article 324 is a vast reservoir of authority to act for the purpose proclaimed by law, not divorced from pressing forward with expedition a free and fair election. Since the day it was established on January 25, 1950, the Election Commission has fulfilled its duties conferred on it.

It has already performed ten general elections to the people's house and countless general, elections to the people's house and countless general elections to the multiple countries 'Legislative Assemblies apart from the biennial elections to state councils and state legislatures, as when the same was due. The Constitution has assigned to the election commission the sacred job of conducting elections. There is no autonomous electoral machinery for the Commission to fulfil its tasks.

So, Elections is most important in a democratic set up and it is very necessary thatit should controlled and supervised by a very competent authority and impartialbody while the impasse on the interpretation of the Commission's power to secure the services of necessary staff stands unresolved due to the procrastination in the Government of India. In

performance of its duties and functions under Article 324 of the constitution for conducting the elections in a free and fair manner, the Election Commission has been requesting anddirecting the Government of India from time to time to take such measures as are considered appropriate and expedient by the Commission. The Supreme Court had held in 1978 that Article 324 of the Constitution is a "reservoir of power" for the Commission and it can act in its own right in a contingency where the law enacted by parliament is silent. According to the present Chief Election Commissioner the Commission does not have the power to deregister a party for violating the provisions of that felt the power yielded by Parliamentor High Courts. If there is a trend of self-denial in this position, it is against part of an effort to entrench the Election Commission's powers and status.

Vesting the Commission with all the power would have meant necessarily a constant monitoring by it of the political activities and programmes and ideologies of political parties.

9.3.1 Power To Superintendent, Direct And Control

The Election Commission has the authority to carry out electrol rolls for all parliamentary, state, presidential and vice-presidential elections. Superintendence, direction and control over the preparing of electrolrolls has the authority of the Election Commission. The authority of the Superintendence, Direction and Control conferred on the Election Commission pursuant to Article 324(1) of the Indian Constitution shall be subject to the legislation of the Parliament pursuant to Article 327 and also to the legislation of the State Legislature pursuant to Article 328 of the Constitution.

The responsibility for conducting both national and state elections has been assigned to the Election Commission, so Article 324(1) is regarded to be a plenary provision that assumes accountability for conducting elections under the Election Commission. Since Article 324(1) is a plenary provision, there is no law or provision taken by Parliament or the Legislature of the State to satisfy a specific case, Article 324 gives the Election Commission the authority to act and enact such measures as are

essential in order to promote free and fair elections. The Election Commission has the authority to deal with unexpected circumstances in which Parliament or the State Legislature did not make any law.

9.3.2 Power To Order Re-Poll

Article 324 gives not only the authority to conduct elections but also the authority to order a new survey to the Election Commission. The order for re-poll may be issued when there is hooliganism, breakdown of law and order at the moment of voting, or when voting is counted.

Check your Progress-3

1.What is power to order re-poll?

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9.3.3 Power To Allot Symbols

The Election Commission is empowered to define the symbols for applicants for elections by Rule 5(1) of the regulations taken by the Central Government under Representation of People's Act, 1951. The 1968 Symbols Order was also released with the above-mentioned regulations by the Election Commission reading. The validity of the order was questioned by saying that it is ultra vires to the Constitution on the ground that "the electoral commission has only executive power but no legislative power, but the Supreme Court has always upheld the validity of the order explaining the following; "In India allotment of symbols to the candidates becomes necessary so that an illiterate voter may identify the candidate of his choice and cast his vote in his favour".

In the Kanhaiya Lal vs. case, the Supreme Court noted R.K. Trivedi as follows' Although, for any reason, it is held that any of the provisions contained in the symbols order are not traceable to the Act or the Rules,

the power of the Election Commission, in accordance with Article 324(1) of the Constitution, which is of a plenary nature, may encompass all such provisions.

9.3.4 Power To Postpone The Elections

In the case Digvijay Mote v. Union of India, the Supreme Court held that if there are any kind of disturbing circumstances in a state or any portion of the state that prevent free and fair elections from taking place, then the Election Commission has the authority to postpone the elections.

Check your Progress-4

1.What is power to postpone the elections?

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9.3.5 Power To Seek Information Regarding Election Expenses

In the event of Registered Society v. UOI, the issue was brought before the tribunal concerning the "election expenditures" incurred by the political parties during election moment. The primary argument in the arguments was that India's elections are solitary fought on the grounds of money power, so individuals should be made aware of the costs incurred by the political parties and candidates in the election process.

The Court held that the purity of elections is essential to democracy and thus the Election Commission has the authority to issue such instructions requiring political parties to send information of the spending incurred during elections to the Election Commission for its scrutiny.

9.3.6 Power To Issues Budgets And Expenses

The budgets of the formers Secretariat, which is liable for an independent budget is finalised by the Union Finance Ministery and Election Commission. Union Finance Ministery generally upholds the

recommendation made by the Election Commission. The expenses of the elections should be taken care by the concerned states and the Union territories but it is the Union Government who bears the expenses of Lok Sabha elections entirely, in case of the legislative assembly elections, the concerned state bears the expenses.

9.3.7 Power To Disqualify The Candidates

The power of post-election disqualification of sitting members of the Parliament and State Legislature has been vested within the Election Commission. In the case where the person is found guilty of corrupt practices at elections that come before High Court or Supreme Court are also referred to the Election Commission for its opinion regarding whether such person shall be disqualified and it so, for what reason. The opinion of the Commission is binding on the President or as the case may be, the Governor to whom such opinion is tendered. The imposed disqualification on the candidate may be removed or reduced by the Election Commission.

Check your Progress-5

1.What is power to disqualify the candidates?

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9.4 LET'S SUM UP

Independent India's elections are conceived as both the beginning and the culmination of its democratic parliamentary process. When it was conceived in colonial India, the concept of parliamentary and electoral democracy was an exotic scheme. But in the course of the country's domestic freedom movement, it got sustenance and strength.

The technique of governance in ancient India was completely distinct. Except the Vedic of the early days. Period, the status of the kings was hereditary, and the Samitis and Sabha were aristocratic bodies, even in the republic. Village councils and caste panchayats, on the other hand, consisted of village elders and nobles, deriving their authority from consensus rather than by way of election.

9.5 KEYWORDS

1. Culmination: The highest or climactic point of something, especially as attained after a long time.
2. Indigenous: Originating or occurring naturally in a particular place.
3. Analogous: Comparable in certain respects, typically in a way which makes clearer the nature of the things compared.
4. Harmoniously: With harmony of sound.
5. Tribunal: A body established to settle certain types of dispute.

9.6 QUESTIONS FOR REVIEW

1. Who granted the rights and advantages to enjoy the fruits of a welfare democracy?

2. What Law' describes?

3. The Indian legal system has developed from?

4. What is the Securities and Exchange Board of India Act, is all about?

5. High ideals were purchased with?

9.7 SUGGESTED READINGS AND REFERENCES

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- "EVM 'hackathon' challenge: NCP, CPM didn't participate, but understood the process, says EC". Firstpost.
- "Deployment of observers in RK Nagar a new national record: Election Commission". The New Indian Express.
- "Subject - Guidelines for Publication and Dissemination of Results of Opinion Polls/Exit Polls". Election Commission of India.

9.8 ANSWERS TO CHECK YOUR PROGRESS

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

Independent India's elections are conceived as both the beginning and the culmination of its democratic parliamentary process.

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

The choice by the government to have a multi-member Election Commission is far-reaching.

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

Article 324 gives not only the authority to conduct elections but also the authority to order a new survey to the Election Commission. The order for re-poll may be issued when there is hooliganism, breakdown of law and order at the moment of voting, or when voting is counted.

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

In the case Digvijay Mote v. Union of India, the Supreme Court held that if there are any kind of disturbing circumstances in a state or any portion of the state that prevent free and fair elections from taking place, then the Election Commission has the authority to postpone the elections.

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

The power of post-election disqualification of sitting members of the Parliament and State Legislature has been vested within the Election Commission.

UNIT–10: ELECTORAL REFORMS, CHALLENGES AND SOME IMPORTANT JUDGEMENTS

STRUCTURE

10.0 OBJECTIVES

After learning this unit based on "Electoral Reforms, Challenges and Some Important Judgements", you can gain knowledge of about the following important topics:

- To know Some Issues in Electoral Politics.
- To discuss the History of Election Reforms.
- To know the Electoral Reforms in India.
- To know about Proactive Role of Election Commission.

10.1 INTRODUCTION

India distinguishes itself as the world's largest democracy. Indian elections are overwhelming in size. In 2014, approximately 23.1 million or 2.7% of total eligible voters were first-time voters (18-19 years). The 543 Lok Sabha seats were contested by a total of 8,251 candidates. It was conducted in nine phases, with 66.38 percent voting turnout being the highest ever recorded in Indian General Election's history. Rs. 3426 crores were spent by the nation to conduct Lok Sabha polls. 81.45 Indian crores were on the list of eligible voters. 55.1 The franchise was exercised by crore voters. Approximately 9,30,000 polling stations were established throughout the country. For the last time on May 12, 2014, the ballot boxes were sealed and the results were announced on May 16, 2014. To conduct the elections, 10 million officers (including police security) were deployed. The sheer size of the workforce involved in the elections is larger than most countries in the world's population. It is to India's credit that since independence she has successfully conducted 16 elections to the Lok Sabha and several to the states. In a democratic governance system, elections are the most important and integral part of politics. While politics is the art and practice of dealing with political power, the process of legitimizing such power is election. Democracy can indeed function only on this belief that elections are free and fair, not rigged and manipulated, that they are effective tools for establishing popular will both in reality and in form, and that they are not mere rituals calculated to create illusion of difference for the mass opinion, they cannot survive without free and fair elections. Currently, the election is not being held under ideal conditions due to the huge amount of money needed to be spent and the great muscle power needed to win the elections. While our country's first three general elections (1952-62) were largely free and fair, with the fourth general election in 1967, a discernible decline in standards began. Until the fourth general election, no such events were reported. Indian electoral system has been suffering from severe infirmities over the years. Our country's electoral process is the progenitor of political corruption. For the first time in the fifth general election, 1971, the distortion in its work appeared and multiplied in the successive elections, especially those held in the 1980s and later.

Some candidates and parties are involved in the election process to win them at all costs, regardless of moral values. The ideal conditions require that an honest, upright person who is publicly spirited and willing to serve the people should be able to challenge and be elected as representatives of the people. In fact, however, such a person as mentioned above has no chance of contesting or winning the election in any case.

Check your Progress-1

1.How much money were spent by the nation to conduct Lok Sabha polls?

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10.2 SOME ISSUES IN ELECTORAL POLITICS

Currently, the election is not being held under ideal conditions due to the huge amount of money needed to be spent and the great muscle power needed to win the elections. The major flaws in India's electoral system are: money power, muscle power, politics criminalization, poll violence, booth capture, communalism, castism, non-serious and independent candidates, and so on.

10.2.1 Money Power

It is widely believed that in many cases a successful contest of an election costs a significant amount of money that is often much higher than the prescribed limits. Although this comment is true, the complexity of the issue can be appreciated by the fact that, there has been, and continues to be, a general clamour, especially from political leaders, that the limits on election expenditure are Only a few candidates stated that they had spent between 90 and 95% of the limit. A large number of

candidates and political parties often complain about unrealistically low limitations and are looking for a revision. India's election commission is often blamed for keeping the boundaries too low. However, the fact is that, pursuant to Rule 90 of the Conduct of Elections Rules, 1961, the Ministry of Law and Justice, Legislative Department, sets these limits. Only the government has the authority to change these rules. The Election Commission makes only recommendations as to what the boundaries should be; the day's government takes the final decision. There is a widespread belief that the actual spending far exceeds the limits, often accepted by politicians. Many people, including politicians, and former Chief Electoral Commissioners have often suggested that the limits do not really seem to serve any purpose and should be abolished. However, there are legitimate concerns about the excessive use of money power in the electoral process, which causes severe distortions in the country's fundamental functioning of democracy. The high cost of elections creates a high degree of compulsion for corruption in the public arena, that the sources of some of the election funds are believed to be uncounted criminal money in return for protection, uncounted funds from business groups that expect a high return on this investment, kickbacks or contract commissions, etc. In what came to be called the Vohra Committee Report as early as 1993, the pernicious influence of big money in derailing the democratic process was noticed and documented. Mr N.N. Vohra, then Union Home Secretary, quoted reports from the Central Investigative Bureau (CBI), "Organized Crime Syndicate / Mafia generally starts its activities by engaging in small-scale crime at the local level, mostly related to illicit distillation / gambling / organized satta and prostitution in larger towns. Their activities in port cities involve smuggling and selling imported goods and graduating in drug trafficking and narcotics. The main source of income in the bigger cities is real estate–forcibly occupying land / buildings, procuring such properties at low rates by forcing out existing occupants / tenants, etc. The money power thus acquired is used over time to build contacts with bureaucrats, politicians, and with impunity to expand activities. Money power is used to build a muscle-power network, which politicians also use during elections.... In different parts of the country, the nexus between criminal gangs, police, bureaucracy and politicians has clearly emerged. Given the

rising cost of election campaigns, it is desirable to raise the existing election expenditure ceiling for the various legislative bodies to a reasonable level reflecting the rising costs. However, the political parties should also be subject to this ceiling. There is no limit to how much a political party can spend on elections as of now. The high cost of campaigning also needs to be curbed in order to provide a level playing field for anyone who wants to contest elections. While the reasons for the high cost of campaigning may be numerous and varied, one of the contributing factors may well be that political parties do not pay much attention to their traditional role, that of mobilizing public opinion and acting as a mediator between the general public and the government, but have decided to win elections at all costs. One result of this is the selection of candidates based solely on an all-inclusive feature called "winning feasibility." Given the widespread use of money and muscle power in the electoral process, candidates who can spend more money appear to have higher "winnability." This is also demonstrated by the data collected and analysed by ADR from several elections. For example, 33 percent of the candidates who declared assets of Rs 5 crore and above were elected in the 2014 Lok Sabha election, while less than 1 percent were elected with declared assets of less than 10 lakh. Another recommendation that previous committees have suggested to reduce election costs is government funding for elections. The idea is to create conditions in which even parties with modest financial resources can compete with those with superior financial resources. However, ADR feels that an immediate overhaul of the electoral process is needed before state funding of elections. Elections must be freed from the influence of all vitiating factors, especially politics criminalization. Money power and muscle power are understood to vitiate the electoral process together, and it is their combined effect that sully the purity of electoral contests and free and fair elections. Significant electoral reforms are also urgently needed in other areas of electoral activity. Furthermore, it is strongly recommended that the appropriate regulatory framework be established with regard to political parties which provisions ensuring internal democracy, internal structures and accounts maintenance, auditing and submission to the Election Commission before attempting to fund elections by the state. Given the above and the experience of watching

the electoral process unfold over the past fifteen years, ADR recommends as follows. No worthwhile election financing measures can even be considered until reliable election cost data are available. Political parties presumably make up the largest proportion of election expenditure. As of now, there are no reliable data on political party financial affairs. Over 70% of their donations come from unknown sources. With the introduction of' Electoral Bonds' opacity in their financing will only increase and the effects on our electoral process and elections have been seen in the coming years. The primary requirement for a clear and understandable picture of election financing is to achieve financial transparency in political party financial affairs. Political parties should implement the order of CIC and be open to public scrutiny in accordance with the Right to Information Act, 2005. The guidelines of the Institute of Chartered Accountants of India (ICAI) should be made mandatory and any failure to comply with these guidelines should result in the party being automatically de-registered. The expenditure ceiling that political parties may incur during the election period should be set. Political parties should have intra-party democracy and candidates should be democratically selected. ADR is not opposed to the concept of state election funding, but is NOT in favour of state funding for elections in any form in the current situation until the functioning and finances of political parties are made transparent and subject to public scrutiny.

Check your Progress-2

1.A large number of candidates and political parties often complain about?

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10.2.2 Muscle Power

Violence, intimidation by pre-election, post-election, victimization, most riggings of any kind, booth capturing both silent and violent are mainly muscle power products. These are prevalent in many parts of the country such as Bihar, Western Uttar Pradesh, Maharashtra etc. and this cancerous disease is slowly spreading to the south as in Andhra Pradesh, criminalization of politics and politicization of criminals, now freely indulged, are like two sides of the same coin and are primarily responsible for the demonstration of muscle power at elections.

10.2.3 Criminilization In Politics

Our constitution's preamble is intended to provide the individuals with 'political justice.' When the criminal elements become component of the legislature, it is a hollow pledge to secure any type of justice, whether social, economic or political. Those criminal elements that use threat, intimidation, violence and even sexual abuse to win the election cripple India's sovereign. The impact of criminals in the political arena has shown tremendous growth over the past two decades. These criminal elements used to affect the elections from outside earlier, but now by contesting the elections themselves they have become component of the political system. During the trial, once an accused is elected, he utilizes his stance and authority to dilute the case or pressures the government to cancel the prosecution against him or her. All latest political and electoral reform commissions have almost unanimously noted the criminalization of our political system. There are many types of criminalizing politics, but perhaps the most alarming among them is the large amount of elected officials with criminal allegations pending against them. In the latest past, various public committees have taken up the issue of electoral reforms, including but not limited to: the Goswami Committee on Electoral Reforms (1990) the Vohra Committee Report (1993) the Gupta Committee on State Funding for Elections (1998) the Law Commission Report on Reform of Electoral Laws (1999) the National Commission for the Review of the Workings of the Constitution (2001). The National Commission's Report on the Working of the Constitution mentions Vohra's report as follows: "The link between

criminal gangs, police, bureaucracy and politicians has obviously emerged in different areas of the nation" and that "some political leaders become the leaders of these gangs / armed senas and are elected to local bodies, state assemblies over the years, More than 30 percent of present Lok Sabha MPs have proclaimed criminal charges, including severe criminal charges such as murder, kidnapping, etc., according to an Association for Democratic Reforms assessment. Disclosure of candidates ' criminal records began with the decision of the Supreme Court in Writ Petition (Civil) No. 515 of 2002 (Association for Democratic Reforms vs. Union of India and others) (AIR 2003 SC 2363), after which the Election Commission of India issued Order No. 3/ER/2003/JS-II of 27 March 2003 calling for applicants to contest parliamentary and state elections. The Election Commission has since amended their order no. 3/ER/2011/SDR of 25 February 2011 to vide the affidavit format. This revision was made on the basis of the 2003-2010 experience. Recommendation from ADR is to proceed this format. Furthermore, ADR supports the suggestion of the Election Commission of India, in its 2004 report on Proposed Election Reforms, that (a) an amendment should be made to R.P. Section 125A. Act, 1951 to provide for a more stringent penalty for concealing or disclosing incorrect information on Form 26 of the Conduct of Election Rules, 1961 to imprisonment for at least two years and to remove the alternative penalty for assessing a fine on the candidate, and (b) to amend Form 26 to include all items from the additional affidavit prescribed by the Election Commission, add a column that may be requested Since an overwhelming majority of applicants are run by political parties and political parties are also campaigning for applicants including spending cash on their campaigns, it is logical that the parties take responsibility for the candidates ' background and vouch for it. Consequently, ADR recommends that the candidates' data presented in the affidavits be certified by political parties. Candidates' information in their affidavits will cease to have any helpful impact if its precision and precision are not guaranteed. It is therefore suggested that the data on criminal charges, property, etc. provided in the candidates' affidavits should be confirmed in a time-bound way by an autonomous central agency. Candidates with criminal instances pending against them have long been

discussing the problem of eligibility. India's Election Commission suggested that applicants with pending criminal instances against them be prevented from contesting elections as far back as 1998. This recommendation was repeated in 2004. In its 170threport in 1999, India's Law Commission suggested the enactment of Section 8B of the People's Representation Act, 1951, by which the framing of court allegations relating to any offense, electoral or otherwise, would be a reason to disqualify the applicant from contesting elections. In paragraph 4.12.3 of their 2001 report, the National Commission for the Review of the Working of the Constitution (NCRWC) stated that −Any individual accused of any heinous crime such as assassination, rape, smuggling, dacoit, etc. should be permanently dismissed from contesting any political office.' The Second Administrative Reforms Commission (2008) also suggested that Section 8 of the People's Act, 1951 be amended. It says, "Section 8 of the People's Representation Act, 1951 must be modified to disqualify all individuals charged with serious and heinous crimes and corruption, with the amendment proposed by the Election Commission. As seen from the above, all suggestions on maintaining individuals with criminal instances out of the legislatures are almost unanimous. This has been elegantly indicated by the Election Commission in its 2004 recommendation, the Commission reiterates that such a move would go a long way in purifying the political institution from the impact of criminal elements and protecting the sanctity of the legislative houses. The counter-opinion to this proposition is based on the doctrine that an individual is presumed innocent until proven guilty. The Commission considers that maintaining out of the electoral arena an individual who is accused of severe criminal charges and where the Court is prima facie satisfied with his participation in the crime and subsequently framed charges would be a sensible limitation in the interests of higher government interest.' Therefore, ADR recommends that any person charged by a court of law in a criminal case for which the penalty is imprisonment for two years or more should not be permitted to contest elections, and any political party that provides such an individual a ticket should be "recorded and immediately de-recognized."

Check your Progress-3

1.How criminal elements used to affect the elections?

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10.3 History of Election Reforms

Corruption's trip through the electoral process did not happen all of a sudden, but gradually over a period of several centuries. Initially, the need for cash was felt for campaigning, and since the majority electorate were an alphabet masses, there was a need for large-scale electioneering. The applicants were hired by criminals and muscle men for assistance, assistance and finances. Generating and accumulating cash needs solid bureaucracy assistance, and this tends to include bureaucracy in the political internet as well. After a while, the criminals themselves engaged in non-billable and recognizable offenses began to participate in politics as they could readily win the elections through threats and coercion. The voting fight became a bullet fight. And what better reforms can we expect from our government when these types of individuals aspire to become part of our honorary legislature? Recognizing these shortcomings, several committees submitted a proposition to reform the electoral system in India, including the 1990 Goswami Committee on Electoral Reforms, the 1993 Vohra Committee Report, the 1998 Indrajit Gupta Committee on State Elections Funding, the 1999 Law Commission Report on Electoral Laws, the 2001 National Commission for the Review of the Workings of the Constitution, These committees first described the Election process's alarming divergence and irregularities and then recommended its application.

Check your Progress-4

1.Who described the Election process's alarming divergence?

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10.3.1 Recent Reforms

In July 2013, the Honourable Supreme Court held that it would be prohibited from contesting elections for parliamentarians and state legislators who were convicted of severe offences, meaning that they had a prison term of two years or more. The court structured section 8 of the People Act representation that permitted convicted members of Parliament and Legislative Assemblies to remain in office while their appeals travelled frequently for unlimited periods through the judiciary. Backed by assistance from nearly all political parties, the government had implemented a Parliament bill to override this decision of the Supreme Court and then passed the ill-fated Ordinance that is now withdrawn. It must be recognized that mere regular elections to parliamentary and state assemblies, and occasionally to municipalities and panchayats, are not sufficient for an efficient or vibrant democracy, as we are proud to call ourselves. There is a serious lack of the fundamental democratic foundations in India's political system. No electoral system can provide true and efficient representation for the broader aspirations of society unless the fundamental political system is in real terms undemocratic. Some of the fields of interest are: Institutionalization of political parties: need for extensive laws to control party activity, requirements for registering as a domestic or state party, de-recognition of parties. Structural and organizational reforms: party organisations–national, state and local level; internal party democracy–periodic party elections, party leadership recruitment, socialization, growth and training, party study, thinking and political planning. Party system and governance: mechanisms for making good governance tools feasible to the parties. In perspective of the above, the deeper political reforms can be described in three interrelated but different components: political party registration and de-registration, inner political party

democracy, and extensive legislation to regulate and operate political parties. These are discussed below and are provided with suggestions.

Check your Progress-5

1.What is the need in India's political system?

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10.3.2 Nota

This option was introduced in India's electronic voting machines following the Supreme Court's landmark judgement in PUCL vs. UOI.9 The right to vote in India is a statutory right. The opposite of this, i.e. the right not to vote, was asserted by PUCL to vide a petition to the Supreme Court while preserving secrecy. Since the petition submitted by PUCL (Peoples Union for Civil Liberties) was a Writ Petition pursuant to Article 32, the Court had to judge its sustainability on the grounds that the right to vote was deemed to be a statutory right. The Court ruled that while voting rights are a statutory right, the elector's choice is a facet of freedom of expression under Art. 19(1) (a). Fundamental Right to liberty of speech and expression pursuant to 19(1) (a) and S. 79 the People's Representation Act is infringed if the right to vote is refused. The Court therefore ruled that the Writ Petition could be maintained. The primary benefit of incorporating NOTA is that it upholds and recognizes citizens right not to cast a ballot while preserving privacy during such abstinence. The real spirit of democracy lies in the citizen's right to be able to periodically select their representatives. Obviously the ends of democracy can only be achieved when this right is exercised by the majority of people. At the same time, however, it must be ensured that citizens are not compelled to choose the best from the worst which is the case more often than not, unfortunately. That's precisely what NOTA is trying to do. The driving force behind the Supreme Court's judgment in PUCL vs. UOI was the reality that the implementation of NOTA in EVMs would force political parties to project applicants in the multiple

constituencies with a so-called "clean record." NOTA is a strong tool in the hands of electors who may choose to use it if they are unhappy with the performance of the applicants. Consequently, this has the impact of continuous pressure on the political parties to guarantee that only skilled and appropriate applicants in the elections represent their political party. The result of this whole process: India's much cleaner political future. At least this was the whole concept behind the Supreme Court passing a NOTA judgment. As mentioned in the previous chapter, the benefits of NOTA are obviously numerous. But it's a step forward in attaining the ends of democracy to scale down the tone line of advantages.

10.4 ELECTORAL REFORMS IN INDIA

10.4.1 Proactive Role Of Election Commission

One of a democratic polity's most significant characteristics is periodic elections. Elections are the hallmark of democracy. This is the medium by which people's attitudes, values and views towards their political setting are reflected. Elections give a government to individuals and the state has the constitutional right to rule those who elect it. Elections are the key democratic process in which politicians are selected and controlled. Elections provide a chance for individuals from moment to time to express their belief in government and alter it when the need arises. Elections symbolize people's sovereignty and legitimize the government's power. Free and honest elections are therefore essential to democracy's achievement. India has chosen parliamentary democracy in the continuation of the British heritage. The nation has experienced legislative bodies' elections at both domestic and state levels since 1952. So many snags and stultifying factors hamstrung the electoral system in India. The anti-social components are encouraged by such diseases to jump into the electoral fray. Until the fourth general election (1967), our scheme was mainly free of any significant defect. For the first time, the distortions in its work appeared in the fifth general election (1971), and these were multiplied in successive elections, particularly in those held in the 1980s and later. Dash 2006. The Election Commission has frequently voiced its concern and anxiety to remove barriers to free and fair polling. It had produced a number of suggestions and constantly reminded the

government of the need to change current legislation in order to monitor electoral malpractice. The 1975 Tarkunde Committee Report, the 1990 Goswami Committee Report, the 1998 guidelines of the Election Commission and the 1998 Indrajit Gupta Committee Report generated an extensive collection of proposals on electoral reforms. The Election Commission has taken a number of fresh initiatives to clean up India's electoral system. Here we are discussing the important among these.

10.4.2 Model Code Of Conduct

The Indian election commission is considered to be the guardian of free and fair elections. For political parties and candidates, the EC issues a Model Code of Conduct for free and fair behaviour of elections in each election. At the moment of the fifth general election, held in 1971, the Commission distributed its first code. From moment to time, the Code has been amended. The Code of Conduct sets out rules on how to behaviour political parties and candidates during elections. Under the Code, provision was created that, from the moment the elections were announced by the Commission, ministers and other officials could not announce any financial grant, lay the foundation stones of scheme projects of any kind, make promises of road construction, make any appointments in governmental and public undertakings that could have the impact of affecting voters in favour of t Recently, no fresh concessions have been proposed by the Punjab government, which announced the budget for 2008-2009, because the Code of Conduct was in force for the Panchayat elections in May 2008. The Punjab Congress, however, raised severe accusations against the governing SAD-BJP alliance for misuse of public cars and making certain announcements, in violation of the Model Code of Conduct. The Tribune: 2008] Despite the political parties' recognition of the Code of Conduct, instances of its infringement have been increasing. It is a general complaint that at election moment the party in authority misuses the formal equipment to further their candidates' electoral opportunities. Misuse of formal equipment takes various forms, such as problem of public exchange advertisements, misuse of official mass media during the election period for partisan coverage of political news and advertising about their accomplishments, misuse of government transport including aircraft /

helicopter, cars. For instance, the Commission provided rigorous directions to the political parties during the 2003 Himachal Pradesh Assembly elections to abstain from using plastic and polythene to prepare posters and advertising material. But the political parties, the Bharatiya Janata Party and the Bahujan Samaj Party in particular, set up a big amount of polythene saffron and green advertising flags. The Congress initiated an aggressive advertising campaign against Chief Minister Parkash Singh Badal and his son during the 2002 Punjab Assembly elections, accusing them of corruption and selling Punjab's interests. The Akali Dal struck back against the rulers of Congress with its own set of similarly aggressive advertisements. Prashar: The Indian Election Commission had to intervene to clarify that private complaints against individual officials were not permitted under the Model Code of Conduct, although criticism of policy choices and results was allowed. The EC also held Narendra Modi and Sonia Gandhi accountable for breaching the Model Code of Conduct by making controversial remarks in the 2007 Gujarat Assembly elections during the election campaign. The EC voiced its grave disappointment at the two leaders' breach and anticipated both of them to adhere in letter and spirit to the Code's salutary clauses in the future. Financial Express: 2007] Despite the EC's genuine attempts to verify malpractice, India witnesses a breach of the Model Code of Conduct in each and every election.

10.4.3 Registration Of Political Parties

A key characteristic of parliamentary democracy is the party system. However, the Indian Constitution does not contain a direct mention of political parties. In 1989, the statutory law on political party registration was implemented, which was quite liberal. As a consequence, a big number of mushrooming non-serious parties were recorded with the Commission. After their registration, many of them did not contest elections at all. It caused the electorate to be confused as to who to vote. The EC had to take some strict measures to eliminate party mushrooming. The Commission now lists a party that has as participants at least 100 registered electors and also charges a nominal processing fee of Rs 10,000 to cover the administrative costs it will have to incur in correspondence with the parties after their registration. The Commission

needs them to hold their organizational elections frequently in accordance with their constitutions to guarantee that registered political parties exercise democracy in their inner functioning. Effective outcomes have been shown by the measures made by the Election Commission to streamline political party registration. These have reduced the administrative machinery's headache as well as the electorate's confusion.

10.4.4 Checking Criminalization Of Politics

Political CRIMINALIZATION is a serious issue in India. This threat started in Bihar and spread gradually to every corner of the country. A law was implemented in 2003 to ban criminals from being elected to the legislative bodies. People with criminal backgrounds, however, continue to hold parliamentary and state assemblies seats. This leads to a very unwanted and embarrassing scenario when lawbreakers become lawmakers and under police protection move around. Candidates with criminal instances against them were numbered 12 in Bihar and 17 in Uttar Pradesh during the 13th Lok Sabha election. It was rightly noted by J.P. Naik: "Power is men's spoiler and it is more so in a nation like India, where hungry stomachs generate power hungry leaders." The EC voiced severe concern about the introduction of anti-social and criminal people into the electoral field. It has set standards from time to time and made suggestions to the state to reduce the threat of politics criminalization. The Commission has encouraged all political parties to agree that the party ticket will not be provided to anyone with a criminal background. Also, applicants for an election are required to file an affidavit in a prescribed form declaring their criminal documents, including convictions, pending charges, and proceedings against them. The candidates' data will be disseminated to the public, as well as to the print and electronic media.

10.4.5 Limits On Poll Expenses

The EC has produced many suggestions in this respect to get rid of the increasing impact and vulgar money display during elections. The Commission has set legal boundaries on how much cash a candidate can

spend during the election campaign. Occasionally, these boundaries have been amended. The ceiling limits for Lok Sabha seats varied from Rs 10, 00,000 to Rs 25, 00,000 during the 2004 elections. The highest limit was Rs 10, 00,000 for assembly seats and the smallest limit was Rs 5, 00,000. The EC maintains an eye on the individual records of election spending produced by a candidate during the election campaign by appointing expenditure observers. The candidates are also needed to provide expenditure information within 30 days of the election results statement. Political parties, however, do not conform to the economic Lakashman Rekha (limit) as enormous sums are spent under their supporters 'garb by parties. In addition, the EC also supports holding simultaneous elections to the Lok Sabha and the Assembly and reducing the campaign period from 21 to 14 days. They feel that this will lead to a reduction in election spending. The effort to impose these measures by the Election Commission was a step in the correct direction.

10.4.6 Use Of Scientific And Technological Advancements

By taking advantage of scientific and technological advances, THE Election Commission of India has tried to bring about improvements in electoral procedures. One of the measures in this direction is the introduction of' digital voting devices' (EVMs). The Election Commission suggested that electronic voting machines be introduced with a perspective to decreasing malpractice and also improving the voting process effectiveness. The EVMs were first attempted on an experimental basis in the State of Kerala during the Elections of the Legislative Assembly in 1982. Following successful testing and lengthy legal inquiries into the technological aspects of the machines, the EC made a historic decision to go ahead and start using EVMs for some November 1998 assembly elections. 16 Assembly constituencies were chosen by the Commission in the states of Madhya Pradesh, Rajasthan and Delhi Union Territory. Goa later became the first state to effectively use EVMs in all of its districts in the June 1999 elections to the assembly. The machines were used throughout the nation in the 2004 Lok Sabha elections. It is a significant initiative made by the EC to simplify, fast and trouble-free the electoral process. It has saved cash,

solved several logistical problems and, by saving paper, has also contributed to environmental preservation. Another significant benefit of these computers is the faster and more precise counting of votes. Since every vote collected in the system is accounted for in favour of the candidate for whom it was cast, there are no invalid and wasted votes at all. In making use of information technology for effective electoral leadership and administration, the Election Commission has not lagged behind. On February 28, 1998, it introduced its own website that is, www.eci.gov.in. This is now a useful source for precise data released by the Election Commission on elections, election regulations, manuals and handbooks. The Commission's Secretariat was immediately linked with nearly 1,500 counting centres across the nation during the 1999 Lok Sabha elections. From those counting centres, the round-wise counting findings were fed into the Commission's website. These findings were accessible worldwide immediately. The media— both digital and print— were urged and supplied with equipment to report on the real behaviour of the survey and counting in order to bring as much transparency as possible to the electoral process. The Commission had taken several innovative and efficient measures to generate awareness among voters in collaboration with the state-owned press (Doordarshan and All India Radio). For their election campaign, all recognized domestic and state parties were permitted free access to state-owned media on a wide scale. The complete free time assigned to political parties during the 2004 general election was 122 hours. The Election Commission took a bold step to prevent electoral impersonation at the time of voting and to eliminate bogus and fictitious entries in electoral rolls. In 1998, a national program for the' computerization' of electoral rolls was chosen to take place. The printed electoral rolls as well as CDs containing these rolls are accessible for domestic sale to the general public, and state parties are supplied free of charge after each electoral roll revision. The electoral rolls of the entire country can be found on its website. In the 2008 elections, Karnataka became the first state to prepare electoral rolls with voters 'pictures. State EC created the electoral roll management software called' STEERS' which is State Enhanced Electoral Roll System. [The Hindu: 2008] to avoid duplication of lists of electors and to eliminate incorrect addresses. By the 2009 general election, the EC

decided to implement picture electoral rolls to properly verify voters across the nation. In an effort to enhance electoral roll precision and avoid electoral fraud, the Election Commission instructed all voters to issue picture identification cards for electors in August 1993. In 1978, in the case of elections to the Sikkim Legislative Assembly, a modest attempt was made to introduce the photo identity cards at the instance of the then Chief Election Commissioner, S.L. Shakdher. It was compulsory for individuals with EPICs to furnish it at the moment of voting during the 2004 Assembly elections. People who did not have EPICs had to take proof of identity as prescribed by the EC at the moment of voting During the 2007 elections to the Punjab Assembly, Parneet Kaur could not cast her ballot until late evening because she had misplaced her voting card. The Election Commission's allocation of EPICs was a significant move towards reducing electoral abuse. Only real voters with the issuance of voter identification cards were mentioned in the rolls.

10.5 LET'S SUM UP

Despite the SC's landmark judgments and the ECI's attempts, the scheme remains susceptible to mischief. There is a need to reinforce the EC to punish errant politicians and defiant political parties to stamp out these tendencies. Maintaining the sanctity of the electoral process requires a multi-pronged approach, including the elimination of criminal elements and moneybags in politics, the disposal of poll petitions, the introduction of internal democracy and financial transparency in political party functioning. Free and honest method of election is a basis for good democracy. India's Democratic future relies on a good political setting, and it is inevitable to safeguard it from free and fair elections. Criminals must be limited in election registration at any price. However, a number of boards and committees have examined the issue of politics criminalization; the issue is growing day by day. By amending the legislation, the parliament made attempts, but the practice proved futile. The Indian Supreme Court has also made attempts to maintain a check on the evil of criminalizing politics, but the issue remains unsurpassed, although it did not make any radical suggestions, whatever suggestions

are not acceptable to politicians. There is a broad gulf in today's contemporary political age between preaching and exercise. In fact, the roots of the problem lie in the country's political system. There is a lack of political will to tackle the issue. Election, as stated previously, is a soul of Democracy that not only nourishes the common person's faith in democratic values, but also protects the country from the danger of authoritarian politics. The weak electoral system is not only a major threat to national integration, but also to India's Democratic Consolidation. This glorious country can only be saved from political decay by radical electoral reforms. Elections' sanctity and purity must be shielded at all costs, as India's future depends on it. Over the years, a number of laudable electoral reforms have been carried out by the Election Commission to strengthen democracy and improve the fairness of elections. These reforms are admirable and quite sufficient. Under the EC's aegis, the election machine undoubtedly deserves credit for free and fair conduct of elections. Many vices still plague our system, though. Political parties use foul techniques and corrupt procedures to win votes. Such diseases promote entry into the electoral fray of the anti-social components. The issue is not the absence of legislation, but the absence of rigorous enforcement. There is a need to strengthen the EC's hands and give it more legal and institutional powers to stamp out these unfair tendencies. The EC must have the power to punish the misguided politicians who transgress and violate the electoral laws. Our Election Commission is making every effort to eradicate the virus of malpractice. Reinforcing and enhancing the functioning of democracy through free and honest elections is hopeful. It has always developed better systems and is using sophisticated science techniques to maintain the Indian elections' high reputation. However, reform success will rely mainly on political parties' willingness to adhere to and enforce such reforms. No replacement for pushing through reforms is an independent media and an enlightened public opinion. If individuals vote in accordance with their beliefs and punish those who break the laws, corrupt practices will vanish automatically. And this will go a long way towards making it possible for democracy to thrive and develop to its complete potential.

10.6 KEYWORDS

6. Criminalization: The action of turning an activity into a criminal offence by making it illegal.

7. Impersonation: An act of pretending to be another person for the purpose of entertainment or fraud.

8. Consolidation: The action or process of making something stronger or more solid.

9. Malpractice: Improper, illegal, or negligent professional behaviour.

10.7 QUESTIONS FOR REVIEW

1. The EC must have the power to punish?

2. What does political parties use to win votes?

3. What did EC do to avoid electoral fraud?

4. What is the hallmark of democracy?

5. Describe deeper political reforms?

10.8 SUGGESTED READINGS AND REFERENCES

1. https://adrindia.org/sites/default/files/Electoral_Reforms_in_India_Issues_and_Reform
2. http://lawcommissionofindia.nic.in/reports/Report255
3. https://en.wikipedia.org/wiki/Electoral_reform_in_India
4. https://www.mainstreamweekly.net/article1049.html

10.9 ANSWERS TO CHECK YOUR PROGRESS

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

Rs. 3426 crores were spent by the nation to conduct Lok Sabha polls.

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

A large number of candidates and political parties often complain about unrealistically low limitations and are looking for a revision.

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

These criminal elements used to affect the elections from outside earlier, but now by contesting the elections themselves they have become component of the political system.

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

2001 National Commission for the Review of the Workings of the Constitution, these committees first described the Election process's alarming divergence.

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

There is a serious need of the fundamental democratic foundations in India's political system.

UNIT–11: EVOLUTION AND DEVELOPMENT OF DEMOCRATIC DECENTRALIZATION IN INDIA

STRUCTURE

11.0 OBJECTIVES

After learning this unit based on "Evolution and Development of Democratic Decentralization in India", you can gain knowledge of about the following important topics:

- To know about the Decentralization: The concept.
- To discuss the Decentralization after Independence.
- To discuss the Powers and Functions of Panchayati Raj Institutions.

11.1 INTRODUCTION

The dawn of 21stcentury is marked by decentralized governance both as a strategy and philosophy of bringing about reforms and changes in

democracies. These changes have led to such virtues of transparency, responsiveness and accountability and have ensured good governance. Today, decentralization and democracy are the most important themes of the development discourse. In the current context of rapid social change and development activities, ED's bureaucratisation and decentralization are much more appropriate to deal with the contemporary trends of globalization, liberalization and privatization. In this scenario, this unit attempts to discuss conceptual elements and the importance of democratic decentralization as an institutional mechanism for governing the rural and urban areas of society. Since 1959, the work of the Panchayati Raj institutions has been presented as a success in a few states and in most states as a failure. This means that the system has known the ups and downs. Although the notion of Panchayati Raj is a state subject, each state is fundamentally free to develop its own system based on local needs, administrative conveniences and experiences. We have a variety of Panchayati Raj institutions with all kinds of combinations and permutations with the result. Indeed, their success or failure depends on their structure, their powers, their leadership functions, and their anti-state control finances. Changes in various parts of these organs have taken place in a large country like India, depending on the changing circumstances. Even though all the activities of the Panchayati Raj institutions are vast, their resource base is very low.As things stand today, the local economy is very weak, indicating that there is very limited scope for Panchayati Raj institutions to impose taxes on their jurisdiction. PanchayatiRaj's introduction was hailed as one of independent India's most important political innovations. It was also regarded as a revolutionary step. Panchayati Raj is a system of local self-government where the responsibility for development lies with the people. It is also an institutional arrangement system for achieving rural development through initiative and participation by people. Panchayati Raj has a three-tier structure of democratic institutions at district, block and village level, namely ZilaParishad, Panchayat Samiti, and Village Panchayats. These institutions are considered a training ground for democracy and provide the masses with political education. These institutions were established in 1959 based on decentralization philosophy and gram swaraj. Rural development plans and programs are

implemented at this level in order to directly increase the community's fruits of development. While distributing powers between the Union and the States, Article 40 of the Constitution of India (Directive Principles of State Policy) conferred on local authorities and Panchayati Raj as a subject with the States, but did not further elaborate on the relations between the States and this third level of government gave Panchayati Raj another lease of life in the context of the project for community development. The 1957 Balwantrai Mehta Committee Report highlighted the role of elected Panchayat Samitis as the basic unit of democratic decentralization at the level of community development block / tehsil. For the ZilaParishads, consisting of panchayat samiti heads chaired by the Collector, only an advisory role was envisaged. However, the legislation that followed the report of the Committee essentially continued the earlier Provincial Governments enactments to reiterate the three-tiered structure and provide for the overriding powers of the State Government acting through the Collector. In accordance with the 73rdand 74thamendments, all states have enacted new laws or incorporated changes in their existing laws. In the recent past, through the 73rdand 74thconstitutional amendments, there has been a conscious effort to strengthen and revitalize local self-governance in India. The landmark law aimed at greater clarity between states and local governments in terms of the transfer of adequate powers and resources to enable local authorities to function as vibrant local government institutions.

Check your Progress-1

1.What is the dawn of 21stcentury is marked by?

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11.2 DECENTRALIZATION

There are two types of Decentralization in India. They are as follows- Decentralization in Rural Areas &Decentralization in Urban Areas. We will discuss about Decentralization in Rural area in this topic. In a

context of centralism, Panchayati Raj was a rural development strategy that was then seen as a historical necessity. The national movement's moral weight required the peasantry's aspirations to better living conditions to be fulfilled. The government that came to power launched land reforms and institutional change to end the nefarious traditions of religion-and caste-based discrimination and domination. This required strong central and state governments 'willingness to oppose local interests, be they landlords or' superior castes.' In addition, land income had to be reduced and since income levels were low and highly skewed between individuals and regions, it was necessary to rely on the spread of indirect taxes rather than the narrow incidence of direct taxes, which naturally resulted in a centralized financial system. These constraints, together with others related to the Raj's legacy, country division, and enthusiasm for a planned economy, shaped centralism. This centralism, however, was not conducive to local bodies' status growth.

Now we will discuss about Decentralization in Urban Areas in this topic. The 74thConstitutional Amendment Act (74thCAA) was a milestone in urban India as it gave constitutional validity to urban local bodies (ULBs), codified their constitutional procedure and defined their structures, functions and capacity to generate resources. The act aimed at greater clarity between states and local urban governments in terms of the transfer of adequate powers, authorities and resources to enable the latter to function as vibrant local self-governance institutions. India's 11thFinance Commission (EFC) took the first constructive steps in Indian-based measurement of decentralization. Decentralization as envisaged in the 74thCAA was taken as an important criterion that commanded 20% weight in estimating the amount of EFC grants for municipal bodies to the states.

Check your Progress-2

1. What are the main two types of Decentralization?

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11.2.1 The Concept

The Latin root of the word "Decentralization" conveys the meaning 'away from the centre' (Mac Mohan, 1961), as well as 'the transfer of authority from a higher level of government to a lower level (White. D Leonord, 1959).'Decentralization can take any of these four forms MeenakshiSundaram, 1994.

i. DE concentration:Transfer to lower levels a certain amount of administrative authority.
ii. Delegation:Specifically transfer of responsibility. Defined functions for organizations outside the regular bureaucratic structure and controlled indirectly by the central government.
iii. Devolution:Creation and strengthening of a sub-national unit of governmental activities substantially beyond the control of the central government.
iv. Privatization:To transfer all functional responsibilities to government-independent NGOs.

Therefore, the word 'decentralization' refers to the transfer of powers resulting from the establishment of law-separated bodies from the national centre to local representatives is MeenakshiSundaram, 1994.

As a matter of reality, the history of decentralization in India is the history of evolution of the country's Panchayati Raj system. There was no specific desire for economic and social development during the era of British domination of India except for those operations needed to safeguard the law. Of course, the problem of decentralization was not on the rulers' agenda, although local government institutions were formed according to law in the form of Union boards, district boards, etc. It became apparent in the course of the freedom movement that the nationhood of India would develop in a democratic political and institutional environment after independence. Some rulers thought that in Western nations' mould it should be a representative democracy. But the development discourse of Mahatma Gandhi was based on a participatory village-based democracy integrated in his Panchayati Raj vision. Gandhi championed a democratic polity that would be founded in thousands of

village self-governing societies. Gandhi thought that India's true growth could take place only through its Gram Swaraj political system where the government of the state would exercise only those powers that are not within the scope and competence of the lesser levels of participatory governance organisations. The section on State Policy Directive Principles (Article 40) included rural local authorities in the form of Panchayats. It indicated that countries should take measures to organize Panchayats village and provide them with the powers and power needed to allow them to operate as self-government units. Immediately after independence and especially after the launch of the first five-year plan, on the one hand, the then Government of India launched massive development projects and, on the other, Community Development (CD) and National Rural Development Services programs. With the establishment of the Balwant Rai Mehta Committee (created to explore the effect of the CD Program and the National Extension Service) in 1957, Panchayats' working mechanics and their importance in local governance got a major boost. The committee observed that the development of the country cannot advance even at the lesser levels of government without the co-location of accountability and authority. The goals of Community development can only materialize if the Community knows its issues, fulfils its duties, exercises the required powers through selected officials and retains steady and smart vigilance over local government. The Committee also noted that the personality of the development programs should shift from "Government Program with People's Participation in People's Program with Governments Participation." The Mehta Committee's suggestions began the journey toward political and administrative decentralization. All countries have implemented Panchayat Acts and throughout India by 1960 Panchayats have been formed. But these measures were hardly able to alter ground realities as regulations were weak and inexplicable. Local authorities resisted the transfer of tasks and powers, there were no periodic elections to Panchayati organizations. During the mid-1970s, the nation witnessed important political changes, with which the Panchayati Raj System resurrection and strengthening process regained momentum. To implement multiple development programs, many state governments delegated officials and schematic resources to the Panchayats. But in the

lack of adequate laws defining the role, functions, responsibilities, officials and powers, the Panchayats have not been sufficiently effective to guarantee people's de facto participation in development programmes. In most cases, Panchayats became nothing more than the agency of the State Government to implement a few programs and to provide a few services. Under-performance in poverty alleviation, growth, and even programs of social assistance to reach and benefit target groups (i.e. rural poor) disconcerted decision-makers within and outside government. Panchayats' demands for appropriate empowerment to move them into efficient self-governments began to gain momentum. It was asserted that Article 40 regulations were not sufficient to guarantee the growth of the Panchayats village in the manner it was desired. The countries had to be bound by some constitutional mandate instead of leaving the problem completely at their discretion. This resulted to the Constitution's 73rdamendment in 1992, which took impact on April 24, 1993. This landmark amendment to the Constitution declared the Panchayats to be units of self-government, directed the States to delegate functions to 29 subjects directly related to the social and economic development of the area, made provisions for the sharing of resources between the Panchayati Raj Institutions (PRIs) and Governments, regular elections to local authorities, reservation of socially disadvantaged classes High significance has been provided to the establishment of "Gram Sabha." A required requirement has been created to consult with the Gram Sabha on all significant issues including the planning and execution of development programmes. The amendment paved the way for the decentralization of governance to a large extent and transformed the Panchayats village as self-government organizations.

Check your Progress-3

1.What did Gandhi think that India's true growth could take place only through?

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11.2.2 In Vedic Era

India's local government is tracing it's on back to the hoary past. The Vedas (Rig) reveal that a corporate life was led by the ancient Hindus. J ayswal (1955), a historian from the Vedas found that "popular assemblies and institutions expressed national life and activities in the earliest recorded times." Another scholar of history also referred to the nature and composition of these assemblies and institutions and listed several terms such as Kula, Gana, jati, Puja, Vrata,Sreni, Raigama,Sumana, Parisat and Carana (Mookerji, 1958).The village's existence is also referred to by the epics and other scriptures such as the Samities and the Upanishads and Jatakas. There were two types of villages- GhoshandGram, once administered by an official, known asGramini, according to Ramayana and Mahabharata. He had to work on the advice of the village elders known as Gram Vri.dhas, Samiti, Sabha orPanchyat, although nominated by the king (Mookerji. R 1958).Accordingly, research by a number of Indian historians has shown that a well-settled and more or less highly developed system of local government flourished there, enjoyed a flurry of splendid isolation, and the central government on its part did not unduly bother with local affairs in the year Bhatnagar S, 1978. Village Panchayats had its roots in the ancient past and were the backbone of the social and economic Indian rural system (Hansraj, 1992).

11.2.3 Re-Emergence Of Decentralization

The traditional "Village Panchayat" was about to vanish by the beginning of the nineteenth century, if a few existed in remote areas had practically no say in administration matters.In nearly all walks of life, the period after 1830 saw a revolutionary change sweep the country. Communication means, a network of roads, railways, and telegraphs were laid out and the advancement of education in English was spread across the country. The imperial government also realized that the basic amenities of life had to be provided. The post-Mutiny period witnessed the government being overtaken by acute financial constraints. In order to alleviate the fiscal hardship, the government developed the policy of giving the provinces more and more powers (Bhatnagar, 1978).The most

important step in this regard was taken in 1882 by Lord Ripon's government's historic resolution. During the colonial· regime, Lord Ripon was the first to initiate what might be called the discourse of decentralization. His resolution (1882) was for a large network of local self-governing bodies to be decentralized. He, though for (a) training Indians in governance art (b) enabling them to learn from experience, and (c) opening up avenues for educated people's political participation, urged the early establishment of local boards not only in urban areas but also in rural areas who is Datta, 1995. But his proposals remained in cold storage because they were considered too radical to implement by Lord Ripon's successor. Although it came to establishing local boards, they failed to give any semblance of democratic institutions. What Ripon wanted to secure was not a presentation of the people of a democratic European type, but the training of the best, the most intelligent and the most influential was to take an interest and an active part in the administration. The goal of Ripon was to advance and promote the people's political and popular education and induce the best and smartest men. But the dream of Ripon remained largely incomplete. Decentralization or local self-government has not become a political education agency that is active and stimulating. In principle, the government of India accepted the Royal Commission's recommendations and introduced "Panchayat" in a few selected villages. Although the scheme did not succeed the idea of Panchayat village, it gained the imagination of government and people. In 1935, a new era of hope was looked into; efforts were made not only to democratize the Panchayat village constitution and its functioning.

11.2.4 Gandhi On Democratic Decentralization

The notion of Gandhi's decentralization is not isolated, but influenced by other concepts and thoughts. Gandhi's complex and dynamic personality consisted of an original mind encompassing a wide range of human affairs issues and problems. He preached non-violence, stressed the moral aspects of life, fought for freedom and equality for the poor, opposed the control of individuals by the state, pleaded for swaraj, explained the concept of "trusteeship" for the welfare of all, opposed to great inducements.With the emergence of Mahatma Gandhi on the

nationalist movement, the search for higher independence for rural local bodies gained conceptual power as he maintained that domestic growth was feasible only through independent rural organisation that he wanted to build on the lines of the old Panchayat scheme in India. On February 14, 1946, addressing a missionary continence in Madras, Gandhi said India was living in its villages and pleading for the allocation of authority among the rural masses in India. At the gross root level, he called Panchayati Raj, he insisted on the democracy and sovereignty of the individuals. Gandhi felt that Panchayats' greater power was better for the people (Gandhi, M.K. 1947). For Gandhi, decentralization was essential for the real inaction of ideal democracy, in which everyone can participate in the decision-making and implementation process Gandhi'sconcept of decentralization implies the fundamental principle of self-sufficiency with regard to the basic needs of men and the absence of exploitation. Gandhi advocates that political and economic power be decentralized. He was thinking of a village government that was a five-person Panchayat, male and female-elected annually by the villagers. This Panchayat would have executive and judicial legislative powers where ideal democracy is found on the grounds of individual powers where ideal democracy is found on the grounds of individual freedom. He holds that by improving the industries of farming, village and cottage, khadi, handlooms, etc. Indian masses would elevate their financial status and thus establish 'gram swaraj'.He emphasized 'Swaraj' from below saying 'Independence must begin at bottom', thus, every village will be a republic (Gandhi, M.K., 1933-55). Gandhi, I pleaded for decentralization as an essential precondition for the relation of true democracy to enable each individual to participate in the decision making and implementation process. His concept of self-sufficient village inspired most Indian leaders, both economically and politically. Thus, Panchayats were developed by non-official agencies under the constructive programme of Gandhi, and these bodies become units of national movement.As a means and an end in itself, Gandhi preached non-violence. Nonviolence is the fundamental principle of decentralization in politics and economics. Nonviolence to Gandhi was the kingdom of heaven, and everything will be added to us if we seek it. He also said that before swaraj reaches ahimsa for him. Ahimsa must be put in front of each

other while it is being professed. Not only does Ahimsa refrain from murdering any life out of rage or selfish intent, it also implies avoiding injustice in thought, word, or deed. Gandhi believed firmly that exploitation was the essence of violence because it hurt individuals' character. He thought that when energy was focused in a single body lying the state, exploitation became a truth. The logical link signified decentralization of political power and becomes very apparent about his notation of ahinsa. On the one hand, Gandhi was ahinsa's leading champion, on the other, he held the view that the state represented violence in an undiluted and organized manner. Consequently, ahimsa perseverance or nonviolence was the utmost impotence. Violence must be prevented and the accumulation of power must be prevented by decentralizing authority him the government in order to eliminate violence. Gandhi looked'' on a rise in government authority with the biggest fear, because while obviously doing good by minimizing exploitation, by destroying individuality that lies at the core of all advancement, it does the biggest harm to humanity. Destroying individuality implies exploitation and violence. Therefore, the decentralization of political power must become an end to a progressive and welfare-oriented culture in order to prevent violence and guarantee full flowering of the human character. The issue arises as to whether the modem state could secure this kind of non-violence visualized by Gandhi in a sensible way. Gandhi wasn't sure of it himself. He believed that "a government can't succeed in becoming completely non-violent because it represents all the individuals. I don't conceive of such a golden age today, but I believe in the possibility of a predominantly non-violent society, and I'm working for it.

According to Gandhi, the state's political power wasn't an end in itself, but one of the ways in which people could improve their lives. By combining all mental and moral growth, Gandhi saw human progress in human happiness, the greatest good of all mom than the greatest good of the greatest number. Gandhi believed that to the extent that the ends were pure, the means would be pure to that extent. He always said the means were right for the ends to take care of themselves. His goal of ensuring human happiness with complete mental and moral development with the

biggest good of all was a noble goal in itself. Gandhi thought sincerely that the government represented a force-based organisation. It expressed its coercive authority in society through individual compulsion and exploitation. Gandhi held that any government intervention that was not voluntary in nature was immoral as his plan of thinking was considered him the touchstone of ethical property.

Check your Progress-4

1. According to Gandhi, why decentralization was essential?

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11.3 DECENTRALIZATION AFTER INDEPENDENCE

Unfortunately, panchayats were not referred to by the Draft Commission in 1948. After much thought and debate, K.Santhanam settled the problem through a move. Article 40 of the Constitution states that' the state shall take steps to organize and endow the Panchayats with the power and authority necessary to enable them to function as units of self-government (Bhatnagar S, 1978). The inclusion of the' Panchayats' in the Indian constitution gave new life and almost half of the Indian villages were covered by 1954.The first stage of village self-government in the form of Panchayati Raj Institutions arose in India in the mid-20th century not as part of the Indian Constitution's Art 40 but as a sequel to the Balwantray Mehta Committee's suggestions.Balwantray Mehta Committee: The Balwantray Mehta Study Team was assigned in January 1957 to assess the functioning of the Community Development Program (CDP) and the National Extension Service (NES) and presented its report on 24 November 1957 with the suggestion of a three-tier Panchayat system, namely the village of Panchayat composed of directly elected adult member. The primary focus of the study of the B Mehta Committee

was on democratic decentralization, an effort to move decision-making closer to individuals, promote people's involvement, and place bureaucracy under local popular control (Mehta Report Vol-I). The B Mehta Committee Report was adopted by India's govt in 1958 and became operational in various countries according to the structure and pattern appropriate to each state's circumstances. The first to embrace the Panchayat Raj type of government in 1959 was Rajasthan and Andhra Pradesh. Evaluations of Panchayat Raj had also usually failed to supply the products to rural individuals despite many accomplishments in Rajasthan and Andhra Pradesh. The primary causes of the failure were structural inadequacy, subsidiary legislation to curtail elected bodies 'decision-making authority, merger source of revenue and the role of bureaucracy. A sound democratic foundation and adequate administrative nourishment were also refused to the Panchayat Raj organizations during the B.Mehta era. The transfer of administrative and economic powers to the grassroots stage was just a slogan. Iqbal Narain (1987) notes that'' Nothing has harmed Panchayat Raj more than the attempt to pass them institutionally through the launch of a target-oriented development program (Narain Iqbal, 1987). Ashok mehta identified the ups and downs of Panchayat's first phase in I the period of ascension (1959-64) (ii) the period of stagnation (1965-69) (iii) the period of decline (1969-77) (Datta P, 1995). Referring to the study of the Balvantray Mehta Committee, government governments decided to appoint another commission to review the functioning of their own states'Panchayati Raj institutions. States such as Maharashtra, Rajasthan, Himachal Pradesh and Uttar Pradesh designated as V.P.Naik Committee, 1961, Sadiq Ali, multiple committees with regard to their states Committee, 1964, Committee Hardayal Singh, 1965, and Committee Ram Murti, 1965. These committees proposed placing the zillaparishad at the top of the Panchayat Raj Institutions scheme, and the neighbourhood should be the key component of the development process. Panchayats 'Second Phase: Panchayats' revamping was observed with the 1977 shift in Indian political situation. The Ashok Mehta Committee was named by the New Janata Government to propose to revitalize Panchayat Raj institutions. The commission presented its report in August 1978, which launched Panchayats' second stage with

emphasis on periodic election, the transfer of more powers to local authorities. Soon after that, the Panchayati Raj Institutions were injected with a fresh life by three countries, West Bengal, Karnataka and Kerala, and West Bengal emerged effectively.

Important feature of the Ashok Mehta Committee Report: the committee's most significant results were the functional need to decentralize administration closer to the individuals out of 132 suggestions. The commission noted that there was an inevitable need for decentralized administration where millions of individuals were engaged and many of the poor were attempted to be improved. A Mehta committee report's most significant suggestions were to implement a two-tier Panchayat scheme instead of a current three-tier Panchayat system. The ZillaParishad sought to become the executive body; a Mandal Panchayat would be below that stage as a sign of decentralization. The provision for "open involvement of political parties in Panchayati Raj affairs" was another significant recommendation (Y asin M., 1990). Evaluation of Government majority opposed the concept of party-based election and Mandal Panchayat. At a conference on May 19, 1979, the chief ministers decided to appoint a drafting committee with a number of chief ministers and ministers of the Union as their head. Some of the principles taken by the chief ministers were: it was possible to continue the current three-tier system, the term of the office should be five years. The proposals recommended by the Ashok Mehta Committee were not sufficient in making decentralization a living reality for the complete transfer of power to the local bodies. In the true context of the word, the Panchayati Raj Institutions did not meet the features of 'village-government.' The suggestion of the A Mehta Committee to abolish the block-level body, the Panchayat Samiti, aroused outrage among the individuals. As the government of Janata was created (1977-80), the commission enjoyed low credibility with the government of Congress. Other countries either lagged behind with marginal accomplishments of staying away from the movements following the change of government. The most distinguishing characteristic of this second stage of Panchayats in West Bengal is the leadership's social composition that replaces the ancient patterned rural leadership through

election. The VKRV Rao Committee of 1985 highlighted the decentralization of the district! And the entire development department should be under ZillaParishad's control and oversight. These departments' budgets, non-plan and plan, and funds should be transmitted to ZillaParishad for other different systems implemented at or below the district level. L.M Singhvi Committee, 1986, felt that since individuals cannot participate in development processes and decision-making through bureaucratic framework and devolutionary policies, the Panchayati Raj Institutions should be seen as self-government institutions that naturally involve people in decision-making and growth.Third Phase of Panchayats: The third stage of Panchayat creation in India started after the 73rdconstitutional amendment law in 1992. Decentralization was concerned with improving the scheduling process technically. The government of Rajiv Gandhi developed a Panchayat bill model as a "regulated decentralization" in 1989. But that bill was not enacted in Parliament's upper house. This bill was also submitted by the National Front Government in September 1990, but the government quickly came out of control. Lastly, under the government of PV Narasimha Rao, the bill was reintroduced in Parliament and enacted in December 1992, but was approved on 23 April 1993 by the President of India and brought into law on 24 April 1993. Panchayat raj had several phases to go through. The First Five Year Plan failed to actively involve and involve individuals in the Plan procedures, which included execution and tracking of plan formulation. The Second Five Year Plan tried to cover the whole landscape with National Extensive Service Blocks through the organizations of Block Development Officers, Assistant Development Officers, Village Level Workers, as well as nominated officials of that area's village panchayats and some other famous organizations such as cooperative societies. However, the plan failed to achieve decentralization satisfactorily. Consequently, multiple officials formed committees to advise the Centre on multiple elements of decentralization. In 1956, the National Development Council assigned a committee under Balwant Rai Mehta, which presented its 1957 report recommending:A 3-tier structure composed of ZilaParishad at the district level, Panchayat Samiti at the block level and GramPanchayat at the village level, at least in part to provide the Gandhian objective of direct

political participation.The next significant shift in India's panchayat scheme came in 1992 when the Panchayati Raj Act (73rd Amendment) was passed. A main motive for this law was the conviction that local authorities could be better positioned to define and react to the village's requirements than centrally appointed bureaucrats. This act was therefore a significant component of India's move toward decentralization. The primary characteristics of this law are: (a) a 3-tier Panchayati Raj scheme for all States with a population of more than 20 lakh; (b) Panchayat elections on a regular basis every 5 years; (c) reservation of seats for Scheduled Castes, Scheduled Tribes and Women (not less than one-third of seats); (d) appointment of the State Finance Commission to make suggestions with regard to the Panchayats ' economic power. Therefore, in theory, adequate power was provided to panchayats to operate as organizations of self-governance and social justice assistance. This amendment has had several beneficial impacts, some of which have been mentioned above. There is also proof, however, that deeply ingrained voting-trading structures are preserved by extra-political means. This may be attributed to the reality that Gram Sabhas was not adequately empowered and reinforced to guarantee higher involvement and transparency of people in the functioning of Panchayats as envisaged in the Panchayat Act.

Check your Progress-5

1.Who highlighted the decentralization of the district?

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11.4 POWERS AND FUNCTIONS OF PANCHAYATI RAJ INSTITUTIONS

Article 243 (G) of the 73rd constitution amendment has enabled state govt. to provide necessary powers and functions to the Panchayati Raj

Institutions (a) to function as institutions of local self govt and (b) Plan and implement schemes for economic development and social justice including those 29 subjects enlisted in XI schedule-

1. Agriculture, including agricultural extensions.
2. Land. Improvement, implementation of land reforms, land consolidation and soil conservation.
3. Minor irrigation, water management and water shed development.
4. Animal Husbandry, Dairying and Poultry.
5. Fisheries.
6. Social forestry and form forest.
7. Minor forest produce.
8. Small scale industries including food processing industries.
9. Khadi, village and cottage industries.
10. Rural housing.
11. Drinking Water.
12. 12; Fuel and Fodder.
13. Roads, Culverts Bridge, ferries, waterways and other means of communication.
14. Rural electrification including distribution of Electricity.
15. Non-conventional energy sources.
16. Poverty alleviation programme.
17. Education including primary and secondary schools.
18. Technical training and vocational education.
19. Adult and non-formal education.
20. Rural libraries.
21. Cultural activities.
22. Market and fairs.
23. Health and Sanitation including hospitals, primary health centres and dispensaries.
24. Family welfare.
25. Women and Child development.
26. Social welfare, including welfare of the handicapped and mentally retarded.

27. Welfare of the weaker sections and of the planned casts and planned tribes in particular.
28. The system of public distribution.
29. Maintenance of assets from the community.

Three-tier Structure of Panchayati Raj Panchayat Samiti the second or middle tier of the Panchayati Raj is Panchayat Samiti, which provides a link between Gram Panchayat and a ZilaParishad. The quality of a Panchayat Samiti additionally relies upon the populace in a Samiti region. In Panchayat Samiti, a few individuals are legitimately elected.Sarpanchs of Gram Panchayats Sarpanchs of Gram Panchayats are ex-officio individuals from Panchayat Samitis. Be that as it may, all the Sarpanchs of Gram Panchayats are not individuals from Panchayat Samitis simultaneously. The number changes from State to State and is turned every year. It implies that solitary chairpersons of some Gram Panchayats in a Samiti territory are individuals from Panchayat Samiti at once. In certain panchayats, individuals from Legislative Assemblies and Legislative Councils, just as individuals from Parliament who have a place with the Samiti territory, are co-selected as its individuals. Chairpersons of Panchayat Samitis are, chose in a roundabout way by and from among the chosen individuals thereof.
ZilaParishadZilaParishad or locale Panchayat is the highest level of the Panchayati Raj framework. This organization has some straightforwardly chosen individuals whose number contrasts from State to State as it is additionally founded on populace. Chairpersons of Panchayat Samitis are ex-officio individuals from ZilaParishads. Individuals from Parliament, Legislative Assemblies and Councils having a place with the areas are likewise designated individuals from ZilaParishads. The executive of a ZilaParishad, called Adhyaksha or President is chosen in a roundabout way by and from among the chosen individuals thereof. The bad habit director is additionally chosen also. ZilaParishad gatherings are led once per month. Extraordinary gatherings can likewise be met to talk about exceptional issues. Subject boards of trustees are likewise formed.ZilaParishad gatherings are directed once per month. Unique gatherings can likewise be assembled to talk about uncommon issues. Subject boards of trustees are additionally framed. Elements of

Panchayat All Panchayati Raj Institutions perform such works as are determined in state laws identifying with Panchayati raj. A few States recognize mandatory (obligatory) and discretionary elements of Gram Panchayats while different States don't make this differentiation. The municipal capacities identifying with sanitation, cleaning of open streets, minor water system, open toilets and latrines, essential medicinal services, inoculation, the stockpile of drinking water, developing open wells, rustic zap, social wellbeing and essential and grown-up instruction, and so forth are mandatory elements of town panchayats. The discretionary capacities rely upon the assets of the panchayats. They might possibly perform such works as tree ranch on roadsides, setting up of rearing places for steers, sorting out kid and maternity welfare, advancement of agribusiness, and so forth. After the 73rd Amendment, the extent of elements of Gram Panchayat was broadened. Such significant capacities like planning of yearly improvement plan of panchayat zone, yearly spending plan, help in normal cataclysms, and expulsion of infringement on open grounds and execution and checking of destitution lightening projects are presently expected to be performed by panchayats. Choice of recipients through Gram Sabhas, open dissemination framework, non-customary vitality source, improved Chullahs, biogas plants have likewise been given to Gram Panchayats in certain states. Elements of Panchayat Samiti Panchayat Samitis are at the centre of formative exercises.

They are going by Block Development Officers (B.D. Os). A few capacities are endowed to them like agribusiness, land improvement, watershed advancement, social and ranch ranger service, specialized and professional training, and so forth. The second sort of capacities identifies with the usage of some particular plans, plans or projects to which assets are reserved. It implies that a Panchayat Samiti needs to burn through cash just on that particular venture. The decision of area or recipients is, be that as it may, accessible to the Panchayat Samiti. Elements of ZilaParishadZilaParishad joins Panchayat Samitis inside the locale. It organizes their exercises and manages their functioning. It gets ready region designs and incorporates Samiti plans into region plans for accommodation to the State Government. ZilaParishad cares for

improvement works in the whole region. It attempts plans to improve rural creation, misuse ground water assets, expand rustic zap and dissemination and start business producing exercises, build streets and other open works. It likewise performs welfare capacities like alleviation during normal disasters and shortage, the foundation of halfway houses and poor homes, night shields, the welfare of ladies and youngsters, and so on. Moreover, ZilaParishads perform capacities endowed to them under the Central and State Government supported projects.For example, Jawaharlal RozgarYojna is a big centrally sponsored scheme for which money is directly given to the districts to undertake employment-generating activities.

11.5 LET'S SUM UP

In latest years, democratic decentralization has gained wider recognition as a strategy to deepen democracy by enabling common involvement as well as allocation-efficient development. It also has the ability to make involvement more' inclusive' by enhancing the involvement of marginalized parts of society and thus increasing resource distribution in their favour. It can also guarantee better local governance by enhancing government officials' responsibility. Decentralization provides maximization of welfare by providing products and services in accordance with people's preferences. However, realizing these prospective benefits would rely on a multitude of variables including the decentralization design taken. Our effort in this research was to review the Kerala experiment on democratic decentralization with a particular focus on the state's distinctive decentralization model. In this section, together with some suggestions for the future course of democratic decentralization in Kerala, the overview of the research and significant results are provided. There is a lengthy history of PRIs and village governance in India. They were independent of internal impact, self-governing intuitions. But in nominating a headman to the village body, family tradition, caste hierarchy and class identity played key roles. They launched contemporary form of LSGIs to exercise complete control over rural India when the British seized political power. Government at the centre made several efforts to create a PRI system network in India to better implement the central and state governments' development

systems. The 73rd and 74th amendments to the Constitution were landmarks in India's LSGI history. The amendments to the Constitution empowered LSGIs. The village ruling system's history in Kerala is nearly comparable to that in other parts of India. Kerala had caste-based administrative set for village governance during the ancient period. During the British rule in Kerala, modern local governance schemes were introduced but the scheme had a negligible democratic component. The projects for LSGIs in Kerala were also weak and sporadic after the creation of Kerala state. In 1994, the state govt enacted the Kerala Panchayat Raj Act and the Kerala Municipality Act, delegating duties, finances and powers to LSGIs. The 73rdand 74thamendments to the Constitution gave birth to the third generation of LSGIs in India. It must be understood, however, that the magnitude of the devolution and transfer of authority in India varies considerably. Kerala's LSGIs are one of the few fortunate in the bunch that could enjoy more features and authority as compared to other India countries.Planning remained centralized in India, although decentralized planning has been a significant goal since the launch of planning in India. One significant reason was the lack of sufficiently powerful local genula organs. Due to the lack of democratic structures at the sub-state level, the Community Development initiatives initiated in 1952 could not deliver the required outcomes. The Balwant Ray Mehta Committee, appointed in 1957, suggested the development of a three-tier Panchayat Raj System, which paved the way for first-generation panchayats but after original excitement failed to deliver the products. The suggestions of the Ashok Mehta Committee were accountable for the creation of panchayats of the second generation in a few countries such as West Bengal, Karnataka, Andhra Pradesh, and Jammu and Kashmir. The constitutional amendments of 73 and 74 in 1992 paved the way for the creation of a three-tier Panchayati Raj system of third generation in rural regions and municipalities / corporations in metropolitan regions, with statutory support, fixed five-year terms and reservation of one-third seats for females, scheduled castes and scheduled tribes in proportion to their population. Decentralization is a type of government-local partnership in which political power is transferred to reduced levels. Democracy therefore becomes a connection between local authorities / government

and the individuals and means people's participation in decision-making. Decentralization makes democratization easier. Democracy has two direct forms of democracy in which all individuals take part in decision-making and representative democracy in which elected officials take choices on behalf of the individuals. Direct democracy is the perfect type of decision-making in which all people have a say. However, ensuring that all individuals participate in all decision-making opportunities is hard; therefore, representative democracy is an inevitable type of democracy

11.6 KEYWORDS

10. Inadequacy: The state or quality of being inadequate; lack of the quantity or quality required.

11. Amendments: A minor change or addition designed to improve a text, piece of legislation.

12. Marginalized: To treat someone or something as if they are not important.

13. Stagnation: lack of activity, growth, or development.

11.7 QUESTIONS FOR REVIEW

1. What is democratic decentralization's Strategy?

2. What is Article 243 all about?

3. When National Development Council assigned a committee under Balwant Rai Mehta?

4. Who was ahimsa's leading champion?

5. When did Panchayats have been formed?

11.8 SUGGESTED READINGS AND REFERENCES

5. The important bit stream related information collected from http://www.egyankosh.ac.in/bitstream/123456789/25850/
6. The Glance, panchayti raj helped from https://en.wikipedia.org/wiki/Panchayati_raj
7. https://shodhganga.inflibnet.ac.in/bitstream/10603/6667/

11.9 ANSWERS TO CHECK YOUR PROGRESS

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

The dawn of 21st century is marked by decentralized governance both as a strategy and philosophy of bringing about reforms and changes in democracies.

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

There are two types of Decentralization in India. They are as follows- Decentralization in Rural Areas & Decentralization in Urban Areas.

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

Gandhi thought that India's true growth could take place only through its Gram Swaraj political system where the government of the state would exercise only those powers that are not within the scope and competence of the lesser levels of participatory governance organisations.

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

According to Gandhi, decentralization was essential for the real inaction of ideal democracy, in which everyone can participate in the decision-making and implementation process.

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

The VKRV Rao Committee of 1985 highlighted the decentralization of the district.

UNIT–12: CONTRIBUTION, RESPONSIBILITY AND CHALLENGES FOR DEMOCRATIC DECENTRALIZATION

STRUCTURE

12.0 OBJECTIVES

After learning this unit based on "Contribution, Responsibility and Challenges for Democratic Decentralization", you can gain knowledge of about the following important topics:

- To know Current Status and Key Features of Decentralization.
- To discuss Constraints in Institutionalizing Panchayats: Conformity and Operational Issues.
- To know about the Decentralization and Urban Local Bodies.

- To describe Decentralization and Urban Local Bodies.

12.1 INTRODUCTION

Start with one of the most important subject of this unit, Decentralization; In India is the history of the evolution of the Panchayati Raj system in India. There was no particular urge for economic and social development during the period of British domination of India except for those activities necessary to safeguard the rule. Of course, the issue of decentralization was not on the rulers agenda, although local government institutions were established according to law in the form of Union boards, district boards, etc. It became apparent in the course of the freedom movement that the nationhood of India would develop in a democratic political and institutional environment after independence. Some rulers thought that in Western nations mould it should be a representative democracy. But the development discourse of Mahatma Gandhi was based on a participatory village-based democracy integrated in his Panchayati Raj vision. Gandhi championed a democratic polity that would be founded in thousands of village self-governing societies. Gandhi felt that India's real development could take place only through its Gram Swaraj political system where the government of the state would exercise only those powers that are not within the scope and competence of the lower levels of participatory governance institutions. The section on State Policy Directive Principles (Article 40) included rural local authorities in the form of Panchayats. It indicated that countries should take measures to organize Panchayats village and provide them with the powers and power needed to allow them to operate as self-government units. Immediately after independence and especially after the launch of the first five-year plan, on the one hand, the then Government of India launched massive development projects and, on the other, Community Development (CD) and National Rural Development Services programs. With the establishment of the Balwant Rai Mehta Committee (constituted to study the impact of the CD Program and the National Extension Service) in 1957, Panchayatsworking mechanics and their

importance in local governance received a major boost. The committee observed that the development of the country cannot advance even at the lesser levels of government without the co-location of accountability and authority. The goals of Community development can only materialize if the Community knows its issues, fulfils its duties, exercises the required powers through selected officials and retains steady and smart vigilance over local government. The Committee also noted that the character of the development programs should change from "Government Program with People's Participation in People's Program with Governments Participation." The Mehta Committee's recommendations began the journey toward political and administrative decentralization. All states have enacted Panchayat Acts and throughout India by 1960 Panchayats have been established. But these measures were hardly able to alter ground realities as regulations were weak and inexplicable. Local authorities resisted the transfer of tasks and powers, there were no periodic elections to Panchayati organizations. During the mid-1970s, the country experienced significant political changes, with which the Panchayati Raj System resurrection and strengthening process regained momentum. To implement multiple development programs, many state governments delegated officials and schematic resources to the Panchayats. But in the lack of adequate laws defining the role, functions, responsibilities, officials and powers, the Panchayats have not been sufficiently effective to guarantee people's de facto participation in development programmes.

In most cases, Panchayats became nothing more than the agency of the State Government to implement a few programs and to provide a few services.Under-performance in poverty alleviation, growth, and even programs of social assistance to reach and benefit target groups disconcerted decision-makers within and outside government. Panchayats demands for appropriate empowerment to move them into effective self-governments began to gain momentum. It was asserted that Article 40 regulations were not sufficient to guarantee the growth of the Panchayats village in the manner it was desired. The countries had to be bound by some constitutional mandate instead of leaving the problem completely at their discretion. This led to the Constitution's

73rd amendment in 1992, which took effect on April 24, 1993. This landmark amendment to the Constitution declared the Panchayats to be units of self-government, directed the States to delegate functions to 29 subjects directly related to the social and economic development of the area, made provisions for the sharing of resources between the Panchayati Raj Institutions (PRIs) and Governments, regular elections to local authorities, reservation of socially disadvantaged classes High significance has been provided to the establishment of "Gram Sabha." A necessary requirement has been made to consult with the Gram Sabha on all important issues including the planning and implementation of development programmes. The amendment paved the way for the decentralization of governance to a large extent and transformed the Panchayats village as self-government organizations.

Check your Progress-1

1.What did Panchayats demand?

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12.2 BACKGROUND

Decentralization is the main countervailing trend in an age of globalization that can guarantee that the development method is pro-poor, pro-women, pro-nature, and pro-jobs. As market integration and technological innovation make national borders more permeable, it is essential that negotiation, regulation and decentralized governance structures are placed in place and strengthened. In line with Mahatma Gandhi's message, these can guarantee that the voices and issues of the poorest of the poor are at the centre of political dialog at worldwide, regional and national level. In the Indian context, the two main policy imperatives have been economic reforms and Panchayati Raj since the early 1990s. For both, the need for the policy directive is not so much

discussed, but its content and underpinnings. The 73rd and 74th amendments constitutionally mandated direct local democracy. The principle of' Cooperative Federalism decentralized implementation based on a harmonious understanding between the three levels of governance– Centre, State and Local–is the basic premise of India's Ninth Five Year Plan. Nevertheless, the actual progress of decentralization across states has been uneven. In the absence of measures to strengthen public systems at local level, panchayats run the same risk as cooperatives in the current malaise of bureaucracy and politics that hinders the effective implementation of programs documented in the Ninth Plan's Mid-Term Review. Like any approach for basic democratic change (and Panchayati Raj in India is one of the biggest such "transformation experiments"), local governance organizations tend to represent their socio-economic and political environment. The poor in India are faced with numerous limitations arising from financial, political and social variables. Social limitations often derive power from religious convictions and cultural norms that are common. These are strengthened in the case of females by the pervasive gender-based discrimination. While each of these limitations is strong enough to impede the poor's upward mobility, what is daunting is that the limitations behave in a mutually reinforcing way that makes it nearly impossible for any person to overcome them. Government policy at improving the circumstances of the poor would have higher opportunities for achievement if it were to be multi-pronged in nature and coordinated in a way that would synergize the impacts of interventions in various areas. In this context, the function of the Panchayati Raj Institutions (PRIs) is gaining significance as they provide a chance to undertake coordinated action at grass root level to benefit the disadvantaged parts of society. However, for such action to effectively materialize, mechanisms must be constructed into the decentralization process to counter local energy structures. In the lack of a right-based strategy that encourages the mobilization of the poor to have a voice in governance, the pathologies that go with entrenched energy systems will also restrict PRIs. Clearly, action is required to enable the poor to engage more efficiently through PRIs and informal local organizations and movements of people.

Measures are needed to address the challenges of institutionalizing bad people's involvement in PRI functioning. This includes eliminating the legislative and procedural issues that restrict the Gram Sabha, increasing the devolution of resources, functions and functionaries, establishing audit and accountability processes, and enhancing women's involvement. Elected local government institutions must be helped to become tools for social transformation in order to realize the progressive purpose of domestic objectives, articulating felt requirements of the society, particularly those of females and marginalized groups. Living safety for the poor would guarantee efficient involvement and better local resource mobilization. To do this, it is essential that decentralization be strengthened from below, so that the voice of the poor can carry weight in village assemblies. This can be achieved by enhancing community networks and institutions in addition to social mobilization. These would create poor people's capacities, provide livelihood safety, and protect against destitution, hunger, disease, and alienation. Initiatives that empower bad people, particularly women, to handle both village and village resources are steps in this direction.Local democracy's success relies on these initiatives' achievement. The link between political, financial and economic decentralization is the key to a successful reform program.

Check your Progress-2

1. What is the role of elected local government institutions?

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12.3 CURRENT STATUS AND KEY FEATURES OF DECENTRALIZATION

Democracy implies people's government. The main phase was occupied by this individuals. Once due significance and needed encouragement

has been provided to individuals, they could be encouraged to accomplish the objective for which democracy existed. Aristotle thought there was the state to realize the people's good lives. So is the modern-day object of democracy. This could only be accomplished under a functional powers and responsibilities decentralization system. That's what decentralization is called. Thus, democratic decentralization implies performing tasks in accordance with the values of democracy through and with people's involvement in attaining people's goals by implementing people-oriented welfare programs and initiatives. Delegating decision-making tasks is the vital component in decentralization. Democratic decentralization is the process of devolving the state's functions and resources from the centre to the lower-level elected representatives to facilitate greater direct involvement of citizens in governance. Another important aspect of democratic decentralization is to bring under the authority of elected local self-government the bureaucratic state machinery at the lower levels. This kind of democratic decentralization requires local level creation as institutions to enable ordinary citizens at lower levels to participate in decision-making, implementing, monitoring and sharing the benefits of government activities.

Parts IX related to panchayats and IX A related to municipalities were inserted in the Constitution by the amendments. Articles 243-243O and 243P -243ZG of the Constitution are complemented by the laws of the respective States, which define the details of the powers and functions of the different organs. In accordance with the 73rdand 74thamendments, all States have enacted new laws or incorporated changes in their existing laws. The 73rdConstitutional Amendment's salient features are given.

Check your Progress-3

1.What define the details of the powers and functions of the different organs?

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12.4 CONSTRAINTS IN INSTITUTIONALIZING PANCHAYATS: CONFORMITY AND OPERATIONAL ISSUES

12.4.1 Legal Issues And Litigation Surrounding Panchayati Raj

Although expectations have been raised by providing the PRIs with constitutional status, they appear to have been saddled with a variety of issues in actual practice at the operational level. There are many impediments affecting the functioning of the PRIs in several states with regard to structural patterns, composition of Panchayats, organic links between PRIs, electoral process, concept of rotation in the case of reserved seats, devolution of powers and functions, bureaucratic control over local bodies, etc. It is useful to analyse some of the legal issues surrounding law enforcement and to examine the need for a further amendment to revitalize PRIs to make them vibrant. Unless each village has its own gram sabha, it is not possible to serve the purpose of accountability, especially when the village panchayat serves a few thousand inhabitants. The structure of the PRIs envisaged by the Act is rather rigid. While the district was defined as a normal district in a state, the law did not specifically define the jurisdiction of the village and intermediate levels. While many states have more or less accepted the constitutional dictum of a three-tier structure, some would like the freedom to choose the decentralization pattern that they believe is most suitable for them. The institutional decentralization design should take into account not only the developmental thrusts based on local-level capacity, but also the need to ensure local participation in decision-making. At levels below the district, the problem of striking a balance between technical requirements and possibilities for meaningful people participation in development management occurs. In any state, the issue of adequate space for an administration unit is quite complicated due to

uneven economic resources, communication facilities, population density, social integration level, civic commitments, etc. Therefore, a uniform set of criteria cannot be applied across the country. It would be appropriate to leave to the States / Union Territories the exact pattern of local government below the district. At best, the central government can set general guidance criteria for the states, making it mandatory to have one tier closer to the people to implement the development programs and another at a higher level to oversee and monitor implementation. Dissolution Article 243E specifies the duration of the tenure of panchayats and makes it compulsory, if any, to constitute the next panchayat before the expiry of the previous panchayat's duration or before the expiry of a six-month period from the date of dissolution. Thus, while the Constitution recognizes the possibility of a dissolution, it does not deal with the panchayat running during the interregnum, that is, between the dissolution of the new panchayat and the constitution. Perhaps it may be necessary to ensure the continuation of the panchayat's existing office-bearers to manage the panchayat's daily affairs during this interregnum, if necessary, under the Panchayat's supervision at the next higher level. Even where direct bureaucratic control is not visible, the panchayats have been placed in such a position as to require the chairpersons to make repeated trips to far-off government offices for approvals and sanctions.

To sum up the above discussion, we can say that since the panchayats have now become a constitutionally recognized tier of governance, it is time to reinforce them so that they can fulfil their duties as best they can. At the same time, it must also be borne in mind that the spirit of decentralization in this country can still be implemented even without a further amendment to the Constitution. In areas left to State Governments discretion under the Act, it is possible for State Governments to bring about improvements either through government administrative orders or by appropriately amending state statutes. There is only a need to seek a constitutional amendment in cases where the Act comes in the way of meeting a particular state-specific field situation. There are such cases; but there aren't many. A paradox is that in order to achieve decentralization in the country, the Central Legislature was

needed. While agreeing that a constitutional amendment may not be the best way to bring about decentralization in any country, we must also remember that Article 40 which has been in our Constitution for several years has not been able to help establish meaningful local bodies in most of our country. Therefore, we will have to live with the idea of amending the Constitution not only to introduce decentralized governance, but also to improve it. Anomalies that have slipped in must be corrected and the challenge of the time must be met. They will need a public debate to crystallize ideas again, and a political will to translate these ideas into a workable law.

12.4.2 Relationships Between Panchayati Raj Institution Levels

We are now turning our attention to the relationship between the various levels of the structure of Panchayati Raj. The allocation of functions among them was a major area of friction between the levels, as the Constitution left this entirely to the discretion of the States.While the pattern of devolution must be devised not only between the state government and the PRIs, but also between the PRIs themselves, three aspects must be taken into account. First, administrative units and structures in each State are not uniform. For the evolution of its present administrative and institutional patterns, each State has its own unique historical background. Therefore, establishing a uniform pattern for all states is neither feasible nor desirable. Devolution of functions between the levels will have to be left to the local genius, taking into account the state's existing culture and the capabilities that can be created at various levels.Secondly, as has already been mentioned, the Eleventh Schedule of the Constitution covers all three panchayat levels and there is an apparent overlap of functions. Therefore, with reference to each program or activity, the demarcation of operational responsibility between one level of panchayats and another must be made specifically. As of now, the number of plan schemes literally reaches hundreds. Each of them must be examined to see what the government of the state should retain and what should be entrusted to the panchayat of the district /

intermediate / gram. Such demarcation cannot be a one-time exercise and may require adjustments from time to time, taking into account experience and changes in the nature of governmental activities. This can best be done in accordance with the rules and notifications issued by the governments of the State for which the statute must provide for the necessary provisions. Thirdly, while the principle of subsidiarity must govern the allocation of functions between the different levels of PRIs, certain basic principles of decentralization must also be taken into account, namely: (a) each activity requires a minimum size for functional efficiency and economy; (b) the benefit area should not extend beyond the jurisdiction of the panchayat concerned and Functional linkages between the levels need to be established, for at least three different reasons.

First, there is a common functionality between all three levels. While the nature of the activity entrusted to the various levels could be different in any given area, such activities must be integrated meaningfully with each other. Secondly, administrative support for the activities of the panchayats at different levels shall be provided by different levels of the same official hierarchy, which shall in any case operate in accordance with the official hierarchy already established. Thirdly, the provisions of basic and essential services within the district / intermediate panchayats must be somewhat uniform in standards. Therefore, the panchayats at the higher level must act as coordinating bodies at the levels below for the panchayats. As mentioned above, in some areas, the latter may be the implementing agency for the former's programs. In hierarchical terms, the relationship between different levels cannot be described. Dialog and consultation should be the best way to interact. To do this, responsibility for oversight and accountability between the three levels must be assigned. Although the exact functioning modalities of each tier would differ across states, this implies that residual powers should be entrusted to the district tier and that the panchayat body at a higher level should have some power to monitor the activities of the lower tier and thus also serve as a forum for redress of grievances and settlement of inter-panchayat disputes. If local bodies should be separate political entities, should each be elected independently from a separate constituency or

should membership be linked. Obviously, it is necessary to directly choose the lowest tier in any system. It is a point of debate whether the higher-level bodies should also have directly elected memberships or whether they could be constituted indirectly through the elected members of the lower-level bodies, as set out in the Eighty-seventh Amendment Bill. It is also necessary to examine the issue of its implications for district-level democratic countervailing forces. On the other hand, land scarcity in urban areas has caused problems of slum population proliferation in unplanned settlements with severe deficiencies in basic civic amenities, forcing residents to live in hazardously polluted environments and dilapidated structures. Therefore, there is a strong case for ending dualism in local government. Since 1999, Madhya Pradesh has initiated the district government experiment with district budget innovation, which is reflected in the state budget as a line item. Such experiments in deconcentration of administrative power can help infuse greater interest in mechanisms that have so far been neglected, such as the District Planning Committee. While there may be apprehensions about these being captured by local bureaucracy and politicians, they will become platforms for local level accountability over a period of time. Therefore, the structural relationships between the different levels of governance will depend on the manning people's attitude and their own commitment to the decentralization process. All of them should realize that the PRIs' success depends on how efficiently they can perform. Effective governance is a key component of good delivery and therefore all relationships should be designed on that basis.

Check your Progress-4

1.PRIs' success depends on?

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12.4.3 Panchayats And Line Departments: Operational Issues

In the context of the Constitution Amendment No 73, we examine the following issues concerning the relationship between PRIs / ULBs and government departments in order to identify steps to be taken to ensure that not only the PRIs but also the other actors play their part in tandem for the benefit of the rural poor. Relationships between the PRIs and the national and state governments. The role that the PRIs should play in the field of development in order to properly integrate their place in the federal structure of our policy with the other existing governance structures. The silence of the 73rd Amendment Act on how to link the three levels has led to a variety of practices and confusion in this regard. This can and often results in a lack of coordination between the three levels, which weakens the overall structure1. The lack of function and power specification between the three levels leads to the feeling–at each level–that the other two have greater powers and resources. Devolution of powers in the conformity laws of the States is not merely perceived as inadequate, but the Acts are generally also vague about which functions are intended to be performed by which tier. There are also no mechanisms to coordinate the three levels functioning. Panchayat-Administration Relationship ambiguities the relationship between the panchayats and the local government has been interpreted differently across states. Rajasthan's government, by ordinance, amended some of the conformity act provisions to increase government control over the two higher levels. This, however, is by no means definitive evidence of elective superiority over appointed authority. On the contrary, evidence of the dominance of the bureaucracy over the representatives of the people is to be found in virtually all states. In Haryana, it is seen that the bureaucracy exercises excessive control as it substantially guides and directs the panchayatsdevelopmental activities, rather than simply facilitating them. In relation to panchayats headed by women, and even more so those headed by Dalit women, this relationship may become particularly stifling. In addition, lower-level government officials attached to the panchayats are also confused as they are simultaneously accountable to their government superior as well as to the panchayats

elected leaders. A notable exception in this respect is Gujarat's Conformity Act, which provides for the transfer of sectoral development staff from the rank of gazetted officers to panchayat institutions for development work. Despite this provision, Gujarat was unable to decentralize planning that could be done somewhat better by Karnataka or Maharashtra, possibly because of a longer-standing engagement with panchayat institutions. Devolution of Powers, Functions and Resources in State Conformity Acts While structures undoubtedly predispose institutions to evolve in particular ways, the most stringent test of any exercise in democratic decentralization is the actual powers and functions conferred on democratic institutions at the local level, which must be autonomous in their exercise. The Constitution's relevant article describes panchayats as self-government institutions, but if the scope of self-government is outwardly defined and circumscribed, the institutions will be limited in that role. Article 243(G) itself provides for such circumscription as it allows States to endow the panchayats with powers without, in fact, making it compulsory for them to do so. The fact that the implications of the constitutional amendment were perhaps more radical in reservation provisions than in the powers and functions left to the States to determine and finance is evident from an examination of the powers and functions actually delegated. In fact, only three Conformity Acts–those of West Bengal, Bihar and Tripura–state that they are aimed at endowing panchayats with powers and functions that enable them to function as self-government institutions. Specifically, the Haryana Act states that the panchayat institutions' objective is to better manage rural areas. In fact, Article 20, Chapter IV of the Haryana Panchayati Raj Act of 1994, specifies the' functions and duties' of the Gram Panchayat as follows: 'it is the duty of the Gram Panchayat, within the limits of the funds at its disposal, to make arrangements for the fulfilment of the requirements of the sabha area in respect of the following matters'.

The obstacles faced by women as members or panchayat leaders tend to be assessed in terms of their own subjective perceptions and are rarely associated with the structural inadequacies of the Panchayati Raj framework. E.M.S. Namboodiripad said in his dissenting note to the Ashok Mehta Committee Report, "Democracy at the central and state

levels, but bureaucracy at all lower levels –this is the essence of Indian politics as outlined in the Constitution. I cannot think of the Panchayati Raj Institutions as anything other than the integral parts of the administration of the country without any difference between what is called the functions of' development' and' regulatory.' I am afraid that my colleagues are haunting the ghost of the earlier idea that Panchayati Raj Institutions should be totally divorced from all regulatory functions and confined to developmental functions only. What is required is that while certain specific administrative areas such as defence, foreign affairs, currency, communication etc. should remain with the Centre, all the rest should be transferred to the States and from there to the district and lower levels of elected administrative bodies.' Article 243 G of the Constitution, which now governs the assignment of functions to the Panchayati Raj Institutions (PRIs), makes it clear that the panchayats primary role will be in the field of development. The focus of their activities should be the planning and implementation of economic development and social justice programs. If, at least for the time being, the role envisaged for the PRIs is primarily in the field of development, how is this role to be played alongside several other actors already in this field? What should be their relationship with the other existing governance structures–the central government, state governments, parastatals, community-based organizations, etc., who also have assigned developmental roles. It is true that PRIs have only recently entered the scene. For several years now, all the other actors have been in the field. Over a long period of time the rules governing them were either defined or evolved. Do we need to make changes to these rules in order to make it easier for the PRIs to establish themselves in their assigned governance position? Secondly, since all three levels of the Panchayati Raj Structure have the common goal of development, how can their functions and powers be delineated in such a way that there is room for each of them without any significant overlap.

Check your Progress-5

1.Which is common goal all three levels of the Panchayati Raj Structure have?

12.4.4 Reforms Required For More Effective Linkages

It was at the central government's instance that panchayats were established at different points of time in most states, with the exception of one or two notable exceptions. In this sense, at the greatest point of our federal structure, the central government is responsible for promoting and nurturing efficient panchayats in the federal pyramid's grassroots. It may be essential to review the whole range of powers and duties from the Union to the Gram Panchayat levels for a truly rational pattern of devolution of powers to the PRIs. However, the establishment of a strong Panchayati Raj system in the Indian context has never been a ground for demand from the states for greater autonomy. A strong state doesn't imply the state would have an active PRI network automatically.Centralized planning and local autonomy in fact, local autonomy is severely restricted by the centralized planning system that the nation has been following for over four centuries. When such limitations work at the state level, it is evident that at the panchayat levels they would also be noticeable. In addition to committing a substantial outlay for ongoing activities in the Five Year Plans, the allocation of a large proportion of plan provisions limits the extent to which the panchayats can alter a sectoral allocation. A big percentage of linked funds and domestic guidelines centrally funded schemes have further worsened the scenario. The limited availability of untied resources and serious execution limitations tend to create state government PRIs organizations rather than local government units. The planning system needs to be changed at all levels in India. While the need to allocate national priorities in key areas cannot be contested, it is desirable that the Planning Commission's allocation scope be adequately limited so that the PRIs can have significant untied resources, in addition

to some say in the prioritization that can make local planning more meaningful. In terms of range and volume, the number and scope of centrally sponsored schemes should also be curtailed. In the context of people's involvement in the planning process, a gradual change from sectoral planning to zone planning seems necessary. The quantity of powers and functions that a state wishes to transfer to the PRIs would depend on the extent of power that the state itself can acquire from the central government. The more from the Centre it gets, the more prepared it is to move. Therefore, it is essential to take a new look at the suggestions of the Sarkaria Committee on Centre-State relations in the field of functional distribution, particularly those related to the development industries. Periodic Review the Central Government can also initiate a regular review of the tasks and powers delegated by the State Governments to the PRIs in the context of the liberty accessible to a State Government to implement programs in the field of growth. The Planning Commission itself can initiate the process of activating the District Planning Committees to fulfil its function in decentralized planning as envisaged by the 73rd amendment. The Planning Commission can verify whether or not the State Government has scrupulously followed the district planning practice, while finalizing the outlays of the State Plan as part of its annual exercise. This will also put some pressure on the PRIs to prepare plans at local level in time, taking the local requirements and desires properly into account. Financial adequacy and discretionary funds appropriate finances and untied funds are needed to effectively discharge the tasks allocated to any panchayat. Article 280(3)(bb) of the Constitution obliged the Union Finance Commission to make suggestions to the President on the measures necessary to increase a State's consolidated fund to complement panchayat funds in the State. This would be based on the state's Finance Commission's guidelines. It is essential that the Central Finance Commission be urged to use this provision in a liberal manner to increase the resources of the PRIs so that the availability of resources can be connected to the release of tasks allocated by the respective State Governments to local authorities. A significant untied grant provision would also assist the local organizations to implement innovative programs for the advantage of the individuals. It would also promote the

above-mentioned gradual transition to area growth. Local Area Fund of MPs and MLAs It is unfortunate that a discretionary development fund was made accessible for local area growth to each Member of Parliament shortly after the establishment of the PRIs.

The MPs' Local Area Development Scheme (MPLADS) grants in excess of Rs. 1,500 crore per year at the recently revised rates, coupled with similar funds available to members of the State Legislature in some states, the sum of such grants could well exceed Rs. 2,000 crore per year. These grants are not linked to any particular development program and as such, they are untied funds accessible to undertake local development works, most of which fall within the domain of local government organizations. Such systems that generate a conflict of interests at the local level are desirable to dispense with. On the other hand, it would be desirable to make these funds available to the PRIs themselves as untied grants. Continuing MPLADS and other comparable systems will only erode the significance of decentralized planning through local bodies as provided for in the Constitution. Hence the need for the central government to take the lead in abolishing the MPLADS, which will hopefully lead to the removal of comparable MLAs systems now being introduced by several states. If the process of development planning is to be decentralized down to the panchayat level, this should go hand in hand with the Government of India reducing the range and volume of the centrally sponsored plan schemes and allowing the State Governments to function freely in their allocated areas. It should also be followed by the appropriate transfer of economic resources to the panchayats between them and from them. Unless appropriate funds are supplied to meet the spending, PRIs may lose interest in preparing plans. Therefore, it is necessary to improve the discretion of the panchayat in investing their own resources and to guarantee that they coordinate and integrate the sectoral systems of line departments. State Governments As pointed out in the Sarkaria Commission Report in 1986, the momentum of decentralization at the state level involves political will and an enabling climate, as well as a resolution of angularities in central-state relations. The addition of the Eleventh Schedule to the Constitution listing certain topics to be looked after by the PRIs does not really mean that the

panchayats have now been assigned a constitutionally independent set of functions on the same lines as the allocation of functions in the Seventh Schedule between the Union and the States. Unfortunately, very little discussion has been held about the problems that state governments and PRIs are facing while implementing Article 243 G in both letter and spirit. The distribution of tasks pursuant to this Article does not in any manner decrease the executive and legislative powers granted by the State pursuant to Article 264 of the Constitution with the Seventh Schedule pertaining to the topics on which the States are competent. Since this has been left to the discretion of government, progress on real function transfer such as distinct from the topics mentioned in the Eleventh Schedule there is significant progress variation across states. In most States, in the transfer of powers and functions to the three levels, the principle of subsidiarity was not fully noted in a balanced way. The government departments dealing with these topics have been brought under the administrative control of the PRIs in some states, whereas the PRIs have not been given any powers to control either the staff or the budget or the schemes in many other states. It is necessary to clearly identify the functions to be performed at each panchayat level. Implementing such functions would require simultaneous modifications to the subject-matter legislation in order to allow the panchayats to assume such functions. In matters not covered by legislation such as anti-poverty programmes, preparation of local plans, construction of roads, etc., a clear delegation of powers may be required. In order to pool resources and undertake integrated local development, the panchayats must be given specific powers. There should be no necessity in the department of Panchayati Raj or in any other government department to obtain any permission from greater levels of bureaucracy. Only through annual performance reports and audits should monitoring be carried out. Individual panchayat choices should not also be subject to bureaucracy or state-level review or review by the ministers. Panchayats should have control over the staff working for them in order to effectively discharge functions.The panchayats may be empowered over a period of time to employ their own employees. The employees assigned to them should operate under the immediate control of the panchayat in question until then. For the following reasons, the government of the state should have

powers vis-à-vis the panchayats. The "tough budget restriction" and compression of public spending caused by the fiscal crisis of the states means that attempts to reform state finances should not be undermined by profligacy or "soft budget limitations" at local level. It is the responsibility of the State Governments to implement the accepted domestic priorities and to guarantee compliance with those priorities that they need to have some say on the execution of the PRI programs. The extent to which PRIs can raise funds through local taxation is restricted given the nature of the tax bases available. They must rely mainly on the economic resources transmitted by the governments of the state to them. While instruments such as prizes from the Finance Commission can isolate resource transfer from political uncertainties, the transfer can only take place through the budget, with the permission of the State Legislature.Thus, the State government's accountability to the Legislature with regard to state funds will stay even with regard to the funds transferred to PRIs. The State must have some power over the PRIs to fulfil this duty. Strengthening Cooperative Federalism The issue of overlapping tasks and jurisdiction between state and PRI governments does not necessarily have to be seen as reflecting an unsatisfactory scenario with potential disputes and confusion. Actually, the current scenario poses a challenge to our policy that can be met through the development of synergy structures between distinct levels of governance. We have already developed cooperative federalism in this nation where the central government formulates multiple strategies and shapes policies related to multiple state topics in addition to offering funding to implement such schemes. The Planning Commission is currently working to coordinate the plans of the State with the domestic plan. Five-year plans and annual plans are finalized on this grounds. To approve the district plans at the state level, a comparable method will have to be taken. This may be achieved either by the State Planning Department or by setting up a State Development Council to assist establish the needed physical and economic coordination at all levels.

In order to increase the panchayatsavailable resources, all plan funds must be made available to the panchayat concerned with a clear mandate to implement the scheme for which the funds are intended. The PRIs

may also be allowed to tap untapped funds such as water rates for commercial plants, etc., the district-level organizations discharging tasks that fall within the scope of the PRIs should be abolished and their goals transferred to the PRIs along with tasks and finances. This involves the rural development agency of the district, the program committees of the drought-prone region, etc. Functionaries availability is as essential as providing the PRIs with tasks and resources. The overlapping control of the PRIs and the government of the state over the administrative machinery for implementing development programs entrusted to the PRIs significantly reduces the functional autonomy of all these bodies. Furthermore, the panchayat functionaries, who, like in Karnataka, are on deputation from the state government to these organizations, may continue to consider themselves only as government servants and may tend to look for advice and management from their seniors at the state level than the elected rulers of the panchayats. In some states, this situation is further aggravated by the control exercised by lawmakers over local administration through the annual transfer system of representatives carried out by the state administration mainly on the initiative of lawmakers and political leaders at the other state level. At the initiative of legislators, this practice of large-scale official transfers can seriously undermine the functional autonomy of PRIs, in addition to contributing to dilution of administrative accountability. Therefore, in the administrative arrangements for program planning and implementation, a series of changes would be required with regard to the schemes and programs transferred to the PRIs. The State and Central Government also make budgetary grants in favour of these organizations to promote the mobilization of additional funds from business organizations, using these measures as margin or seed cash. These organizations appear to be eminently suited for transferring from the state level to the PRIs, mostly at the district level, in the context of the Constitution's Eleventh Schedule. All their programs are implementable and can be implemented by the PRIs, whether aimed at infrastructure or individuals or a combination of both, requiring forward and backward connections. The only action needed is to transfer these organizations with all their budgets and employees to the PRIs in their entirety. In doing so, care should be taken to involve all existing technical and administrative staff

in the operation of the programs concerned to ensure that the decentralized local institutions continue to have their experience and expertise at their disposal. If in some cases it is deemed absolutely necessary to keep a particular parastatal outside the purview of the PRIs, it is necessary to build up working relationships between the District Panchayats and the District Unit of the Parastatals in view of its wider area of operation which may extend beyond a district and require coordination between the districts. This may include setting up monitoring / coordinating committees at the cutting edge levels, as well as a legal provision requiring the attendance of the representatives of the parastatals during the panchayat meetings concerned whenever necessary.

12.5 DECENTRALIZATION AND URBAN LOCAL BODIES

12.5.1 Features And Critique

A Critique of the 74thAmendment The act has been assessed from a critical perspective by several academics, administrative and constitutional specialists. The following issues can be highlighted from these documents: The XII Schedule is not mandated and it is up to the governments of the state to decide which of the 12thSchedule functions may be transferred to the ULBs. Most states have modified their acts to include all of these in portion or in some instances. Studies indicate that only marginal modifications were performed that were considered compulsory. A comparison of state law with central law reveals that few state governments have taken advantage of the chance provided by the 74thConstitutional Amendment to explain municipal tasks mentioned as ‘obligatory’ and ‘discretionary’ and to avoid overlapping functional and geographical institutional jurisdictions. In almost all states, with the exception of West Bengal and Kerala, there has been insufficient economic devolution in political decentralization. ULBs must therefore rely on the political and bureaucratic lobbies of the state government to access resources. Also, in terms of approval seeking even comparatively

easy matters, there is still very important reliance. The absence of economic devolution is further reinforced by this. While provision has been made for reservations for SC / ST and females in all States in accordance with the constitutional regulations, this does not represent the spirit of the 74thConstitutional Amendment in its details. For instance, the governing party need not follow any fixed requirements to decide which seats are reserved and could be used for political reasons. This scenario undermines the efforts of females and ST / SCs to engage in broad-based involvement. Similarly, while legal provisions for the establishment of ward boards have also been drawn up in most States, the real spirit of the amendment is disseminated since State Governments can "club" several wards together to form a single committee. Also, while wide-ranging powers may be provided, this is not necessarily associated with economic allocations. One might claim that councillor's roles, the construction block of a municipal and democratic scheme, are still undermined. They have traditionally formed critical conduits for local priorities and also to ensure accountability. This raises another significant issue. Even if an elected body is in place, inadequacy in the local political arena can take a severe toll on local governance, to the benefit of higher-level political circuits. This issue obviously has financial aspects. Ghosh notes that in the case of Punjab, due to elevated industrial development, municipal bodies do not receive a proportionate advantage from the increasing wealth of the towns. While the net value added from industrial manufacturing risen by 173 percent annually in the 1970s and 1980s on average, during this era municipal income grew by only 69 percent. In Bengal, despite the adoption of the Mayor in Council system, a revised grant scheme was promoted by the State Government through the Municipal Affairs Department. While focusing on financial streamlining seems to strengthen state control over ULBs. The point here is to recognize that there are cross currents in the scenario. It is important to realize that such changes are part of a long-term political process– shaped by their implementation experience in a diverse country like India.

12.5.2 Urban Local Bodies And Local Issues

This chapter discusses problems related to the 74thAmendment from a developmental view framed by the following two topics from case studies and experiences from different areas of India: Productive Cities: Where livelihood opportunities are maximized for poor and other communities through local economies.Institutions and 'Good Politics': where bad communities face competition from other stronger societal organizations, they can access funds and shape the nature of public investment. This involves poverty programs that tackle poverty's systemic and structural circumstances. These topics are binding on a common thread-the main role played by local bodies and their representatives. The 74thamendment is component of a broader political decentralization process which, in turn, refers to quickly developing local economies. Thus, a close research of urban terrain in both metropolitan and small-town environments, even before the enactment, reveals that efficient social and economic change has occurred through civic actions pushing for political decentralization. This in turn influenced the nature of organizations as well as the political process to some extent. The amendment provides institutional opportunities to react to such modifications in the future. For example, stressing municipal institutions' stability, reinforcing the ward as a focus of development operations, are significant starting points. The resurgence of a local political and identity is perhaps the most significant thing. This resurgence helps to challenge para-state agencies dominance over local bodies and political circuits at the state level over local ones. In this regard, it is of the utmost importance that international development funds give severe consideration to decentralization procedures. It's on two levels. First, structuring development programs that give local elected officials and municipal bodies a lawful position; second, ensuring that financing paths do not undermine their lawful and developmental tasks. This attention to local governance problems is crucial from several points of view: from the point of view of social justice to respond to the requirements of these organizations in a scenario of severe poverty; secondly, to help create programs viable. This is both political is to minimize a political backlash after financing and economic to help local bodies tap the wealth

generated by urbanization. Recognizing current attempts to decentralize and the 74th openings. In addressing these problems, CA would go a long way and in the longer term allow for higher "local ownership."

12.5.3 Trends In Urbanization And Civic Participation

Cities today also reveal increasing disparities between rich and poor groups manifest in neighbourhoods with contrasting levels of civic amenities. Earlier, among planners, administrators and economists, ways of defining and dealing with urban problems was seen to be one of management. Recent recognition of the complexities has shifted this view to one of governance. Mechanistic solution to problems is replaced by a closer look at economic growth in terms of its institutional processes, and administration in terms of the extent and form of civic participation. In this perspective, the 74thConstitutional Amendment needs to be viewed from its societal and developmental perspective. To respond to these complex changes governance has to give space for innovation and flexibility. Urban management can no longer be assumed to be a static, top-down, State centred, and set in a long-term horizon. In the last decade or so, policy makers and academics have recognised the innovative role of local governments. Here, a key issue has been of representation. Disparities of resources between rich and poor in its most fundamental sense, represents a serious fracture of governance. The 74thAmendment, has to be seen as part of a larger process of political transformation. In this transformation, local governments can no longer remain as passive sub-contractors of centralised schemes. They are increasingly pushed to take on a proactive and development role. This is obviously not an easy situation for higher levels of government. Since Independence, with the task of nation building heavy on them, they have been constituted by interest groups used to deciding on issues in a centralizing way to' plan' solutions for "problems" at the lower level. This forced reversal of roles not only implies a different way of working, but also very different attitudes and relationships. The traditional way of centralised control needs to give way to a judicious mix of support from higher levels of government to ensure the stability and continuity of developmental programmes, and more than sufficient autonomy which

allows Local Bodies to develop management strategies that can respond to local situations. There are three aspects in defining a direction of investigation to address issues raised by the above questions. First, rather than speculating about the future structure of cities, it seems useful to first start by understand parts of cities and towns that support large numbers of people, and try and see as to what makes these areas tick. This requires a fine grained and cross-sectoral approach. Second, we need to use a suitable conceptual framework to comprehend the complexities of urban structure. The standard Master Planning strategy to understanding urban buildings is almost certain to be insufficient. Here, as particular land uses residential; commercial; recreational; and, industrial, different functional elements are seen in a compartmentalized fashion. This approach misses important local features as well as connecting spatial issues with economic ones. Equally problematic seems to be a strict econometric approach too. The complex institutional and political elements of financial procedures are not obviously identified by these. Also, this strategy frequently utilizes a "sectors"-centred structure as a type of accounting rather than conceptualizing growth. Finally, one of the property is a main problem of urban growth. Land has important non-economic elements and characteristics of location. It is also essential, in a conceptual framework, to move away from a narrow focus on "poverty," and to consider in a comparative sense the condition of bad communities. This is important because the situation of the poor in relation to other groups will substantially shape the nature of urban management, their economy, forms of representation and political structures along two broad themes of productive neighbourhood and good urban governance.

12.6 LET'S SUM UP

Decentralization is widely lauded as a key component of good governance and development. Decentralization and democracy may improve the chances for successful economic development. It is clear that an honest effort to alleviate poverty and promote sustainable development in India requires considerable decentralisation of

government authority, well beyond the state level. The passing of the 73rdConstitutional Amendments in 1992 was a crucial step in this direction, identifying Panchayati Raj Institutions (PRIs) as agents of self-governance and giving them the responsibility for preparing plans for promoting economic development and social justice. While most states have ratified the 73rd Amendments in state acts and held elections, the quality of political, administrative and fiscal decentralisation varies widely from one state to the other. In general, states have not matched the functions devolved to local government institutions with the necessary administrative reforms, or by devolving financial powers. As a result, have neither the capacity to implement assigned functions – which remain the factor under the control of state administration –nor do they have the control on resources to make relevant decisions. In order to strengthening the decentralization process 73rdamendment must be more practical. All activities need to be identified and developed at the three levels of local government without duplication. This principle holds that anything that can be done at a lower level should be done at that level and not at any higher level. Government should ensure both fair and regular elections for local government bodies. Without proper popular representation, local interests would not be protected and local initiatives would not receive the required levels of support. Unnecessary interference by bureaucrats, political leaders and members of parliament must be stopped. The relationship between MPs and local government should be cooperative and complementary, not domination and subjugation.

12.7 KEYWORDS

14. Bureaucracy: A system of government in which most of the important decisions are taken by state officials rather than by elected representatives.

15. Comprehend:To understand something completely.

16. Complexities: The state or quality of being intricate or complicated.

17. Modalities: A particular mode in which something exists or is experienced or expressed.

12.8 QUESTIONS FOR REVIEW

1. What is decentralization?

2. What is the structure of the PRIs?

3. What did the Constitution's relevant article describes?

4. What is MPs 'Local Area Development Scheme?

5. On what the Planning Commission is currently working?

12.9 SUGGESTED READINGS AND REFERENCES

8. https://www.researchgate.net/publication/329415345
9. https://www.rti.org/sites/default/files/resources
10. https://en.wikipedia.org/wiki/Decentralization
11. https://shodhganga.inflibnet.ac.in/bitstream/10603/111462/16

12.10 ANSWERS TO CHECK YOUR PROGRESS

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

Panchayats demands for appropriate empowerment to move them into effective self-governments began to gain momentum.

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

Elected local government institutions must be helped to become tools for social transformation in order to realize the progressive purpose of domestic objectives, articulating felt requirements of the society, particularly those of females and marginalized groups.

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

Articles 243-243O and 243P -243ZG of the Constitution are complemented by the laws of the respective States, which define the details of the powers and functions of the different organs.

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

PRIs success depends on how efficiently they can perform. Effective governance is a key component of good delivery and therefore all relationships should be designed on that basis.

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

All three levels of the Panchayati Raj Structure have the common goal of development, how can their functions and powers be delineated in such a way that there is room for each of them without any significant overlap.

UNIT-13: DEVELOPMENT OF LEGAL SYSTEM

STRUCTURE

13.0 OBJECTIVES

After learning this unit based on "Development of Legal System", you can gain knowledge of about the following important topics:

- To know the Legal System in Hindu Period as well as Medieval Period.
- To discuss the Legal System in British Period.
- To know about the Legal System After independence.

13.1 INTRODUCTION

The Indian Legal System is one of the most sophisticated legal systems in the world's history. Over the past hundreds of years, it has altered and, in fact, led to ingest surmising from the legal systems around the globe. The Indian Constitution is the source of the Indian Legal System. This document will focus on the outstanding modifications and their effect on the contemporary Indian legal system since India is home to four notable legal conventions, Hindu, Muslim, British, and contemporary, autonomous India. Our current system of law is based on British laws.

The kings who governed India had previously pursued their own personal or religious laws. Hindus followed Dharma's notion of obligation, religion, and the inseparable quality of the thing or order. Dharma means righteousness-based moral laws. The Muslims then followed the Quran and the sources directed by the Prophet Mohammad. In the midst of moving from Mughal's legal system, the proponents under that regime, advocates, also took action accordingly, but as client agents they usually proceeded with their prior portion. This article discusses different systems of court and the legal system that has been pursued in each stage of the nation. This article tries to study in every stage of the nation the systematic evolution of the legal system in India. Our current system of law is based on British laws. The kings who governed India had previously pursued their own personal or religious laws. India has one of the world's oldest civilized systems because of its association with Indus Valley Civilization. Nyaya's notion can be traced back to religious scriptures such as Ramayana, Mahabharata, Smriti, and Vedas. The image of contemporary law will offer a distorted and perverted image if we start with the perception that only a few centuries ago the legal system started today. Historical traditions and growth have resulted to the foundation of the current legal system. It may be hard to understand why a specific scheme is as it is without adequate historical context. The history of Indian legal system is described in distinct respects by distinct writers. But no theories related to Indian legal history had the same explanation, all had distinct narratives. So, I came up with an idea after going through different books and transcripts to project my opinions on this subject in a manner that is easier and clearer to comprehend. Without going through the legal system that prevailed in India at each stage, one cannot understand the current Indian legal system. This article tries to study in every stage of the nation the systematic evolution of the legal system in India.A country's legal system is component of its social system and represents the society's social, political, economic, and cultural features. Therefore, outside the socio-cultural environment in which it works, it is hard to comprehend the legal system. In India, the legal system is still alien to most Indians whose legal culture is more native and whose contact with the official legal scheme the imported British Model is marginal if not totally non-

existent. Indeed, the hereditary legal system's language, technicity, and procedure are considerations that restrict access to justification for our country's illiterate, poor masses. Nevertheless, the rights and advantages granted by the legislation and constitution give these very individuals the chance to enjoy the fruits of a welfare democracy provided to themselves by the individuals of India on January 26, 1950. It is familiar with the law in this context, and its procedures are crucial for every Indian, wealthy or poor. Young or old, man or female. A level system comprises of certain fundamental principles and values which are mainly described in the Constitution, a set of operational standards including citizens 'rights and responsibilities as laid down in the laws are Central, State and Local, institutional law enforcement structures, and a legal staff member with responsibility for administering the scheme. India is a federation of 29 countries and 7 territories of the Union. The President is the executive head of the Union. He operates on the recommendation of the cabinet of the Union headed by a prime minister in charge of the Indian parliament. The parliament is bicameral: The Council of States or Upper House, whose primary membership is elected by state legislatures and the House of People or Lower House, composed of directly elected by the individuals in general elections. The democratic system works in a comparable way to the parliamentary democracy scheme in Britain. A single integrated court system administers union legislation as well as state regulations. The common law system in India is a British legacy in which the stare decisis doctrine. Sitting in New Delhi, India's Supreme Court is the largest court in the entire justice system. Each state, or group of them, has a High Court, which is also a record court, exercising administrative power over the subordinate judiciary. It also has the authority to issue writs in the practice of exceptional jurisdiction and is the court of appeal from the state's reduced court choices. Each state is split into districts where the highest tribunal is the District Court and Sessions Judge. He's got a double role. He adjudicates in civil litigation as a District Judge and as a Sessions Judge adjudicates criminal litigation. Below him are Civil Sub-Judges and Criminal Magistrates. In criminal matters, the Chief Judicial Magistrate and the Senior Sub-Judge on the civil side, with reduced rungs of magistrates and sub-judges, constitute the judiciary at district level under the District Court's

superintendence. Indian legal system has been contrasted with 1' Triveni1 meaning 3 rivers confluence. Thus, there are 3 streams that make up the Indian legal f system. The first is Common Law, the second is Civil Law, and the third is Personal and Customary Laws. Let's look in some detail at each of them. India is usually presumed to be a Common Law Country. In many nations of the globe where England colonization took place; even after decolonization, common law is discovered to prevail. The English people took the legal system that has become known as the Common Law system with them to their colonies.

Check your Progress-1

1.What is the source of the Indian Legal System?

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13.2 LEGAL SYSTEM IN HINDU PERIOD

Sources of Hindu Law are the Hindu Law is thought to be a divine law. It was disclosed through Vedas to the individuals by God. The conceptual concepts of life stated and clarified in the Vedas have been clarified and refined by various sagas. Hindu law sources were split into: Old sources: Shruthi, Smriti, Customs, Commentaries and Digest. And Modern sources: Equity, Justice and Good Consciousness, Precedent, Legislation the judicial administration was based on the notion of Dharma during the Hindu regime. Dharma's concept literally addresses the obligation, religion, and inseparable quality of the thing or order. It is built on the basis of Vedas like Smriti and Sruthi. Dharma was derived from the Rita notion of Vedic, meaning straight line. Rita implies Nature's Law. Dharma means righteousness-based moral legislation. Dharma is the right, just and moral thing. Dharma is aimed at the welfare of the state and its people in particular. Ancient India Judicial Administration In those days there was no reference in Vedic Literature to the Judicial

Organization. The Judicial Administration came into being later after the Kings rulings through the notion of Dharma. Kings were the Justice's head. Court types are as follows like -Kings Court: King presided over this court to bring justice. The king was warned by Brahmans and they were called Adhyaksha or Sabhapathi. In addition to the king, the tribunal comprises of the chief justice of Pradivivaka and three jurisdictions. Then second one we can consider as Principal Court: This court existed for hearing the conflicts in big cities. Then third one we can discuss about is Kula: Mitakshara as a group of close or remote relationships. When the family members quarrelled, it was fixed by the family's elders. It's an unofficial kind of tribunal. Then the fourth one is Sreni: If the family dispute has not been resolved in the Kula scheme, the matter has been brought before Sreni Court. And in ancient India, the sreni tribunal heard guild conflicts and settled business issues. And last but not the least is Puga: It was an association of people from distinct castes and from distinct professions. This is an unofficial tribunal as well. Law in India has developed from religious prescription to the present constitutional and legal system that we have today, through secular and common law systems. India has a documented legal history beginning in the Vedic ages and during the Bronze Age and the Indus Valley civilization there may have been some kind of civil law system in place. Law has an illustrious history in India as a matter of religious prescriptions and philosophical discourse. It was a fertile place characterized by professionals from various Hindu philosophical schools and later by Jains and Buddhists, emanating from the Vedas, the Upanishads and other religious texts. In India, secular law differed extensively from one region to another and from ruler to ruler. Civil and criminal court systems were vital characteristics of ancient India's many governing dynasties. Under the Mauryas and the Mughals there were excellent secular court systems with the latter giving manner to the present common law system. India has the world's oldest court. No other judiciary has an older or more exalted pedigree. British Henry Maine defined ancient India's legal system as "an instrument of cruel absurdity." An English-Indian jurist made the following comment about what he called the Indians '"oriental habits of life" before the British appeared in India: "It actually British rule in India is a record of

experiments taken by foreign rulers to govern alien races in a weird territory, to adapt European institutions to Oriental lifestyle habits, and to create clear regulations supreme among peoples who are always wicked. But the impact of this misrepresentation, which has few similarities in history, was to build a false image of both India and abroad of the Indian judicial and legal system. Indian jurisprudence was discovered in the rule of law, that the King himself was subject to the law, that arbitrary power was unknown to Indian political theory and jurisprudence, and that the right of a kind to regulate was subject to the performance of responsibilities which led to the forfeiture of kingship, that the magistrates were autonomous and subject only to the law, that ancient India had the greatest standard. In criminal proceedings the accused could not be punished unless his guilt was demonstrated by legislation that in civil instances the trial consisted of four phases such as any contemporary trial–complaint, answer, hearing and decree, that doctrines such as res-judicata Prang Nyaya were familiar to Indian jurisprudence, that all trials, civil or criminal, were heard by a multi-jurisdictional bench and rarely by a judge. In ancient India, was there a rule of law? It was laid down in the Mahabharata, "A King who, after vowed that he will defend his subjects, fails to safeguard them, should be executed as a crazy dog." Also, "People should execute a king who does not defend them, but deprives them of their possessions and assets, and who does not take advice or guidance from anyone. Such a king is not a king but a misfortune. "These clauses show that sovereignty was based on an implied social compact and that if the King breached the traditional agreement, he forfeited his kingship. Coming to the historical times of the Mauryan Empire, Kautilya defines the responsibilities of a king in the Arth-shastra as follows: "The happiness of the King resides in the happiness of his subjects; his well-being in their welfare; whatever pleases him he will not consider well, but whether he pleases his individuals he will consider good." Rama, Ayodhya's King, was forced to banish his queen, whom he loved and, in whose chastity, he had full faith, merely because his people disapproved of having taken back a spouse who had spent a year in her abductor's house. The legal system of a country is part of its social system and reflects the social, political, economic, and cultural characteristics of society. Therefore, it is difficult

to understand the legal system outside of the socio-cultural setting in which it operates. In India, most Indians whose legal culture is more indigenous and whose contact with the formal legal system the imported British Model is marginal, if not totally non-existent, are still alien to the legal system. Indeed, the language, technicity, and procedure of the hereditary legal system are considerations that restrict access to justification for the poor, an alphabet masses of our country. Nevertheless, the rights and benefits granted by the law and constitution offer these very people the opportunity to enjoy the fruits of a welfare democracy given on January 26, 1950 by the Indian people. In this context, it is acquainted with the law and its processes are essential to any Indian, rich or poor. Young or old, both guy and woman. A level structure includes certain basic principles and values which are defined primarily in the Constitution, a set of operational norms including the rights and obligations of people as set out in the laws is central, state and local, institutional law enforcement structures, and a member of the legal employees responsible for administering the scheme. India is a federation of 29 nations and seven Union territories. The President is the Union's executive head. He works on the advice of the Union cabinet led by an Indian parliament prime minister. The parliament is bicameral: The Council of States or Upper House, whose main membership is elected by state legislatures and the House of People or Lower House, made up of people directly elected in general elections. The democratic system operates in a manner similar to the British system of parliamentary democracy. As well as state laws, a single integrated court system administers union laws. India's common law system is a British heritage in which the doctrine of stare decisis rules. India's Supreme Court, sitting in New Delhi, is the biggest court in the whole justice system. Every state, or group of them, has a high court, which is also a record court, exercising administrative authority over the subordinate court. In the exercise of extraordinary jurisdiction, it also has the power to issue writs and is the court of appeal from the decreased court decisions of the state. Each state is divided into districts where the District Court and Sessions Judge are the largest tribunal. He has a double role to play. He adjudicates as a District Judge in civil litigation and adjudicates criminal litigation as a Sessions Judge. Civil Sub-Judges and Criminal

Magistrates are located below him. In criminal matters, under the superintendence of the District Court, the Chief Judicial Magistrate and the Senior Sub-Judge on the civil side, with decreased rungs of judges and sub-judges, comprise the district-level judiciary. There are, therefore, four thirds of the judiciary. The King had to take the oath of impartiality and decide situations without prejudice or attachment. Katyayana says: "The king should be modestly dressed in the court room, take his seat facing east, and hear his litigants 'suits with an attentive mind. He should behave under the leadership of his council's chief justice Praadvivaka, magistrates, ministers, and Brahman representatives. A king who gives justice in this way and lives in heaven according to the law. The code of behaviour prescribed to the king when acting as a judge was very rigorous and he was needed to be free from all "attachment or bias" Nerada says: "If a king has lawsuits Vyavaharan in accordance with the law and is self-restrained in court, in him the seven virtues meet like seven flames in the fire" Narada prescribes that when the king takes the seat of judgement Vivasvan's oath is an oath of impartiality: Vivasvan's child is Yama, the god of death, impartial to all living creatures.

Check your Progress-2

1. The HINDU law was disclosed through?

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13.3 LEGAL SYSTEM IN MEDIEVAL PERIOD

Muslim Law Sources is Primary sources: the primary sources will be the sources directed by the Prophet Mohammad. These are to be followed in their priority order. They are also referred to as official sources. These are the basis of all Muslim personal law. Quaran, Sunna or Ahadis, Ijma, Qiyas, primary sources. And there are some Secondary sources. The

primary sources are explained or modified by these sources. They address the requirements of the modern-day Islamic society. These are also referred to as alien sources. Some of the private laws, such as customs, may discover places in the sources. Secondary sources are Urf or Taamul, judgments, laws. Political Administration of Medieval India the Hindu Period started to collapse towards the end of the 11th century and the beginning of the 12th century. The first Muslims to come to India were the Arabs. They arrived in the eighth century and settled on the coast of Malabar and in Sind. The two Muslim leaders Ghazni, who had traded in India, and Ghori, who had joined India, defeated the Hindu Kingdoms. Both are rulers of the Turks. Muslims 'political theory was controlled by their religion. It was based on Quran learning, the Prophet's Traditions, and the Precedent. The Teaching established the Basic Principles Srivastava. The political institutions are not described by the Quran. Greek philosophers gave political ideas. Muslims 'sovereignty belonged to God and the servants of God were the Muslim Kings. The Legal Sovereignty Political Concepts were based on Sharia Law and Islamic Law and Shia Law. Medieval India Judicial Administration the Medieval India Judicial Administration was split into two headings and they are briefly explained as follows. First one is Delhi Sultan's administration of the court system (1206-1526). Second one is During the Mughal period (1526-1755) the administration of the court scheme Administration of the court system during the Delhi Sultan (1206-1526) The Sultan, being head of the state, was the supreme power in medieval India to administer justice in his Kingdom. The Justice Administration was one of Sultan's significant tasks, which was effectively performed in three capacities in his name. Diwan-E-Qaza (Arbitrator) Diwan-E-Mazalim (Bureaucracy Head) Diwan-E-Siyasat (Force Commander) The Sultan's judicial system was structured on the basis of the Kingdom's administrative divisions. At the capital's seat, there was a systematic classification and gradation of the judiciary. Each Court's powers and jurisdiction were obviously described Rama Rau. Courts formed in the sultanate's capital can be indicated as follows. The first one is The Kings Court: The Kings Court chaired by the sultan, exercised both initial and appeal jurisdiction over all types of instances. It was in the realm's largest court of appeal. Two renowned Muftis,

extremely skilled in law, helped the sultan. The second one is Diwani-E-Mizalim Court: Supreme Court of Criminal Appeal. The Third one is Diwani-E-Risalat Court: Supreme Court of Civil Appeal. Sultan presided over the above two courts, but Chief Justice Qazi-ul-Quzat presided over them in his absence. And last but not the least is Sadre Jehan's Court and Chief Justice Court: if the Separate Court were appointed for help to the Chief Justice Court.

Administration of the court system during the Mughal period from 1526 to 1755 the emperor was regarded as the Fountain of Justice during the Mughal period. Three significant courts were created in Delhi, which was the capital of the Mughal Emperors in India. The Emperors Court: The Emperor's Court was the Empire's largest court. The Court was competent to hear initial civil and criminal matters. The Chief Court: the next Important Court in Delhi, chaired by the Chief Justice for hearing civil and criminal cases and hearing appeals from the provincial judiciary. The Chief Revenue Court: it is Delhi's third largest court and it was Diwan-e-ala's largest court of appeal to decide income cases. A veil of darkness descends on India's history after the disintegration of the Harsha Empire, which does not lift until the Muslim invasion. Once again, the nation was split into tiny kingdoms. But this did not lead in any major shift in the judiciary that had taken root in the thousands of years preceding it. In each kingdom, the standards and ideals of justice were maintained, the unity of civilization was preserved despite political divisions, and the fundamental principles of law and procedure were applied across the country. This is shown by the reality that during this era the excellent law commentaries like Mitakshara and ShukarneetiSar were published and enjoyed a power all-India. But a fresh chapter in our judicial history was launched by the establishment of the Muslim rule in India. A new religion, a new civilization, and a new social system carried with them the Muslim conquerors. This could only have a deep impact on the judiciary. Under Islam, the ideal of justice was among the highest in the middle Ages. He said in the Quran"Justice is God's equilibrium on earth where things are not less or more by a particle when weighed. He has established the equilibrium that he should not transgress with regard to the equilibrium, so keep a fair weight and not decrease the

equilibrium. He is also reported to have said that a moment spent in the dispensation of justice is better for God than the dedication of the person who has been fasting for years every day and praying every night. Thus, the administration of justice was considered a religious duty by the Muslim kings. High ideals were purchased with the Muslim kings in India. Badaoni reports that the Qadi rejected a libel suit lodged by the Kind itself against Shaikhzada Jami during Sultan Muhammad Tughlaq's reign, but no harm was done to him. This did not stop the defendant from being executed without trial by the Sultan. Individual sultans had very elevated righteous ideals. According to Barani, Balban considered justice to be the key pillar of sovereignty "where the sovereign's power to wipe out oppression lay". As a contemporary writer says, "India's medieval state, like here, had all the disadvantages of an autocracy throughout its existence and everything was temporary, private, and had no fundamental power. The private factor had become so pronounced in the administration that a slight deviation of the head from the route of obligation created concomitant differences in the whole 'trunk.' If the King was drunk' his magistrates in public were seen drunk.' Without safety, justice is not feasible, and the Indian Sultans have always felt safe. Consequently, the democratic ideal of government preached by Islam was unsafe in India. Islamic norms of justice did not take root as an established tradition in India during the Sultanate, unlike the judicial traditions of ancient India, which had found deep roots over several thousand years and could not be uprooted by political divisions. The nation had an effective state system under the Mughal Empire, resulting in the justice system taking shape. Qazi-an office that was borrowed from the Caliphate was the judicial administration unit. Every provincial capital had its Qazi and the empire's Supreme Qazi (Qazi-ul-quzat) was at the head of the judiciary. In addition, each town and village had its own Qazi, large enough to be classified as a Qasba. In theory, a Qazi had to be "a blameless Muslim scholar, fully familiar with the prescriptions of sacred law. According to the Mughal Empire's biggest historian, "the primary shortcoming of the Department of Law and Justice was that there was no scheme, no organisation of law courts in a periodic gradation from the highest to the lowest, nor any correct allocation of judges in proportion to the region to be served by them. According to

Sircar, "all the Mughal period Qazis were infamous for taking bribes, with a few honourable exceptions. The Emperor was the source of justice for the fountain. Every Wednesday, he kept his court of justice and decided on a few cases personally chosen by him, but he did not function as an initial tribunal but as the largest court of appeal. There is overwhelming proof that all the emperors from Akbar to Aurangzeb took their judicial role seriously and fulfilled their duties Jahangir made a wonderful display of it and his Golden Chain became popular throughout history. According to Jadunath Sircar, the weakness of Indo-Mohammedan Law was that all three of its sources were outside India. A relic of the emperor's usurpation of authority is the name given to criminal trials by Fauzdari even today. The method of replacing the Mughal justice system by the British started after the conquest of Bengal by the British. It took a long time, however. In reality, until the High Courts substituted it, the Sadre Diwani Adalat continued to operate. The Mughal judicial system has left its mark on the current system and it borrows from it a great portion of our legal terminology. Our first-instance civil courts and called Munsifs, the complainant and the defendant are called Muddai and Muddaliya and counts of other legal terms remind us of the Mughal Empire's excellent days.

Check your Progress-3

1.Who was the first Muslims to come to India and settled in?

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13.4 LEGAL SYSTEM IN BRITISH PERIOD

The custom-based law system–a legal system with the British East India Company came to India in perspective of recorded legal points of reference. In 1726, King George I permitted the firm to sanction the

construction of "Mayor's Courts" in Madras, Bombay and Calcutta. The company's legal elements extended widely after its triumph in Battle of Plassey and from the three major cities Roy and Swamy stretched out the courts of 1772 business. At the same moment, in those areas, the firm slowly replaced the present Mughal legal system. After the First War of Independence in 1857, control of India's corporate areas goes to the British Crown. The following enormous move in the Indian legal system was seen as a piece of the realm. Numerous oral courts have been established to supplant incomparable courts. Through letters of permits approved by the Indian High Courts Act passed by the British Parliament in 1862. These courts were transferred to the basic High Courts. The superintendence of smaller courts and the registration of law experts were appointed to the high courts of the individuals. In the midst of the Raj, the Privy Council was the most amazing offering tribunal. Law leaders of the House of Lords mediated cases before the chamber. The state prosecuted and was prosecuted in her capacity as Empress of India for the sake of the British sovereign. The proponents under that regime, "vakils," also took action in the midst of moving from Mughal's legal system, although they usually proceeded with their prior portion as client agents. The resulting principles and laws were finished in the 1846 Law on Legal Practitioners, which opened the calling with little regard for citizenship or faith. Furthermore, the coding of law began decisively with the shaping of the main Law Commission. The Indian Penal Code was drafted, created and restricted by 1862 (Keith) under the stewardship of its director, Thomas Babington Macaulay. A comparable committee has also drafted the Code of Criminal Procedure. Host of various laws and codes such as the Evidence Act (1872) and the Contracts Act (1872). Reforms under Warren Hastings (1772-1785 AD) Warren Hasting created two litigation courts–civil litigation for Diwani Adalat district and criminal litigation for Fauzdari Adalats district. District Diwani Adalat: The civil disputes put under the collector were settled in districts. Hindu law applied to Muslim Hindus and Muslim law in this tribunal. If individuals seek more justice, they can migrate to Sadar Diwani Adalat, which was run by a president and two Supreme Council members. District Fauzdari Adalats: It was established to resolve the criminal problems put under Qazi and Muftis aided Indian policemen. The

collector administered the entire functioning of this tribunal. This tribunal administered the Muslim law. But Sadar Nizamat Adalat, led by a Deputy Nizam who was assisted by Chief Qazi and Chief Mufti, gave the permission of capital punishment and for the purchase. The creation of the Supreme Court in Calcutta had original and appeal jurisdiction under the Regulating Act of 1773 AD. Education development in India during the British Period. Reforms under Cornwallis (1786-1793 AD) The Fauzadari District Court was abolished under Cornwallis and the Circuit Court was set up in Calcutta, Decca, Murshidabad and Patna. It functions as an appeal court for both civil and criminal instances operating under European magistrates. He moved Sadar Nizamat Adalat to Calcutta and placed it under the oversight of Governor-General and Supreme Council members who were helped by Chief Qazi and Chief Mufti. The Diwani Adalat District has been renamed District, City, or Zila Court, which was operated under a district judge. He also set up civil courts for both Hindu and Muslim gradation, such as Munsiff Court, Registrar Court, District Court, Sadar Diwani Adalat, and King-in-Council. He is renowned for establishing the rule of law. Reforms under William Bentinck the four Circuit Courts were abolished under William Bentinck and the functions of the dissolved tribunal were transferred to the collectors under the oversight of the income and circuit commissioner. In Allahabad, Sadar Diwani Adalat and Sadar Nizamat Adalat were founded. He produced the Persian and a vernacular language for the reduced court case and created English as the official language for the Supreme Court case. Macaulay established the Law Commission during his reign, which codified the Indian legislation. A Civil Procedure Code of 1859, an Indian Penal Code of 1860, and a Code of Criminal Procedure of 1861 were prepared on the grounds of this committee. Indian Press Development during the British Rule in India 4. The Government of India Act 1935 altered the Indian government's composition from "unitary" to "federal" form. To avoid disputes that would have arisen between the constituent units and the Federation, the distribution of powers between the Centre and the Provinces required the balance. It also supplied for the establishment of a Federal Court with appeal and advisory jurisdiction, which was established in 1937. His jurisdiction for appeals has been expanded to civil and criminal

instances. We can therefore claim that Indian law was originally guided by the custom and religious book that evolved over time into secular law and common law. It is remarkable that the ruling classes affected the entire evolution of Indian judiciary. For example-from ancient legal literature to arbitration in the Delhi Sultanate, then moving to arbitration in Mughal and lastly despotic British.

Check your Progress-4

1.Who sanction the construction of "Mayor's Courts" and where?

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13.5 LEGAL SYSTEM AFTER INDEPENDENCE

India's independence brought about some inescapable modifications in the composition of the judiciary, the hugest of which was the replacement of the Supreme Court as an intense court of appeal (Puri) in place of the Privy Council. In India, the current judicial system consists of a different levelled court system. There are liberal arrangements to take the lower to the greater courts 'interests. The Supreme Court, the arrival's most notable court, implements a high equity requirement and advances a fundamental way of dealing with the law throughout the country. Simplify and rationalize our policies and regulations so that they are forward-looking, solution-oriented, compatible across government departments and agencies, with clear goals, and well drafted by specialists who really comprehend the problems and how to bridge prospective loopholes up front While some of our main statutes were drafted in the British era (Indian Penal Code, 1860; Contract Act, 1872; Negotiable. India was socially divided in 1947, economically poor, with very little sector and exports, a vast array of religious and customary convictions, and a British rule-fitting system. We invested in

government-owned infrastructure, education, business (which facilitated job motives, but quickly became inefficient with outdated techniques), transportation and communication, granting minority protection, licensing sector to control its development and regulated foreign exchange movement. Often our regulations became instruments to harass our individuals, our political classes became our rulers, sometimes our bureaucrats and intellectuals became barriers to our constitutional commitments. Indian entrepreneurship began to flourish from being an almost bankrupt country when liberalization began in 1991, and with excellent pride Indians began to take their rightful position in world business. For the developed world, "India" has become a buzzword. China and India have become destinations worldwide. But while some pockets were beneficial, a toll was taken by national interest. We have learned about our "rights," but have lost sight of our "responsibilities." There has been a radical increase in wealth disparity, but the reality of political financing has been concealed behind the veneer of our political classes "being there for the common person." Changes have led to a lot of fresh legislation. Many are poorly drafted and apart from abolishing issues such as fringe benefit tax and sick industrial company legislation, we find fresh circulars, press notes, changes being implemented by business and finance regulators every day. The Securities and Exchange Board of India Act, 1992, for instance, offers for regulations to be made by the board (SEBI). There are already more than 200 regulations and almost every day Circulars are issued11. The Foreign Exchange Management Act, 1999 offers for the issuance of notifications and circulars by the Reserve Bank of India (RBI), an amount which is well in hundreds with several continuing to be replaced / revised12. In a practical set-up, many government agencies and ministries only recognize policy change when informed and not when a notice or master circular is passed by another agency or ministry. Complexities have been added by the burgeoning internet, social media sites and email communication. Crime is now rarely technology-free, yet our law enforcement machinery is unfit to tackle it and efficiently enforce the 200013 Information Technology Act. Terrorism and bomb blasts, apart from bank and other financial fraud, are an acknowledged event. The Right to Information Act, 2005, sought to address opaqueness. Public

pressure resulted in the adoption of Public Interest Litigation (PIL), speedy trials and retrials of some accused murder. While India began seeing the emergence of PILs Hussainara Khatoon14 in 1980, this also began to be abused. The Supreme Court ruled strongly on such misuse in Dalip Singh v. State of UP15 saying that a fresh creed of litigants had arisen which was dishonest and worked exclusively for private benefit in filing PILs. It further stated that such litigants did not hesitate to misrepresent and suppress facts and only tried to pollute the justice stream. There has also been growing suspicion and mud-slinging between key components of our legal system. Instead of working together for the greater good, as our Constitution requires, turf wars between departments and organizations have begun. Government officials like the Chief Electoral Commissioner and the Chief Electoral Officer and Auditor General gave results that the government was over in a fight with them. Departments of government and corporations have begun to take divergent positions and are increasingly litigating against each other. Litigation against government has grown to such an extent that the courts have entered governance16. By aggressive reporting and "breaking news" stories, our media added to the pressure. We have not been able to tackle even the essential things for our people in over six decades–too many of whom live in poverty, without fundamental food, accommodation or sanitation. We did not dismantle the complicated legal recourse access schemes we inherited. We have many legislations that are confusing and frequently changing with conflicting government and court choices. We have a tiny rich portion of our population prepared to deny taxes to the government and fight up to the greatest courts they can afford for their "rights," almost balanced by unjustifiable tax collection agencies demands. We have large-scale rambling litigation documents that are intended to be concisely presenting appropriate facts. At the dawn of independence, independent India's legislature was the forge where a paper was being created that would guide the young nation. It's going to collapse on B's keen legal mind. R. Ambedkar for the newly autonomous country to formulate a constitution. The Indian Bar played a part in the independence movement that can hardly be overestimated–it is sufficient evidence that the movement's top rulers across the political spectrum were attorneys. In Jawaharlal Nehru, the

new country saw its first leader, and a paternal figure in M. K. Gandhi, the two leading lawyers. Perhaps it was the consequent understanding of law and its relationship with society that prompted the founding fathers to devote the energy needed to form an unprecedented constitution of scope and length. India's Constitution is the guiding light in all the country's executive, legislative and judicial matters. It's vast and it's aimed at being delicate. The Constitution turned the system direction initially implemented in India for the perpetuation of colonial and imperial interests, strongly in the direction of social welfare. The Constitution aims to empower the weakest members of society explicitly and through judicial interpretation. As a result of the common law system, India has an organic law. This was fine-tuned for Indian circumstances through judicial pronouncements and legislative action. The move of the Indian legal system towards a paradigm of social justice, although undertaken separately, can be seen to reflect the changes with common law system in other regions. The Indian legal system has developed from a colonial master's artifice as an important component of the world's biggest democracy and a vital front in the struggle for every citizen to secure constitutional rights.

Check your Progress-5

1.What role played by The Supreme Court after independence?

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13.6 LET'S SUM UP

History includes the growing evolution and development of the country's legal system and outlines the historical process by which a legal system has become what overtime is. A country's legal system at the time is not

the creation of one man or one day, but is the cumulative fruit of the careful planning and patient work experience of a large number of people through generation. With the arrival of the British to India, India's legal system altered from what it was in the Mughal era before the Hindu rules were followed primarily by Islamic law. Currently in India, the legal system is very similar to what the British left with. It is obvious from this research that the null hypothesis fails as the current legal system is well refined and has evolved to its finest. Law' describes the political organisation and structure of society, provides an individual relationship system within it and adds to the stability of society by providing an objective mechanism to resolve disputes and conflicts within the community. In some form or other, all comprehensive human societies possess law. Legal System' is the whole of a state or community's legislation. A country's legal system is component of its social system and reflects that society's social, political, economic, and cultural features. That legal system outside the socio-cultural environment in which it works is therefore hard to comprehend. The British model-based legal system (formal / inherited) is full of technicalities and processes, which keeps the scheme alien to the majority of Indians whose legal culture is more indigenous and limits access to justice for poor and illiterate individuals. However, the rights and advantages granted by the legislation and the constitution give these very individuals the chance to enjoy the fruits of a welfare democracy. Thus, the law and its processes should be acquainted to every Indian. "The word' Law' often refers only to rules and regulations, but it is possible to draw a line between the rules and regulations themselves and those structures, institutions and processes that give life to them. The' Legal System' is this extended domain.

13.7 KEYWORDS

18. Indigenous: Originating or occurring naturally in a particular place

19. Hypothesis: A supposition or proposed explanation made on the basis of limited evidence as a starting point for further investigation.

20. Comprehensive: Including or dealing with all or nearly all elements or aspects of something.

21. Autonomous: Having the freedom to govern itself or control its own affairs.

13.8 QUESTIONS FOR REVIEW

1. Who granted the rights and advantages to enjoy the fruits of a welfare democracy?

2. What Law' describes?

3. The Indian legal system has developed from?

4. What is the Securities and Exchange Board of India Act, is all about?

5. High ideals were purchased with?

13.9 SUGGESTED READINGS AND REFERENCES

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13.10 ANSWERS TO CHECK YOUR PROGRESS

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

The Indian Constitution is the source of the Indian Legal System.

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

The Hindu Law is thought to be a divine law. It was disclosed through Vedas to the individuals by God.

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

The first Muslims to come to India were the Arabs. They arrived in the eighth century and settled on the coast of Malabar and in Sind.

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

King George I permitted the firm to sanction the construction of "Mayor's Courts" in Madras, Bombay and Calcutta.

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

The Supreme Court, the arrival's most notable court, implements a high equity requirement and advances a fundamental way of dealing with the law throughout the country.

UNIT-14: GUIDE TO INDIA'S LEGAL RESEARCH

STRUCTURE

14.0 OBJECTIVES

After learning this unit based on "Guide to India's Legal Research", you can gain knowledge of about the following important topics:

- To discuss Legal Profession.
- To know the Legal Education.
- To know Law Reporting.
- To know Important Legal Sources.

14.1 INTRODUCTION

India is a federation of 28 countries and 7 territories of the Union. The President is the executive head of the Union. He operates on the recommendation of the cabinet of the Union headed by a prime minister in charge of the Indian parliament. The parliament is bicameral: the Council of States or Upper House, whose primary membership is elected by state legislatures and the House of People or Lower House, composed of directly elected by the individuals in general elections. The

democratic system works in a comparable way to the parliamentary democracy scheme in Britain. A single integrated court system administers union legislation as well as state regulations. The common law scheme in India is a British legacy where stare decision doctrine rules. Sitting in New Delhi, India's Supreme Court is the largest court in the entire justice system. Each state, or group of them, has a High Court, which is also a record court, exercising administrative power over the subordinate judiciary. It also has the authority to issue writs in the practice of exceptional jurisdiction and is the court of appeal from the state's reduced court choices. Each state is split into districts where the highest tribunal is the District Court and Sessions Judge. He's got a double role. He adjudicates in civil litigation as a District Judge and as a Sessions Judge adjudicates criminal litigation. Below him are Civil Case Sub-Judges and Criminal Magistrates. In criminal matters, the Chief Judicial Magistrate and the Senior Sub-Judge on the civil side, with reduced rungs of magistrates and sub-judges, constitute the judiciary at district level under the District Court's superintendence. There are four thirds of the judiciary, therefore.The first significant civilization of India flourished in the Indus River Valley around 2500 BC. This civilization, which has persisted for 1000 years and is known as the culture of Harappan, seems to have been the culmination of thousands of years of settlement. The social and religious structures of India have been resisting invasions, famines, religious persecutions, political upheavals and many other cataclysms for many thousands of years. Few other nations have such a lengthy and vibrant history of national identities. The roots of the human organizations of today are deeply buried in the past. This also applies to the law and legal system of the country. A country's legal system cannot be said to be creating one person for one day at any given moment; it reflects the cumulative impact of a big amount of people's efforts, experience, careful planning, and patient work over generations. During the 17th century, the contemporary judicial system in India began to take shape with British control in India. The British Empire persisted until 1947, and India's current judicial system owes much to the development of the judicial system during the British period.

Check your Progress-1

1.What is the main role of president?

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14.2 LEGAL PROFESSION

The profession of law is called a noble profession, and because they are guardians of the contemporary legal system, attorneys are a force for the perseverance and strengthening of constitutional government. In 1774, with the establishment of the Supreme Court in Calcutta, the first step towards organizing a legal profession in India was taken. The Supreme Court was empowered to "approve, acknowledge and enrol such and so many lawyers, vakils and lawyers" as to the court "shall appear to be meeting." For the first time, Bengal Regulation VII of 1793 established a standard legal profession for the judiciary of the firms. In the Companies courts in Bengal, Bihar, Orissa, Madras, and Bombay, other comparable laws were enacted to regulate the legal profession. The 1879 Law on Legal Practitioners was implemented in order to strengthen and amend the law on legal practitioners. This enabled a lawyer/vakil to register on the roll in any high court and exercise in all courts subordinate to the high court concerned, and also to exercise in any court in British India other than the high tribunal on whose roll he was not registered. After India's independence, it was thought that it was necessary to change the judicial administration in India according to the requirements of the moment. The legal profession in India is currently regulated by the 1961 Advocates Act, which was implemented on the advice of the Indian Law Commission to strengthen the law on legal practitioners and to provide for the establishment of the Bar Council and All India Bar. Under the Advocates Act, India's Bar Council was established as a statutory body to accept individuals as advocates on its roll, prepare and retain such roll, entertain and determine cases of misconduct against proponents on its roll, and protect advocates' rights,

privileges, and interests on its roll. India's Bar Council is also an apex statutory body that sets norms for advocates 'professional behaviour and etiquette while promoting and supporting law reform.The Indian legal profession is one of the world's biggest, with more than 1.4 million lawyers registered across the country. The Indian legal market's estimated full value as of 2010 was about USD 1.25 billion. Since its independence, the legal profession has experienced an enormous transformation as it has evolved from colonial India. The bar members 'attempts to attain excellence through rigid competition in all areas of their practice are evident not only in their dealings with new difficulties due to technological and other innovations, but also in their acceptance in a globalized globe. Historically, both nationally and internationally, the bar members have given leadership. Much greater is the present potential. The 1961 Advocates Act revised and consolidated the law on legal professionals and provided for the establishment of the State Bar Councils and an All-India Bar–India's Bar Council as its apex body. India's Bar Council is made up of India's Attorney General and India's Solicitor General as its ex officio representatives, as well as one member elected from each of the State Bar Councils. State Bar Council members are appointed for a five-year term. Some of the primary tasks of the Bar Council of India are: establishing norms of professional behaviour and advocate etiquette; and establishing the procedure to be followed by its supervisory committee and the supervisory committee of each State Bar Council; and promoting and supporting reform of the law; and promoting legal education and setting norms for such education in consultation. India's Bar Council is resulted by a Chairman and Vice-Chairman, who are elected for a two-year term from among Council members.Each of India's states has a State Bar Council. Each State Bar Council has a variable amount of representatives based on the numerical strength of proponents on their rolls, who are elected to the State Bar Council membership in accordance with the proportional representation system through a single transferable vote among proponents on the electoral roll of the corresponding State Bar Council. The State Bar Council shall consist of 15 representatives in the event of an electorate not exceeding five thousand participants, whereas in the event of an electorate exceeding five thousand but not exceeding ten thousand, the power of the

Council shall be twenty members. If the voters exceed 10,000, the Council's power is twenty-five. In addition, each State Bar Council counts as ex officio members its corresponding Advocate General. A Chairman, aided by a Vice-Chairman and Secretary, heads each State Bar Council.In India, the legal profession is regarded a noble profession to date and is thus still evaluated by norms of legal ethics that may seem outdated in many other jurisdictions overseas, but are regarded a very significant part of the legal profession in India, despite the shift in thinking that liberalization inevitably has brought about. India's Bar Council still retains rigid legal community standards. An instance of this is Rule 36 of the Indian Bar Council Rules, which does not allow Indian law firms / lawyers to advertise their practice on the market. In different instances, the judiciary has recognized the substance of this limitation. That is not to say that India's Bar Council has been totally blind to the realities of liberalization, as is apparent from its decision to amend Rule 36 and add a provision enabling proponents to keep websites about themselves or their law firms in order to disseminate data so that individuals can make informed decisions. In order to strike the highest equilibrium, India's Bar Council is gradually reviewing ethical norms with the requirements of our moment. Recently, in a seminar on' Professional Ethics,' the Bar Council regarded whether to reform ethical norms and professional behaviour in India in order to better reflect the norms of the International Bar Association, of which it is a member, and the norms of the UIA Rules. Chamber and contingency fee agreements in India have always been illegal, and there is nothing to suggest that in the near future there is any reason to change such thinking.

Check your Progress-2

1.The Supreme Court was empowered to?

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14.3 LEGAL EDUCATION

Legal education is fundamentally a multidiscipline, multi-purpose schooling capable of developing the human resources and idealism required to enhance the legal system. A lawyer, a product of such education, could contribute much more constructively to national growth and social change. Legal education and development have become interrelated ideas in contemporary developing societies. According to Babylon's Dictionary, "Legal schooling is the education of people who plan to become legal experts or those who merely plan to use their law degree to some extent, either law-related (such as academic or political) or business-related. It involves: first degree in law, which can be studied at either graduate or graduate level depending on the nation; historically, there has been no severe concern or attention given to legal education in India. After graduation, classes were taught in the law departments of universities as three-year programs resulting in an LLB degree being awarded. This mediocrity has been questioned with the institution of national law schools and it has been effective in attracting learners to law research.This document will study in detail the status of legal education before and after independence, as well as the goals and difficulties faced by legal education in our nation.In the present era of data capitalism, economic liberalization, and WTO, India's legal profession must meet the requirements of a fresh brand of legal consumer / client, namely overseas firms or collaborations. The extra roles to be played by law professionals in the altered situation are policy planner, company consultant, interest group negotiator, articulation and communication specialists, mediator, lobbyist, law reformer, etc. Because of the growing role of law practitioners, our curriculum should be enhanced with all interdisciplinary courses that are required to generate 4th generation qualified law experts. Education encyclopaedia describes legal education as a human expertise skill that is widely applicable to the art of the lawyer and deserves unique attention in academic institutions. Blackstone argues that legal education seeks to impart country understanding as part of the needed culture of a gentleman, nobleman and common person involved in an apprenticed profession. The law commission also describes legal education as a science that provides

learners with understanding of certain values and legal regulations to allow them to join the legal profession. In popular parlance, it can be called a science that deals with the practical element of land law and is related to laws, moots or arguments on issues of law and case law. Consequently, legal education cannot be said to be a limited notion. It involves not only the profession that is practiced in court, but also law study, law teaching, administration, business and industrial employments, and all other activities that postulate and involve the use of legal understanding and skills.The Indian Bar Council, which is a statutory body established under the Advocates 'Act of 1961, regulates legal education in India. In India, there are two kinds of graduate-level law courses: a 3-year course after graduation; and an integrated5-year course after 10 + 2 leading to a graduate degree with honours and a law degree. The laws of the Bar Council of India lay down standards for the acceptance of universities / schools providing legal education. Under the Advocates Act of 1961, a graduate from a recognized law college is only permitted to be registered with the Bar Council as a lawyer, and any law graduate registered with the Bar Council is qualified to practice in any law court in India.Legal education is primarily aimed at producing professional attorneys. The term 'professional lawyer 'covers not only the 'litigating, lawyer, viz., 'the lawyer who argues before normal courts, but also all law-trained individuals whose employment depends primarily on their law degrees.

Check your Progress-3

1.What are the most important factors of Legal education introduced?

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14.4 MANIFESTATIONS OF LEGAL LITERATURE

Legal fraternity may require distinct kinds of data, such as case legislation, statutory provisions, regulations framed under any act, objects and grounds of any act, amendments to any act, notifications issued under any specific statute, parliamentary discussions at the moment of the enactment of any specific act, or scholarly articles on a specific subject in distinct circumstances. "In England, the theory of precedent binding force is strongly created. A judge is required to follow the judgments of any court identified as qualified to bind him, and it becomes his responsibility to administer the law as proclaimed by such a court." The precedent system has taken on a strong factor in the growth of common law in England. Since the Indian legal system had its origins in the British system, a comparable concept has prevailed in India, and the precedent's binding power is strongly defined. Article 141 of the Indian Constitution, enacted on 26 January 1950, further reinforced the precedent doctrine in India by providing that the law declared binding by the Supreme Court is binding on all judges in India. Precedent theory carries the law reporting scheme as its needed concomitant in its aftermath. Publication of choices is a precedent condition for the operation of the theory. This is why legal practitioners have come to rely on the Law Reports to identify views with comparable problems with the case in hand. Therefore, a law library must obtain all credible and genuine court reports containing accurate records of what they lay down, and it is only then that the stare decision doctrine can work meaningfully. A law library includes extremely specific materials, and unique abilities are required to manage this. In essence, legal material comprises of statutory law and case reports. These two kinds of legal material relate respectively to the "power" and the "precedent." The wider legal fraternity may require distinct kinds of data, such as case legislation, statutory provisions, guidelines framed under any Act, subject-matter and reasons for any Act, amendments to any Act, notifications issued under any specific law, discussions in Parliament at the moment of the enactment of any specific Act, or scholarly articles on a specific subject in distinct circumstances. Legal literature manifests itself in many forms

such as: Bare Acts & Commentaries on particular laws & Manuals / Local Acts & Reports are Law Commission Report, Committee / Commission Reports, Annual Reports, Parliamentary Committee Reports, Joint Committee, Select Committee, Standing Committee & Gazettes, Central Government, Government & Parliamentary Debates, Constituent Assembly Some of the newspapers also publish statutory content like Acts, Amendments, Rules, etc. Journals that contain only legislation such as Acts, Rules, Notifications, etc. Digests& Legal Dictionaries Legal encyclopaedias such as American Jurisprudence, Corpus Juris Secundum, Halsbury's Law of England and Halsbury's Law of India Different kinds of legal literature for various kinds of data requirements are to be consulted. A law librarian must obtain each sort of legal literature in his or her library in order to create a suitable and proportionate collection. In addition to obtaining legal literature of various kinds, a law librarian must create numerous native instruments to meet the data needs of library customers, such as: Alphabetical Index to all Acts including details of amendments Topical alphabetical index to significant landmark instances& Topical bibliographies on significant legal elements & Union catalog of present periodicals

Check your Progress-4

1. Where did Indian legal system had its origins?

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14.5 LAW REPORTING

The precedent's binding force theory is strongly founded in England. A judge is required to follow any court's judgment identified as qualified to bind him, and it becomes his responsibility to administer the law as stated by such a court. The precedent system was a strong factor in England's common law growth. Because of the legacy of common law,

the binding power of precedents has also been strongly created in India, meaning that the decisions handed down by the superior courts are both the law of the nation and legislative acts. Precedent theory carries the law reporting scheme as its needed concomitant in its aftermath. Publication of choices is a prerequisite for the operation of the precedent principle; case reports must be accurate. If the cases are to be binding, then accurate records of what they lay down must be available, and it is only then that the doctrine of stare decision can function meaningfully. The Indian Law Reports Act of 1875 authorizes the publication in the official report of reports of cases decided by the high courts and provides that,' No court shall be bound to hear the citation or receive or treat as a binding authority the report of any case decided by any of those high courts on or after that date other than a report published under the authority of the G A decision of the Supreme Court or of the High Court is in itself authoritative, not because it is recorded. As a result, the practice of quoting unreported choices led to a big amount of private reports being published. The extraordinary delay in publishing official reports and the incompleteness of official reports made private reports flourish, leading to the commercial publishing of a number of law reports in India by non-official organizations. More than 300 law reports are released in the nation in India. They cover a very broad variety and from different points of perspective are released. A "union catalogue" compiled by the library of present law journals of the Supreme Court Judges subscribed by the libraries of multiple high court and Supreme Court judges appended at the end of this document provides information of numerous law reports released in India. It also provides information of multiple foreign law reports presented in India by law libraries, giving an idea of the "foreign newspapers" being used by the country's legal fraternity.In India, the art of reporting law and the growth of precedent power as in England have not occurred. In this nation, England has embraced the technique of law reporting to maintain judicial choices and the principle of precedent power. As in England, a court in this nation is bound by a greater court's decision-making proportion of each situation; but their own choices are not bound by the Supreme Court and the High Courts. In Bengal Immunity Company, Ltd. v. State of Bihar6, the Supreme Court held that if it is persuaded of its mistake and its baneful

impact on the overall interest of the public, it could deviate from a prior decision.7 The same stance is also held in the High Courts.8 The History of Law Reporting in India can be split into two sections: the first of which deals with the early phases of its growth. There was no periodic and systematic reporting of the law. Regular law reporting began only with the establishment of the High Courts in the Presidential Towns in 1862. Semi-official and private law reports have been released from that moment on a regular and systematic basis. There's also formal law reporting at the moment. Sir James Stephen, who was the law member of the Governor General's Council, registered a minute that law reporting should be considered a branch of legislation; he acknowledged the concept that the government's obligation to publish the law enunciated by its tribunals was hardly less essential than to enact its laws. A circular was given to different local governments and the high courts on this topic. Later on Mr Hob house, who succeeded Sir Stephen as the member of the Law, became interested in the topic of law reporting and took the initiative to improve the Law Reports Act in 1875. Its section 3 only gave power to approved reports by offering that no court would be bound to hear, obtain or treat it as a binding authority, a report of any case decided by any High Court other than a document released under the power of the Government. Following the passage of this Act, reporting councils of law were established in several high courts and reports started to be published under the government's oversight and power. It was heavily opposed to the 1875 Act, which was an effort to create a partial monopoly in favour of formal reports. Sir George Campbell, then Lieutenant-Governor of Bengal, said:' If you placed in the hands of any authority the power to decide which of those choices should be treated as authoritative and should be denied and snuffed out, you give that authority a tremendous power over the country's Superior Courts: you make him, in reality, Judge over the Judges. Notwithstanding this Act, in official accounts released in this nation have been and are brought before the superior courts and depended on in their decisions by them. The Act has proven to be a dead letter, in reality. A non-official law implemented in the Central Legislature in 1927, containing provision to prohibit the citation of accounts of non-official law, encountered with powerful criticism and opposition and eventually collapsed. The Law Commission

also recently stated that law reporting monopoly was not desirable and suggested repealing the 1875 Act.The Law Commission, appointed in 1955, dealt in detail with the issue of law reporting in India and made some useful suggestions for improvement.14 The Law Commission failed to consider the desirability of undertaking the reproduction of ancient law reports.15 it is argued that it is necessary to undertake this project in the interests of the administration of justice.A law report is a record of a legal choice that sets a precedent on a point of law. Not all court choices set a precedent, however interesting they might be in terms of the facts of the situation or its implications. A choice can only be reported if it sets out a fresh law principle or modifications or clarifies the current law. Therefore, it is essential to differentiate between those instances which effectively lay down, alter or clarify the law and therefore need to be reported and those which do not; and to guarantee that any report of a reportable case obviously indicates all the appropriate data so that learners, educators, professionals and magistrates can rely on it as an precise and authoritative declaration of the situation There are two wide kinds of law reports.Reports on complete text law integrate the court's complete judgment, along with a summary of the case known as the headnote and a number of other components. Summary reports, also known as summaries of cases, digests, case notes, etc., consist of summaries or summaries of the judgment and are presented in a less formal manner than a full text law report. Full text reports enjoy greater status than summary reports for apparent purposes and should be quoted for them in preference. The role of summary reports is either to alert professionals and learners to instances that may not merit complete reporting, or to act as an early warning scheme prior to complete reporting, which may take longer to write, edit and publish for apparent purposes.

This may be quoted in combination with a summary report where a case is not reported in a complete text law report, but a transcript of the judgement is accessible. The combination of a summary report and a transcript, however, does not enjoy the same status as a full text law report where one is available, for reasons that will become clear once you appreciate the amount of careful editorial work involved in the

preparation of the full report. Anatomy of a law report In order to justify its being quoted in support of a law proposal, any law report, whether complete text or summary form, must contain certain basic pieces of data. First, it must have a title, generally based on the parties ‘names. It must recognize the decision provided by the tribunal and the date it was issued. Most essentially, a declaration of the law principle decided in the case must be included. Ideally, the declaration should be articulated as a rule or proposal that can be implemented even if the facts are not the same in subsequent finals. Usually it will be drawn from the phrases actually used by the judge(s), but in some manner it can be condensed and placed into recorded rather than quoted speech. In the contemporary headnote of a complete text law report as released by ICLR, the most highly evolved type of such a declaration is discovered. Finally, the reporter must be a skilled lawyer to reassure the reader of the report’s reliability, and this must be apparent either from the report itself or from the journal it appears in.For a summary document, the above five components (title, court, date, law principle, reporter) are the bare minimum. But most reports contain a number of other elements, particularly in the case the full text of the judgment(s) and the judge(s) names. What follows is a more comprehensive explanation of all the different components of a contemporary study on complete text law, as published in The Law Reports, listed in the order in which they appear. For the sake of illustration, opening a copy of a complete text law report or viewing the Learn more speaking essay on law report anatomy would be helpful at this stage.THE DOCTRINE of the rule of law is based on the fundamental basis and structure of the well-ordered government of a country and its defined courts of justice. While it is the government’s legislative wing that makes the law, there is still a big body of common law based on society’s customs and procedures that provides them the sanctity of law. Ultimately, it is the courts of justice that administer alt these legislations and, in their interpretative jurisdiction, they take note of the legislature’s intention and often provide omissions in the enacted law and sometimes advocate even new ways for the legislature to take note of and regulate them by the enacted law. Consequently, the legal profession and the litigant public seek enlightenment in the country’s law by studying the law reports containing the choices of the country’s

highest judiciary. Such authoritative decisions in Bharat's federal set-up emanate only from the states 'high courts and the centre's Supreme Court. It follows, therefore, that the law reports containing these authoritative choices should be based on a pattern that will examine the duly edited and annotated binding precedents. The selection of reportable decisions, the editing pattern and the need for any annotation requires some profound thinking. Because the precedent doctrine has come to remain in India, it is essential to create effective law reporting based on certain fundamental and workable values. In Article 141, the Constitution of India provided that the law declared by the Supreme Court would be binding on all Indian courts. Although there is no comparable provision in respect of the High Courts, it is well established that the judiciary subordinate to the High Courts are bound by their decisions. In its 14th Report, the Law Commission of India noted that' the current scheme of treating and citing judicial precedents as binding serves a very precious objective and should continue.'' The choices of the High Court. Precedents serve to demonstrate values and offer them a set certainty/'10 A good reason for the elastic powers conferred on the Supreme Court in its interpretative jurisdiction is to allow it to alter the law when it feels it is essential. The Supreme Court may review its own decision under Article 137. The Supreme Court is not bound by the Privy Council or the Federal Court's own decision.

Check your Progress-5

1.The Indian Law Reports Act of 1875 authorizes?

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14.6 IMPORTANT LEGAL SOURCES

Constitutions, laws, customary law and case law are the primary sources of law in India. Statutes are adopted by the legislatures of the Parliament,

the legislatures of the State and the Union Territory. In addition, there is a wide range of laws known as subordinate laws in the form of rules, regulations and by-laws created by central / state governments and local authorities such as municipal corporations, municipalities, gram panchayats and other local authorities. This subordinate legislation is produced in accordance with the power granted or delegated by the relevant legislatures of the Parliament or State or Union Territory. Superior court judgments such as the Supreme Court and the High Court are significant legal sources. Supreme Court decisions are binding on all judiciary in India. Local customs and conventions that are not contrary to statute, morality, etc. are also recognized and taken into consideration by the judiciary while administering justice in some areas. It is vital to comprehend the sources of law in order to have a clear and complete knowledge of law. Sources of law imply the sources from which human behaviour originates from law or binding regulations. In other words, from sources, law is obtained. Jurists have distinct opinions as to the origin and sources of legislation as to the definition of legislation. Since the word 'law' has several meanings, legal specialists approach law sources from different perspectives. Austin, for example, sees sovereign as the source of law, while Savigny and Henry Maine see custom as the most significant source of law. The school of natural law believes nature and human reason to be the origin of law, while theologians regard religious scripts as sources of law. While there are different claims and counter claims about the sources of law, it is true that law has been derived from comparable sources in almost all societies. Salmond, an English lawyer, has categorized law sources into the following categories: formal law sources: these are the sources from which law derives its strength and validity. This category includes Alaw implemented by the State or Sovereign. Material Law Sources: relates to the law material. Simply put, it's all about where the laws are derived from. In this category of law, customs drop. If we look around and examine the current legal systems, however, it can be seen that most legal systems are based on laws. At the same moment, it is equally true that customs sometimes play an important part in a country's legal system. In some legal systems, court rulings are legally binding. Based on the above debate, in any contemporary culture, three main sources of

law can be recognized as follows: Custom &Justice precedent & Legislation. To be valid, a custom must be noted continually without interruption for a very long time. Furthermore, the general public's view and ethics must support a practice not only for a very lengthy moment, but also. Every custom, however, does not need to become law. The Hindu Marriages Act, 1955, for instance, prohibits marriages within the prohibited degrees of marriage. However, if there is a proven custom within a certain society, the Act still allows weddings within the prohibited degree of partnership.Custom can be described merely as long-established procedures or unwritten laws that have become binding or binding. Custom was deemed one of the most significant sources of law in ancient cultures; in reality it was regarded as the true source of law. The significance of custom as a source of law diminished with the passage of time and the advent of modern civilization, and other sources such as judicial precedents and laws attained significance. There is no doubt that custom is a significant source of law. Broadly speaking, there are two opinions that prevail over whether custom is law in this respect. Lawyers like Austin opposed custom as a law because it did not come from the sovereign's will. Lawyers like Savigny regard custom as the primary source of law. According to him, the people's will be the true source of law and not the sovereign's will. People's will have always been expressed in society's customs and traditions. Therefore, custom is a major source of law. As a source of law, Saptapadi is an instance of customs. It's a Hindu marriage ceremony's most importantantrite. The Saptapadi term implies "Seven steps." The newly-wed pair take seven measures around the holy fire, called Saptapadi, after binding the Mangalsutra. Section 7 of the Hindu Marriage Act, 1955 integrated Saptapadi's usual practice.Customs can be broadly divided into two classes: Customs without sanction: These kinds of customs are non-obligatory in nature and are followed because of public opinion. Customs with sanction: These customs are binding in nature and are enforced by the State. These customs may further be divided into the following categories: Legal Custom: Legal custom is a custom whose authority is absolute; it possesses the force of law. It is recognized and enforced by the courts. Legal custom may be further classified into the following two types: General Customs: These types of customs prevail throughout the

territory of the State. Local Customs: Local customs are applicable to a part of the State, or a particular region of the country. Conventional Customs: Conventional customs are binding on the parties to an agreement. When two or more persons enter into an agreement related to a trade, it is presumed in law that they make the contract in accordance with established convention or usage of that trade. For instance an agreement between landlord and tenant regarding the payment of the rent will be governed by convention prevailing in this regard. All customs cannot be accepted as sources of law, nor can all customs be recognized and enforced by the courts. The jurists and courts have laid down some essential tests for customs to be recognized as valid sources of law. These tests are summarized as follows: Antiquity: In order to be legally valid customs should have been in existence for a long time, even beyond human memory. In England, the year 1189 i.e. the reign of Richard I King of England has been fixed for the determination of validity of customs. However, in India there is no such time limit for deciding the antiquity of the customs. The only condition is that those should have been in practice since time immemorial. A custom to be valid should have been in continuous practice. It must have been enjoyed without any kind of interruption. Long intervals and disrupted practice of a custom raise doubts about the validity of the same. Exercised as a matter of right: Custom must be enjoyed openly and with the knowledge of the community. It should not have been practised secretly. Accustom must be proved to be a matter of right. A mere doubtful exercise of a right is not sufficient to a claim as a valid custom. Reasonableness is a custom must conform to the norms of justice and public utility. A custom, to be valid, should be based on rationality and reason. If a custom is likely to cause more inconvenience and mischief than convenience, such a custom will not be valid. Morality is a custom which is immoral or opposed to public policy cannot be a valid custom. Courts have declared many customs as invalid as they were practised for immoral purpose or were opposed to public policy. Bombay High Court in the case of Mathura Naikon v. Esu Naekin, ((1880) ILR 4 Bom 545) held that, the custom of adopting a girl for immoral purposes is illegal. Status with regard to: In any modern State, when a new legislation is enacted, it is generally preferred to the custom. Therefore, it is

imperative that a custom must not be opposed or contrary to legislation. Many customs have been abrogated by laws enacted by the legislative bodies in India. For instance, the customary practice of child marriage has been declared as an offence. Similarly, adoption laws have been changed by legislation in India. Custom was the most important source of law in ancient India. Even the British initially adopted the policy of non-intervention in personal matters of Hindus and Muslims. The British courts, in particular, the Privy Council, in cases such as Mohammad Ibrahim v. Shaik Ibrahim, (AIR 1922 PC 59) observed and underlined the importance of custom in moulding the law. At the same time, it is important to note that customs were not uniform or universal throughout the country. Some regions of the country had their own customs and usages. These variances in customs were also considered a hindrance in the integration of various communities of the country. During our freedom struggle, there were parallel movements for social reform in the country. Social reformers raised many issues related to women and children such as widow re-marriage and child marriage. After independence and the enactment of the Constitution, the Indian Parliament took many steps and abrogated many old customary practices by some progressive legislation. Hindu personal laws were codified and the Hindu Marriage Act, 1955 and the Hindu Adoption Act, 1955, were adopted. India's Constitution supplied these social modifications with a favourable setting. The significance of custom as a source of law and judicial precedent has definitely diminished after independence, and legislation has acquired a more important position. However, much of Indian law, particularly private legislation, is still controlled by customs. The codified Hindu Personal Laws are: a) Hindu Marriage Act, 1955 b) Hindu Succession Act, 1956, c) Hindu Minority and Guard Act. 1956 and d) 1956 Hindu Law on Adoptions and Maintenance.

14.7 LET'S SUM UP

India's laws refer to the Indian nation's law scheme. India retains a hybrid legal system with a combination of civil, common law and customary, Islamic morality or religious law within the legal framework

inherited from the colonial era and multiple laws first implemented by the British are still in effect in altered forms today. Indian regulations have also adhered to the rules of the United Nations on human rights law and environmental law since the creation of the Indian Constitution. Indian private law is quite complicated, with each religion adhering to its own particular legislation. Registration of marriages and divorces is not mandatory in most countries. Hindus are governed by separate legislation including Sikhs, Jain and Buddhist, Muslims, Christians, and adherents of other religions. The exception to this rule is Goa, where there is a uniform civil code in place, where all religions have a common law on marriage, divorce, and adoption. In the first major reformist decision of the last decade, the Supreme Court of India banned the Islamic practice of "Triple Talaq" divorce by uttering the husband's "Talaq" term thrice. Women protesters across India welcomed the landmark judgment of the Supreme Court of India. As of January 2017, there were approximately 1,248 laws.

14.8 KEYWORDS

1. Protesters: A person who publicly demonstrates opposition to something.

2. Hindrance: A thing that provides resistance, delay, or obstruction to something or someone.

3. Rationality: The quality of being based on or in accordance with reason or logic.

4. Citation: A mention of a praiseworthy act in an official report, especially that of a member of the armed forces in wartime.

14.9 QUESTIONS FOR REVIEW

1. Why Indian private law is complicated?
2. How Indian Parliament abrogated many old customary practices?
3. Why Courts have declared many customs as invalid?

4. What 1875 Act is all about?
5. What are common factors are included in Law Library?

14.10 SUGGESTED READINGS AND REFERENCES

1. http://cbseacademic.nic.in/web_material/doc/Legal_Studies
2. https://www.nyulawglobal.org/globalex/India_Legal_Research
3. https://www.loc.gov/law/help/legal-research-guide/india.php
4. https://www.uianet.org/en/actions/overview

14.11ANSWERS TO CHECK YOUR PROGRESS

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

The President is the executive head of the Union. He operates on the recommendation of the cabinet of the Union headed by a prime minister in charge of the Indian parliament.

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

The Supreme Court was empowered to "approve, acknowledge and enrol such and so many lawyers, vakils and lawyers" as to the court "shall appear to be meeting." For the first time, Bengal Regulation VII of 1793 established a standard legal profession for the judiciary of the firms.

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

Legal education is fundamentally a multidiscipline, multi-purpose schooling capable of developing the human resources and idealism required to enhance the legal system. A lawyer, a product of such education, could contribute much more constructively to national growth and social change. Legal education and development have become interrelated ideas in contemporary developing societies.

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

Indian legal system had its origins in the British system, a comparable concept has prevailed in India, and the precedent's binding power is strongly defined. Article 141 of the Indian Constitution, enacted on 26 January 1950, further reinforced the precedent doctrine in India by providing that the law declared binding by the Supreme Court is binding on all judges in India.

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

The Indian Law Reports Act of 1875 authorizes the publication in the official report of reports of cases decided by the high courts and provides that,' No court shall be bound to hear the citation or receive or treat as a binding authority the report of any case decided by any of those high courts on or after that date other than a report published under the authority of the G A decision of the Supreme Court or of the High Court is in itself authoritative, not because it is recorded.