

## PREFACE

In the curricular structure introduced by this University for students of Post-Graduate degree programme, the opportunity to pursue Post-Graduate course in Subject introduced by this University is equally available to all learners. Instead of being guided by any presumption about ability level, it would perhaps stand to reason if receptivity of a learner is judged in the course of the learning process. That would be entirely in keeping with the objectives of open education which does not believe in artificial differentiation.

Keeping this in view, study materials of the Post-Graduate level in different subjects are being prepared on the basis of a well laid-out syllabus. The course structure combines the best elements in the approved syllabi of Central and State Universities in respective subjects. It has been so designed as to be upgradable with the addition of new information as well as results of fresh thinking and analyses.

The accepted methodology of distance education has been followed in the preparation of these study materials. Co-operation in every form of experienced scholars is indispensable for a work of this kind. We, therefore, owe an enormous debt of gratitude to everyone whose tireless efforts went into the writing, editing and devising of a proper lay-out of the materials. Practically speaking, their role amounts to an involvement in invisible teaching. For, whoever makes use of these study materials would virtually derive the benefit of learning under their collective care without each being seen by the other.

The more a learner would seriously pursue these study materials the easier it will be for him or her to reach out to larger horizons of a subject. Care has also been taken to make the language lucid and presentation attractive so that they may be rated as quality self-learning materials. If anything remains still obscure or difficult to follow, arrangements are there to come to terms with them through the counselling sessions regularly available at the network of study centres set up by the University.

Needless to add, a great deal of this efforts is still experimental—in fact, pioneering in certain areas. Naturally, there is every possibility of some lapse or deficiency here and there. However, these do admit of rectification and further improvement in due course. On the whole, therefore, these study materials are expected to evoke wider appreciation the more they receive serious attention of all concerned.

**Professor (Dr.) Subha Sankar Sarkar**  
Vice-Chancellor

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## **Unit -1 □ The Concept of Law, Ethics and Implication of Law, The Role of Law in Social Welfare and Social Security**

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### **Structure**

**1.1 The Concept of Law and Ethics**

**1.2 The Implication of Law**

**1.3 The Role of Law in Social Welfare and Social Security**

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### **1.1 □ The Concept of Law and Ethics**

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#### **□ The Concept of Law**

In order to live in society we have to abide by certain rules. The source of such rules is different laws and the nation's Constitution accepted from time to time. The source of all state power is the nation's constitution. The constitution has determined all the rights of the citizens for their comfort and well being. It is stated in sections 14, 15 and 16 Constitution that men and women would enjoy the same rights. It is also stated that the state would not accept any kind of inequality in all kinds of fundamental rights' for every citizen. As the Constitution of India is in force any kind of violation of the rights of citizen can be addressed in a court of law. At the same time no one can be dragged to the court if he/she does not abide by any deterministic rule. This is because no deterministic rule has been considered valid under the Constitution. The literal-meaning of the word law is some rules with regard to the legal standards set by the nation. In security for which, there has been laws and by laws. The role of the legal system is to protect the rights of the citizens and in that order enact punitive actions whenever necessary, which has been formalized through the demands and trials, faced by the citizens. The areas that are considered important for protection of rights of the citizen's are -

1. Economic Rights
2. Social Rights
3. Cultural Rights
4. Civil Rights
5. Political Rights

It is the responsibility of the government to protect all rights of its citizens in keeping with the International Human Rights Bill in the name of the social rights. It is often said that for every human rights the importance is on the qualitative standard

of life and status of all citizens. In this respect required legal system has been enacted with the assistance of National Legal Committee. A specialist body has been found to look into how the Criminal Procedure Code, the Indian Penal Code has been effective in the legal procedures taken, punishments given, and the judiciary. The recommendation of this committee is also very significant in issues like law for all people in India etc. thought he section 31 of the Constitution has been abolished in 1978 sections 31 A, 31 B, 31 C has still be effective. As a result there has been ample opportunity for enacting new laws and social change. In keeping with the sections 31 A and 31 B of the Constitution abolition of Zamindari and the Land Reform prospects were devised.

#### ❑ The rules of the law

The legal system of a nation is built mainly to keep law and order and to protect the society by punishing the deviant. By the Indian Penal Code and the Criminal Procedure Code is initiated on the one hand to build a system of procedure to punish the deviant and on the other to build a system of procedure for conducting litigation at the court of law. In respect to the Indian Constitution if there is any kind of threat to the fundamental rights it can be subject to a suit. On the other side of it any threat to the Directive Principles is not subject to a suit. On closer analysis of the different rights of the citizens of India it can be seen that the makers of the Constitution have been too much careful of the positive role the state could play in enforcing law, order and meeting the basic needs of the citizens. J. Bentham has pointed out which principles are important to keep in mind for the betterment of the people. These are-

1. Principle of Utility
2. Principle of sympathy/Antipathy
3. Reformative Principle
4. Morality Principle

These above principles are very important for keeping the standard of the life style of the people, women and child's rights in the family. These principles can be discussed in detail below-

#### 1. Principle of Utility

There are two main bases of this principle. One is to know how much good implementing the legal system can do. Second is to enhance the capacity for awareness that is related to the feeling of goodness and self-satisfaction. This principle has been accepted in all countries of the world with utmost importance. This is because the system of fulfilling demands is directly linked with the demands or needs of the people.

#### 2. Principle of Sympathy/Antipathy

Some have identified this principle as joyful on the one hand and sorrowful on the other. There are still others who consider this principle to be one that does not

conform to the approved norms. It means that some people are joyous for the law while others are not. The law has positive aspects for those who support it while for others it delivers an opposed psychological state. For example, with the implementation of the Dowry Prohibition Act some people are poor have sighed relief because it showered them with the opportunity to get rid of the painful burden of paying dowry. This law seemed to be sympathetic towards their poverty and insecurities. On the other those who thought that receiving dowry was an end in marrying off their sons were opposed to such a law. To take another example, we can consider Prevention of Domestic Exploitation Act, which has delivered some good for women who were a routine prey to exploiters. On the other the exploiters did not consider this law to be a welcome relief because it was enacted in the law that the wrongdoer would be penalized if found guilty. The aim of the principle is to curb the tendency to commit crime. But in order to aim at a healthy society some may benefit out of it while others may not. But still the creation and stability of a law would carry on. It is with this simple truth that laws are formulated.

### 3. Reformatory Principle

The common sense ideas, regulations etc on the one hand try to establish good relations between men and help in integration while on the other it also encourage superstitions and bad habit. To the lawmakers the welfare of the society reformatory measures and their security through law are equally important. The aim of the law is to liberate some people from superstitions that enforce division among people and push some to a marginal position in society. In 1829, the Sati Prohibition Act helped to eradicate the superstition of burning a wife on the funeral pyre of her dead husband. Therefore, the main aim of this principle is to establish laws that consider social welfare with prime importance. This is considered important because it is thought that the lawmakers would consider social welfare to be very important for society. The importance of the principle lay in aiming at eradication of social inequality, caste based in equality etc.

### 4. Morality Principle

The importance of the Directive Principles in the Constitution is to establish economic and social justice for the people. The High Court and the Supreme Court delivers justice from time to time. It is considered that the guardians of law would deliver judgement in keeping with the fundamental rights and therefore sympathize with the self-respect of the ordinary people. This is how the principles of democracy, liberty and security from individual freedom can be established. This should not lead to believe that the Principle of Morality only seeks to establish individual freedom and security of rights. The main of this principle is to see that people from all classes are able to uphold a good relation with respect to human values and have respect for each other. The lawmakers should consider the social, economic, political and cultural rights of the citizen, which is an indispensable part of establishing self-respect of all

citizens. It can be said that there are punishment for a crime so are the legal procedures and systems. By the means of these reformation of a criminal via justified judgements are to be carried out. The security of individual freedom is therefore the main amulet.

Though different laws have been formulated in keeping with the above-mentioned principles still, the Indian Consitution is over and above all. It is important to consider some Directive Principles of state policy (36-51) here. The Directivie Principles can be divided in to three main sub divisions.

### 1. Socialist Principles -

Any kind of subjects can be consideired under this head.

- To cater to sufficient means of livelihood for all citizens
- To prohibit accumulation of property through production
- To maintain a balance in distributing property and other services equally among all citizens
- To deliver equal wages for all
- To consider the security of health for all workers
- To save children from all kinds of exploitation
- To render help from government to the old, unemployed, work for those who suffer from ill health and are illiterate
- To make arrangements for work according to merit
- To give opportunities to children to develop
- To help workers participate in industrial work
- To make laws and see that legal help system is widespread

### 2. Gandhian Principles -

The subjects that are considered under this heading are -

- To work in agricultural areas and animal husbandry
- To establish cottage industry
- To maintain the Gram Panchayat system
- To develop public health facilities and develop the quality of life for all citizen
- To prohibit intake of drags or any beverage that contain drug
- To protect the environment by maintaining trees and wild animals

### 3. Liberal Principles -

The main aim of this principle is reforming liberal economic situations and developing productive forces within the country by maintaining a productive work force. Though by the 42nd Amendment there were some revisions of all these but later on they were reestablished.

Like any other country of the world, in India too the security of the rights of the citizen is given prime importance through making and renewing laws. The aim here is to make and execute them equally for rich and the poor. In considering this significance, the other sides of the legal system are put forward here.

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## **1.2 □ The Implication of Law**

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It is a process by which laws are made and executed in keeping with the needs and wants of the society. It means laws are formulated in keeping with the life course of the people. Laws are made while considering the democratic set up of the country and the demands so far made. Laws are enacted with a purpose of eradicating inequality, security of the fundamental rights of the citizens, and the directive principle all help in formulating a law,

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## **1.3 □ The Role of Law in Social Welfare and Social Security**

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Social welfare is a special kind of attempt, which helps in creating opportunities for the downtrodden insecure poor physically handicapped persons to come to the mainstream society. Generally simple government and non-government attempts can help these people to come in to the mainstream fold. For example, the house building policy, the policy of giving rice and wheat to the needs, old age pension, and all kinds of services fall under this heading.

On the other it has already been discussed about social security that can lend support to people who have faced an accident for which the family has lost an economic support base. For example, insurance of any kind can deliver such a good.

The legal system and the constitution play the most important role in delivering social security and social welfare. The important areas this under the constitution of India is as follows-

- a. For women and children -
  - Oppression-it is criminal to oppress women and children. For example, physically abuse them, denying food, unnatural sexual behavior, to keep them in locked etc. This includes psychological oppression like not letting one to see his/her children, to punish children in order to hurt the mother etc. There is punishment in Indian Penal Code against such crimes in 498 (A), which states both jail and fine. On the other hand to lock anyone for a period of time is punished under rules 341 and 348. By implementing such laws oppression against women have curbed down to some extent.
  - Violation of modesty-the law in India cares for the status and respect of

women by writing rules against rape and any such attempts. It has been possible for these laws to protect the modesty of women in the country.

- ❑ Abduction and illegal act-abduction is alluring or by taking unfair means to transfer young boys and girls and women from one place to another. For this there are laws namely 363 and 363 A that consider punishment. There are different types of punishments prescribed under rules 364, 366 to 371. Moreover, the law that prohibits economic trafficking also considers such acts as criminal.
- ❑ Marriage, Divorce and Maintenance-there are different types of marriage rules for different communities. In many marriages, registration of marriage is mandatory. There are also some differences taking place in religious confirmation of a marriage. If any one party in marriage is of other religion the marriage has to be registered (1954) so that the legal importance of the marriage is established. In 1955 the provisions for divorce after marriage and the question of maintenance thereafter the Hindu Marriage Act of 1955 was established. The Muslim marriage generally called the Sharyati Law has been in vogue for long and the Christian Marriage Act is in action from 1972. In all these laws the age at marriage of the two people, their religion, caste and all other possibilities have been discussed along with the rules of divorce and punishments to be enforced for the deviant are written down even who will take the responsibility of the children after divorce are all clearly specified. The women till a long time could not take the recourse to law because they were ignorant of what it had in store for them. But with time they became conscious like others and that is how they have started to benefit out of it. As a result, now women are able to take help of these laws in groups too.
- ❑ Child Welfare.- the makers of the Constitution have made provisions for the guardianship of the child in India. There is a strict code that protects every child who is below 14 years of age from laboring for money. Other than this there are laws for juvenile delinquents (Juvenile Act 1986). The child labor act (Prevention and Control) 1986 and \*\*\*\*\* can be specially mentioned. The other law that can be mentioned is Child Marriage Prevention Act 1929 under which boys below the age of 21 and girls below the age of 18 are prohibited to get married. The guardians and parents of such boys and girls are also liable to punishment under this law. By the enactment of such law the poor and the economically backward families are lesser a prey to the exploitations these days. It is for this reason that many have been able to come in to normal life. Moreover by the such laws number of crimes of such dimension has decreased to a great extent.

b. For the labor and the employee-in a country like India most of the people are

engaged in the unorganized sector, where the employer is the supreme authority. The most of the people are engaged in works like binding bidi, breaking rocks, building roads etc. Moreover in such works too much education is also not important. As a result a sizeable portion of the backward people are engaged in such work. There are many instances of exploitation on such workers. The government has taken initiatives from time to time to make necessary laws and amendments for this purpose.

- ❑ Minimum wage-in 1948 the minimum wage law was enacted for giving wages at government rate. It was enlisted in the said law that it would be a criminal offence to exploit anyone-child labor, girls/boys, and adult workers etc.- in this respect. Even if anyone agrees to receive lesser amount of wage it is mandatory for the employer to give the due in the form of arrears as soon as possible. Another law that is equal pays for equal pay has been enforced in 1976. It is considered a crime to pay a woman any less or higher amount than a man doing the same work. There cannot be any discrimination on promotion on the basis of sex either. The employer is bound to pay double amount for any extra time at work. There is an inspector at every block office to look in to the matter. Any kind of redress can be addressed to him. By the law \*\*\*\*\* enacted in 1970 any contractor who has a supply of more than 20 labors under him has to register his name. He is also responsible for making necessary arrangements like suitable place to sleep, eat, medical facilities etc.- for these labors. If he fails to make such arrangements the labors can file a case against the said contractor. This type of law has helped many labors of the unorganized sector to pressurize the contractor to take necessary action.
- ❑ To consider accidents-all labours more or less come from families that are economically backward. The other members of their families are totally dependent on them for money. Any kind of accidents can permanently cripple the labor and his family. With this question in mind in 1923 a provision for a right for compensation has been bestowed with the family of the unfortunate laborer. In 1947 it was legally sanctioned that no labour can be sacked at the whim of the employer. This has brought a relief to most of the labor force. The labors employed under a contractor are also liable to get benefit from this law. But primarily a doctor's certificate, a request for compensation in written form to the employer, petition in the local labor officer or the Assistant Labor Commissioner has to be produced.
- ❑ Labour union-the labors are allowed to organize in unions to protest against their exploitation. According to the trade union law of 1926 any seven labour can organize to form a union and register it. In that case the employer cannot file a criminal case against the leaders of the union

for violating the contract between the employer and the worker. As the leaders exchange arguments in favor of the labors they cannot be considered responsible of creating any criminal offence.

- Opportunities for labors-there are many instances where there can be disharmony in the relationship between employer and the labor. Generally this disharmony results from arguments for various demands, holidays etc. it is notified that even if a worker works for no less than 30 days in any year the employer is bound to give him bonus. In 1965 the bonus law was enacted where the lawmakers have specifically notified such emoluments for workers of the primary sector. In 1972 by the gratuity act provisions of paying pensions for people who have worked for five years at a stretch are made. If the employer disowns the required amount the case can be put forward to the gratuity officer. In this respect the provisions under this law can be said to be in keeping with the welfare of the worker.
- c. for the oschedule castes and scheduled tribes - it was enacted in 1950 that India is a sovereign, socialist, secular, democratic republic. With all the rules it has been stated that there will be no discrimination on the basis if caste creed sex and the like. Every citizen in India is liable to get equality of opportunity for employment etc. In 1955 by the enactment of the Citizen Rights Act is has been ensured that no one can be discriminated on the basis of untouchability either. If found guilty of that the person can be fined and suffer imprisonment. As there has been a continuous flow of superstition regarding untouchability it has been ensured through the Scheduled Caste Scheduled Tribe Prevention and Cruelty Act 1989 that no one specially from these special groups are victim of such cruel action. To ensure smooth functioning of this Act a special officer at the block level has been engaged, where any kind of cruelty against these groups can be taken care of. By the enactment of this law equality and justice for all has been ensured. There are different schemes and policies taken for them with an aim of development for them. In this way their role in the development procoess has increased. The Amendment of the Act in 1995 has also increased the rate of progress of these people.
- d. For the physically handicapped - as a citizen of India those who are physically handicapped are given the same opportunity of education, employment, government facilities etc. in 1995 all physically handicapped people are given equal opportunity and after that there has been a widespread acceptance of the amendment. It has ensured an increase in confidence among these people by this law. It is a message of equality and social welfare. As a result this can be said to be a road towards development and change.

- e. For the insecure and the old-along with the women the child, the people who are victims of any kind of accident and the old all are a sizeable number who are taken care of by the department of social welfare of the government. But the most of the responsibility is taken up by the voluntary organizations as well. To meet the demand of a number of people for a long time two special laws have been implemented. \*\*\*\*\* (1955) and \*\*\*\*\* (1960). It has been ensured by these laws that no voluntary organization can take up the cause without prior consent of the government. As a result the responsibility and the clarity of work in voluntary organization were also ensured. In 1985 another legal step was taken in the form of \*\*\*\*\*. Before the juvenile criminals were accused in the same court of law as for the adult. This was a difficulty in restoring them in the society after they served sentence at jail. By this law a separate court where only their special cases will be brought under scan has been ensured. It has also been ensured that these juvenile convicts are accused with reference to a special code of law. By this every marginal people has been brought in the mainstream society.

It can be said therefore that the importance of law in social equality and social security is unquestioned. This is not limited in making new laws now and then. It also the aim to find out how far the laws are implemented and how much it has been able to eradicate inequality, superstition and the like. The legal implication depends on all this. That is to find out how far the laws have been able to increase the rate of development by faster rate of delivering justice.

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## **Unit - 2 □ Provisions Related to Social Justice and Human Rights in the Constitution of India With Reference To Women and Children, Scheduled Tribes, Minorities and Displaced Persons**

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### **Structure**

#### **2.1 Social Justice**

#### **2.2 Human Rights, with special reference to, Protection of Human Rights Act, 1993**

#### **2.3 Provisions in the Constitution of India**

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### **2.1 □ Social Justice**

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Social justice refers to conceptions of justice applied to an entire society. That is to say, it refers to the idea of a just society, which gives individuals and groups fair treatment and a just share of the benefits of society.

Social justice is also a concept that people use to describe the movement towards a socially just world. In this context, social justice is based in the idea of **human rights** and **equality**. So a very broad definition of social justice is : “*social justice reflects the way’ in which human rights are manifested in the everyday lives of people at every level of society*”. It can be further defined as working towards the realisation of a world where all members of a society, regardless of background have basic human rights and equal, access to their community’s wealth and resources.

This view is exemplified in the United Nations assertion that: Human rights are based on respect for the dignity and worth of all human beings and seek to ensure freedom from fear and want. Therefore in a general sense, social justice can be seen as a belief in and the pursuit of human rights and the equal distribution of resources for all people.

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### **2.2 □ Human Rights, with special reference to, Protection of Human Rights Act, 1993**

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Human rights refers to the concept of human beings as having universal rights, or status, regardless of legal jurisdiction or other localizing factors, such as ethnicity, nationality, and sex. As is evident in the United Nations Universal Declaration of Human Rights, human rights, at least in the post-war period, are conceptualized as based on inherent human dignity, retaining their universal and inalienable character.

Where it has been adopted, human rights legislation commonly contains :

1. **security rights** that protect people against crimes such as murder, massacre, torture and rape
2. **liberty rights** that protect freedoms in areas such as belief and religion, association, assembling and movement
3. **political rights** that protect the liberty to participate in politics by expressing themselves, protesting, participating in a republic
4. **due process rights** that protect against abuses of the legal system such as imprisonment without trial, secret trials and excessive punishments
5. **equality rights** that guarantee equal citizenship, equality before the law and nondiscrimination
6. **welfare rights** (also known as economic rights) that require the provision of education and protection against severe poverty and starvation
7. **group rights** that provide protection for groups against ethnic genocide and for the ownership by countries of their national territories and resources

Protection of Human Rights Act 1993 is an Act to provide for the constitution of a National Human Rights Commission, State Human Rights Commission in States and Human Rights Courts for better protection of Human Rights and for matters connected therewith or incidental thereto, deemed to have come into force on the 28th day of September, 1993.

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## 2.3 □ Provisions in the Constitution of India

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Development and empowerment of scheduled castes (SCs), scheduled tribes (STs), other backward classes (OBCs), minorities, disabled and other social groups in order to bring them at par with the rest of society is a commitment enshrined in the Constitution. This is to be done by adopting the approach of social justice to ensure equal rights, access to benefits and resources and empowerment to enable them to develop their potential and capacities as agents of social change, through the process of planned development.

The Constitution lays down the basic structure of government under which the people are to be governed. It establishes the main organs of government - the executive, the legislature and the judiciary. The Constitution not only defines the powers of each organ, but also demarcates their responsibility. It regulates the relationship between the

different organs and between the government and the people.

The Constitution is superior to all other laws of the country, Every law enacted by the government has to be in conformity with the Constitution. The Constitution lays down the national goals of India - **Democracy, Socialism, Secularism and National Integration**. It also spells out the **rights** and **duties** of citizens.

The Constitution applies to the State of Jammu Kashmir with certain exceptions and modifications as provided in Article 370 (which is a temporary provision) and the Contitution (Application to Jammu and Kashmir) Order, 1954.

**The Ministry of Social Justice & Empowerment** is entrusted with the **welfare, social justice & empowerment** if disadvantage and marginalised section of the society viz, Schedule Caste, Minorities, Backward Classes, Persons with Disabilities, Aged Persons, Street Children and victims of Drug Abuse etc. Basic objective of the policies, programmes, law and institution of the Indian welfare system is to bring the target groups into the main stream of development by making them self-reliant.

The Constitution of India lays down specific provisions regarding the welfare of women and children, minorities and displaced persons, etc, in several chapters, viz, the Chapters on Fundamentals Rights, the Directive Principles of State Policy and the Fundamental Duties.

### 1. Preamble

The Preamble to the Constitution, which as amended in 1976, summarizes the aim and objective of the Constitution :-

WE THE PEOPLE OF INDIA, having solemnly resolved to Constitute India into a Sovereign Socialist Secular Democratic Republic and secure to all its citizens :

JUSTICE, social, economic and political;

LIBERTY, of thought, expression, belief, faith and worship;

EQUALITY, of status and of opportunity; and to promote among them all;

FRATERNITY, assuring the dignity of the individual and the unity and intergrity of the nation;

IN OUR CONSTITUENT ASSEMBLY this 26th day of November, 1949 do HEREBY ADOPT, TNACT AND GIVE TO OURSERLVES THIS CONSTITUTION.

The Preamble to our Constitution serves two purpose :-

A) It indicates the source from which the Constitution derves its authority;

B) It also states the objects, which the Constitution seeks to establish and promote.

The Preamble seeks to establish what Mahatma Gandhi described as The India of my Dreams,

“.....an India in which the poorest shall feel that it is their country in whose making they have an effective voice;.... an India in which all communities shall leave in perfect harmony. There can be no room in such an India for the curse of untouchability or the curse of Intoxicating drinks and drugs. Woman will enjoy as the same rights as man.”

## 2. Fundamental Rights

The *Fundamental Rights* embodied in Part III of the Indian Constitution act as a guarantee that all Indian citizens can and will lead their lives in peace and harmony as citizens of India. These civil liberties precede over other laws of the country. They include individual rights common to most **liberal democracies**, such as **equality before law**, freedom of speech and expression, freedom of association and peaceful assembly, freedom to practice religion, and the **right to constitutional remedies** for the protection of civil rights by means of writs such as **habeas corpus**. The punishment for encroaching on these rights depends upon the discretion of the **judiciary**.

The six Fundamental Rights are:

- Right to equality
- Right to freedom
- Right against exploitation
- Right to freedom of religion
- Cultural and educational rights
- Right to constitutional remedies

The relevant Rights for the welfare of disadvantaged and marginalised section of the society viz, Scheduled Caste, Minorities, Backward Classes, Persons with Disabilities, Aged Persons, Street Children and victims of Drug Abuse etc. in this section are :

- 1) **The Right to Equality** - the Right to Equality comprises of the Articles 14 to 18. However the most relevant ones for us Articles 14,15,16, 17.
  14. **Equality before law** - The State not deny to any person equality before the law or the equal protection of the laws within the territory of India.
  15. **Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth** - (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.
- 2) No citizen shall, on grounds only of religion, race caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to-
  - (a) access to shops, public restaurants, hotels and places of public entertainment; or
  - (b) the use of wells, tanks bathing ghats, roads and places of public resort

maintained wholly or partly out of State funds or dedicated to the use of the general public.

- 3) Nothing in this article shall prevent the State from making any special provision for women and children.
- 4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Schedule Castes and the Schedule Tribes.

**16. Equality of opportunity in matters of public employment** - (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

- (2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.
- (3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.
- (4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.
- (4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Schedule Castes and the Schedule Tribes which, in the opinion of the State, are not adequately represented in the services under the State.
- (4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4 A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent reservation on total number of vacancies of that year.
- (5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the

governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

17. **Abolition of Untouchability** - “Untouchability” is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of “Untouchability” shall be an offence punishable in accordance with law.

Thus, *Equality before Law*, given in Article 14 of the Constitution, guarantees that all citizens will be equally protected by the laws of the country. It means that the State cannot discriminate against a citizen in the basis of caste, **creed, colour, sex, religion or place of birth**. According to the *Electricity Act of 26th January, 2003* the Parliament has the power to create special courts for the speedy trial of offences committed by persons holding high offices. Creation of special courts is not a violation of this right.

*Social equality and equal access to public areas*, in Article 15, states that no person will be discriminated on the basis of caste, **colour, language, sex etc**. Every person will have **equal access** to public places like public parks, museums, wells bathing ghats and temples etc. However, the State may make any special provision for **women and children**. Special provisions may be made for the advancements **of any socially or educationally backward class or schedule castes or schedule tribes**.

*Equality in matters of public employment*, in Article 16, lays down that the State cannot discriminate against anyone in the matters of employment. All citizens can apply for government jobs. There are some exceptions. The Parliament may make laws prescribing any requirement as to the residence for State employment. This may be meant for posts that require knowledge of the locality and language of the area. The State may also reserve posts for members of backward classes, scheduled castes or scheduled tribes which is not adequately represented in the services under the State. The purpose of reservation of seats is bring up the weaker sections of the society. Also, there may be a law which requires that the holder of an office of any religious institution shall also be a person professing that particular religion.

*Abolition of Untouchability*, in Article 17, abolishes the practice **of Untouchability**. Practice of Untouchability is an **offence** and anyone doing so is **punishable by law**. The Untouchability Offences Act of 1955 provided penalties for preventing a person from entering a place of worship or from taking water from a tank or well. In 1976, the name of this act was changed from Untouchability Offences Act to Protection of Civil Rights Act.

- II. **Right to Freedom** - The Right to Freedom comprises of the Articles 19(a)-(e) and (g), 20,21,21A and 22. However the most relevant ones for us are Article 21 and 21 A.
21. **Protection of life and personal liberty** - No person shall be deprived of his life or personal liberty except according to procedure established by law.

**21 A. Right to Education** - to provide free and compulsory education to all children of the age of 6-14 years in such a manner as the State may, by law, determine.

The main object of Article 21 is that before a person is deprived of his life or personal liberty by the State, the procedure established by law must be strictly followed. Right to Life means the right to lead meaningful, complete and dignified life. It does not have restricted meaning. It is something more than surviving or animal existence. The meaning of the word life cannot be narrowed down and it will be available not only to every citizen of the country. As far as Personal Liberty is concerned, it means freedom from physical restraint of the person by personal incarceration or otherwise and it includes all the varieties of rights other than those provided under Article 19 of the Constitution. Procedure established by Law means the law enacted by the State. Deprived has also wide range of meaning under the Constitution. These ingredients are the soul of this provision. The fundamental right under Article 21 is one of the most important rights provided under the Constitution which has been described as heart of fundamental rights by the Apex Court.

It was observed in Unni Krishnan's case that Article 21 is the heart of Fundamental Rights and it has extended the scope of Article 21 observing that the life includes the education as well as, as the right to education flows from the right to life, thus making way for the insertion of the **Article 21A** by the Eighty-Sixth amendment act, 2002.

**III. Right Against Exploitation** - The Right against Exploitation comprises of Articles 23 and 24.

**23. Prohibition of traffic in human beings and forced labour** - (1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such services the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

**24. Prohibition of employment of children in factories, etc.** - No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

The right against exploitation, given in Article 23 and 24, provides for two provisions namely, the abolition of **Begar** and trafficking in human beings, and abolition of employment of children below the age of 14 years in dangerous jobs.

**Begar** was carried out without any payments for landlords and other wealthy persons. It has now been declared a crime and is punishable by law. Trafficking in humans for the purpose of **slave trade** or **prostitution** is prohibited by law.

The Constitution forbids employment of children below the age of 14 years in

dangerous jobs like factories and mines. According to it, children are the assets of the country and they should be allowed to lead a happy childhood and get **education**. **Child labour** is a gross violation of the spirit and provisions of the constitution. An exception is made in employment without payment for compulsory services for public purposes. Compulsory military **conscription** is covered by this provision. The right against exploitation allows Indian citizens to stand up against any kind of exploitation that he/she might be going through and are perhaps the most relevant articles in guaranteeing social justice to the Indian people irrespective of class, creed, caste, sex, religion, or place of birth, etc.

**IV. Right to Freedom of Religion** - The Right to Freedom of Religion comprises of the Articles 25-28.

**25. Freedom of conscience and free profession, practice and propagation of religion** - (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and right freely to practise and propagate religion.

(2) Nothing in this article shall affect the operation on any existing law or prevent the State from making any law-

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

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

*Explanation I* - The wearing and carrying of *kirpans* shall be deemed to be included in the profession of the Sikh religion.

*Explanation II* - In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to hindu religious institutions shall be construed accordingly.

**26. Freedom to manage religious affairs** - Subject to public order, morality and health, every religious denomination or any section thereof shall have the right-

(a) To establish and maintain institutions for religious and charitable purposes:

(b) To manage its affairs in matters of religion;

(c) To own and acquire movable and immovable property; and

(d) To administer such property in accordance with law.

**27. Freedom as to payment of taxes for promotion of any particular religion** - No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion

or maintenance of any particular religion or religious denomination.

- 28. Freedom as to attendance at religious instruction or religious worship in certain educational institutions** - (1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.
- (2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.
- (3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

Right to freedom of **religion**, covered in Articles 25,26,27 and 28, provides religious freedom to all citizens of India. The objective of this right is to sustain the principle of **secularism** in India. All religions are equal before the State and no religion will be given preference over the other.

Citizens are free to preach practice and propagate any religion of their choice. Thus no one can be allowed to hurt the religious feelings of any class of citizens of India. The wearing and carrying of *Kirpans* is included in the profession of the **Sikh religion**. This can be restricted in the interest of public order, morality and health. Religious communities can set up charitable institutions of their own. Many educational institutions are run by such charities. However, there could be activities in such institutions which are not religious. These activities are performed according to the laws laid down by the government. Establishing a charitable institution can also be restricted in the interest of public order, morality and health. A State run institution cannot impart education that is pro-religious.

**V. Cultural and Educational Rights** - the Cultural and Educational Rights comprises of the Articles 29 and 30.

- 29. Protection of interests of minorities** - (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.
- (2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.
- 30. Right of minorities to establish and administer educational institutions-**
- (1) All minorities, whether based on religion or language, shall have the right to

establish and administer educational institutions of their choice.

- (1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such as would not restrict or abrogate the right guaranteed under that clause.
- (2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

India is a country on many languages, religious and cultures. The constitution provides special measures, in Articles 29 and 30, to protect the rights of the minorities. Any community which has a language and script of its own, has the right to conserve and develop them.

No citizen can be discriminated against for admission in State or State aided institutions. All minorities, religious or linguistic, can set up their own educational institutions. By doing so, they preserve and develop their own culture. In granting aid to institutions, the State cannot discriminate against any institution on the basis of the fact that it is administered by a minority. But the right to administer cannot include the right to maladminister. In a leading case in 1980, the Supreme Court held that “the State can certainly take regulatory measures to promote the efficiency and excellence of educational standards. (It can also) issue guidelines for ensuring the security of the services of the teachers or other employees of the institution”. In another landmark judgement delivered on **31 October, 2002**, the Supreme Court ruled that in case of aided minority institutions offering professional courses, admission could only be through a common entrance test conducted by State or university. Even an unaided minority institution ought not to ignore the merit of the students for admission.

**VI. Right to Constitutional Remedies** - the Right to Constitutional Remedies comprises of the Articles 29 and 30.

The right to constitutional remedies allows Indian citizens to stand up for their rights against anybody even the government of India. This fundamental right is described in the constitution as:

**Article 32. Remedies for enforcement of rights conferred by this Part -**

- (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.
- (2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this part.

- (3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).
- (4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

The Right to Constitutional Remedies and more recently the provision for PIL (Public Interest Litigation) gives each Indian the right to stand up for his/her own rights as well as those of his/her fellow citizens. Right to Constitutional Remedies empowers the citizens to go to **court** in case on any denial of the Fundamental Rights. The court of law stands as a guard against the violation of these rights by the government. In case the government uses power against a citizen unjustly or if he is imprisoned or punished unlawfully, this right empowers the aggrieved person to go to court and get justice against government action.

The Constitution gives every citizen the right to go to court to get his Fundamental Rights enforced. For instance, in case of imprisonment, the citizen can ask the court to see if it is according to the provisions of the law of the country. If the court finds that is not, the person will have to be freed. This procedure of asking the court to preserve or safeguard the citizen's fundamental rights can be done in various ways. The courts can issue various kinds of *writs*. These writs are *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari*.

The Fundamental Rights were included in the Indian Constitution because they are essential for the development of the personality of every individual and to preserve human dignity. They are secured to promote social progress. The Fundamental Rights for Indians are aimed at overturning the inequities of past social practices. They have also been used to successfully abolishing the "untouchability" prohibit discrimination in the grounds of religion, race, caste, sex, or place of birth; and forbid trafficking in human beings and also the forced labor. They go beyond conventional civil liberties in protecting cultural and educational rights of minorities by ensuring that minorities may preserve their distinctive languages and establish and administer their education institutions.

### 3. Directive Principles of State Policy

The *Directive principles of State Policy* (DPSPS), given in part IV of the **Constitution of India**, are certain directions given to the central and state government to establish a just society in the country. The government must keep them in nature and they aim at achieving social and economic democracy for establishing a welfare.

#### ➤ Social justice

The Programme of Universalization of Elementary has been accorded the highest priority in order to provide **free education** to all children up to the age of 14 years.

The 86th constitutional amendment of 2002 inserted a new article, Article 21-A, into the Constitution, which seeks to provide free and compulsory education to all children aged 6 to 14 years.

Welfare schemes for the weaker section are being implemented both by the Central and state governments. These include programmes, such as boys' and girls' **hostels**, for scheduled caste or schedule tribe students. The year 1990-1991 was declared as the "Year of Social Justice" in the memory of **B.R. Ambedkar**. The government provides free textbooks to students belonging to schedule castes or scheduled tribes pursuing medicine and engineering courses. During 2002-2002, a sum of Rs. 4.77 crore was released for this purpose.

In order that scheduled castes and scheduled tribes are protected from atrocities, the Government enacted the **Prevention of Atrocities Act**, which provided severe punishments for such atrocities.

Article 31-C, inserted by the 25th Amendment Act of 1971 seeks to upgrade the Directive Principles. If laws are made to give effect to the Directive Principles over Fundamental Rights, they shall not be invalid in the grounds that they take away the Fundamental Rights.

DPSPs promote an environment where the citizen's life becomes comfortable and meaningful. If the **government** fails to provide these conditions, the citizens are free to vote that government out in the next election and elect a new government. However, if a government does not adhere to the DPSPs, no punishment can be meted out since they are only guidelines; and not laws; and are hence, non-justiciable. This means that a person cannot go to court if the government makes a law which is not in adherence to the DPSPs.

DPSPs make the citizens aware about the inhuman treatment meted out to human beings in different parts of the world. Our policy framers have to keep such situations in view and frame policies which will make our lives worth living.

In case of a conflict between Fundamental Rights and DPSP's, if the DPSP aims at promoting larger interest of the society, the court will uphold the case in favour of the DPSP.

#### **4. Fundamental Duties**

**51 A. Fundamental duties** - It shall be the duty of every citizen of India -

- a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
- b) to cherish and follow the noble ideals which inspired our national struggle for freedom;
- c) to uphold and protect the sovereignty, unity and integrity of India;
- d) to defend the country and render national service when called upon to do so;

- e) **to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;**
- f) to value and preserve the rich heritage of our composite culture;
- g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
- h) to develop the scientific temper humanism and the spirit of inquiry and reform;
- i) to safeguard public property and to abjure violence;
- j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.

India is a multi-racial, multi-linguistic, multi-religious and multi-cultural country. In spite of various diversities, there is a need for developing harmony between different races, languages, religious and cultures. We should promote the spirit of common brotherhood. Since ages women in India are being given a very low status in society. Infanticide, dowry and sati system are some of the most derogatory practices that bring down the dignity of women. It is the duty of every citizen to renounce these evil practices.

However, Fundamental Duties are non-justiciable : a person cannot be taken to court for not fulfilling his or her Fundamental Duties. They are merely moral obligations which every citizen **of India** is expected to fulfill. They are in nature a Code of Conduct which citizen and the State has to follow. The inclusion of fundamental duties reminds that the constitution presents an integrated scheme of which the fundamental or any other constitutional rights are only a part. The scheme must also be taken as a part of the constitution. The fundamental duties, when they mentioned in the Constitution, take an educative role. They also hold legal value, because when laws, legislated by the parliament or the State Legislature cannot be held invalid on the ground of conflict with the Fundamental Rights unless such conflict is irreconcilable. The rights must be reconciled with the duties.

## **5. Miscellaneous**

### **I. Panchayati Raj Institutions**

The Statement of objects and Reasons appended to the Constitution (Seventy-second Amendment) Bill, 1991, which was enacted as the **Constitution (Seventy-third Amendment) Act, 1992**, states that " Though the Panchayati Raj Institutions have been in existence for a long time, it has been observed that these institutions have not been able to acquire the status and dignity of viable responsive people's bodies due to a number of reasons including absence of regular elections, prolonged suppressions, insufficient representation of weaker section like Schedule Castes,

Schedule Tribes and women, inadequate devolution of powers and lack of financial resources”.

As such Article 243D of the Constitution of India specifies reservation of seats for SCs, STs and women in Panchayati Raj Institutions :

**243D. Reservation of seats** - (1) Seats shall be reserved for—

- a) the Schedule Castes; and
- b) the Schedule Tribes

in every Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat.

- (2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.
- (3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat.
- (4) The offices of the Chairpersons in the Panchayats at the village or any other level shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law provide :

Provided that the number of the offices of Chairpersons reserved for the Scheduled Castes and the Scheduled Tribes in Panchayats at each level in any State shall bear, as nearly as may be, the same proportion to the total number of such offices in the Panchayats at each level as the population of the Scheduled Castes in the State or Scheduled Tribes in State bears to the total population of the State :

Provided further that not less than one-third of the total number of the offices of Chairpersons in the Panchayats at each level shall be reserved for women :

Provided also that the number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level.

- (5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in article 334.
- (6) Nothing in this part shall prevent the Legislature of State from making any provision for reservation of seats in any Panchayat or offices of Chairpersons in the Panchayats at any level in favour of backward class of citizens.

## II. Urban Local Bodies

Similarly, the Statement of Object and Reasons appended to the Constitution (Seventy-third Amendment) Bill, 1991 which was enacted as the **Constitution (Seventy-fourth Amendment) Act, 1992**, states that “In many States local bodies have become weak and ineffective an account of a variety of reasons, including the failure to hold regular election, prolonged suppressions and inadequate devolution of powers and functions. As a result, Urban Local Bodies are not to perform effectively as vibrant democratic units of self-government”.

As such Article 243T of the Constitution of India specifies reservation of seats for SCs, STs and women in Urban Local Bodies :

**243T. Reservation of seats** - (1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every Municipality and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Municipality as the population of the Scheduled Castes in the Municipal area or of the Scheduled Tribes in the Municipal area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Municipality state. The concept of Directive Principles of State Policy has been borrowed from the Irish Constitution.

Directive Principles are classified under the following categories: Gandhian economic and socialistic, political and administrative, justice and legal, environment, protection of monuments and peace and security.

The following are the efforts made by the State to implement the Directive Principles, most relevant to our purpose.

**38. State to secure a social order for the promotion of welfare of the people-**

- (1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may social order in which justice, social, economic and political, shall inform all the institutions of the national life.
- (2) The State shall, in particular, strive to minimise the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

**39. Certain principles of policy to be followed by the State** - The State shall in particular, direct its policy towards securing-

- a) that the citizens, men and women equally, have the right to an adequate means of livelihood;
- b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
- c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common

detriment;

- d) that there is equal pay for equal work for both men and women;
- e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;
- f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral material abandonment.

- 39A. Equal justice and free legal aid** - The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.
- 41. Right to work, to education and to public assistance in certain cases** - The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.
- 42. Provision for just and humane conditions of work and maternity relief—** The State shall make provision for securing just and humane conditions of work and for maternity relief.
- 44. Uniform civil code for the citizens—** The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.
- 45. Provision for free, and compulsory education for children—** The State shall endeavour to provide, within a period a ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.
- 46. Promotion of education and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections—** The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.
- 47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health—** The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption

except for medicinal purpose of intoxicating drinks and drags which are injurious to health.

**51. Promotion of international peace and security** ^- The State shall endeavour to-

- a)* promote international peace and security;
  - b)* maintain just and honorable relations between nations;
  - c)* foster respect for international law and treaty obligations in the dealings of organized peoples with one another; and
  - d)* encourage settlement of international disputes by arbitration.
- (2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.
  - (3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality shall be reserved for women and such seats may be allotted by rotation of different constituencies in a Municipality.
  - (4) The offices of Chairpersons in the Municipalities shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide.
  - (5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in article 334.
  - (6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Municipality or offices of Chairpersons in the Municipalities in favour of backward class of citizens.

III. Apart from this there are other provisions for reservation such as :

- i) 330. Reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the people
- ii) 332. Reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States
- iii) '334. Reservation of seats and special representation to cease after sixty years

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## **UNIT : 3 □ The Application of Laws As A Means of Social Change : Legal Aid, Family Court, Public Interest Litigation, The State and National Legal Service, Lok Adalat.**

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**Structure :**

- 3.1. The Application of Laws As A Means of Social Change**
- 3.2. Legal Aid**
- 3.3. Family Court**
- 3.4. Public Interest Litigation**
- 3.5. The State and National Legal Service**
- 3.6. Lok Adalat**
- 3.7. References**

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### **3.1. The Application of Laws as a Means of Social Change**

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In social sense law making is a process by means of which new laws are made implemented and used to eradicate different social inequalities. Only those wishes of men or analysis on judgments that can transform economic and social judgment into implemental laws are considered a part of the process. Even if there are separate legal systems for every area, still the main aim of law making is creating laws for the security of the women, for the child, the old, and the unable. Like any other citizen of India women and other powerless or down trodden people can apply for work in government sectors, work independently, deliver opinions on their own, be a part of meetings and gatherings, organize those, as these are included in the constitution as their rights. It is also said in the constitution that nobody can inflict bodily harm to any citizen if India (be it men or women). Special privileges have been granted to women in case they are harassed or hurt. The accused in such cases can be arrested, imprisoned or even put in court and crossed for the deed. For the safeguard of constitutional rights and in accordance to the demands of quite a number of people of the country, law is a useful path towards social change. The areas that can benefit from the social change brought about by laws are—

### **1. To eradicate social inequality :**

There cannot be any social inequality in terms of Varna, jati, or class. It was not possible in India to develop because there was regionalism, caste based and class based inequalities. There were demands for legal securities for the backward class for long time. It was at last in 1976 that a law for equal wages, temporary worker (control and eradicate) law in 1976, Right to Information act in 2005, National Work Guarantee Programme in 2005 etc. that aimed at eradicating various inequalities in society. This way a large section of the backward class got the opportunity to develop their means of living. As a result it has brought about a way towards social change.

### **2. For the equal distribution of property :**

In case of transfer of ownership rights of movable and immovable property, it was seen that there were exploitations and one-sidedness. One class of people had owned a large amount of property, whereas the other class was largely non-owners or were owners of a small amount. This created a serious impediment to development. Other than that on the one hand, this unequal distribution of property ensured luxury for one class and on the other, non-ownership or ownership over less property brought about poverty to the other class. With an objective to ensure development on the basic needs of people, a number of laws were implemented. Noteworthy among those are, Hindu Succession of Property Rights 1956, Property Rights etc. As a result of such implementation of laws the unprivileged people especially women, had started to enjoy the right to property. This led to growth in courage and power in their social living, which is a main determinant of social change. As a result of such implementation the backward people especially members of the scheduled castes and scheduled tribes, faced complex problems in property succession as well. By the implementation of Land Reform Laws, another significant social law for movable and immovable property succession was envisaged. As a result a large number of people like the landless labourers were endowed with Land Patta in West Bengal. This envisaged the growth in social prestige of the people especially that of the farmers. Their new role has envisaged a commendable place in the vision towards social change.

### **● Social Exploitation :**

A class of people are the worst sufferers as a result of social exploitation, over the years . Especially in British ruled India, social exploitation oppression over women, children and aged were most common the disabled and people in distress were not spared either. The said society took important steps towards social change following the path showed by social reformist thinkers like, Hindu Marriage Act in 1955, the Child Marriage Prohibition Act in 1929, The Family Court Law in 1954, the Dowry Act in 1961, The Sati Prohibition Act in 1829, The Illegal Trafficking Act in 1986, The Domestic Violence Prohibition Act in 2006. As a result of such Acts there were

significant legal steps towards social development, this led to abolition of exploitation, oppression that had been rampant in traditional India. There has been important cases where women are coming forward to ensure apt punishment to the wrong doer. This is an important step towards social change.

● **Towards Empowerment for the weaker class :**

There was a time when the weaker section of the society faced trouble in expressing their opinions independently or even conducting any meeting on their own. Special mention can be made of women in this regard. But with changing times there has been significant changes in these ideas. Women are now part of the empowerment programme and with this objective the 73<sup>rd</sup> and 74<sup>th</sup> Amendment of the constitution has been envisaged so that women can actively participate in the political sphere with 1/3<sup>rd</sup> seat reservation ensured for them. This has also led to the widening of social life, family life and has helped to gather courage to overcome many problems. It has been seen that in West Bengal and in other state in India, these two amendments have helped women in large to work together for their social benefit.

After India had gained independence, the government has taken initiative to take different legal steps mainly in four sectors— social reform in developing labour power, reform in tax patterns and ensuring speedy actions in social welfare programmes. Other than these, legal steps are being taken in areas like the laws that help the weak the oppressed to overcome their condition and protect their interest. Although measures have been taken to protect self respect of every human being, but still in reality there are different opinions in this respect. Till now the accused was regarded as a criminal by the society. This was specially true of juvenile delinquents because there was no special system of judiciary of these delinquents. But in 1986 Juvenile Justice Act was implemented as a result a new way of justice was ensured. This paved for good news for the juveniles. It can be well understood from this discussion that law-making can be a potent means for the goal of changing society.

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## **3.2. Legal Aid**

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In literal sense, the term legal aid means helping people with legal advice. Such advice play an important role in the political and social life of people. Specially this is true for the poor and needy people. As a result different measures are available from the central and State governments. People who reside in far off places, those who are economically backward and those who are in need, all are liable to take help from the Legal Aid. The important role of Legal Aid is to provide legal service to all people irrespective of caste, religion and creed. The different sides of the Legal Aid that aim at providing service to people are—

- ➔ to provide information on legal matters.

- to propagate for legal literacy.
- to provide service to people who need help in legal matters.
- to organise awareness programmes for people who are associated with legal matters.
- to organise public opinion for taking recourse to the law whenever necessary.

The government directly or indirectly associate with the non-government voluntary organizations with the aim of providing such services. Along with other non-government organisation Legal Aid Service In West Bngnal [LASIB] has taken up such issues. Centre for Implementation of Legal Aid Scheme [CILASS] is another such important agency. The helpless and destitute who are in need of legal help are identified by these organisations. But though there has been positive steps taken in this direction, legal aid has not been fully utilised in a nation like India. There are still many people who are not inclined towards taking legal help. In analysing the present situation, many areas where drawbacks are, can well be identified.

First : As the legal procedure takes too long and is highly costly the backward section of the society cannot take proper recourse to the legal help provided by the organisation.

Second : The people who are must in need of such help are themselves not aware and are mostly illiterate.

Third : Traditionally such people have been so much underprivileged that they do not have the strength to fight against that powerful.

Four : Many people do not want to wage a conflictual situation with the socially and economically powerful.

Fifth : Politically these people do not like to take recourse to such help.

Sixth : Many do not have the necessary mental strength to take the long time bound pressure of a legal procedure.

Seventh : Many people have misconceptions about legal affairs.

For these reasons, the legal aid has not attained the proposed success.

The families that have an yearly income of not more than Rs. 9000, are liable to get help from government lawyers and the costs of legal affair are taken care of. Those who want to take such help, have to apply to either of the following the Pradhan of Gram Panchayat, Sabhapati of Panchayat Samiti, any Member of the Zilla Parishad, any member of the Bidhan Sabha or the Lok Sabha, the commissioner of a Municipality for an attested letter stating the income of the family. This attested letter has to be produced to the B. D. O., District Magistrate or the District Administrator. After a preliminary examination of this letter, the applicant is sent to any lawyer. The help an applicant can receive are—

- A reduction in the cost of Court Fee, the travel fare of the , other costs of the litigation.
- The applicant can have a lawyer for free.
- The applicant is liable to receive a copy of the verdict and copies of other papers.
- To prepare papers for the
- To prepare a

Other than these, to extend the services of the Legal Aid to every district a committee has been formed at all district level. Many workshops are organised at the Block and Municipality areas. As a result there has been an increase in interest among common people about accident related. Women Specially those who are poor and exploited are given priority. There has also been an increase in awareness among women regarding the rights of women and for this the voluntary organisations have taken a significant role in extending the works of the legal Aid. Many voluntary organisations so far has come forward to help needy women.

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### 3.3. Family Court

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Many interest groups work in society. These are mainly class based. There are elite classes on the one hand and backward classes on the other. The class based interest groups play an important role in extending their class interest through these. But the interesting point is that in a democratic country like India only the opinion of the public is maintained in the constitution. Moreover, in the Panchayat areas, public opinion is formed by Gram Sabha and in Municipal areas by ward committee according to the Directive Principles stated in the constitution. According to these principles, many laws have been enacted at different times in our country. In 1984, by the enactment of the Family court law, in every district and states, it is mandatory to establish family courts. Matters regarding marriage, family matters are taken care of in these courts.

The problems that are taken in Family Court are—

- Cancellation of Marriage
- Re-establishing rights of marriage-partners.
- Legal Divorce.
- To break marriages.
- To give marital status to individual.
- To apply before court for maintenance.

- ➔ To take over guardianship of minors, ensure legal security of individuals, legal validity etc.

In coordination with Upper Courts, these courts function at district levels.

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### **3.4. Public Interest Litigation**

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The Supreme Court and the High Court for the last fifty six years have successfully carried out the responsibility of safeguarding the fundamental rights of the citizens. Many cases have been sought out and as a result statuses of citizens have been maintained. Although to maintain fundamental rights of citizen, the highest court of law has played an important role, but to uphold the rights of public interest, the responsibility lies with the State. In India a large part of the population is poor, illiterate and politically unaware and this has caused unawareness among them to consider the importance of Public Interest. As a result many people do not think it appropriate to take recourse to a court of law when necessary specially for political and social rights. Furthermore most people of the underprivileged class do not have the economic stability to take matters to the court. In this respect their rights as guaranteed by the constitution do not have any meaning for them. The right to cases in Public Interest was first initiated through a verdict by honourable Justice P. N. Bhagawati in the 1980s.

As a result a positive impact on the judicial system and on the security of fundamental rights was envisaged. At the primary level, though such cases were filed only in the Supreme Court, later on High Courts were also guaranteed the permission to handle such cases. The most important characteristic of such cases is that any one case file the case in place of the affected person. A handwritten post-card to the Chief Justice or a telegram can also start the case. As a result Public Interest litigation is a convenient method for the common people to pave the way for social change. The underprivileged people can easily avail such facilities. It has also helped to bring a clear image of the judiciary among the common people. Such cases are generally filed in areas where public interest is at stake. For example torture of children within prisons, security of destitute children in Mumbai, establishing factories that produce insecticide in a crowded place like Howrah.

In sections 227 and 32 of the Constitution, it is stated that if rights of any citizen is transgressed then he / they can take recourse to Public Interest Litigation Law. In that case, the Honourable Court promises pro-bono-public. In this respect, All India Exploited Employees Association (Railways) Vs State of India litigation can be cited. The said organisation though not being registered had asked for written an application by its members in public interest. The Honourable Justice Sri Krishna Ayar had given his verdict in favour of the rights of citizen to file cases in court of law in Public Interest.

After this permission was granted, so many applications in post-cards were sent that the cases could not be administered within seven days. As a result, many of such cases could not be taken care of within stipulated time-period.

Though the Public Interest Litigation scheme has some difficulties, it can act as a very important medium of putting up cases in the interest of a group of people. With the increase of mass media attention public interest litigation is now universally accepted. This is an important, successful means in the hands of the common man.

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### **3.5. The Authority in National and State level legal service**

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On the one hand, for economic development some measures have been taken and on the other, by providing different advantages to the backward class people, various laws have been enacted. The Directive Principles of State Policy in the Constitution has guaranteed distinctive actions by the state to fight against any kind of exploitations to any caste, religion, varna, caste or gender. With this, in 1986, Legal Services Authorities Act was established and its role is very significant in enacting laws. The areas of enacting important laws are—

- ➔ To pave the path for a situation where the weaker section can take legal services without any cost.
- ➔ To see that the backward section of the society can take help via the Lok Adalat.

For these above objectives, to provide everyone with the legal services there is a three tier.

Legal service as follows—

- a. National Legal Service Authority.
- b. State Level Legal Services Authority.
- c. District Level Legal Services Authority.

The functions of the National Legal Services Authority and the State Level Legal Services Authority can be discussed with reference to Section 4 of the Legal Services Authorities Law (1986)—

- (a) The functions of National Legal Services Authority

As being the National Level Legal Services Authority, the functions of the State and District Level Legal Services Authority can also be performed. The type of functions performed only at the National level are—

- ➔ to prepare the norms and working conditions of the State Legal Services.
- ➔ to prepare a most functional and Cost Saving project.
- ➔ to ensure the right of the consumer, to protect environment, exploited people and take important steps in that direction.

- ➡ to import legal education in inslum areas, village areas, labour colonies and also to see that litigations that are long pending are put to an end as fast as possible.
- ➡ to ensure inter communication.
- ➡ to take necessary steps so that the fundamental duty as stated in Section 4 of the constitution is properly enacted.
- ➡ to establish universities, colleges and other institutions for importing legal education and to see that the Bar Council is contacted for this.
- ➡ to see that the awareness about legal matters and legal literacy is increased among public.
- ➡ to see that at the grass root level the voluntary organisations that work for the scheduled castes and tribes are given proper legal cooperation.

To implement the above functions, the following infrastructural development is necessary—

- ➡ The Chief Justice of the Highest Court Should be the Patron in chief.
- ➡ An ordinary member of this organisation would be a working or retired Justice nominated by the President.
- ➡ Among those members two elected members should be chosen who have the required education and experience. The Central Government rules are to be followed in their selection.

#### (b) State Level Legal Service Authority

The structure of the organisation would be as follows—

- ➡ One chief Patron, who is the chief justice of a Higher Court.
- ➡ One member who is a working or a retired Justice.
- ➡ Any two members who have the required education and experience.

The type of work done by the organisation is—

- ➡ The State government to abide by the norms and functions of the National Legal Service.
- ➡ To deliver legal help to individual or group according to the laws laid down by the legal service.
- ➡ To organise Lok Adalat.
- ➡ To organise strategic and resistance oriented programmes by legal aid.

In addition to the above the State Legal Aid services would be liable to work for the National Legal Aid Services.

#### (c) District Level Legal Services Authority

The structure of the District Level Legal Services Authority is—

- One President, who is Justice of the District Judge Court, working or retired.
- One member, who is working or retired member of the District Judge Court.
- Two efficient and experienced worker / member those who have the requisite knowledge.

The functions of the District level legal Services Authority are—

- To maintain the directires and working structure of the State Level Legal Services Authority.
- To help in adding the functions like legal services at the District Level.
- To organise Lok Adalat at the district level.
- To work in coordination with government and private universities, legal organisations, college and other institutions for extending legal help.
- To be responsible for working in coordination with the National and state level legal Aid Authority.

This is a simple illustration of the structure and function of the National, State and District level legal aid authority. Further, one important area of the three tier system is to whom can this service be extended. According to the No. 12 law— any individual can receive such help but he / she has to register a case with the court if—

- he / she is a member of the SC / ST family.
- a victim of human trafficking.
- a beggar as described in section 23 of the constitution.
- a woman or a child.
- a mentally retarded person (as described in rule no. 12)
- a victim of riot, violence or any other caste based conflict .
- an industrial labour.
- an inmate of a Home, a child inmate of any Home.
- a member of a family whose yearly income is less than Rs. 9000.
- Yearly income family's Rs. 12,000, or less than that only of a member of such family has filed a case at any District Court or the Supreme Court.

In summary, the aim of presenting legal aid to common people is the primary task of such organisation. This is an important path towards social change. The most significant aspect of such organisation is that it can help in fulfilling demands of many people who are in need.

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### **3.6. Lok Adalat**

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The poor people of our country are a victim in the complexity of filing cases at the courts for their needs. To see that no citizen of this country are deprived of legal oportunities,

Legal Aid services were established. One of the functions of the Legal Aid services at national, state and district level is to organise Lok Adalat. Day by day the applicability of Lok Adalat is on the increase. The two conflicting parties are made to be present face to face in the Panchayat, Municipality or any other such platform in the Lok Adalat. Further the conflicting parties of a long drawn legal battle can also be finalised in a Lok Adalat. The main aim of Lok Adalat to put an end to a conflict after listening to both the parties. In the section 39A of the Constitution justice for all has been recognised. By such Lok Adalats, long drawn pending cases have been resolved so far.

One retired Justice, a government official or a ministerial worker of the Upper or Lower Court, two councillors and two officials make up the structure of Lok Adalat. A special law recognizes the justice administered by Lok Adalat as the verdict of Departmental Justice. Generally two conflicting parties are brought together and two counsellors are given the responsibility of talking to both parties. After both parties have been heard, a verdict is given on the basis of a case filed by both the parties.

The counsellors are efficient and experienced. The aim of Lok Adalat is to resolve the process of conflict by alternative method (Alternative Dispute Resolution Process) but in accordance to legal procedures.

In this process long pending cases can be resolved faster. But Lok Adalat are so much in demand that a member of cases have piled up. It is becoming impossible to work efficiently within a time period.

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### **3.7. References**

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## **Unit - 4 □ Salient features, Provision and Implementation of Legislation with reference to Marriage and Divorce, Inheritance and Succession, Maintenance of Spouse and Children**

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### **Structure**

- 4.1 Concept**
- 4.2 Marriage and Divorce**
- 4.3 Inheritance and Succession**
- 4.4 Maintenance of Spouse and Children**
- 4.5 References**
- 4.6 Exercises**

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### **4.1 □ Concept**

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The term 'legislation' connotes sets of laws made and passed the legislature or parliament of a nation. Hence by the term 'social legislation' we mean a process of enactment of laws for the eradication of unhealthy social practices, toobos, etc. and in its place introduction of new practices which beneficial to the society altogether.

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### **4.2 □ Marriage and Divorce**

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#### **4.1.1 Marriage**

Marriage as a social institution plays an important part in the family life of individuals in any society. There are various legislations namely Hindu Marriage Act of 1955, Special Marriage Act of 1954 etc. which governs and safeguards marriages in our society.

#### **So far as Hindu Marriage Is concerned.**

A marriage is solemnised when the bride and bridegrooms follows to customary rites 'homa' and saprapadi'. Th&tefm 'saptapadi' connotes taking seven steps round the holy fire. The marriages of Hindu of any sect or caste, Buddhists, Jains, Sikhs, arid for anyone converted to Hinduism, are governed and protected under Hindu Marriage Act. Provisions for Hindu Marriage are :

- a) Both the bride and bridegroom must be Hindus.
- b) Neither the bride nor bridegroom be already married.
- c) Both the parties are not within degree of prohibited relationships unless the existing custom permits of a marriage between the two.
- d) Parties are not sapindas unless the custom permits a marriage between the two.
- e) Neither of the parties is a lunatic or retarded at the time of marriage.
- f) The bridegroom must complete 21 years of age and bride must complete 18 years of age at the time of marriage.
- g) The marriage has not taken place by force or fraud.

**So far as Special Marriage is concerned.**

Conditions relating to Solemnization of Special Marriage-

Notwithstanding anything contained in any other law for the time being in force relating to the solemnization of marriages, a marriage between any two persons may be solemnized under The Special Marriage Act, if at the time of the marriage the following conditions are fulfilled namely:

- a) Neither party has a spouse living.
- b) Neither party -
  - i) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or
  - ii) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as be unfit for marriage and the procreation of children; or
  - iii) has been subject to recurrent attacks of insanity or epilepsy.
- c) The male has completed the age of twenty-one years and the female the age of eighteen years.
- d) The parties are not within the degrees of prohibited relationship. Provided that where a custom governing at least one of the parties permits of a marriage between them, such marriage may be solemnized, notwithstanding that they are within the degrees of prohibited relationship ; and
- e) where the marriage is solemnized in the State of Jammu and Kashmir, both parties are citizens of India domiciled in the territories to which this Act extends.

**4.1.2. Divorce**

So far as Hindu Marriage Act is concerned:

**Dissolution of Marriage (Divorce):** According to Section-13 of the Hindu Marriage Act, a husband or wife at any moment of time can dissolve the marriage ties on the grounds mentioned below :

**Grounds for Divorce:**

- a) Adultery: After solemnization of marriage, voluntary sexual intercourse with any person other than his or her spouse.
- b) Cruelty: After solemnization of marriage, when either of the husband or wife treat with cruelty (amounting to physical, mental or both) to other.
- c) Desertion: After solemnization of marriage, willful neglect or either husband or wife to their counterpart without reasonable cause or without consent or against the wish of the counterpart.
- d) Renunciation (Change of Religion): After solemnization of marriage, when either of the husband or wife has ceased to be a Hindu by conversion to any other religion or renounces the world for religion.
- e) Insanity: After solemnization of marriages, when either of the husband or wife be of unsound mind for a period not less than 3 years.
- f) Leprosy: After solemnization of marriage, when either of husband or wife been suffering from virulent and incurable form of leprosy for a period not less than 3 years.
- g) Venereal Disease: After solemnization of marriage, when either of husband or wife been suffering from communicable form of venereal diseases for a period not less than 3 years.
- h) When after solemnization of marriage, either husband or wife has not been heard of being alive for a period of seven years or more.

**Dissolution of Marriage (Mutual Consent) :** According to Section-13B of the Hindu Marriage Act (Amendment of 1976), after solemnization of marriage, dissolution of marriage by mutual consent can occur subject to the conditions that the following grounds are fulfilled: .

**Grounds for Divorce through Mutual Consent:**

- a) Both husband and wife have been living separately for a period of one year or more.
- b) They are not in a position to live together.
- c) They have agreed mutually that marriage be dissolved.

**So far as the Special Marriage Act is concerned :**

**Dissolution of Marriage (Divorce):** According to Section-27 of the Special Marriage Act, after solemnization of marriage, petition for divorce can be done to the District Court of the following grounds:

(1) Subject to the provisions of this Act and to the rules made thereunder, a petition for divorce may be presented to the District Court either by the husband or

the wife on the ground that the respondent-

- a) has, after the solemnization of the marriage had voluntary sexual intercourse with any person other than his or her spouse; or
- b) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or
- c) is undergoing a sentence of imprisonment for seven years or more for an offence as defined in the Indian Penal Code (45 of 1860); or
- d) has since the solemnization of the marriage treated the petitioner with cruelty; or
- e) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind, and also to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

**Explanation : In this Clause-**

- a) the expression “mental disorder” means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;
- b) the expression “psychopathic disorder” means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence which results in abnormally aggressive or irresponsible conduct on the part of the respondent and whether or not it requires or is susceptible to medical treatment; or
- f) has been suffering from venereal disease in a communicable form; or
- g) has been suffering from leprosy, the disease not having been contracted from the petitioner; or
- h) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of the respondent if the respondent had been alive;

**Explanation-** In this sub-section, the expression “desertion” means desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.

(1 -A) A wife may also present a petition for divorce to the District Court on the ground-

- i) that her husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality;
- ii) that in a suit under Sec. 18 of the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956), or in a proceeding under Sec. 125 of the Code of Criminal

Procedure, 1973 (2 of 1974), or under the corresponding Sec. 488 of the Code of Criminal Procedure, 1973 (2 of 1974), or under the corresponding Sec. 488 of the Code of Criminal Procedure, 1898 (5 of 1898), a decree or order, as the case may be, has been passed against the husband awarding maintenance of the wife notwithstanding that she was living apart and that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards.

(2) Subject to the provisions of the Act and to the Rules made thereunder, either party to a marriage, whether solemnized before or after the commencement of the Special Marriage (Amendment) Act, 1970, may present a petition for divorce to the District Court on the ground-

- i) that there has been no resumption of cohabitation as between the parties to the marriage for a period of one year or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or
- ii) that there has been restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.

27-A. Alternate relief in divorce proceedings- In any proceedings under this Act, on a petition for a dissolution of marriage by a decree of divorce, except in so far as the petition is founded on the ground mentioned in Cl. (h) of sub-section (1) of Sec. 27, the Court may, if it considers it just so to do, having regard to the circumstances of the case, pass instead a decree for judicial separation.

**Dissolution of Marriage by Mutual Consent:** According to Section-28 of the Special Marriage (Amendment) Act 1970, petition for divorce by mutual consent can be done to the District Court of the following grounds :

- (1) Subject to the provision of this Act and to the rules made thereunder, a petition for divorce may be presented to the District Court by both the parties together on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.
- (2) On the motion of the both parties made not earlier than six months after the date of the presentation of the petition referred to sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the District Court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit that a marriage has been solemnized under this Act and that the averments in the petition are true, pass a decree declaring the marriage to be dissolved with effect from the date of the decree.

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### **4.3 □ Inheritance and Succession**

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When we talk about Inheritance and Succession, the act which automatically comes into our mind is The Hindu Succession Act of 1956. After the enactment of this law, there was a all-round change in the concept of property rights so far as Hindus are concerned. The men and women started getting equal rights towards ancestral property. The main provisions of the act are as follows :

#### **The Hindu Succession Act of 1956.**

##### **General rules of succession in the case of males :**

The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter-

- a) firstly, upon the being the relatives specified in class I of the Schedule;
- b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;
- c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and
- d) lastly, if there is no agnate, then upon the cognates of the deceased.

##### **Order of succession among heirs in the Schedule**

Among the heirs specified in the Schedule, those in class I shall take simultaneously and to the exclusion of all other heirs; in the first entry in class II shall be preferred to those in the second entry; those in the second entry shall be preferred to those in the third entry; and so on in succession.

##### **Distribution of property among heirs in class I the Schedule**

The property of an intestate shall be divided among the heirs in class I of the Schedule in accordance with the following rules :

Rule 1 - The intestate's widow, or if there are more widows than one, all the widows together, shall take one share.

Rule 2 - The surviving sons and daughters and the mother of the intestate shall each take one share.

Rule 3 - The heirs in the branch of each pre-deceased son or each pre-deceased daughter of the intestate shall take between them one share.

Rule 4 - The distribution of the share referred to in Rule 3-

- i) among the heirs in the branch of the pre-deceased son shall be made that his widow (or widows together) and the surviving sons and daughters get equal portions; and the branch of his predeceased sons gets the same portion;
- ii) among the heirs in the branch of the pre-deceased daughter shall be so made that the surviving sons and daughters get equal portions.

### **Distribution of property among heirs in class II of the Schedule**

The property of an intestate shall be divided between the heirs specified in any one entry in class II of the Schedule so that they share equally.

### **Order of succession among agnates and cognates**

The order of succession among agnates or cognates, as the case may be, shall be determined in accordance with the rules of preference laid down hereunder:

Rule 1 - Of two heirs, the one who has fewer or no degrees of ascent is preferred.

Rule 2 - Where the number of degrees of ascent is the same or none, that heir is preferred who has fewer or no degrees of descent.

Rule 3 - Where neither heir is entitled to be preferred to the other Rule 1 or Rule 2 they take simultaneously.

### **Computation of degrees**

- (1) For the purpose of determining the order of succession among agnates or cognates, relationship shall be reckoned from the intestate to the heir terms of degrees of ascent or degrees of descent or both, as the case may be.
- (2) Degrees of ascent and degrees shall be computed inclusive of the intestate.
- (3) Every generation constitutes a degree either ascending or descending.

### **Property of a female Hindu to be her absolute property**

(1) Any property possessed by a Female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

**Explanation :** In this sub-section, “property” includes both movable and immovable property acquired by a female Hindu by inheritance or device, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.

### **General rules of succession in the case of female Hindus**

(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16 :

a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;

- b) secondly, upon the heirs of the husband;
- c) thirdly, upon the mother and father;
- d) fourthly, upon the heirs of the father; and
- e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section (1)-

a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence on any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in subsection (1) in the order specified therein, but upon the heirs of the father; and

b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any daughter of the deceased (including the children of any predeceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.

**Order of succession and manner of distribution among heirs of a female Hindu**

The order of succession among the heirs referred to in section 15 shall be, and the distribution of the intestate's property among those heirs shall take place, according to the following rules, namely :-

Rule 1 - Among the heirs specified in sub-section (1) of section 15, those in one entry shall be preferred to those in any succeeding entry and those including in the same entry shall take simultaneously.

Rule 2 - If any son or daughter of the intestate had pre-deceased the intestate leaving his or her own children alive at the time of the intestate's death, the children of such son or daughter shall take between them the share which such son or daughter would have taken if living at the intestate's death.

Rule 3 - The devolution of the property of the intestate on the heirs referred to in clauses (b), (d) and (e) of sub-section (1) and in sub-section (2) of section 15 shall be in the same order and according to the same rules as would have applied if the property had been the father's or the mother's or the husband's as the case may be, and such person had died intestate in respect thereof immediately after the intestate's death.

**Special provisions respecting persons governed by Marumakkattayam and Aliyasatana laws**

The provision of section 8,10,15 and 23 shall have effect in relation to persons who would have been governed by the marumakkattayam law or aliyasantana law if this Act had not been passed as if-

(i) for sub-clauses (c) and (d) of section 8, the following had been substituted, namely:

“(c) thirdly, if there is no heir of any of the two classes, then upon his relatives, whether agnates or cognates.”,

(ii) for clauses (a) to (e) of sub-section (1) of section 15, the following had been substituted, namely :-

“(a) -firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the mother;

(b) secondly, upon the father and the husband;

(c) thirdly, upon the heirs of the mother;

(d) fourthly, upon the heirs of the father; and

(e) lastly, upon the heirs of the husband.”,

(iii) clause (a) of sub-section (2) of section 15 had been omitted;

(iv) section 23 had been omitted.

### **General Provisions Relating To Succession**

#### **Full blood preferred to half blood**

Heirs related to an intestate by full blood shall be preferred to heirs related by half blood, if the nature of the relationship is the same in every other respect.

#### **Mode of succession of two or more heirs**

If two or more heirs succeed together to the property of an intestate, they shall take the property-

(a) save as otherwise expressly provided in this Act, per capita and not per stripes; and

(b) as tenants-in-common and not as joint tenants.

#### **Right of child in womb**

A child who was in the womb at the time of death of an intestate and who is subsequently born alive has the same right to inherit to the intestate as if he or she had been born before the death of the intestate, and the inheritance shall be deemed to vest in such a case with effect from the date of the death of the intestate.

#### **Presumption in cases of simultaneous deaths**

Where two persons have died in circumstances rendering it uncertain whether either of them, and if so which, survived the other, then for all purposes affecting succession to property, it shall be presumed, until the contrary is proved, that the younger survived the elder.

#### **Preferential right to acquire property in certain cases**

(1) Where, after the commencement of this Act, interest in any immovable property of an intestate, or in any business carried on by him or her, whether solely or

conjunction with others, devolve upon to two or more heirs specified in class I of the Schedule, and any one of such heirs propose to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred.

(2) The consideration for which any interest in the property of the deceased may be transferred under this section shall, in the absence of any agreement between the parties, be determined by the court on application being made to it in this behalf, and if any person proposing to acquire the interest is not willing to acquire it for the consideration so determined, such person shall be liable to pay all costs of or incident to the application.

(3) If there are two or more heirs specified in class I of the Schedule proposing to acquire any interest under this section, that heir who offers the highest consideration for the transfer shall be preferred.

**Explanation :** In this section, “court” means the court within the limits of whose jurisdiction the immovable property is situate or the business is carried on, and includes any other court which the State Government may, by notification in the Official Gazette, specify in this behalf.

#### **Special provision respecting dwelling houses**

Where a Hindu intestate has left surviving him or her both male and female heirs specified in class I of the Schedule and his or her property includes a dwelling-house wholly occupied by members of his or her family, then, notwithstanding anything contained in this Act, the right of any such female heir to claim partition of the dwelling-house shall not arise until the male heirs choose to divide their respective shares therein; but the female heir shall be entitled to a right of residence therein:

PROVIDED that where such female heir is a daughter, she shall be entitled to a right of residence in the dwelling-house only if she is unmarried or has been deserted by or separated from her husband or is a widow.

#### **Certain widows remarrying may not inherit as widows**

Any heir who is related to an intestate as the widow of a pre-deceased son, the widow of a pre-deceased son of a pre-deceased son or the widow of a brother shall not be entitled to succeed to the property of the intestate as such widow, if on the date the succession opens, she has re-married.

#### **Murderer disqualified**

A person who commits murder or abets the commission of murder shall be disqualified from inheriting the property of the person murdered, or any other property in furtherance of the succession to which he or she committed or abetted the commission of the murder.

#### **Convert's descendants disqualified**

Where, before or after the commencement of this Act, a Hindu has ceased or ceases to be a Hindu by conversion to another religion, children born to him or her after such conversion and their descendants shall be disqualified from inheriting the property of any of their Hindu relatives, unless such children or descendants are Hindus at the time when the succession opens.

#### **Succession when heir disqualified**

If any person is disqualified from inheriting any property under this Act, it shall devolve as if such person had died before the intestate.

#### **Disease, defect, etc. not to disqualify**

No person shall be disqualified from succeeding to any property on the ground of any disease, defect or deformity, or save as provided in this Act, on any other ground whatsoever. ESCHEAT

#### **Failure of heirs**

If an intestate has left on heir qualified to succeed to his or property in accordance with the provision of this Act, such property shall devolve on the government; and the government shall take the property subject to all the obligations and liabilities to which an heir would have been subjected.

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## **4.4 ☐ Maintenance of Spouse and Children**

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In every case of lawful marriage, separation, divorce, the husband has the obligation and liability for maintenance of wife and children. These are governed according to various personal laws and procedure codes enacted from time to time.

#### **Section-125, Criminal Procedure Code of 1973 :**

Under Section-125 of Cr.PC, right of maintenance extends not only to the wife and dependent children, but also to the indigent parents and divorced wives. Claims of course depend on the means of the husband. Only in cases of exception, where women receive maintenance from the safeguards of personal law, such women cannot claim maintenance under Cr.PC 125.

#### **Hindu Adoptions and Maintenance Act of 1956 :**

1. Under the Hindu Adoptions and Maintenance Act of 1956, a Hindu wife can claim maintenance from her husband if she is unable to support herself. In cases where wife stays from husband for unavoidable circumstances, in that case also, the wife is eligible to get maintenance for her husband.

The circumstances may be:

- Desertion by husband.
- Cruelty of husband.

- Husband has leprosy or other virulent disease.
- Bigamy of husband.
- Illicit relationship of husband with other women.
- Husband has got converted to other religion.

[It has to be noted that if the wife is living in adultery or changed her religion or has got remarried she will not be entitled for maintenance.]

(2) Under the Hindu Adoptions and Maintenance Act of 1956, children, old and infirm parents have the right to get maintenance, if they are unable to maintain themselves out of their income or out of the income of their property.

- Here 'children' means legitimate or illegitimate minor children - they have right to get maintenance from their parents.
- Old and infirm parents have right to get maintenance from their children (Sons and daughters).

(3) Under the Adoptions and Maintenance Act of 1956, if a Hindu Widow is unable to support herself from her own income or property, she is entitled to get maintenance from:

- Her husband's property or from her parents.
- Her sons or daughters or their property.
- In absence of the above from father-in-law or his property.

[If she (widow) remarries, she will not be entitled to get maintenance from her father-in-law.]

#### **4.5 References**

1. Bare Act - "The Hindu Marriage Act of 1955" - Hind Publication House, Allahabad, Uttar Pradesh, India.
2. Bare Act - "The Hindu Succession Act of 1956" - Clarion Law Books, New Delhi, India.
3. Bare Act - "The Hindu Adoption and Maintenance Act of 1956" - Hind Publication House, Allahabad, Uttar Pradesh, India.
4. [www.google.co.in](http://www.google.co.in)

#### **4.6 Exercises**

1. Describe in brief the salient provisions of The Hindu Succession Act of 1956.
2. What are the grounds of dissolution of marriage (Divorce) under The Hindu Marriage Act of 1955 ?
3. Who all are Class-I and Class-II Heirs specified under The Hindu Succession Act of 1956 ?

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## **Unit - 5   □   Laws Safeguarding the Rights of Women and Children**

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### **Structure**

- 5.1   Introduction**
- 5.2   Juvenile Justice (Care and Protection of Children) Act, 2000**
- 5.3   Child Labour (Protection and Regulation) Act, 1986**
- 5.4   Dowry Prohibition Act, 1961**
- 5.5   Child Marriage Restraint Act, 1929**
- 5.6   Equal Remuneration Act, 1976**
- 5.7   Maternity Benifit Act, 1961**
- 5.8   Medical Termination of Pregnancy Act, 1971**
- 5.9   Conclusion**
- 5.10   Recapitulation**
- 5.11   Exercises**

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### **5.1   □   Introduction**

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Traditionally women and children are the most vulnerable sections, especilly in a developing country like ours. Although the Preamble to our Constiutution refers to the promise of social justice, and the Constitution itself has provisions for affirmative action in favour of women and children, as well as, special laws enacted to promote gender justice and the rights of the child, the status of women and children continues to be a cause of concern not only in our country by also in most countries of the world.

At the International level, prohibition against gender discrimination and the rights of the child for :-

- Protection
- Survival
- Development
- Participation

are being voiced from the United Nations Charter of 1945 and the Universal Declaration of Human Rights of 1948 onwards,. Since then, virtually all human rights instruments have reinforced and extended protection against discrimination. The International Covenant on Civil and Political Rights adopted in 1966 guarantees equal protection of the law to both sexes. The International Covenant on Economic, Social and Cultural Rights also adopted in 1966 promises women equality of status. The Fourth World Conference on Women, held at Beijing brought us further forward by reaffirming gender equality as a fundamental pre-requisite for social justice.

Perhaps the most important conceptual advance in the international law of women's rights is the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), effective 1981, which provides that women be given rights equal to those of men on equal terms. The Preamble of CEDAW maintains that "the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields."

The Convention on the Rights of the Child (CRC) is the human rights instrument that sets out the rights of children and adolescents, taking into account their particular needs for protection, and the opportunities they require for growth and development. According to article 1 of the Convention on the Rights of the Child, a child is very human being the age of 18 (this includes adolescents) unless, under the law applicable to the child, majority is obtained earlier.

In India, our Constitution provides for distributive and social justice enshrined in the Preamble, the chapters on Fundamental Rights and Duties, and Directive Principles of State Policy and other articles. Article 14 confers on men women equal rights and opportunities in the political, economic and social spheres. Article 15 prohibits discrimination against any citizen on the grounds of religion, race, caste, sex, etc. Article 15(3) makes a special provision enabling the State to make affirmative discriminations in favour of women. Similarly, Article 16 provides for equality of opportunities in matter of public appointments for all citizens. Article 39(a) lays down that the State shall direct its policy towards securing all citizens, men and women, equally, the right to means of livelihood, while Article 39(c) ensures equal pay for equal work. Article 42 directs the State to make provision for ensuring just and humane conditions of work and maternity relief. Above all, the Constitution impose a fundamental duty on every citizen through Article 51A (e) to renounce the practices derogatory to the dignity of women.

In tune with various provisions of the Constitution, the State has enacted many 'women-specific' and 'women-related' legislations to protect women against social discrimination, violence and atrocities and also to prevent social evils like child marriages, dowry, rape, practice of Sati, etc. We will discuss some of them below.

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## **5.2 □ Juvenile Justice (Care and Protection of Children) Act, 2000**

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An Act to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under this enactment.

### **5.2.1. Act 56 of 2000**

The Juvenile Justice (Care and Protection of Children) Bill having been passed by both the House of Parliament received the assent of the President on 30th December, 2000. It came on the Statute Book as THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN); act, 2000 (56 of 2000).

### **5.2.2. Department Concerned in the State**

It is the Social Welfare and Women & Child Development Department of the concerned state.

### **5.2.3. Scope of Service**

It is to provide Care & Protection to the Destitute & Neglected Delinquent children accordingly to the Provision of the Act.

### **5.2.4. Eligibility Conditions**

The eligibility condition is, as per the provision of the Juvenile Justice (Care & Protection of Children Act, 2000, the child should be within the age of 18, whether male or female.

### **5.2.5. Step by Step Procedure**

1. Destitute & neglected children are admitted in the children homes where their case files are completed and are transferred to the Juvenile Homes within a period of three months. Boarding and lodging and medicines etc. are provided free to the children.
2. In the Juvenile Homes children are cared up to the age of 18 years where the children complete their studies.
3. If the Children have not completed their education then they are transferred in the After Care Homes, where they remain up to the age of 21 years. Neglected/Destitute Children are admitted in the children homes.

### **5.2.6. Delinquent Children**

Delinquent Children are admitted by Juvenile Justice Boards and they are kept in the Special Home.

### **5.2.7. Format of Application Form**

No format of application is required, any person can produce destitute neglected and needy child can be produced before the child welfare committee for the admission in the children homes.

### **5.2.8. Check List of Document**

No check list of documents is prescribed Child Welfare Committee is empowered to admit the child while exercising the powers conferred by the Code of Criminal Procedure, 1973 on a magistrate of 1st Class according to the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000.

### **5.2.9. Verification Procedures**

No prior verification is required, as it is within the powers of Child Welfare Committee to admit/discharge the destitute/neglected child.

### **5.2.10. Prescribed Time Schedule**

Child Welfare Committee will complete its process with in three months.

### **5.2.11. Fee Prescribed**

No fee is required destitute/neglected/delinquent children are admitted and cared and socialized according to the provisions of Juvenile Justice (Care & Protection of Children) Act, 2000.

### **5.2.12. Sanctioning Authority**

- For Destitute and Neglected Children - Child Welfare Committee of the Concerned District.
- For Delinquent Children - Juvenile Justice Board of the concerned District.

### **5.2.13. Grievance Redressal System**

It consists of the concerned Child Welfare Committee and Juvenile Justice Boards.

### **5.2.14. Implementation Strategy and Objectives of the Act**

The Juvenile Justice (Care and Protection of Children) Act, 2000 lays down the Primary law for not only the care and protection of the children but also for the adjudication and disposition of matters relating to children in conflict with law. For the implementation of the Act, the Ministry is implementing a plan Scheme called, 'A Programme for Juvenile Justice.' The objectives of the Programme for Juvenile Justice are :

- To extend help to State Governments to bear the cost of infrastructure and services development under the Juvenile Justice Act in order to ensure that in no circumstances the child in conflict with law is lodged in a regular prison.
- To ensure minimum quality standards in the juvenile justice services.
- To provide adequate services for prevention of social maladjustment and rehabilitation of socially maladjusted juveniles.

- Ensure participation of community and other organizations into the care and protection of children in conflict with law who are perhaps more vulnerable than other groups of children.

Under the scheme, the Ministry provides 50% assistance to State Governments and Union Territory (UT) Administration for establishment and maintenance of various levels of institutions for juveniles in conflict with law and children in need of care and protection. During the year 2003-04, an amount of Rs. 16.37 crore was released to 22 States/UTs.

#### **5.2.15. Implementation Status in West Bengal**

1. 2 Juvenile Justice Boards have been constituted for all Districts of the State.
2. Child Welfare Committees have been constituted covering all Districts of the State.
3. 5 Observation Homes run by Government have been established.
4. 5 Special Homes run by Government have been established
5. 13 Children Homes have established and are run by Government.
6. 21 Shelter Homes run by NGOs have been recognized.
7. 8 After Care Homes are being run.
8. Formulation of Rules under consideration of Government.

#### **5.2.16. Review of the Act**

The Juvenile Justice Act, 2000 is the primary law for children in need of care and protection. The JJ Act designed for the care, protection, development and rehabilitation of neglected and delinquent juveniles, as well as for the adjudication of and disposal of certain matters related to them.

The Juvenile Justice Act, 1986 has been replaced by a new Act called 'The Juvenile Justice (Care and Protection of Children) Act, 2000'. This new law is more child-friendly and provides for proper care and protection as also for ultimate rehabilitation of children in need of care and protection. A clear distinction has been made in the new law between the juvenile offender and the neglected child. The other salient features of this enactment are :

- it prescribes a uniform age of 18 years below which both boys and girls are to be treated as children
- the Act directs that the cases related to juveniles should be completed within a period of three-four months
- it has been made compulsory to set up Juvenile Justice Board (previously known as Juvenile Court) and Child Welfare Committee (previously known as Juvenile Welfare Board) either for District or a group of Districts
- special emphasis has been given for rehabilitation and social re-integration of the children and the alternatives provided for this are adoption, foster

care, sponsorship and after-care. The new Act allows for adoption of a child within the purview of the Act by community. The Juvenile Justice Board has been empowered to give such children in adoption even to a single parent and to parents to adopt a child of same sex irrespective of number of biological sons or daughters. > it has been provided that there is to be no joint proceeding of a juvenile and a person not a juvenile

The Juvenile Justice Rules, 2002 under the 2000 Act have already been framed by the State Governments. It has also been decided to constitute a JJ Board and Child Welfare Committee (CWC) in each District.

The programme for Juvenile Justice endeavours to provide for full coverage of services envisaged under the Juvenile Justice Act so as to ensure that no child under any circumstances is lodged in prison; to bring about qualitative improvement in the juvenile services and to promote voluntary action for the prevention of juvenile social maladjustment and rehabilitation of socially maladjusted juveniles.

Under the Programme for Juvenile Justice, the Government of India provides assistance to the State Government for establishment and maintenance of Observation Homes, Juvenile Homes, Special Homes and after-care institutions for children in conflict with law and children in need of care and protection. The cost of maintenance of the inmates of the Observation Homes is borne by the State Government on a 50:50 sharing basis a Centrally Sponsored Plan Scheme.

#### **5.2.17 Amendment**

The Social Justice and Empowerment Minister Dr. Satyanarayan Jatiya introduced the Juvenile Justice (Care and Protection of Children) Amendment Bill, 2003 in the Lok Sabha on 24th April, 2003. The bill seeks to amend the sections 32, 33, 56, 57 and 59 of the Juvenile Justice (Care and Protection of Children) act, 2000. The amendment has been necessitated following the observation made by the Delhi High Court in a 'Public Interest Litigation' that certain provisions of the Act merited reconsideration. Keeping in view these observations, the amendment proposes to have a minimum time period within a child should be produced before the Child Welfare Committee. It seeks that the child shall be produced before the Committee without any loss of time but within a period of 24 hours excluding the time necessary for the journey. The amendment bill also proposes to do away with the association of any untrained police officer from the inquiry process and seeks to substitute the word 'any police officer or special juvenile police unit' with the 'any member of a special juvenile police unit'. The amendment bill also propose exclusion of or-local authority from the provisions authorizing them to discharge or transfer a child in need of care and protection or juvenile from the children home or special home. It also propose to provide for a flexible period of leave that may be given to the child on special occasions like examination, marriage of relations, death of kith or kin or accident or serious illness of parent or any emergency of the like nature.

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## **5.3 □ Child Labour (Protection and Regulation) Act, 1986**

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The government has made efforts to prohibit child labor by enacting Child labor laws in India including the 1986 Child Labor (Prohibition and Regulation) Act that stated that children under fourteen years of age could not be employed in hazardous occupations. This act also attempted to regulate working conditions in the jobs that it permitted, and put greater emphasis on health and safety standards.

### **5.3.1. Act 61 of 1986**

Based on the recommendations of Gurupadaswamy Committee, the Child Labour (Prohibition & Regulation) Act was enacted on 23rd December, 1986. The Act prohibits employment of children in certain specified hazardous occupations and processes and regulates the working conditions in others. The list of hazardous occupations and processes is progressively being expanded on the recommendation of Child Labour Technical Advisory Committee constituted under the Act.

In consonance with the above approach, National Policy of Child Labour was formulated in 1987. The Policy seeks to adopt a gradual a sequential approach with a focus on rehabilitation of children working in hazardous occupations & processes in the first instance.

### **5.3.2. Department Concerned in the State**

In the state the concerned department is the Labour Department.

### **5.3.3. Prohibition of Employment of Children**

This Act prohibits the engagement of children below the age of 14 years in certain employments and regulates the conditions of work of children in certain other employments. The Act prohibits employment of child in about 13 occupations and about 51 processes.

### **5.3.4. Regulatory Provisions**

The Act provides no child shall be permitted or required to work between 7p.m. and 8 a.m., for more than 3hrs before he has an interval for rest at least one hour. Every child employed in an establishment shall be allowed in each week a holiday for one whole day.

### **5.3.5. Administrative Machinery**

All the Inspecting Officers of the Labour Department are notified as inspectors for the purpose of this Act. On receipt on complaints inspection are conducted by the inspectors. For any violation prosecution is filled in the Court of respective are Metropolitan Magistrate by the Inspectors.

### **5.3.6. Objective of the Act**

It is an Act to prohibit engagement of children in certain employments and to regulate the conditions of work of children in certain other employments.

### **5.3.7. Penalties**

Whoever employs or permit any child to work in the occupations and process in which employment of children is prohibited shall be punishable with imprisonment up to one year with fine not less than Rs. 10,000/- or with both. For other contraventions the penalty is up to one months imprisonment or with fine up to Rs. 10,000/- or with both.

### **5.3.8. Review of the Act and the Rehabilitative Machinery**

India has all along followed a proactive policy in the matter of tackling the problem of child labour, and always stood for constitutional, statutory and developmental measures that are required to eliminate child labour. India has ratified six ILO conventions relating to child labour and three of them as early as in the first quarter of the twentieth century. Legislative provisions have been made in various laws to protect children from exploitation at work and to improve their working conditions. Concerted attempts have been made to follow a pro-active policy in the matter of tackling the problem through constitutional, statutory and developmental measures. Article 24,39 and 45 of the Constitution consciously incorporate provision to secure labour protection and free and compulsory education for children up to the age of 14 years.

In addition, a comprehensive law namely the Child Welfare (Prohibition and Regulation) Act, 1986 prohibits employment of children in certain hazardous occupations and processes and regulates their employment in some other areas. Through subsequent Notifications in 1999 and 2006, the Schedule to the Act has been substantially enlarged bring the total number of occupations and processes listed in the Schedule to 14 and 57 respectively. As per the provisional figures of Census 2001, there are 12.5 million working children in age group of 5-14 years as compared to the child population of 252 million.

#### **The salient features of this Act are as follows :-**

- Provision for CHILD LABOUR TECHNICAL ADVISORY COMMITTEE : The central government may by notification constitute a child Labour technical advisor committee to advise the central govt. for the purpose of addition of occupations to the schedule of the Act. (Section-5).
- Provision for HOURS AND PERIOD OF WORK: No child shall be required or permitted to work in any establishment in excess number of hours prescribed (Section-7). The period of work on each day shall not exceed three hours and no child shall work for more than three hours before he has had an interval for rest for at least one hour. No child shall be permitted or required to work between 7 p.m. and 8 a.m. No child shall be required or permitted to work overtime. (Section-7).
- Provision for WEEKLY HOLIDAY: Every child shall be allowed in each week a holiday of one whole day. (Section-8)

- WHO CAN FILE PROSECUTIONS :
  1. Any person
  2. Police Officer
- Section 14 of the provides for penalties for contravention of the various provision under the Act.

The National Policy on Child Labour was formulated in 1987 which apart from requiring enforcement of legal provision to protect the interests children, envisages focusing of general development programmes for the benefit of child labour and project-based plan of action in areas of high concentration of child labour. Under the project action plan of the policy, National Child Labour Projects (NCLP) have been set up in different areas to rehabilitate child labour. A major activity undertaken under the NCLP is the establishment of special schools to provide non-formal education, vocational training, supplementary nutrition, etc., to children withdrawn from employment.

The programme for the elimination of child labour received further impetus after the announcement of the new programme for the rehabilitation of children working in hazardous employments. Under the programme, 77 projects have been sanctioned to cover around 1.5 lakh working children in Andhra Pradesh, Madhya Pradesh, Gujarat, Orissa, West Bengal, Bihar, Rajasthan, Uttar Pradesh, Maharashtra, Kamataka and Tamil Nadu. The Cabinet Committee on Economic Affairs (CCEA) in their meeting on 20 January, 1999 approved continuance of the scheme of National Child Labour Project (NCLP) during the Ninth Plan period. The CCEA also approved increase of the projects from 76 to 100.

The number of working children who have been covered by special schools is a minuscule of the total number of working children waiting to be released and rehabilitated. The ultimate objective of the National Child Labour Projects is to convert working children into productive and participative members of society. Considering the magnitude of tire problem and paucity of resources - human, material and financial, a sequential, gradual but intergrated approach has been adopted.

The Government commitment to address the problem of child labour is reflected in the announcement made in the National Agenda for Governance (1998). The agenda states that the aim is to ensure that no child remains illiterate, hungry or lacks medical care and that measures will be taken to eliminate child labour. The need for time-bound action has also been emphasized by the Honorable Supreme Court. The Supreme Court of India, in its judgement dated 10 December, 1996 in Writ Petition (Civil) No. 465/1986 has been certain directions regarding the manner in which the children working in the hazardous occupations are to be withdrawn from work and rehabilitated as also the manner in which the working conditions of the children working in non-hazardous occupations are to be regulated, and improved upon.

The important directions given in the judgement include payment of compensation

amounting to Rs. 20,000 by the offending employers for every child employed in hazardous occupations, constitution of the Child Labour Rehabilitation-cum-Welfare Fund, giving alternative employment to an adult member of the family in place of the child withdrawn from the hazardous occupation or payment of an amount of Rs. 5,000 for each child employed in hazardous employment by the appropriate Government., completion of the survey of working children within a period of six months (i.e., by 10 June, 1997), Payment of interest on the corpus of Rs. 25,000 (Rs. 20,000 to be paid by the employer and Rs. 5,000 to be contributed by the appropriate government) to the family of the child withdrawn from work, provision of education in a suitable institution for the child withdrawn from work, etc. The Government has already initiated steps for giving effect to the directions of the Supreme Court.

#### **5.3.9. Amendment**

The latest amendment to the Child Labor (Prohibition and Regulation) Act, 1986 has come about in August, 2006 and prohibits Child Domestic Work and employment of children in roadside tea stalls and dhabas. By this Amendment Indian government is banning the employment of children under age 14 as domestic servants or as workers in hotels and restuarants.

The proposed ban will be effective from October 10. The West Bengal minister for labour, Mrinal Banerjee announced that West Bengal will implement the law and also plans to declare an anti child labor law of the state.

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### **5.4 O Dowry Prohibition Act, 1961**

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#### **5.4.1. Act 28 of 1961 (Amendment in 1984 and 1986)**

It is a woman-specific legislation and is an Act to prohibit the giving or taking of dowry. It came into force on 1st July, 1961.

#### **5.4.2. Department Concerned in the State**

It is the Social Welfare and Women & Child Development Department of the concerned state.

#### **5.4.3. Administrative Machinery**

In exercise of the powers conferred by Section 10 of the Dowry Prohibition Act, 1961, the State Government has framed the Dowry Prohibition Rules, 2000. Government has appointed the Sub-Division Magistrates as the Dowry Prohibition Officers to hear complaints on dowry-related matters and take appropriate steps in accordance with the provisions of the law. Govt. has also constituted Advisory Boards in each Sub-division to assist the Dowry Prohibition Officer (DPO) in discharge the functions under the law in dowry-related matters. During the current year, steps have been taken to revamp the Boards to ensure that the Dowry Prohibition Officer's funstions are carried out properly.

#### **5.4.4. Grievance Redressal System**

The dowry system has been a great social and health problem. So many cases of burns, hamicides, and suicides are reporting to the medical casualty in the hospitals. These cases are mainly due to the fact the dowry was not given according to the exception of bridegroom party. As the value of male child has been fixed much higher as compare to girl and women status is also low, the bride's parent has to offer costly gifts, and spend lot of money on arranging household goods to present even before the marriage which is illegal. If any person violates the Act may be punished with the imprisonment for a term not less than 5 years and with fine which shall not less than Rs. 15,0007- or the amount of the value of such dowry, whichever is more. Under the Amended Act of various states many types of prohibitions like advertisement, scope of dowry, gift, presens, and joint accounts are also included.

The Dowry Prohibition (Maintenance of list of presents to the bride and bridegroom) Rules 1885 prescribes that list of gifts, and other items should be made and kept. Where the death of a women is couosed by any burns or bodily injury within 7 years of her marriage and shown that soon before death she was subjected to curelty or harassment by her husband or any relatives is known as dowry death and punishment is for not less than 7 years but which may extend to life term imprisonment.

#### **5.4.5. Implementation Status in West Bengal**

All employees, including officers of the West Bengal Government, have to submit a written declaration to the authorities of their respective departments that they had not accepted dowry "before, after or at the time of marriage" from 2003 onwards. Penal action is to be taken against those whose testimonies were found to be untrue. "Those found guilty of having accepted dowry could suffer imprisonment for it is considered a criminal offence under Section 173 of the Indian Penal Code. Anti-dowry legislation has been in force in the State since 1961 but this most recent development comes in the wake of a notification issued by the State Government following an amendment to the West Bengal Dowry Prohibition Act, 1989."

The declaration is to be submitted to the departmental heads and will have to be certified by spouse, father and father-in-law of the individual concerned. After screening the undertakings, the authorities will send them to the recently-appointed Cheif Dowry Prohibition Officer of the Social Welfare Department for further action if deemed necessary.

"The post Dowry Prohibition Officer has also been earmarked for each district of the State. The officer will be entrusted the job of inquiring into any charge against a State employee of having accepted dowry at the time of his or her wedding in the case of doubt arising over the veracity of the declaration submitted."

The officer will forward the findings of the inquiry to the department headquarters in Kolkata. He will also be empowered to file a first information report with the local

police on any case where the acceptance of dowry has been ascertained. Suspension notices, which could be followed by a charge sheet, will be served on the guilty employee.

#### **5.4.6. Review of the Act**

In order to establish the implicit connection between the dowry system and the dowry deaths it is essential to look at the different provision of the Act along with the provisions of other enactments. While section 2 of the Act defines the term “Dowry” as any property or valuable security given in connection with a marriage, section 3 thereof makes giving or taking the dowry as a punishable offence. Section 4 provides penalty for demanding dowry and section 4-A bans advertisements on matrimonial based on the ground of dowry. Section 5 makes void an agreement for giving and taking the dowry, section 6 contemplates a legal obligation on the person who actually receives the dowry to transfer the same to the women in whose marriage it is given or to her children, heirs or parents as the case may be, in the event of her death. Section 7 and 8 provide provision as to the cognizance of offence. Section 8-A provides provision as to the burden of proof in certain cases and section 8-B provides for the appointment and powers and function of the Dowry prohibition Officers. Section 9 and 10 empower respectively the central as well as the State Government to make rules. While section 113-A of the Indian Evidence Act provides presumption as to the abetment of suicide in case where a married woman who commits suicide within 7 years of her marriage. Section 113-B thereof provides presumption as to the commission of dowry death where a person subjects a woman to cruelty or harassment for or in connection with any demand for dowry soon before her death.

#### **The salient features of this Act are :-**

- Agreement for Giving or Taking Dowry is void.
- Section 3 of the Act restrains the parents of the bride the giving of some property or valuable security even to their own daughter out of whatever little they could possess in connection with and in consideration of the marriage. As already mentioned, it also prohibits a bride/wife giving any property or valuable security to her bridegroom/husband and vice versa. The time span as provided by the Act under Section 2 ranges from birth to the death of the parties to the marriage in so far as giving or taking Dowry at or before or after the marriage is concerned.
- Sub-Section (1) of Section 3 of the Act contemplates that giving or taking or abetting the giving or taking of Dowry is a punishable offence. But Sub-Section (2) of section 3 permits the giving of customary presents at the time of marriage, provided there shall not be any demand for such presents. Further, the value of these presents shall not be in excess of the financial status of the person who presents the same or on whose behalf these are made, and that the same are to be listed in the prescribed form as required under the rules framed in accordance with the provisions of the Act. What

is important in this Sub-Section is that the presents shall be made only at the time of the marriage.

The Parliament has also attempted to combat the problem of dowry deaths and to stem their increase in recent years by inserting Section 304-B in the Indian Penal Code. This Section provides the following :-

- the death of a woman is caused by burns or bodily injuries or occurs, otherwise than under normal circumstances;
- within seven years of marriage;
- it is shown that just before her death, she was subjected to cruelty and harassment by her husband or his relations for or, in connection with any demand for dowry, such death is known as a 'dowry death'. The section also provides that the husband or the relatives shall be assumed to have committed the offence, if the above circumstances are proved.

#### **5.4.7. Amendment**

The Amendent Act of 1986 further amended the 1961 Act. After the above two amendments, the Act became more stringent. The 1986 Act introduced new section 8-A and 8-B Sec. 8-A says that the burden of proving that one has not committed offence u/s. 4 (demanding dowry) is on the person charged.

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## **5.5 Q Child Marriage Restraint Act, 1929**

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### **5.5.1. ACT 19 of 1929**

The Child Marriage Act aims to restrain the solemnization of child marriages. It extends to the whole of India [except the State of Jammu and Kashmir]; and it applies also to all citizens of India without beyond India.

### **5.5.2. Department Concerned in the State**

The concerned department is The Department of Social Welfare and Women and Child Development.

### **5.5.3. Grievance Redressal System**

Section 6 of the Act says that punishments are prescribed for

- male adult below twenty-one years of age marrying a child with a simple imprisonment which may extend to fifteen days, or with fine which may extend to one thousand rupees, or with both.
- Punishment for male adult above twenty-one years of age marrying a child with simple imprisonment which may extend to three months and shall also be liable to fine.
- Punishment for solemnizing a child marriage with simple imprisonment which may extend to three months and shall also be liable to fine, unless he

proves that he had reason to believe that the marriage was not a child marriage.

- Punishment for parent or guardian concerned in a child marriage with simple imprisonment which may extend to three months and shall also be liable of fine.
- Provide that no woman shall be punishable with imprisonment.

For the purpose of this section, it shall be presumed, unless and until the contrary is proved, that where a minor has contracted a child marriage, the person having charge of such minor has negligently failed to prevent the marriage from being solemnized.

There is also to be a Child Marriage prevention officer, in charge of prevention and restraint of child marriages, about to be solemnized, and for those that have already taken place, to see that the perpetrators are charged with the Act.

#### **5.5.4. Review of the Act**

It is estimated that in roughly half of all marriages taking place in India in a year, the girls are underage. According to the Rapid Household Survey conducted across the country, 58.9 percent of women in Bihar were married off before age 18; 55.5 percent in Madhya Pradesh; and Karnataka 39.3 percent. Despite high female literacy, close to one-tenth of Kerala women are married off are minors.

India's Parliament adopted the Child Marriage Restraint Act in 1978 (a revision of the British Child Marriage Prevention Act of 1929 and the following amendment of 1949) setting 18 as the minimum age for women to get married and 21 for men. However the 1929 Child Marriage Restraint Act is perplexing because it pronounced all child marriages illegal but 'Void' (invalid). This made the Act violative of several international conventions including the UN Convention on the Rights of the Child (UNCRC). The Universal Declaration of Human Rights (UDHR) and CEDAW (Convention on the Elimination of all forms of Discrimination Against Women) which make child marriages invalid. Prevention of child marriages is imperative not merely from the child and human rights perspective but also in the interest of meeting several national goals and Millennium Development Goals, such as decreasing poverty, MMR and IMR.

According to the Chairpersons of the National Commission for Women (NCW), Girija Vyas, child marriage can be tackled by stringent law implementation and increased social awareness. The NCW has taken up the issue with the Government at length and made following recommendations :-

- Child Marriage Prevention officers should be appointed immediately by the Government.
- The punishment provided under section 23 the Child Marriage Restraint Act should be amended and made more stringent.
- Marriages performed in contravention of the Act should be made void.

- It should be penal obligation for every person attending a child marriage, to prevent it or report it to the concerned authorities.
- Awareness should be generated among masses about the evils of child marriage.
- An offence under the Child Marriage Restraint Act should be made cognizable.

The National Human Rights Commission has also recommended amendment of the Act. The Commission has recommended that the Child marriage Restraint Act, 1929 should be recast so as to. provide for higher penalty for the violations of the provisions of this Act and also to make the offence cognizable and non-bailable. Further, it was of the view that a provision should be made in the amended Act to take action organizers/ associations who organize child marriage on a mass-scale.”

The Ministry of Women and Child Development implements a Centrally Sponsored Scheme entitled “Balika Samridhi Yojana” under which funds are released to the State Governments and the Union Territory Administrations to provide financial assistance to the girls born on or after August 15,1997. The financial assistance is in the nature of periodic deposit in the account of the girl child, including scholarship for successful completion of study in each class. The accumulated value of deposits becomes payable to the beneficiary on attaining the age of 18 years and having remained till then. Under the scheme, a sum of Rs. 40 crores has been released during 1999-2000 to benefit eight lakh girl children.

#### **5.5.5. Amendment**

The Child Marriage Restraint Act of 1929, also known as the Sarda Act, was amended in 1978 to raise the minimum marriage age of girls to 18 years and for boys to 21 years. Under the new Act, police officers are competent to investigate offences as if they are cognizable but would not be able to arrest any person without a warrant or an order of a Magistrate. However, the Act does not invalidate child marriages as it could adversely affect status of girls.

In order to curb practice of child marriage in the country, the National Human Rights Commission recommended to the Central Government (Department of Women & Child Development) a number of amendments to the Child Marriage Restraint Act, 1929 in July 2002. In pursuance of these recommendations, the Central Government (Legislative Department, Ministry of Law & Justice) introduced a Bill entitled the Prevention of Child Marriage Bill, 2004 in the Rajya Sabha on 20.12.2004 incorporating almost all the recommendations of the Commission.

## **5.6 Q Equal Remuneration Act, 1976**

### **5.6.1. ACT 25 of 1976**

The Equal Remuneration Bill was passed by both the Houses of Parliament and it received the assent of the President on the 11th February, 1976. It came on the Statute Book as THE EQUAL REMUNERATION ACT, 1976 (25 of 1976). This is an A\* to provide for the payment of equal remuneration to men and women workers

and for the prevention of discrimination, on the ground of sex, against women in the matter of employment and for matters connected therewith or incidental thereto.

#### **5.6.2. Department Concerned in the State**

The concerned department in the state is the Labour Department.

#### **5.6.3. Enforcement of The Act**

The Inspecting Officers/Inspectors of the Labour Department enforce the provisions of the Act in the jurisdictions assigned to them under the administrative control of the respective Labour Officers, Assistant Labour Commissioners and Deputy Labour Commissioners.

During the year 2002 2826 and up to September 2003 1233 inspections were carried out respectively by the Inspectorate staff.

#### **5.6.4. Penalty**

In case contravention of the provisions the Act, the punishment provided is fine which shall not be less than Rs. 10,000/-, but which may extend to Rs. 20,000/- or with the imprisonment for a term, which shall not be less than three months, but which may extend to one year or with both, for the first offence and imprisonment which may extend to two years for the second and subsequent offences.

#### **5.6.5. Grievance Redressal System**

Under section 9, the appropriate Government may, by notification appoint such persons as it may think fit to be Inspectors for the purpose of making an investigation as to whether the provisions of this Act, or the rules made thereunder, are being complied with by employers, and may define the local limits within which an Inspector may make such investigation.

It also provided that, under section 10,

- If after the commencement of this Act, any employer, being required by or under the Act, so to do-(a) omits or fails to maintain any register or other documents in relation to workers employed by him, or
  - ✓ omits or fails to produce any register, muster-roll or other document relating to the employment of workers, or
  - ✓ omits or refuse to give any evidence or prevents his agent, servant, or any other person in charge of the establishment, or any worker, from giving evidence, or
  - ✓ omits or refuses to give any information,

he shall be punishable 1 [with simple imprisonment for a term which may extend to one month or with fine which may extend to ten thousand rupees or with both.]

- If, after the commencement of this Act, any employer-

- ✓ makes any recruitment in contravention of the provisions of this Act, or
- ✓ makes any payment of remuneration at unequal rates to men and women workers, for the same work or work of a similar nature, or
- ✓ makes any discrimination between men and women workers in contravention of the provisions of this Act, or
- ✓ omits or fails to carry out any direction made by the appropriate Government under sub-section (5) of section 6,

he shall be punishable 2[with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with imprisonment for a term which shall be not less than three months but which may extend to one year or with both for the first offence, and with imprisonment which may extend to two years for the second and subsequent offences.]

- If any person being required so to do, omits or refuses to produced to an Inspector any register or other document or to give any information he shall be punishable with fine which may extend to five hundren rupees.

#### **5.6.6. Review of the Act**

The Act provides that no employer shall pay to any worker employed by him in an establishment or employment, remuneration whether payable in cash or in kind at the rates less fovourable than those at which remuneration is paid by him to the workers of the opposite sex in such establishment or employment. The Act further provides that no discrimination should be made against women at the time of recruitment. The salient features of the Act includes :-

- Payment of equal remuneration to men and women workers for same or similar nature of work protected under the Act.
- No discrimination permissible in recruitment and service conditions except of women is prohibited or restricted by or under any law.

There is a provision under the Act for constitution of Advisory Committee for the purpose of providing increasing emplymnt opportunities for women. Government of National Capital Territory of Delhi has constituted an Advisory committee under the provision of the Act.

There is also provision for the Central Advisory Committee on equal Remuneration Rules, 1991, under sub-section (1) of section 6 of the Equal Remuneration Act, 1976.

#### **5.6.7. Amendment**

The Equal Remuneration (Amendment) Act, 1987 (49 of 1987) amends the Equal Remuneration Act, 1976, specifically to prohibit discrimination between men and women in relation to conditions of service subsequent to employment such as promotions, training, or transfer. The original Act contained no such provisions. Sections of the Act are also amended to provide for grreater penalties and for the

lodging of complaints by any person aggrieved and by any recognized welfare institution or organization, in addition to government officials.

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## **5.7 □ Maternity Benefit Act, 1961**

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### **5.7.1. ACT 53 of 1961**

With the object of providing maternity leave and benefit to women employee the Maternity Benefit Bill was passed by both the Houses of Parliament and subsequently it received the assent of President on 12th December, 1961 to become Act under short title and numbers “THE MATERNITY BENEFIT ACT, 1961 (52OF 1961)”.

### **5.7.2. Department Concerned in the State**

The concerned department in the state is the Labour Department.

### **5.7.3. Application**

This Act is a central legislation, which provides maternity benefits and is applicable to factories covered under the Factories Act, 1948. It also applies to Shops and Establishments in which ten or more workers are employed or were employed on any day of the preceding twelve months. The Maternity Benefit Act is thus applicable to notified establishments. Its coverage can therefore extend to the unorganized sector also, though in practice it is rare. A woman employee is entitled to 90 days of paid leave on delivery or on miscarriage.

### **5.7.4. Important Provisions**

The provisions of this Act do not apply to any factory or establishment to which the provision of Employee state Insurance Act, 1948 apply. The Rules have been framed under this Act, according to which Inspector of Factories is ex-officio Chief Inspector under this Act in respect of factories registered under the Factories Act, 1948.

### **5.7.5. Forfeiture Of Maternity Benefit**

If a woman works in any establishment after she has been permitted by her employer to absent herself under the provision of section 6 for any period during such authorized absence, she shall forfeit her claim to the maternity benefit for such period.

### **5.7.6. Penalty**

This Act provides that :-

- If any employer fails to pay any amount of maternity benefit to a woman entitled under this Act or discharge or dismisses such woman during or on account of her absence from work in accordance with the provisions of this Act, he shall be punishable with imprisonment which shall not be less than three months but which may extend to one year and with fine which shall

not be less than two thousand rupees but which may extend to five thousand rupees; provide that the court may, for sufficient reasons to be recorded in writing, impose a sentence of imprisonment for a lesser term or fine only in case of imprisonment.

- If any employer contravenes the provision of this Act or the rules made thereunder, he shall, if no other penalty is elsewhere provided by or under this Act for such contravention, be punishable with imprisonment which may extend to one year, or with fine which may extend to five thousand rupees, or with both; provided that where the contravention is of any provision regarding maternity benefit or regarding payment of any other amount and such maternity benefit or amount has not already been recovered, the court shall, in addition, recover such maternity benefit or amount as if it were a fine and pay the same to the person entitled thereto.

#### **5.7.7. Review of the Act**

The Central Government passed the Maternity Benefit Act in 1961 which extends to the whole of India, and to every establishment belonging to the government - industrial, commercial or agriculture. It provides for certain benefits which are granted to a woman during her pregnancy. Also she cannot be dismissed from service on account of her pregnancy.

The maximum permissible period of maternity leave is 12 weeks, with 6 weeks leave to be taken before delivery and 6 weeks immediately after the child is born. A woman can ask for light work before she goes off on leave. The employer cannot reduce her salary in this scenario. The maternity benefits can only be withdrawn if the employee joins some other organisation during that time.

It is a gender sensitive legislation for ensuring social security of pregnant women. Its salient features include :-

- Maternity benefits to be provided on completion of 80 days working.
- Not required to work during six weeks immediately following the day of delivery of miscarriage.
- No work of arduous nature; long hours of standing likely interfere with pregnancy/ normal development of foetus; which may cause miscarriage or is likely to affect health to be given for a period of one month immediately preceding the period of six weeks before delivery.
- On medical certificate, advance maternity benefit to be allowed - Rs. 250/ - as medical bonus to be given when no pre-natal confinement and post natal care provided free of charge.

#### **5.7.8. Amendment**

The Maternity benefit Act of 1961 has been amended several times by the :-

- The Central Labour Laws (Extension to Jammu and Kashmir) Act, 1970 (51 of 1970).

- The Maternity Benefit (Amendment) Act, 1972 (21 of 1972).
- The Maternity Benefit (Amendment) Act, 1973 (52 of 1973).
- The Maternity Benefit (Amendment) Act, 1976 (53 of 1976).
- The Maternity Benefit (Amendment) Act, 1988 (61 of 1988).
- The Maternity Benefit (Amendment) Act, 1995 (29 of 1995).

In the latest one, a number of improvements were made in relation to Maternity Protection for women at work including :-

- The period of Maternity Leave which attracts a payment was increased from 14 weeks to 18 weeks as and from 8 March 2001. > Additional unpaid maternity leave was doubled to 8 Weeks from March 2001.

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## **5.8 □ Medical Termination of Pregnancy Act, 1971**

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### **5.8.1. ACT 34 of 1971, as amended by Act No. 64 of 2002**

The medical termination of Pregnancy Act of 1971 is an Act to provide for the termination of certain pregnancies by registered medical practitioners and for matters connected therewith or incidental thereto.

### **5.8.2. Department Concerned in the State**

The concerned department for the state is the Department of Health And Family Welfare.

### **5.8.3. MTP Act, MTP Rules and MTP Regulations**

The MTP Act is an Act of Parliament providing a board overview of the methodology of safe abortion practice and defining and delegating authority to central and state governments to make rules and regulations.

The MTP Rules are framed by the Central Government, but must be placed before each House of Parliament.

The MTP Regulations are framed by State Government and relate to issues involving opinions for termination, reporting and maintaining secrecy.

The importance of this distinction is the possible flexibility in introducing or modifying rules and regulations within the ambit of the Act without having to steer amendments through Parliament.

The potential for appropriate changes in rules and regulations to encompass medical methods is particularly significant, since this new development is not adequately reflected in the present rules and regulations.

### **5.8.4. When Pregnancies may be Terminated ?**

A registered medical practitioner (RMP) is protected under law if a pregnancy is terminated in accordance with Section 3 of the MTP Act, based on opinion formed in good faith.

### **5.8.5. Duration of Pregnancy**

According to Section 3 (2), pregnancies not exceeding 12 weeks may be terminated based on a single opinion formed in good faith. Since the use of medical methods governed by clear guidelines issued by Drug Controller is presently up to 49 days, the single clinical opinion is necessary and sufficient.

### **5.8.6. Grounds for Terminations**

According to Section 3 - Sub-section (2) of the MTP Act, a pregnancy may be terminated for the following indications :-

- If the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical and mental health.
- If there is a substantial risk if the child was born, it would suffer physical or mental abnormalities as to be seriously handicapped.

The MTP Act does not permit induced abortions on demand. The responsibility rests with the medical practitioner to opine in good faith regarding the presence of a valid legal indication. These indications are also mandatory with medical methods.

### **5.8.7. Valid Legal Consent**

Section 2 - Sub section (4) of the MTP Act mandates the presence of a valid legal consent, provided :-

- Termination of pregnancy in minors (under 18 years age) or lunatics (as defined in Section 3 of Indian Lunacy act, 1912) only with consent in writing of guardian.
- Termination of pregnancy in adult women over 18 years age permissible with their valid consent.

### **5.8.8. Where Pregnancies may be terminated ?**

According to Section 4 of the MTP Act, pregnancies may only be terminated in the following settings.

- A hospital established or maintained by the Government.
- A place approved for the purpose of the Act by the Government.

### **5.8.9. Penalty**

Notwithstanding anything contained in the Indian Penal Code (45 of 1860), the termination of a pregnancy by a person who is not a registered medical practitioner shall be an offence punishable under that Code, and that Code shall, to this extent, stand modified, according to sub-section (2) of section 5 of this Act, inserted by the first amendment to the Act!

### **5.8.10. Review of the Act**

Voluntarily 'causing miscarriage' to a woman either child - other than in 'good faith for the purpose of saving her life' is a crime under Section 312 of the Indian Penal

Code, punishable by simple or rigorous imprisonment and/or fine. Consequent section (IPC Sections 313-316) relating to causing miscarriage without a pregnant woman's consent or causing material death due to the procedure are stricter with punishments ranging from up to 10 years imprisonment, and extending up to life imprisonment.

The MTP Act is an empowering legislation, which if adhered to completely, offers protective umbrella allowing clinicians to offer legal safe abortion services within well-defined limits. The use medical methods for early abortion is also completely covered by the MTP Act.

The Act seeks to liberalize certain existing provisions relating to termination of pregnancy on the following grounds :-

- As a health measure
- On humanitarian grounds
- On eugenic grounds

The salient features of this act are as follows :-

- In determining whether the continuance of a pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2) of section 3, account may be taken of the pregnant woman's actual or reasonably foreseeable environment.
- No pregnancy of a woman, who has not attained the age of eighteen years, or, who having attained the age of eighteen years, is mentally ill person, shall be terminated except with the consent in writing of her guardian, according to clause (a) section 4.
- Save as otherwise provide in clause (a) of Section 4, no pregnancy shall be terminated except with the consent of the pregnant woman.
- The number of registered medical practitioners has relevance only with regard to the formation of the opinion. Once the opinion has been formed by the required number of registered medical practitioners, the actual termination of the pregnancy may be done by one registered medical practitioner. It is not necessary that more than one registered medical practitioner should act together to terminate a pregnancy.
- A pregnancy which is terminated on one or more of the grounds specified in Sec.3, should not be made at any place other than-
  - ❑ a hospital established or maintained by Government, or
  - ❑ a place for the time being approved for the purpose of the Act by Government.
- The Act empowers the Central Government to make regulations to provide for the maintenance of secrecy about the termination of pregnancies made-under the Act.
- By sub-section (I) of sec. 3 a registered medical practitioner, who terminates to pregnancy in accordance with the provisions of the Act, is protected from

any prosecution for the termination of such pregnancy. By this section, he is protected from any civil action for compensation for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act. In order to be able to get this protection, the registered medical practitioner must establish that his action was done in good faith.

The MTP Act of 1971 has been the beacon of landmark social and medical legislation with farreaching positive benefits for the Reproductive Health of Women. It is an empowering act for the healthcare system and its beneficiaries, setting aside the application of the Indian Penal Code in certain welldefined situations.

Unfortunately, many of the traditional assumptions of the MTP Act, Rules and Regulations are out of step with contemporary medical methods. Even so, the MTP Act in its present form, with some fine tuning of MTP Rules and Regulations, is quite adequate to cover the introduction of this recent development which offers one more technique to achieve our goal of Safe Abortion.

#### **5.8.11. Amendment**

The two amendment Act are :-

- The Medical Termination of pregnancy (Amendment) Act, 2002 (64 of 2002)
- The Delegated Legislation Provision (Amendment) Act, 2004 (4 of 2005)

The latest amendment provides that no lawsuit can be brought against a registered medical practitioner who has done or intended to do in good faith any action that turns out to be damaging.

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## **5.9 □ Conclusion**

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The conclusion of any socio-legal discussion of the existing legislations upholding the gender justice and safeguard the rights of women and children is one and the same - the mere presence of laws and provisions do not ensure that rights will be observed and protected. It requires the wholehearted participation of the community and all its strata, to ensure a suitable impact towards a positive social change.

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## **5.10 □ Recapitulation**

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Thus from this chapter we learn:

- Traditionally, the most vulnerable sections in the society are the women and children.
- There are several national and international provisions for upholding their rights, including :-
  - ✓ Constitutional provisions
  - ✓ Laws like Juvenile Justice (care and Protection of Children) Act, 2000, etc,
  - ✓ International conventions like CEDAW, etc.

- The laws discussed are :-
  - ✓ Juvenile Justice (Care and Protection of Children) Act, 2000 for :-
    - Children in conflict with law
    - Children in need of care and protection
  - ✓ Child Labour (Protection and Regulation) Act, 1986
  - ✓ Dowry Prohibition Act, 1961
  - ✓ Child Marriage Restraint Act, 1929
  - ✓ Equal Remuneration Act, 1976
  - ✓ Maternity Benefit Act, 1961
  - ✓ Medical Termination of Pregnancy Act, 1971
- To conclude we find that without community participation there can be no opportunity of utilizing these laws for the upliftment of the present status of the majority of women and children in our country.

## 5.11 □ Exercises

1. Why, in your opinion, are the women and children especially vulnerable in any society, particularly in the third world countries ?
2. Mention the step by step procedure of implementing the Juvenile Justice (Care and Protection of Children) Act, 2000.
3. What are the salient features of the Medical Termination of Pregnancy Act, 1971.
4. If you are a social worker in charge of implementing the latest amendment to the Child Labour (Protection and Regulation) Act, 1986, how would you do it ?
5. Do you think the existing provisions of the Dowry Prohibition Act, 1961 is adequate to prevent the rising incidence of dowry deaths in our country ? Give reasons for your answer.
6. The Child Marriage Restraint Act, 1929 is one of the oldest standing laws in our country. How then would you explain the continued prevalence of child marriages in our country ?
7. Discuss the equal Remuneration Act, 1976 in the context of the Article 39 (c) of the Constitution.
8. What is the relevance of the Maternity Benefit Act, 1961 as a social security legislation ?
9. Apart from the 7 laws given here, can you think of any other appropriate law for upholding the rights of women and children ? Please write a short note on it.

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## **Unit - 6 □ Salient features, Compensation, Range of benefit and administration of old age pension, Maternity benefit, Women's compensation, Unemployment assistance**

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### **Structure**

- 6.0 Introduction**
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## **6.0 Introduction**

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The Government has been increasingly concerned with the issue of ageing, health and income security during old age as well as its close links to the mental and emotional well being. The Poverty Alleviation Programmes directed at the aged alone cannot provide a solution to the income and social security problems of the elderly. Faced with such large numbers, it is imperative that the problem will have to be addressed through thrift and self-help, where people prepare for old age by saving accumulating through their decades in the labour force. The role that the Government can play in this enterprise is to create the necessary institutional infrastructure to enable and encourage each citizen to undertake this task.

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## **6.1 Constitutional Provision**

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In the Constitution of India, entry 24 in list III of schedule Vn deals with the “Welfare of Labour, including conditions of work, provident funds, liability for work’smen’s compensation, invalidity and old age pension and maternity benefits. Further Article 41 of Directive Principles of State Policy has particular relevance to Old Age Social Security.”

**Article 41 of the Indian Constitution, deals with the State’s role in providing social security to the aged**

According to this article, “the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in case of unemployment, OLD AGE, sickness and disablement and in other cases of undeserved want.”

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## **6.2 Oasis**

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As a culmination of this growing concern the Ministry of Social Justice and Empowerment commissioned the National Project titled “OASIS” (acronym for Old Age Social and Income Security) and nominated an 8 member Expert Committee headed by Dr. S.A. Dave, former Chairman of Unit Trust of India, to examine policy questions connected with old age income security in India.

As per the Report a person will open a single Individual Retirement Account

(IRA) with the pension system at as early a point in his life as possible. The account will provide the individual with a unique IRA number that will stay with the individual through life. The individual would save and accumulate assets into this account in his working life, subject to a minimum of Rs. 100 per contribution and Rs. 500 in total accretions per year.

Individuals would be free to decide the frequency of accretions into their accounts; there will be no pressure to make a fixed monthly contribution. The account would stay with the individual across job changes, spells of unemployment, and can be accessed at any location in India. The individual would always have access to an account balance statement showing his assets. Also the individual would be empowered in having control of how his pension assets should be managed. Finally, upon retirement, the individual would be able to use his pension assets to buy annuities from annuity providers and obtain a monthly pension.

At age 60, an individual would be able to derive benefits from his retirement account. The pension system would require that the first Rs. 2,00,000 of accumulations be used for buying an annuity and thus obtaining a monthly inflation-indexed pension of roughly Rs. 1500/- which is well above the poverty line. Beyond that, an individual would be free to decide how his assets should be deployed. This minimum mandatory annuitisation level (of Rs. 2,00,000) should be periodically revised to keep pace with inflation. Premature cessation of accumulation (e.g. owing to retirement before age 60) would be possible only if 100% of the assets are annuitised.

Other benefits including integration of a micro credit facility into the pension system whereby individuals can have access to the funds in the form of a loan against their pension savings. The bank branches can disburse these loans upto Rs. 5,000 provided the individual pension account has a balance in excess of Rs. 10,000. The premature withdrawal would be permitted once an individual accumulate Rs. 2 lakh in the Individual Retirement Account (IRA). Such withdrawals to a maximum of 30% of the accumulated balance above Rs. 2 lakh shall be permitted for housing, medical expenses for serious illness or other grounds specified by the Regulating Authority.

However, the recommendations of the Report are still under examination. Given the ground situation, the Working Group is of the opinion that, as part of the Tenth Plan a key focus area should be to establish a single national enumeration in the form a social security number for the workforce. This number should be used by all agencies of the Central and State Governments in the matter of delivery of social security benefits of workers.

Apart from the direct benefits at the operational level in the matter of collection, accumulation and accounting of contributions and distribution of benefits, valuable strategic data will be generated indicating information relating to the mobility of the

workforce, gender issues, seasonal movement in relation work, family status, income levels etc. in the work force which can be the basis for any future policy formulation at the strategic level.

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### **6.3 National Policy Older Persons**

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The Government of India announced a National Policy on Older Persons in January, 1999. This policy provides a broad framework for inter-sectoral collaboration and cooperation both within the government as well as between government and non-government agencies. In particular, the policy has identified a number of areas of intervention - financial security, healthcare and nutrition, shelter, education, welfare, protection of life and property etc. for the well being of older persons in the country. Amongst others the policy also recognizes the role of the NGO sector in providing user friendly affordable services to complement the endeavours of the State in this direction.

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### **6.4 National Old Age Pension (NOAP) Scheme**

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Under National Old Age Pension Scheme, Central Assistance is available on fulfillment of the following criteria

- The age of the application (male or female should be 65 years or more).
- The application must be a destitute in the sense that he/she has no regular means subsistence from his/her own source of income or through financial support from family members or other sources.
- The amount of old age pension is Rs. 75 per month. This scheme is implemented in the State and Union Territories through Panchayats and Municipalities. Both Panchayats and Municipalities are encourage to involve voluntary agencies as much as possible in benefiting the destitute elderly for whom this scheme is intended.

**a. Weakness of National Old age Pension Scheme :**

- the selection process of beneficiaries was too bureaucratic, as it involved too many offices and establishments which discouraged many prospective beneficiaries to participate,
- the process of bureaucratization also encourage room for mal practices and lured the unscrupulous elements to make foray into the process of selection.
- lack of awareness, due to lack of enviromental building exerciceses, also limited the scope of the programme,
- the ritualistic or casual approach of the programme functionaries on account of their heavy work load, also attracted amny duboius elements to take advantage of the situation,

- Lack of coordination between various departments, involved in the programme, also contributed to its poor performance.
- b. Suggestions :**
- panchayat-wise detail information about the beneficiaries be provided in the family as well as economic register maintained at the block offices, which should be regularly updated,
  - the list of beneficiaries identified on the basis BPL survey be uniformly accepted and followed by all the departments who are involved in the programme so that anomalies arising out, be taken care off,
  - the progress report of benefits given to panchayats, under different scheme, be prepared every which should also contain the detail information about beneficiaries,
  - effort be made, either with the help of some professional body, between blocks and other departments who are involved in the programmes to work in close liaison.

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## **6.5 Pension and family pension**

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The centrally funded social assisted programmes include schemes for both rural and urban areas under the National Social Assistance Programme (NSAP), which has three components viz., National Old Age Pension Scheme (NOAPS), National Family Benefit Scheme (NFBS) & National Maternity Benefit Scheme (NMBS).

**a. For Central Government employees**

The revision of pension/family pension approved by the Central Government based on the 5th Pay Commission is given below :

**i. Pension**

People, who retired from service as 1-1-96, will get their pension at 50 per cent of their basic pay. Pension of those who retired before 1-1-96 will be fixed based on 50 per cent of the minimum of the new scale applicable in place of old scale in which he/she retired. Special provision has been made for people retire before completing 10 months of service after 1 January 1999 (before 30 September 1996) and have opted to come over to the revised scales of pay are eligible weight age at 40 per cent on the existing basic pay for arriving at the average pay fixation on pension.

**ii. Family pension**

Family pension of people who retired from service as on 1-1-96 will be fixed at 30 per cent of the pay drawn by the deceased employee based on the new pension formula subject to his having put in 33 years of service. Family pension of people who retired before 1-1-96 will be fixed at 30 per cent of the pay drawn by the deceased employee based on the new pension formula subject to his having put in 33 years service.

**b. For Central Government employees who have been permanently absorbed in public sector undertakings/autonomous bodies.**

**i. Pension**

Where the Government servants on permanent absorption in public sector undertakings/autonomous bodies continue to draw pension separately from the Government, the pension of such absorbees will be updated in terms of these orders. In cases where the Government servants have drawn one-time lump sum terminal benefits equal to 100 per cent of their pensions and have become entitled to the restoration of one-third commuted portion of pension as per Supreme Court judgment dated 15.12.1995, their cases will not be covered by these orders.

**ii. Family pension**

In cases where, no permanent absorption in public sector undertaking/autonomous bodies, the terms of absorption permit grant of family pension under the CCS (Pension) Rules, 1972 or the corresponding rules applicable to Railway employees/members of All India Services, the family pension being drawn by family pensioners will be updated in accordance with these orders.

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## **6.6 Insurance Schemes Jeevan Dhara**

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This is a Pension Plan for the individuals who are self-employed, artists, cine artists, technicians, businessmen, businesswomen, professionals, as these individuals cannot have 'Pension' benefit after they cease to earn, when compared with State/Central Government's employees who are endowed with 'Pension' benefits.

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## **6.7 The Employees' Pension Scheme, 1995**

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The Employees' Pension Scheme, 1995 was introduced w.e.f. 16.11.95, the pension scheme is compulsory for all members of the family pension scheme. It is also compulsory for persons who became members of provident fund from 16.11.95. Minimum 10 years membership of the fund is required for entitlement to pension.

Normal superannuation pension is payable on attaining the age of 58 years and at a proportionately reduced rate on attaining the age of 50 years. The Scheme also provides for monthly pension in the contingency of death, total permanent disablement etc. The amount of monthly pension depends upon pensionable salary and pensionable service. On completion of 33 years contributory service, 50% of pay is payable as pension. The minimum pension for the widow is Rs. 45 07- per month and maximum may go up to Rs. 2,5007- per month payable as normal members' pension on completion of 33 years service. Family Pension up to Rs. 1,7507- per month is also payable to the widow of the member who has contributed to the pension fund just for one month.

In addition to widow pension the family is also entitle to children pension @ 25% of widow pension payable up to two children till they attain the age of 25 years. The employees have the option to accept the admissible pension of 10% reduced pension with return of capital equivalent to 100 times of original pension. The Scheme is financed by diverting employers' share of PF contribution @ 8.33% of wage to the pension fund. Accumulation of the ceased family pension scheme constitutes the corpus of the new pension fund. The Central govt. also contributes to the pension fund @ 1.16% of the wage.

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## **6.8 Maternity Benefit Act, 1961**

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Maternity benefit is one of the of the most widespread social security measures that are there in the pro-people policies employed by both developing and developed countries alike. India is no exception. In fact, the article 42 of the constitution of India, 1950 imposes obligation upon the state to make provision for securing just and human conditions of work and for maternity relief. In view of this constitutional obligation the parliament has passed the maternity benefit act, 1961 to regulate the employment of women in specified organization/ institution/establishment for certain period before and after the child birth and to provide for maternity and other benefit.

### **6.8.1 Aims and objectives**

The objective of maternity leave and benefit is to protect the dignity of motherhood by providing for full and health maintenance of women and her child when she is not working. With the advent of modern age, as the number of women employees is growing, the maternity leave and other maternity benefits are becoming increasingly common. But there was no beneficial piece of legislation in the horizon which is intended to achieve the object of doing social justice to women workers employed in factories, mines and plantation.

The maternity benefit act aims to regulate to employment of women employees in certain establishments for certain periods before and after child birth and provides for maternity and certain other benefits.

### **6.8.2. Extent and scope**

The act extends to the whole of India and is applicable to :

- Every factory, mine or plantation (including those belonging to government) and
- An establishment engaged in the exhibition or equestrian, acrobatic and other performance, orrespective of the number of employees, and
- To every shop or establishment wherein 10 or more persons are employed or were employed on any day of the preceding 12 months.

The state government may extend the act to any other establishment or class or establishments; industrial, commercial, agriculture or otherwise.

However, the act **does not apply** to any such **factory/other establishment** to which the provisions of the **employees' state insurance act are applicable** for the time being.

But, where the. factory/establishment is governed under the employees' state insurance act, and the woman employee is not qualified to claim maternity benefit under section 50 of that act, because her wages exceed Rs. 3,000 p.m. (or amount so specified u/s 2(9) of the ESI act), or for any other reason, then such woman employee is entitled to claim maternity benefit under this act till she becomes qualified to claim maternity benefit under the E.S.I, act.

### **6.8.3 What is maternity benefit ?**

Every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit, which is the amount payable to her at the rate of the average daily wage for the period of her actual absence.

The maximum period for which any woman shall be entitled to maternity benefit shall be 12 weeks in all whether taken before or after childbirth. However she cannot take more than six weeks before her expected delivery.

Prior to the amendment of 1989, a woman employee could not avail of the six weeks' leave preceding the date of her delivery; she was entitled to only six weeks leave following the day of her delivery. However, by the above amendment, the position has changed. Now in case a woman employee does not avail of six weeks' leave preceding the date of her delivery, she can avail of that leave following her delivery, providing the total leave period, i.e. Preceding and following the day of her delivery does not exceed 12 weeks.

### **6.8.4 Who is entitled to maternity benefit ?**

- Every woman employee, whether employed directly or through a contractor, who has actually worked in the establishment for a period of at least 80 days during the 12 months immediately preceding the date of her expected delivery, is entitled to receive maternity benefit.
- The qualifying period of 80 days shall not apply to a woman who has immigrated into the state of Assam and was pregnant at the time of immigration.
- For calculating the number of days on which a woman has actually worked during the preceding 12 months, the days on which she has been laid off or was on holidays with wages shall also be counted.

There is neither a wage ceiling for coverage under the act nor there is any restriction as regards the type of work a woman is engaged in.

### **6.8.5 Notice that is to be given for maternity benefit**

A woman employee entitled to maternity benefit may give a notice in writing (in the prescribed form) to her employer, stating as follows :

- i. That her maternity benefit may be paid to her or to her nominee (to be specified in the notice);
- ii. That she will not work in any establishment during the period for which she receives maternity benefit; and
- iii. That she will be absent from work such date (to be specified by her), which shall not be earlier than 6 weeks before the date of her expected delivery.

The notice may be given during the pregnancy or as soon as possible, after the delivery.

On receipt of the notice, the employer shall permit such woman to absent herself from work after the day of her delivery. The failure to give notice, however, does not disentitle the woman to the benefit of the act.

### **6.8.6 Restriction on employment of pregnant woman**

- No employer should knowingly employ a woman during the period of 6 weeks immediately following the day of her delivery or miscarriage or medical termination of pregnancy. Besides, no woman should work in any establishment during the said period of 6 weeks.
- Further, the employer should not require a pregnant woman employee to do an arduous work involving long hours of standing or any work which is likely to interfere with her pregnancy or cause miscarriage or adversely affect her health, during the period of 1 month preceding the period of 6 weeks before the date of her expected delivery, and any period during the said period of 6 weeks for which she does not avail of the leave.

### **6.8.7 Discharge or dismissal to be void**

When a pregnant woman absents herself from work in accordance with the provisions of this act, it shall be unlawful for her employer to discharge or dismiss her during, or on account of, such absence, or give notice of discharge or dismissal in such a day that the notice will expire during such absence or to vary to her disadvantage any of the conditions of her services.

Dismissal or discharge of a pregnant woman shall not disentitle her to the maternity benefit or medical bonus allowable under the act except if it was on some other ground.

### **6.8.8 Other benefits**

#### **➤ Leave for miscarriage etc. and illness**

In case of miscarriage or medical termination of pregnancy, a woman shall, on production of the prescribed proof, be entitled to leave with wages at the rate of

maternity benefit, for a period of 6 weeks immediately following the day of her miscarriage or medical termination of pregnancy.

➤ **Leave for tubectomy operation**

In case of tubectomy operation, a woman shall, on production of prescribed proof, be entitled to leave with wages at the rate of maternity benefit for period of two weeks immediately following the day of operation.

➤ **Leave for illness**

Leave for maximum period of one month with wages at the rate of maternity benefit are allowable in case of illness arising out of pregnancy, delivery, premature birth of child, miscarriage or medical termination of pregnancy or tubectomy operation.

➤ **Medical bonus**

Every woman entitled to maternity benefit shall also be allowed a medical bonus of Rs. 250, if no pre-natal confinement and post-natal care is provided for by the employer free of charge.

**6.8.9 Duties of employers**

Important obligations of employers under the act are :

1. to pay maternity benefit and/or medical bonus and allow maternity leave and nursing breaks to the woman employees, in accordance with the provisions of the act.
2. not to engage pregnant women in contravention of section 4 and not to dismiss or discharge a pregnant woman employee during the period of maternity leave.

**6.8.10 Rights of employees**

Important rights of an employee are :

1. To make a complaint to the inspector and claim the amount of maternity benefit improperly withheld by the employer.
2. To appeal against an order of the employer depriving her of the maternity benefit or medical bonus or dismissing or discharging her from service, to the competent authority, within 60 days of the service of such order.

**6.8.11 Penalties for action in contravention of the act by an employer**

1. For failure to pay maternity benefit as provided for under the act, the penalty is imprisonment upto one year and fine upto Rs. 5,000. The minimum being 3 months and Rs. 2,000 respectively.
2. For dismissal or discharge of a woman as provided for under the act, the penalty is imprisonment upto one year and fine upto Rs. 5,000. The minimum being 3 months and Rs. 2,000 respectively.
3. For trying to disentitle the woman to the benefit of the act. Apart from the Act

that is enforceable more in the organized sector, there is a scheme that even unorganized sector workers can avail of:

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## **6.9 National Maternity Benefit Scheme (NMBS)**

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Under NMBS there is a provision for the payemtn of Rs. 500 per pregnancy to women belonging to poor households for pre-netal and post-netal maternity care up to first two live births. The benefit is provided to eligible women of 19 years and above.

This scheme regarding Maternity benefit was launched by the erstwhile Department of Family Welfare. For Implementation of the Scheme meetings are convened by Deputy Commissioner (North\_ and MLAs, Councilors, CDMO, District and DHO of MCD, Head of Department of Delhi Govt. Hospital of District North, Assistance Director of Food & Supply and NGOs are the members of the Committee. The Scheme was launched with the object to decrease Maternity Mortality Rate and to improve the status of health of women especially those falling below poverty line. A grant of Rs. 20,0007- was given by the Family and Health Welfare Department during the year 2004-05. The benefit has been given to those women who are having BPL Card and for first two live births at least 12 to 18 weeks before due dates of delivery and in exceptional cases it can be paid after delivery. A sum of Rs. 5007- was paid to each women in March 2005.

**The guidelines are as follows :**

1. should be a permanant resident of a village
2. should belong to a BPL category
3. one can enjoy the benefit during her 1st and 2nd pregnancy only.
4. one can apply during 8-9 months pregnancy only.

**The Workmen's Compensation Act, 1923**

A beginning in social security in India was made when workmen's Compensation Act was passed in 1923 providing for payment of compensation to workmen and their families in case of industrial accidents and certain occupational diseases arising out of and in course of employment and resulting in death or disablement.

The Act has prescribed separate scales of compensation for death, permanent total disablement and temporary disablement. It covers workers employed in certain specified hazardous occupations except those who are covered under the Employees' State Insurance Act, 1948. The Act provides for cheaper and quicker disposal of disputes relating to compensation through special tribunals than is possible under the Civil Law.

The Act considers compensation payable by an employer to his workmen in case of an accident as a measure of relief and social security. It enables a workmen to get compensation irrespective of his negligence. It also lays down the various amount

payable in case of an accident depending upon the type and extent of injury. The employer now knows the amount of compensation he has to pay and is saved many uncertainties to which he was subject before the Act came into force.

The main purpose of the Act is to provide special machinery to deal with the cases of compensation in case of accidents and to make arrangement for some prompt compensation to the injured workman who cannot afford to go to the Court of Law. The Act has proved of immense utility to both the workman and the employers and has resulted in bringing about better relations among them. It provides a simple cheap and prompt procedure for the recovery of compensation and relieves the parties of unnecessary litigation.

The Workmen's Compensation Act, 1923 provides for payment of compensation to workmen and their dependants in case of injury and accident (including certain occupational disease) arising out of and in the course of employment and resulting in disablement or death. The Act applies to railway servants and persons employed in any such capacity as is specified in Schedule I of the Act. The schedule II includes persons employed in factories, mines, plantations, mechanically propelled vehicles, construction works and certain other hazardous occupations.

The amount of compensation to be paid depends on the nature of the injury and the average monthly wages and age of workmen. The minimum and maximum rates of compensation payable for death (in such cases it is paid to the dependents of workmen) and for disability have been fixed and is subject to revision from time to time.

A Social Security Division has been set up under the Ministry of Labour and Employment, which deals with framing of social security policy for the workers and implementation of the various social security schemes. It is also responsible for enforcing this Act. The Act is administered by the State Governments through Commissioners for Workmen's Compensation.

#### **6.9.1 THE MAIN PROVISIONS OF THE ACT ARE :-**

- An employer is liable to pay compensation:- (i) if personal injury is caused to a workman by accident arising out and in the course of his employment; (ii) of a workman employed in any employment contracts any disease, specified in the Act as an occupational disease peculiar to that employment
- However, the employer is not liable to pay compensation in the following cases :-
  - if the injury does not result in the total or partial disablement of the workman for a period exceeding three days.
  - If the injury, not resulting in death or permanent total disablement, is caused by an accident which is directly attributable to :- (i) the workman

having been at the time of the accident under the influence of drink or drugs; or (ii) the willful disobedience of the workmen to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen; or (iii) the willful removal or disregard by the workman of any safety guard or other device which has been provided for securing safety of workmen.

- The State Government may, by notification in the Official Gazette, appoint any person to be a Commissioner for Workmen's Compensation for such area as may be specified in the notification. Any Commissioner may, for the purpose of deciding any matter referred to him for decision under this Act, choose one or more persons possessing special knowledge any matter relevant to the matter under inquiry to assist him in holding the inquiry.
- Compensation shall be paid as soon as it falls due. In cases where the employer does not accept the liability for compensation to the extent claimed he shall be bound to make provisional payment based on the extent of liability which he accepts, and such payment shall be deposited with the Commissioner or made to the workman, as the case may be.
- If any question arises in any proceedings under this Act as to the liability of any person to pay compensation (including any question as to whether a person injured is or is not a workman) or as to the amount or duration of compensation (including any question as to the nature or extent of disablement), the question shall, in default of agreement, be settled by a Commissioner. No Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by a Commissioner or to enforced any liability incurred under this Act.
- The State Government may, by notification in the Official Gazette, direct that every person employing workmen, or that any specified class of such persons, shall send at such time and in such form and to such authority, as may be specified in the notification, a correct return specifying the number of injuries in respect of which compensation has been paid by the employer during the previous year and the amount of such compensation together with such other particulars as to the compensation as the State Government may direct.
- Whoever, fails to maintain a notice-book which he is required to maintain; or fails to send to the Commissioner a statement which he is required to send; or fails to send a report which he is required to send; or fails to make a return which he is required to make, shall be punishable with fine.

### **6.9.2 THE MAIN PROVISIONS OF THE ACT ARE :-**

The Workmen's Compensation Act, aim to provide workmen and/or their dependents some relief in case of accidents arising out of and in the course of employment and causing either death or disablement of workmen.

It provides for payment by certain classes of employers to their workmen compensation for injury by accident.

#### **a. WHO IS A WORKMAN**

Workman means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purpose of the employer's trade or business) who is-

- i) a railway servant as defined in section 3 of the Indian Railways Act, 1890 not permanently employed in any administrative, district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II, or
- ii) employed in any such capacity as is specified in Schedule II,

Whether the contract of employment was made before or after the passing of this Act whether such contract is expressed or implied, oral or in writing.

The provisions of the Act have been extended to cooks employed in hotels, restaurants using power, liquefied petroleum gas or any other mechanical device in the process of cooking.

#### **b. EMPLOYEES ENTITLED TO COMPENSATION**

Every employee (including those employed through a contractor but excluding casual employees), who is engaged for the purposes of employer's business and who suffers an injury in any accident arising out of and in the course of his employment, shall be entitled for compensation under the Act.

#### **c. EMPLOYER'S LIABILITY FOR COMPENSATION (ACCIDENTS)**

The employer of any establishment covered under this Act, is required to compensate an employee :

- Who has suffered an accident out of and in the course of his employment, resulting into (i) death (ii) permanent total disablement, (iii) permanent partial disablement, or (iv) temporary disablement whether total or partial, or
- Who has contracted an occupational disease.

#### **d. HOWEVER THE EMPLOYER SHALL NOT BE LIABLE**

- In respect of any injury which does not result in the total or partial disablement of the workmen for a period exceeding three days;
- In respect of any injury not resulting in death, caused by an accident which is directly attributable to-

- i. the workmen having been at the time thereof under the influence of drugs, or
- ii. the willful disobedience of the workman to an order expressly given, or to a rule expressly framed, of the purpose of securing the safety of workmen, or
- iii. the willful removal or disregard by the workmen of any safeguard or other device which he knew to have been provided for the purpose of securing the safety of workmen.

The burden of proving intentional disobedience on the part of the employee shall lie upon the employer.

- iv. when the employee has contracted a disease which is not directly attributable to a specific injury caused by the accident or to the occupation; or
- v. when the employee has filed a suit for damages against the employer or any other person, in a Civil Court.

**e. CONTRACTING OUT**

Any contract or agreement which makes the workmen give up or reduce his right to compensation from the employer is null and void insofar as it aims at reducing or removing the liability of the employer to pay compensation under the Act.

**6.9.3 WHAT IS DISABLEMENT**

Disablement is the loss of the earning capacity resulting from injury caused to a workman by an accident.

- Disablement's can be classified as (a) Total, and (b) Partial. It can further be classified onto (i) Permanent, and (ii) Temporary, Disablement, whether permanent or temporary is said to be total when it incapacitates a worker for all work he was capable of doing at the time of the accident resulting in such disablement.
- Total disablement is considered to be permanent if a workman, as a result of an accident, suffers from the injury specified in Part I of Schedule I or suffers from combination of injuries specified in Part n of Schedule I as would be the loss of earning capacity when totaled to one hundred per cent or more. Disablement is said to be permanent partial when it reduced for all times, the earning capacity of a workman in every employment, which he was capable of undertaking at the time of the accident. Every injury specified in Part II of Schedule I is deemed to result in permanent partial disablement.
- Temporary disablement reduces the earning capacity of a workman in the employment in which he was engaged at the time of the accident.

#### **6.9.4 ACCIDENT ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT**

An accident arising out of employment implies a casual connection between the injury and the accident and the work done in the course of employment. Employment should be the distinctive and the proximate cause of the injury. The three tests for determining whether an accident arose out of employment are :

1. At the time of injury workman must have been engaged in the business of the employer and must not be doing something for his personal benefit;
2. That accident occurred at the place where he was performing his duties; and
3. Injury must have resulted from some risk incidental to the duties of the service, or inherent in the nature condition of employment.

The general principles that are evolved are :

- There must be a casual connection between the injury and the accident and the work done in the course of employment;
- The onus is upon the applicant to show that it was the work and the resulting strain which contributed to or aggravated the injury;
- It is not necessary that the workman must be actually working at the time of his death or that death must occur while he was working or had just ceased to work; and

Where the evidence is balanced, if the evidence shows a greater probability which satisfies a reasonable man that the work contributed to the causing of the personal injury it would be enough for workman to succeed. But where the accident involved a risk common to all humanity and did not involve any peculiar or exceptional danger resulting from the nature of the employment or where the accident was the result of an added peril to which the workman by his own conduct exposed himself, which peril was not involved in the normal performance of the duties of his employment, then the employer will not be liable.

#### **6.9.5 COMPENSATION IN CASE OF OCCUPATIONAL DISEASES**

Workers employed in certain types of occupation are exposed to the risk of contracting certain diseases, which are peculiar and inherent to those occupations. A worker contracting an occupational disease is deemed to have suffered an accident out of and in the course of employment and the employer is liable to pay compensation for the same.

Occupational diseases have been categorized in Parts A, B and C of Schedule HI. The employer is liable to pay compensation :

- a When a workman contracts any disease specified in Part B, while in

service for a continuous period of 6 months under one employer. (Period of service under any other employer in the same kind of employment shall not be included,

- b. When a workman contracts any disease specified in Part C, while he has been in continuous service for a specified period, whether under one or more employers. (Proportionate compensation is payable by all the employers, if the workman had been in service under more than one employer).

If an employee has after the cessation of that service contracted any disease specified in the said Part B or Part C, as an occupational disease peculiar to the employment and that such disease shall be deemed to be injury by accident within the meaning of the Act.

#### **6.9.6 CALCULATION OF COMPENSATION**

The amount of compensation payable by the employer shall be calculated as follows:

(a) In case of death - 50% of the monthly wages X Relevant Factor or Rs. 50,000, whichever is more. And Rs. 1,000/- for funeral expenses.

(b) In case of total permanent disablement Specified under Schedule I- 60% of the monthly wages X Relevant Factor or Rs. 60,000/-, whichever is more.

(c) In case of partial permanent disablement specified under Schedule I - Such percentage of the compensation payable in case (b) above as is the percentage of the loss in earning capacity (specified in Schedule I).

(d) In case of partial permanent disablement not specified under Schedule I - Such percentage of the compensation payable in case (b) above, as is proportionate to the loss of earning Capacity (as assessed by qualified medical practitioner).

(e) In case of temporary disablement (whether total or partial). A half- monthly installment equal to 25% of the monthly wages, for the period of disablement or 5 years, which is shorter.

#### **6.9.7 WHEN COMPENSATION TO BE DEPOSITED WITH COMMISSIONER ?**

The amount of compensation is not payable to the workman directly. It is generally deposited along with the prescribed statement, with the Commissioner who will then pay it to the workman. Any payment made to the workman or his dependents, directly, in the following cases will not be deemed to be a payment of compensation:

- i. in case of death of the employee;
- ii. in case of lump sum compensation payable to a woman or minor or a person of unsound mind or whose entitlement to the compensation is in dispute or a person under a legal disability.

Besides, compensation of Rs. 10 or more be deposited with the Commissioner on behalf of the person entitled thereto.

The receipt of deposit with the Commissioner shall be a sufficient proof of discharge of the employer's liability.

#### **6.9.8 AMOUNT PERMISSIBLE TO BE PAID TO THE WORKMAN DEPENDENTS DIRECTLY**

Following amounts may be paid directly workman or his dependents :

- a. In case of death of the workman, any advance on amount of compensation upto [an amount equal to three months' wages of such workman] may be paid to any dependent.
- b. In case of lump sum compensation payable to an adult make worker not suffering from any legal disability.

In case on half-monthly payments payable to any workman.

#### **6.9.9. REGISTRATION OF AGREEMENTS OF COMPENSATION**

1. Where the amount payable as compensation has been settled by agreement a memorandum thereof shall be sent by the employer to the Commissioner, who shall, on being satisfied about its genuineness, record the memorandum in a registered manner.
2. However where it appears to the Commissioner that the agreement ought not to be registered by reason of the inadequacy of the sum or amount, or by reason that the agreement has been obtained by fraud or undue influence or other improper means he may refuse to record the agreement and may make such order including an order as to any sum already paid under the agreement as he thinks just in the circumstances.
3. An agreement for payment of compensation which has been registered shall be enforceable under this act notwithstanding anything contained in the Indian Contract Act, or any other law for the time being in force.

#### **6.9.10 EFFECT OF FAILURE TO REGISTER AGREEMENT**

When a memorandum of any agreement is not sent to the Commissioner for registration, the employer shall be liable to pay the full amount compensation, which he is liable to pay under the provisions of this Act.

#### **6.9.11 FILLING OF CLAIMS**

- A claim for the compensation shall be made before the Commissioner.
- No claim for compensation shall be entertained by the Commissioner unless the notice of accident has been given by the workman in the prescribed manner, except in the following circumstances :
  - a. in case of death of workman resulting from an accident which occurred on the premises of the employer, or at any place where the workman at

- the time of the accident was working died on such premises or such place in the vicinity of such premises or place;
- b. in case the employer has knowledge of the accident from any other source, at or about the time of its occurrence;
  - c. In case the failure to give notice or prefer the claim, was due to sufficient cause.

#### **6.9.12 LIMITATION**

Workman, to the Commissioner, may file the claim for accident compensation in the prescribed form, within 2 years from the occurrence of the accident or from the date of death. The claim must be preceded by

- (i) a notice of accident, and
- (ii) the claimant-employee must present himself for medical examination if so required by the employer.

#### **6.9.13 ATTACHMENT AND ASSIGNMENT OF COMPENSATION**

No compensation payable under this Act, whether in lump sum or half-monthly payments, can be attached, charged or passed on to any person other than workman by operation of law, nor can it be set off against any other claim.

#### **6.9.14 DUTIES OF EMPLOYERS / EMPLOYEES**

- To pay compensation for an accident suffered by an employee, in accordance with the Act.
- To submit a statement to the Commissioner (within 30 days of receiving the notice) in the prescribed form, giving the circumstances attending the death of a workman as result of an accident and indicating whether he is liable to deposit any compensation for the same.
- To submit accident report to the Commissioner in the prescribed form within 7 days of the accident, which results in death of a workman or a serious bodily injury to a workman ?
- To maintain a notice book in the prescribed form at a place where it is readily accessible to the workman.
- To submit an annual return of accidents specifying the number of injuries for which compensation has been paid during the year, the amount of such compensation and other prescribed particulars.

#### **6.9.15. DUTIES OF EMPLOYEES**

- To send a notice of the accident in the prescribed form, to the Commissioner and the employer, within such time as soon as it is practicable for him. The notice is precondition for the admission of the claim for compensation.
- To present himself for medical examination, if required by the employer.

## Unemployment Assistance

Unemployment rates in a developing country like India are always on the rise as its population booms and the Central and State Govt.'s struggle to provide opportunity for adequate and suitable employment to more persons. The latest data shows :

<b>Table 10.5 : Unemployment rates for 55th round (1999-2000) and 61st round (2004-05) of the NSSO</b>						<i>(all-India)</i>
			<b>Rural</b>			
<b>Males</b>			<b>Females</b>			
<b>Round</b>	<b>Usual</b>	<b>CWS</b>	<b>CDS</b>	<b>Usual</b>	<b>CWS</b>	<b>CDS</b>
55th (1999-2000)	2.1	3.9	7.2	1.5	3.7	7.0
61st (2004-05)	2.1	3.8	8.0	3.1	4.2	8.7
			<b>Urban</b>			
			<b>Males</b>		<b>Females</b>	
<b>Round</b>	<b>Usual</b>	<b>CWS</b>	<b>CDS</b>	<b>Usual</b>	<b>CWS</b>	<b>CDS</b>
55th (1999-2000)	4.8	5.6	7.3	7.1	7.3	9.4
61st (2004-05)	4.4	5.2	7.5	9.1	9.0	11.6
<b>Usual : Usual Principle Status, CWS : Current Weekly Status, CDS : Current Daily Status Source : NSSO's 61st Round Survey on Employment and Unemployment conducted during July 2004 - June 2005.</b>						

Unemployment assistance brings to mind the concept of handing out a lump sum amount to an unemployed person periodically on a weekly, monthly, etc. basis. Most countries of the world view unemployment assistance as a part of supportive policy this point of view. However India one the largest (in terms of population) developing countries also has a large public debt burden which makes it nigh impossible for her to provide for monetary assistance to her unemployed citizens. Thus, in so far as India has taken measures to provide some protection for the unemployed and underemployed, these have tended to take the form of a myriad of employment-intensive programmes. These programmes can both generate employment and reduce poverty by using labour-based techniques for mainstream investment programmes and by directing investments increasingly towards the productive and social needs of the low-income groups in the population. Some programmes of this type operate on a large scale. For example, the Jawahar Rozgar Yojana (JRY) programme in India by the mid-1990s covered over one- third of the country's underdeveloped districts and provided some 20 days' work a year to each participant.

### Unemployment Assistance vis-a-vis Policies for Promoting Employment in India

Ever since the initiation of planning in India in 1950, the Government has stressed the goal of increasing employment opportunities and eventually eradicating

unemployment from the country. Awareness about the difficulties of eliminating unemployment has, over the three decades, led the successive governments at the centre and in the states to formulate and implement several schemes for eradicating unemployment and promoting employment. High rates of unemployment among the youth have been recognized by the planners (India, Planning Commission, 1970). It is generally stressed as the problem of unemployment among the “educated” or those who have passed the high school certificate examination (matriculates) or the higher educated. The problem is seen as part of the overall problem of employment creation or development.

Yet, some of the special employment schemes have been aimed specifically at the youth to improve their training and skills and to promote self-employment and entrepreneurship. They included : an effort to reorient the Indian educational system in the direction of Vocational Educational; an Apprenticeship Training Scheme supported by legislation passed in 1961 and amended in 1973 and 1986; the centrally sponsored scheme of TRYSEM (Training of Rural Youth for Self-Employment); and a Self- Employment Scheme for Educated Unemployed Youth (SEEUY) in urban areas. These schemes were intended to address the problems of urban youth. Some of the schemes have been modified in the light of experience and the findings of evaluations undertaken by various agencies and institutions on behalf of the government. Yet, the overall problem of high rates of unemployment among the youth continues to be virtually intractable.

Some of the schemes still in operation or have been merged with other schemes over the years for greater efficacy can be enumerated as follows :

### **1. National Employment Service or Employment Exchanges**

National Employment Service, operated by the Directorate General of Employment and Training, Ministry of Labour, runs nearly 900 Employment Exchanges in order to bring about a better matching of the demand for and the supply of work opportunities. However, over the years, the number of persons registered with these exchanges each year for help in finding a job has far exceeded the number of placements. During 1995, for example, the 895 exchanges had registered 5.9 million job-seekers, but the number of vacancies notified to them was no more than 386,000; and after 3.6 million submissions, the placements numbered only 215,000. At the end of the year, 6.7 million persons were on the “live register”. The Draft Ninth Plan has recognised that “within the public sector, including the government administration, the role of employment exchanges in personnel selection has ... practically vanished”. (Planning Commission, 1998, Vol. II, p. 453).

### **2. Prime Minister’s Scheme for Unemployed Urban Youth**

Between 1983 and 1993-94, India also had a scheme for Self-employment for

Educated Urban Youth, which has not been subsumed under a new scheme called the Prime Minister's Rozgar (Employment) Scheme (PMRY) since 1994-95. Self-employment for Educated Urban Youth was designed to help the urban educated unemployed youth aged 18-35 in non-metropolitan towns and cities (with a population of less than one million), with an annual family income not exceeding Rs. 10,000.

The central government provided a capital subsidy of 25 percent of the loan from a bank to take up self-employment ventures in industry, services and business. The entrepreneur was not required to find any margin money for the bank loan. Over a decade, nearly 39.6 million urban youth were given loans amounting to Rs.31.9 billion. The average amount works out to less than Rs.20,000 per assisted person. (Planning Commission 1996, p-84).

Since October 2, 1993, the Government has been implementing Prime Minister's Rozgar Yojana (PMRY) or a Scheme for Educated Unemployed Youth has been implemented to assist one million educated unemployed youth (from both rural and urban areas) by March 31, 1997 (up to the end of the Eighth Plan). The youth are encouraged and helped to set up micro enterprises, covering manufacturing, service and business ventures. The scheme caters to youth aged 18 to 35 from families with an annual income of less than Rs.24,000, who are expected to propose schemes for setting up small enterprises with a bank loan of up to Rs. 100,000, without any collateral guarantee. If two or more eligible persons join together, more costly projects can also be assisted under the scheme. The entrepreneurs are given a subsidy of 15 percent, subject to a ceiling of Rs.7500/=, and they are required to bring in 5 percent of the project cost as the margin money, i.e., the amount to be invested by the person seeking a bank loan. The eligible entrepreneurs include youth, who have passed or failed in matriculation examination, or graduates from Industrial Training Institutes or those who have undergone training in a government-sponsored technical course for a minimum of six months. The applicants are expected to be permanent residents of an urban area for three years and are to be assisted by the District 'Industries Centres (DICs) and/or NGOs with the requisite background. The scheme envisages compulsory training of the entrepreneurs for four weeks after the sanctioning of the loan; a stipend of Rs.300 is paid during the four weeks. The Prime Minister's Office and the Reserve Bank of India monitor the progress of the scheme on a monthly basis and advise all the Indian scheduled commercial banks to meet the targets prescribed at the start of the year.

During 1993-94, the first year of the scheme, about 32,000 youth were granted loan. The target for 1994-95 was to help 220,000 persons. Relative to the SEEUY, PMRY envisaged a larger scale of effort but it also covered a much larger territory, including all metropolitan cities and rural areas under its scope.

### **3. Training of Rural Youth for Self-Employment (TRYSEM)**

TRYSEM was initiated on August 15, 1979, "to provide basic technical and managerial skills to rural youth from families below the poverty line" to enable them to take up "self employment and wage employment in the broad fields of agricultural and allied sectors, namely industries, services and business services". Rural youth aged 18-35 are eligible; age is relaxed to 16 inmates of orphanages in rural areas and up to 45 in the case of widows, freed bonded labourers, freed convicts, persons displaced from large development projects, and cured leprosy patients. The programme is expected to cover a minimum of 50 percent of the youth from the scheduled caste and tribe communities and a minimum of 3 percent from the ranks of the physically handicapped. Training is imparted through formal institutions, including industrial and servicing units, commercial and business establishments and through master craftsmen.

The District Rural Development Agency (DRDA) is expected to approve the syllabus for each trade and it is expected to impart not only job skills but also managerial and entrepreneurial capability. Subject to the approval by the State Level Co-ordination Committee, the duration of a course does not exceed six months. The states bear 50 percent of the expenditure on the scheme, with the central government 40 covering the rest. (In the union territories, the central government covers the entire expenditure). The government covers the recurring costs towards the stipend paid to the trainees, the honoraria for the trainers, etc.; and also assists the training institutions to develop the requisite infrastructure in the form of building, equipment, and training aids.

The trainees are supplied free tool-kits (costing up to Rs.2000 since 1994-95, and up to Rs.600/= until March 31, 1994) during their training. The tool-kits are supplied to help the trainees to gain the practical experience in the use of their tools. The trainees are eligible for loans from the banks under the Integrated Rural Development Programme, being implemented in all the districts of the country. Over a 16 year period, nearly 3.9 million rural youth were trained. Except during 1990-92 (when the eighth plan was being drafted), the reports indicated that the targets relating to training were "very nearly fulfilled". However, only about 53 percent of the trained rural youth were employed; and almost a quarter of them had found work as wage employees rather than as self-employed. The total cost of training was close to Rs.1535 per trained person (Rs.1210 or almost 79 percent as recurring cost and the balance on the infrastructure for training). According to the available data, 42 percent of the trained persons were women, and 39 percent were scheduled caste or tribe persons. During the Eighth Plan period 1992-97, nearly 1.5 million youth had been trained under TRYSEM. About 49 percent of the trained youth had been employed, nearly 69 percent as self-employed and the rest as wage-employees. (Planning Commission,

1998. P.56). During June-August, 1993, the Monitoring Division of the Ministry of Rural development had commissioned a “Quick Evaluation” of TRYSEM by contacting and interviewing 1220 beneficiaries from 122 blocks of 61 districts, drawn from 10 major states of the country. (Government of India, Ministry of Rural Development, 1994). According to the results of the “quick evaluation”, only 4 percent of the TRYSEM beneficiaries had received any previous training. About one-third of the beneficiaries were trained in “mechanical & electrical trades”, another one-third in handicrafts, about 18 percent in hand-loom, 2 percent each in animal husbandry and food processing/ preservation, and 11 percent in other crafts or trades. Excluding those who had “just completed training”, about 48 percent of the trained beneficiaries were employed and 52 percent were unemployed; among the employed, the self-employed and employees formed 28 and 20 percent, respectively. The tabulations based on the study are not necessarily consistent; but according to another table, one-third of the trainees had taken up self-employment, a large majority of them in the trades in which they had received training. (About 62 percent of the self-employed trainees had taken up work in the secondary sector and one-third were engaged in the tertiary sector). Almost 63 percent of the trainees reported the monthly stipend to be inadequate. However, only 21 percent reported receipt of a tool-kit. Almost 92 percent reported acquisition of vocational/technical knowledge; the remainder had acquired entrepreneurial knowledge. Over two-thirds of the trainees found the duration of training inadequate; others found the training facility “not satisfactory”, practical training “not enough”, or training infrastructure “inadequate”.

#### **4. Other special Employment Schemes**

The unemployed youth are also eligible for benefits from other employment schemes of the Government of India and the states. These include:

- a. Scheme of Urban Micro Enterprises (SUME), under which the eligible beneficiaries in all urban areas are helped to secure technical training and to set up micro enterprises, with the seed money provided by the government as subsidy and bank loan.
- b. Scheme of Urban Wage Employment (SUWE) aims to provide wage employment opportunities to the urban poor through the construction of socially and economically useful public assets in towns with a population of up to 100,000.
- c. Scheme of Shelter and Housing Upgradation (SHAHU) is operated in towns with a population of between 100,000 and 2 million to provide training in construction trades. The trained persons are eligible for loan and subsidy from Housing and Urban Development Corporation (HUDCO) to enable the urban poor to upgrade their shelter with improvements, relation to roof, flooring, etc.

- d. In addition to the urban schemes listed above, there is also the Employment Guarantee Scheme (EGS) of Maharashtra, with its counterpart in the National Employment Assurance Scheme (NBAS), launched in October 1993. The latter is the central government's effort to extend the key features of EGS to the entire country. The EAS is demand-driven and seeks to give to a maximum of two adults (18-60) per family, assured unskilled manual work for 100 days during the lean agricultural season. The scheme initially covered 1,775 identified backward blocks in 261 districts, located mainly in drought-prone areas, desert areas, tribal areas and hill areas; but subsequently, its scope was widened to cover an additional 668 blocks (or a total of 2446 blocks), including flood-prone blocks. From Effective January 1, 1996, the 120 districts (722 blocks) covered by the second stream of Jawahar Rozgar Yojana were brought under the EAS. With effect from April 1, 1997, rural areas of the entire country have been brought under the EAS. (Planning Commission, 1998).

#### **5. Swarnjayanti Gram Swarajgar Yojana (SGSY)**

SGSY, a holistic self-employment generation programme, was launched from April 1, 1999 by restructuring the earlier Integrated Rural Development Programme (IRDP) and allied programme. The emphasis of SGSY is on a focused approach to poverty alleviation, capitalising advantages of group lending and overcoming the problems associated with a multiplicity of programmes. SGSY is funded on the same sharing basis as IAY. Up to December 31, 2006, 24.38 lakh self-help groups (SHGs) have been formed and 73.25 lakh swarajgaris have been assisted with a total outlay of Rs. 16,443.66 crore.

#### **6. Sampoorna Grameen Rozgar Yojana (SGRY)**

SGRY, launched on September 25, 2001 to provide additional wage employment in the rural areas, has a cash and food grains component. The cash-component of SGRY is funded on the same sharing basis as IAY and SGSY, while foodgrains are provided free of cost to the States and UTs. In 2005-06, 82.18 crore person-days of employment were generated with the Centre releasing Rs.5497.43 crore as cash component and about 37.30 lakh tonnes of food grains to the States/UTs. Besides, under the special component of the SGRY, with the States/UTs meeting the cash components, Centre released 15.64 lakh tonnes of food grains to the 11 calamity affected States. In 2006-07 up to October 31, 2006, the number of person-days of employment generated under SGRY was 18.41 crore while the Centre's contributions in terms of cash and food grains component up to December 31, 2006 were Rs.2,762 crore and 16.67 lakh tonnes, respectively. Under the special component, about 4.44 lakh tonnes of food grains have been released to calamity-hit States in the current year up to December 2006.

## **7. Swarna Jayanti Shahari Rozgar Yojana (SJSRY)**

In December 1997, the Urban Self-Employment Programme (USEP) and the Urban Wage Employment Programme (UWEP), which are the two special components of the SJSRY, substituted for various programmes operated earlier for urban poverty alleviation. The SJSRY is funded on the same sharing basis as IAY and SGSY. The number of urban poor assisted for setting up micro/group enterprises in 2005-06 was 0.98 lakh against a target of 0.80 lakh; while in the current year, against a target of 1.20 lakh, 0.53 lakh was achieved by December 31, 2006. The number of urban poor imparted skill training in 2005-06 was 1.42 lakh against a target of 1 lakh. In the current year, against a target of 1.50 lakh, 0.72 lakh was achieved by December 31, 2006. Under UWEP, the mandays of employment generated was 43.48 lakh in 2005-06 and 1.78 lakh in the current year till now. Coverage of beneficiaries under the community structure component was 337.4 lakh both in 2005-06 and the current year up to December 31, 2006.

## **8. National Rural Employment Guarantee Scheme (NREGS)**

With the NREG Act being passed in September, 2005, the NREGS was implemented from February 2, 2006 in 200 identified districts of the country with the objective of providing 100 days of guaranteed unskilled wage employment to each rural household opting for it. The ongoing programmes of SGRY and National Food for Work Programme (NFFWP) have been subsumed under NREGS in these districts. NREGS will cover all districts of the country within five years. The NREGS, a demand-driven scheme, has its focus on works relating to water conservation, drought proofing (including afforestation/ tree plantation), land development, flood-control/ protection (including drainage in waterlogged areas) and rural connectivity in terms of all-weather roads. Of the Rs. 11,300 crore allocated for NREGS in 2006-07 (BE), Rs. 6,714.98 crore was released up to January 31, 2007. Till January 31, 3.47 crore job cards have been issued; and of the 1.50 crore household who have demanded employment, 1.47 crore household have been provided employment. Under the scheme, up to December 2006, of the 53.65 crore person-days of employment generated, 21.13 crore were for women; and of about 5.81 lakh works taken up, 2.34 lakh were completed.

However, apart from these schemes there are also a few indirect ways and means through which the Indian govt. over the years have tried to promote self-employment and entrepreneurship, especially among the youth since it neither practically possible nor feasible to guarantee 100% employment, for a country like India with her teeming masses on the one hand and comparatively scarce resources on the other. These include:

### **1. Role of Employers' Organisations and Trade Unions**

The Indian trade unions have been quite effective in safeguarding the interests

of their membership; but they have taken little interest in issues of promoting employment of the unemployed persons seeking work for the first time. The employees have been forced to participate in the efforts to raise the skills of the potential young workforce through training. Many employers recognise such activities to be in their own medium and long term interest and help to identify the skills in short supply or those likely to become important in the years ahead. However, the scale of the problem is much larger than what the employers can grapple with and it needs a larger perspective such as only the development planners and those concerned with educational planning are likely to have.

## **2. Vocational Guidance and Education**

Since the late 1950s, there has been a widespread recognition of the need to reorient the Indian educational system towards various vocations to minimise the problem of mismatch between the demand for and the availability of white-collar jobs. As noted above, the Employment Exchanges set up as the agencies operating the National Employment Service, were assigned the task of vocational guidance and employment counselling. By late 1996, 314 of the 895 Employment Exchanges and 84 University Employment Information and Guidance Bureaux were equipped to provide the service. Unfortunately, these bureaux cater to the needs of those who approach them and do not take the initiative to reach the youth through schools and colleges and other informal channels. Also, their outreach remains limited to urban centres and has little rural impact (except insofar as the “educated” in rural areas also register with them for placement assistance). More importantly, under the National Policy on Education, adopted in 1986 and revised in 1992, high priority has been assigned to “vocationalisation” of secondary education. The goals for 1995 and 2000 envisage the diversion of 10 and 25 percent of the students studying beyond the High School Certificate examination to the vocational stream. The objectives are to enhance the employability of individual students, to reduce the mismatch between the demand for and the supply of skilled manpower and to provide an alternative to those seeking to pursue higher education without a particular interest or purpose.

About 150 vocational courses have been introduced in six major areas of agriculture, business and commerce, engineering and technology, health and paramedical services, home science and humanities. Sixty additional vocational courses have been notified under the Apprenticeship Act of 1961.

The Eighth Plan had adopted a goal of diverting about 1.16 million higher secondary school students to the vocational stream. By March 31, 1994, almost 0.91 million were enrolled in 16,450 vocational sections in 5,701 schools. However, the quality of the vocational courses was a cause for concern. The progress was considered sluggish and the links with industry were weak. A central Institute for Vocational Education was established at Bhopal in July 1993 to strengthen the activities in the field of vocational education. (Planning Commission, 1996, p. 128.)

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## **Unit - 7 □ Review of Social Security measures with reference of Women, Children, SC &ST, Disabled**

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### **Structure**

- 7.1 Contextualising Social Security**
- 7.2 Formal Social Security and Developing Countries**
- 7.3 Social Security appropriate to Developing Countries**
- 7.4 Social Security for Women**
- 7.5 Schedule Caste and Social Security**
- 7.6 Social Security for the Oschedule Tribe**
- 7.7 Social Security for the Disabled People**
- 7.8 Social Security and Children**

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### **7.1 □ Contextualising Social Security**

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By now it is well known that the definition of social security in developing countries is much broader as compared to that for developed countries. Social security arrangements have long history in India. Since independence, India has extended formal social protection measures such as old-age benefits, insurance, health benefits, etc. to workers in the organised sector, which was less than 10 per cent of the total workforce in India. For workers in the unorganised sector and the other poorer sections of the population the emphasis has been on promotional measures. Social security is a relatively neglected area in terms of both research and policy in India. There has been very little discussion on this subject in India Plan documents. There is thus a need to document and analyse the concepts, problems, policies and effectiveness of the programmes relating to social security for the Indian population.

The most recent justification for formulative viable social security programme is the initiation of economic reforms in 1991. This led people to advocate the need for strengthening social security programmes in order to face the negative consequences of reforms. One important factor contributing to the increase in the number of workers

in need of social welfare is the likely labour retrenchment in the public sector. This sector is currently protected by employment legislation, and its privatisation will lead to retrenchment. In the unorganised sector, the increased need for social security is due to dismantling of subsidised and targeted credit programmes, which previously benefited small scale industry and agriculture. Decline in public investment in agriculture, reduction in input subsidies and liberalisation of trade may lead to an increase in the agricultural prices. The increase in food prices combined with a reduction in food subsidies will raise the real cost of living for the vast majority of the population. It may be noted, however, that the problem of social insecurity had been severe even before the economic reforms were introduced. Indeed, many of the social security programmes are important irrespective of whether we have economic reforms or not. At the same time, it is true that reforms may create some new problems relating to social security and may necessitate some modifications in the existing programmes and introduction of new programmes.

The debate on social security in developing countries has emerged largely since the 1980s, prompted by several factors.

One was the acknowledgement of the glaring dichotomy in the availability of social security between the industrial and developing countries; and, not unrelated to this, the dichotomy between the access to social security in the developing countries themselves for labour in the organised sector of public and industrial employment vis-a-vis the vast majority in the unorganised rural and urban sectors.

The second was the realization that even the portfolio of direct poverty alleviation measures cannot be depended upon to provide adequate, timely or guaranteed protection to insure the poor against identifiable forms of deprivation.

The third, and more proximate, factor has been the recognition of the role of social safety nets in cushioning the poor during the structural adjustment which many developing countries initiated in the 1980s in response to the debt crisis or as part of domestic economic reform processes.

Until the mid-1980s, the ILO's understanding of social security formed the dominant discourse. It refers mainly to specific public programmes involving social assistance and social insurance largely by the state. This definition presumes that the members of the society have already reached an acceptable standard of living and the main aim of social security is to, protect the members of society from a fall in their standard of living. Implicit in this is the understanding of social security as a concept whereby the care of income and welfare is assumed through regular participation in work and production, leaving only specific contingencies to be tackled through public policy.

The need for a broader concept of social security began to be articulated by communities living in the developing countries as it was gradually established that the reigning western notion of social security does not take into account the high degree of deprivation and vulnerability of the majority of the population. Further, the

search for a more comprehensive notion of social security arose simultaneously with the increasing economic globalisation of the world. This was followed by the increased interest evinced by other development organisations, mainly the UNDP and the World Bank, resulting in the emergence of newer concepts and approaches in the discourse on social security. It is being observed that the discussion on social security is increasingly polarised into social risk management and human security.

Social risk management consists of public measures intended to assist individuals, households and communities in managing income risks in order to reduce vulnerability, improve consumption, smoothen and enhance equity while contributing to economic development. While this emphasis on income security and human security is conceptualised as a system of social structures and practices which ensures the safety of all people, it is defined in terms of safety from chronic threats such as hunger, disease and protection from sudden and hurtful disruptions in the patterns of daily life, be it in homes, jobs or in communities. It can be discerned from the definition that it provides a generic notion of security that runs very closely to the concept of human development. Taking cognisance of the fact that social security is defined in terms of protection against human deprivations, any attempt toward human development may be conceived as a social security measure. Though social security mechanisms aim at human development, at the operational level, a clear distinction has to be made between human development measures and social security mechanisms. Social security measures primarily aim at removing vulnerability by preventing a decline in the living standards in general and promoting basic living standards in particular, during economic contingencies.

Human development is a prerequisite for the effective implementation of social security measures for it builds the capabilities of individuals so that they are entitled to security gains. And, social security mechanisms provide a safeguard against the risk of individuals relapsing to a below minimum standard of living during the economic crisis and contingencies. However, social security cannot be reduced to social risk management though it forms an essential component of it. In the context of developing countries, social security can neither be limited to social risk management nor equated with human development, therefore, in an analysis of the existing social security scenario in India, the pivotal role of the state emerges as a crucial factor.

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## **7.2 □ Formal Social Security and Developing Countries**

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The term formal social security (based on ILO Convention No. 102(1952)) covers the following branches of social security :

- medical care and benefits addressed to sickness ;
- unemployment;
- old age ;
- employment injury;
- family size;
- maternity;
- invalidity and widow-hood.

The extent and coverage of formal social security in developing countries suffer from a number of shortcomings.

In the first instance, their mere availability varies considerably across contingencies. Work injury benefits are available in most developing countries. Benefits for old age, disability and to survivors are also prevalent in fair measure. Availability of schemes covering sickness or maternity is more restricted; even more so are family allowance schemes. Few developing countries provide unemployment benefits.

Second, most of the schemes cover only workers in the government and quasi-government sectors and workers in organized employment in mining, manufacturing or plantations where the workforce is stable, employment is regular and a clear employer-employee nexus exists. Large segments of workers in agricultural sector, in rural non-farm employment, and in the urban informal sector are excluded.

Third, the regional dispersion of formal social security is very uneven in the Third World. It is relatively well developed in the highly urbanized, middle-income countries of Latin America and the Caribbean (LAC), while outside the LAC (with few exceptions) its availability is very restricted.

Fourth, formal social security system is malfunctioning in several ways. Evasion of employer liabilities is widespread (for example for work injury and maternity). The regular and timely collection of contributions from the insured and their employers is not easy. Provident funds do not provide adequate retirement benefits. Administrative overheads are high, disbursement is delayed and is subject to cumbersome procedures. Many schemes have also run into actuarial and fiscal imbalances.

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### **7.3 □ Social Security Appropriate to Developing Countries**

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Social security in poor countries will have to be viewed as part of and fully integrated with anti-poverty policies, with such policies themselves being broadly conceived in view of the complex, multi-dimensional nature of poverty and deprivation. In a context of massive and persistent poverty, the concept of social security has to extend considerably beyond the conventional social insurance model

and encompass a large measure of social assistance. The conceptual problem is to situate an operationally useful notion of social security - one that is neither excessively specific (as in the formal model) nor excessively general - within a comprehensive anti-poverty approach. From this standpoint, a categorization of instruments from the point of view of poverty alleviation may be useful.

There are three broad categories :

Promotional measures that aim to improve endowments, exchange entitlements, real incomes and social consumption; preventive measures that seek more directly to avert deprivation in specific ways; and

Protective (or safety net) measures that are yet more specific in their objective of guaranteeing relief from deprivation.

This is a taxonomy with overlapping categories. Work programmes, for instance, promote employment, they can also be seen as preventing unemployment. Health care promotes well being; it may also prevent sickness. The value of these categories does not, therefore, lie in their being clear cut or mutually exclusive.

The outer circle of promotional measures would include the whole array of macroeconomic, sectoral and institutional measures of major importance for poverty alleviation, operating at the macro and meso levels.

The middle circle would consist of what have come to be known as direct measures for poverty alleviation such as asset redistribution, employment creation and food security.

The inner circle would contain specific measures for the relief from or protection against deprivation to the extent that the latter is not or cannot be averted through promotional and preventive approaches.

This visualization helps clarify several questions. The first is that social security provision in developing countries requires a multiple approach.

The second arises from the residual nature of safety nets : poverty must be alleviated as much as possible by the outer circles of promotional and preventive measures so that the burden on safety nets can be lessened.

Third, safety nets must indeed act as the last resort as regards any entitlements.

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## **7.4 □ Social Security For Women**

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Although women are not a minority group (live child labourers and disabled persons), they constitute a disadvantaged and vulnerable group in Indian society. They have been victims of unabated gender violence, both societal as well as domestic. Women comprise the largest section of population living in absolute poverty and they represent the poorest of the poor. Gender discrimination against women is one of the

all pervading forms of deprivation. A most telling demographic symptom of such deprivation is the presence of an adverse sex ratio which declined from 934 females per 1000 males in 1981 to 927 females per 1000 males in 1991 and there has been a slight improvement in 2001, where there are 933 females per 1000 males. India's adverse sex-ratio reflects the increasing neglect of women's health and social subordination. Women's marginalisation is also reflected in their lack of control over assets and resources. Discrimination against women in our society and some similarly placed societies in South Asia could begin as early as conception-in the act of deliberately selecting the sex of a child. It becomes viable in the early childhood itself, in upbringing of girls vis-a-vis boys in the family, in terms of opportunities for education, skill formation and in terms of household work that the girl child is expected to share. This discrimination and neglect of the girl child is reflected in the significantly adverse and even declining sex-ratio of women to men in many states. The differences become pronounced in the early adulthood when women are often subjected to covert and overt acts of physical and emotional abuse, sexual exploitation and even violence. The problem for the women could continue in the marital relationships that are forced on them or those that involve incompatible and socially maladjusted relations. In fact, the physical abuse of women in most cases enjoys some kind of social sanction, compounded further by the tolerance and resignation of the individual on grounds that it is only expected of married women. The dowry deaths are an unfortunate and hideous manifestation of these incompatibilities in marital relations and acceptance of perverse social norms. Ultimately, the ill treatment of women is reflected in the deprivation of elderly and economically dependent widows. Moreover, throughout her life cycle, a weomen's dignity, self-esteem and emotional well-being are compromised by some less overt, but widespread farm of discrimination such as personal confinement and restriction on mobility particularly in rural areas; almost complete marginalisation in the decision making process at the household level; responsibility for household work including, looking after young siblings; sexual abuse by the family members, even incest; childhood' forced marriage and verbal abuse.

The bringing of women into the realm of social policies can be traced to the post-independence period. Social security policy was explicitly grounded in the nation of the family. At this point, it must be mentioned that social policies (health, housing, education, etc.) seem to be overtly egalitarian and unconcerned with the individual to whom they relate. However, a closer scrutiny of the policy as well as its practice reveal that these policies have in explicit ways constructed the family by delivering workers, breadminners and dependants. Certain arsumptions underlie the choices that have been made in social policy; the first is that women are available to do housework and for the caring of children and the aged, and the second relates to their income, whereby it was presumed that women work only when the family income needed augmentation. Therefore, there was neither any attempt to value women's work nor was interruption in work as seen as a serious problem.

A change in social policies can be discerned in the seventies and eighties, when women's economic contribution was formally recognised. Based on equity considerations, women were included in almost all the income generation programmes. However, it seems that their inclusion was more of an afterthought, as these concerns have not percolated to other social policies. For instance, the family's male breadwinner was still targeted in programmes providing for rights to housing. In fact, social security provisions were only made for those women who had no support from the made breadwinner. Thus, social security was grounded in the supporter dependent relationship that men and women share.

The nineties have seen a slight shift in approach in that social policy now recognises that the exclusion of women from its realm amounts to dis-empowering them in that the most vulnerable section of the population has been left insecure. However, there are still problems in the practice of this policy as the state has been unable to disentangle men and women from their supporter dependent identities.

Schematically, the dominant development nations that have influenced the way in which social security programmes for women have been conceptualised in India can be divided into three phases, marked by the features as shown in Table - 1.

**Table -1 Dominant Development Models and Social Security**

Period	Dominant nations	Main features of social security programmes
1950-1970	Welfare	Community development programmes, Welfare institutions for most vulnerable
1970-1990	Equality and Equity	IRDP, JRY, Welfare institutions for most vulnerable
Past-1990	Employment	IRDP, JRY, Welfare institutions for most vulnerable, reservation to political bodies, special financial assistance to vulnerable women like widows, supplementary nutrition programme, TRYSEM, DWACRA

The 'National Policy for Empowerment of Women' was adopted in the country in 2001 with the ultimate adjective of ensuring women their rightful place in society by empowering them 'as agents of socio-economic change and development.' 'Empowerment of Women', is therefore, an important approach adopted in the Tenth Five year plan (2002-07) for development of women. To this effect a National Plan of Action for Empowerment of women, with a view to translating the National Policy of Empowerment of Women into action in a time bound manner, was adopted as a priority agenda for action during 2003-04 for the Department of Women and Child Development (DWCD).

Education being an important tool for social empowerment of women, specific

schemes to provide incentives to promote education, especially amongst girl children and reduce the school drop-out rates is being implemental. Two important schemes viz, 'Saarva Shiksha Abhiyan' and 'Mahila Samakhya' are being implemented by the Department of Education as a special effort to stretch the reach of the education especially to the girl child. In addition, the DWCD implements the schemes of 'condensed courses for education and vocational training' and 'Distance Education Program for Women' supplementing the efforts of the Department of Education.

A number of schemes such as Swyamsiddha, Swablamban and support to Training-cum-Employment Programme (STEP) are in progress where women mobilized as Kiable SHGs are utilizing micro credit with the help of agencies like the Rashtriya Mahila Karh for income generating activities or getting trained in various traditional trades and crafts (such as poultry, bee keeping and weaving) as well as newly emerging vocations (such as the IT sector), or skill upgradation and capacity building. To facilitate the employment of women away from their homes/towns, schemes such as Working Women Hostels with day care centres and creches/day centres are also being implemented. Care and protection of women in distress is a focused area of attention.

The National Commission for Women (NCW) safeguards the interest of women with a mandate covering almost all aspects of women's rights. There are about 42 Central Acts concerning women, of which 32 Acts have been rereviewed by the NCW for their efficiency and removing gender discriminatory provisions. In addition, the DWCD is also in the process of initiating new legislation, amending existing ones so that they become more patent in protecting women. These include Protection of Women from Domestic Violence Act, 2005, which came into force September 14, 2005. The act seeks to provide immediate and emergent relief to women who face situations of violence in their homes. Protection against Sexual Harassment of Women Bill, seeking to confer on women the right to be protected from sexual harassment, is being drafted at the moment.

There are, infact, three basic programmes that concern women workers and can be broadly defined as social security measures. They are employment promoting programmes, social relief and public provisions like health care, public distribution system etc.

In fact, the important point about the Indian social security system, especially when applied to women workers is that it operates in an economic environment in which the following belief system still predominates :

1. India is a developing country and, therefore, income support of the kind given through the western social security system is unfeasible.
2. Given the structure of its economy and thereof, employment (self-employed, casual labour, etc.), conventional social security measures will be difficult to operationalise; and

3. India has a large social security network and therefore it only requires to be complemented and strengthened through the efforts of the state.

Such a belief system has led the state to largely focus its efforts on total employment generation, which it still hopes, will result in the 'leap frogging' of the Indian economy, thus, enabling women also to benefit. Additionally the state has initiated a few programmes designed specifically to augment the nature and type of women's work.

However, the failure of the state-backed employment promotion measures can be deduced not only from the dismal growth rates in women's employment across the board but also the increased casualisation of the women's labour in the part-reform period. Structural Adjustment programme has had a negative impact on the status of women's employment - the only major source of social security which is available to poor rural women workers in India.

Social relief covers assistance to widows and measures like old-age pension. There is no specific labour insurance or any other direct programme which targets the women workers specifically. The largest social security program for the poor still comes under the umbrella of direct public provision of health, housing, food etc. However, as in the case of macro policies, which largely aim at job creation, these too are male head of the household centric and do not specifically target the women worker.

Clearly, the impact of economic growth on women has neither been in terms of increased opportunities nor in increased workforce participation. The structural adjustment Programme regime has exposed women to greater vulnerability by relegating them to the sphere of casual labour, further, the compartmentalised provisioning of basic social security has had a negligible impact on women in that it has not been able to even relieve women of their burden involved, especially in terms of time spent, in accessing the basic necessities.

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## **7.5 □ Scheduled Castes and Social Security**

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Economic and social discrimination against SCs prevail in significant degree in rural and urban areas, both inside and outside the market, i.e., regarding access to sources of income such as agricultural land, capital, property, employment and social services, etc. The scheduled castes (SCs) who constitute about one fifth of India's population, are mostly employed in the unorganised sector of the economy, i.e., agriculture and the urban informal sector. Social security in the unorganised sector is mainly of a promotional nature. It includes measures to improve income earning capabilities as also protective measures such as minimum employment guarantee programmes for wage labour.

Given the significantly higher degree of socio-economic deprivation among SCs, a set of highly targeted programmes have been developed to meet the challenges

under the Five Year Plans as also through the non-plan channel. In so far as these measures intend not only to provide some source of income but also to maintain a minimum level of income, they are in the nature of social security measures.

They can be categorized in the following manner:

- a) measures to provide minimum wage employment support both in rural and urban areas, with special emphasis on rural areas, where there is a lack of employment opportunities around the year due to drought or agricultural activities not being in operation. The main purpose of these programmes is to provide minimum wage employment and income on an yearly basis particularly in drought prone and agriculturally less developed areas;
- b) measures to provide access to public services such as housing, health care and education, and finally,
- c) protection against discrimination in access to land, capital, social services, employment etc., through the reservation policy and preferential treatment.

The programmes which assure minimum income include the employment programmes like the Jawahar Rozgar Yojana (JRY) and the Employment Assurance Scheme (EAS). The objective of JRY is to provide supplementary employment to unemployed and under employed persons in rural areas. These programmes also aim at strengthening assets in favour of poor people. Persons below the poverty line constitute the target group and preference is given to SCs and STs, in proportion to their population.

Under the JRY, housing construction is also undertaken through the Indira Awas Yojana in which preference is given to SC households who are victims of atrocities, household below the poverty line, household headed by widowed or unmarried women, SC/STs affected by flood, fire earthquakes and similar natural calamities. Similarly, development of private agricultural land under the Land Development Scheme and irrigation under Millions Well Scheme of marginal and small farmers is also undertaken free of cost. In both the schemes, the small and marginal farmers, particularly SC/STs and freed bonded labourers are given priority.

In addition to JRY, Employment Assurance Scheme (EAS) was launched in 1993 aiming at providing assured employment of 100 days of unskilled work to rural poor in the age group of 18-60 years.

The Nehru Rozgar Yojana which was introduced in 1992 also initiated a wage employment programme for urban poor.

From the priority of target group it is clear that the focus is really on deprived and vulnerable sections of the rural society and, therefore, these programmes are in nature of social security measures in so far as they intend to provide sources of income and to maintain the current income at a certain minimum level.

The IRDP also falls in this category. The IRDP was launched as a credit linked programme of self-employment for poverty alleviation. The objective is to enable the identified rural poor families to augment their income in order to the poverty line through acquisition of credit based productive assets. While the target groups consist of small and marginal farmers and artisans below the poverty line, 50 per cent of assisted families are from the SC/ST category.

In addition, the Training of Rural Youth for Self Employment (TRYSEM) has been started with the aim of providing basic technical and managerial skills to rural youth from families below poverty line and thus enable them to take self-employment or wage employment

Special Central Assistance (SCA) for the Special Component Plan (SCP) is a major scheme for the welfare and development of SCs. Under the scheme, 100 per cent assistance is extended to supplement the efforts of the States/UTs for ensuring rapid socio-economic development of SCs, especially those living below the poverty line.

The flagship scheme of Post-Matric Scholarships (PMS) to SC students continued to receive high priority. Under the scheme, over and above their committed liability to extend scholarship to all eligible SC students based on a means test, 100 per cent Central Assistance is provided for payment of tuition and compulsory fees, besides maintenance allowance.

For social security and economic development of these disadvantaged groups through income generating schemes, special financial institutions have been set up namely: Schedule Castes Finance and Development Corporation (NSCFDC), National Safai Karmachari Finance and Development Corporation (NSKFDC), National Backward Classes Finance and Development Corporation (NBCFDC) and National Minorities Development and Finance Corporation (NMDFDC).

The Protection of Civil Rights (PCR) Act, 1955 and the SC & ST Prevention of Atrocities (POA) Act, 1989 are the two important legal instruments to prevent/curb persistent problems of social discrimination, prevalence of social evils like untouchability and cases of exploitation and atrocities against these disadvantaged groups.

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## **7.6 □ Social Security for The Schedule Tribes**

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The scheduled Tribes (SYs) consisting 8 per cent of the population from the most marginalised group in the Indian Society. While their traditional systems provided them with social and economic securities to the extent that a primitive culture could afford, the development interventions in the later half of 20<sup>th</sup> century have exposed them to a series of insecurities. These include displacement from their natural habitat, loss of traditional modes of livelihood mainly because of the modern conservation

rules of forests and finally, a social system that devalues their skills. Further, even the development policies formulated exclusively for them could not result in building their capabilities to enable them to participate in the mainstream of the development processes. Such a reading that the process of development have been detrimental to the tribal communities gained momentum in the 1980s and also formed a powerful critique of the dominant development model.

Government agencies have been in the process of evolving an organisational structure and formulating result-oriented development programmes in such key areas as education, health, nutrition, agriculture, marketing, forestry, communication, etc.

In an effort to provide educational security to tribal children, the government has initiated three important measures in this region.

These are (i) opening up of anganwadi centres ;  
(ii) provision of primary schools in each and every village ;  
and (iii) opening up of residential schools in the region of tribal concentration.

Apart from these government also has introduced schemes for the free distribution of textbooks and stationery, book bank and awarding scholarships for the tribal students. However, all these schemes have shown very little impact because of various institutional and structural constraints. The Adivasi Awasiya Vidyafey (Tribal Residential School) set up by the Welfare Department of the Government of India serves very little purpose as very few children are able to get admission in this school. All of them use the traditional teaching methods and no effort has been made to introduce the concept of joyful learning and improve teaching learning process. All these factors have contributed in making education unattractive and in lowering the enrolment and increasing the drop-out rate.

With a view to assure employment and income security to the tribals, the government has initiated several programmes such as IRDP, TRYSEM, DWACRA, PMRY and ITDP aimed essentially at creating avenues for self-employment. Under these schemes, income generating assets have been distributed among poor tribals. The Integrated Tribal Development Project (ITDP) has provided such assets to the tribals on 100 per cent subsidy, while under IRDP, TRYSEM, DWACRA and PMRY subsidised loans have been given to them for buying these assets. EAS (Employment Assurance Scheme) and JRY (Jawahar Rojgar Yojana) with its components, Indira Aawas Yojana (IAY) and Million Well Scheme (MWS), have been introduced for creating wage employment. Most of these programmes are carried out during the agricultural lean season and are intended to reduce unemployment and migration among the tribal people. The wage employment programmes also have the objective of creating community assets, which can support the tribals in their economic endeavours.

The government has taken certain steps to activate the existing medical facilities and set up additional facilities for providing medical assistance to the tribals. Specifically, intensive malaria eradication/control programmes are being carried out in rural areas and T.B., leprosy and filaria centres have been established.

For the social security, welfare and development of the STs, an outlay of Rs. 1,499 crore has been provided in the Annual Plan for 2005-06, up 30.70 per cent from the corresponding outlay of Rs. 1,146 crore for 2004-05. The outlay of 2005-06 includes Rs.727 crore provided as Special Central Assistance (SCA) to Tribal Sub Plan (TSP) and Rs.380 crore provided as grant-in-aid under article 275(1) of the constitution.

SCA to Tribal Sub-plan (TSP) is a 100 per cent grant extended to states as an additive to undertake a number of developmental schemes. The focus is on family oriented income generating schemes, creation of critical infrastructure, extending financial assistance to SHGs for community based activities, development of Primitive Tribal Groups (PTGs) and forest villages. Grant-in-aid under Article 275(1) is also being provided to the States with an objective to promote the welfare of the STs and improve administration in the States to bring them at par with the rest of the states and to take up such special welfare and development programmes which are otherwise not included in the plan programmes.

Under the scheme of Post-Matric Scholarships (PMS), all eligible ST students are provided with stipend to pursue their education beyond matric including professional and graduate and post-graduate courses in recognized institutions.

A new scheme of Rajib Gandhi National Fellowship for ST students to pursue high education is being introduced in 2005-06.

Economic empowerment of STs continued through extension of financial support to Finance Corporations and Tribal Co-operative Marketing Federation of India Limited (TRIFED). Under the scheme of National Scheduled Tribes Finance and Development Corporation and Grant-in-Aid to State Scheduled Tribes Development and Finance Corporation, financial support is being extended to ST beneficiaries/entrepreneurs in the form of terms loans and micro credit at concessional rate of interests for in generating activities.

Other economic development schemes being implemented are grant-in-aid to NGOs, Vocational Training Centres in tribal areas, investment in TRIFED and price support and grant-in-aid to STDCs.

A few non-government agencies (NGOs) have also initiated steps to introduce social security measures for the tribals. Apart from their limited reach, full benefits of their programmes would depend on the capability, motivation and commitment of their personnel intensity of their efforts and the resources at their disposal. Though these organisations have provided both promotional and protective social security to a large number of tribals, a large proportion still remain uncovered, suggesting that

their efforts are inadequate and need to be strengthened. They should also look into the basic sources of deprivation and vulnerability- the low level of agricultural production, the alienation of their land, fall in their access to forest and exploitation by others. The technique of intervention should be participatory and should aim at developing their own mechanism for tackling the problems.

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## **7.7 □ Social Security for The Disabled People**

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In India, as per NSSO survey on disability, there were nearly 16 million persons with some physical disability in 1991 as against nearly 12 million persons with some physical disability in 1981. Disability refers to any restriction or lack of ability to perform an activity in the manner or within the range considered normal for a human being. The disabilities covered in the survey included visual, hearing, speech hearing and/or speech and loco-motor disability. Loco-motor disability refers to the inability of an individual to execute distinctive activities associated with moving both self and objects from one place to other place. Not only does a disabled person require resources to overcome handicap(s), but he or she may also require additional resources to meet their specific needs of education, training and skill formation. The on-setting of disabilities with age, such as, the commonly seen visual, hearing and loco-motor disabilities have in most cases a direct bearing on the economic well-being of the person through reduced work participation rates and a decline in productivity of the affected person. As a result, the employment and income levels tend to be a fraction of the non-disabled persons. The problems for a disabled are compounded by many physical social and attitudinal barriers that may restrict their livelihood opportunities and access to basic public services or social transfers.

There are some more than half a dozen Government Departments, which are directly engaged in addressing the problem of disability on India. A coordinate approach to build synergies across the various interventions could substantially improve the effectiveness of public action in this area. Some of the public programmes on addressing disability issues are described here.

### **HEALTH & FAMILY WELFARE**

- Child immunisation programmes;
- Leprosy eradication programme ;
- Blindness control programme and curative treatment of cataracts;

### **DEPARTMENT OF EDUCATION**

- Integrated education for disabled in special schools ;
- Teachers training programmes for persons with disabilities ;
- Provision of books, uniforms and other materials to school going disabled;

### **MINISTRY OF LABOUR**

- Vocational rehabilitation centres for the disabled;
- Training for promotion of employment of disabled;

### **MINISTRY OF RURAL DEVELOPMENT**

- Reservation of (2-3)% benefits in all poverty alleviation schemes for the disabled and for improving their environment by building barrier free infrastructure;

### **MINISTRY OF URBAN DEVELOPMENT**

- Model norms and space standards for barrier free in built environment;

### **DEPARTMENT OF PERSONNEL & TRAINING**

- Implementation of 3 per cent reservation of Government jobs for disabled;

### **DEPARTMENT OF WOMEN AND CHILD DEVELOPMENT**

- Training of Angadwari Workers for early detection and timely prevention of disabilities;

### **MINISTRY OF SOCIAL JUSTICE & EMPOWERMENT**

- Monitoring implementation of persons with disability act 1995 ;
- National programme for rehabilitation of persons with disabilities in States ;
- Setting up composite resource centres, rehabilitation centres and national trust for persons with various disabilities, viz. Spinal Injuries Autism, Cerebral Palsy etc.;

The implementation of child immunisation programmes - the national pulse polio campaign in more recent years - eradication of leprosy, blindness control and treatment of cataract have all contributed towards addressing the visual and loco-motor disabilities, particularly in the working age group population. The coverage and reach of health care system is, however, a serious constraint on addressing the problem of disability in the country, especially in rural areas. More importantly, a critical element of public and social intervention, namely, physical and social rehabilitation programmes for disabled suffers on account of inadequate resources, lack of integration with medical and other treatment and often also from social insensitivity.

The enactment of 'The Persons with Disabilities (Equal opportunity Protection of Rights and Full Participation) Act 1995' which came into effect in 1996 and the Rehabilitation Council of India (RCI) Act 1992 provide the basic policy framework for addressing the issue of disability. The 1995 act defines the responsibilities of the Central and State Governments with regards to the public provided services for the disabled persons. The governments are expected to ensure that every child with disability has access to free and adequate education till the age of 18. It also requires setting up of integrated education and special schools to meet the educational needs of children with disabilities. The RCI Act regulates the manpower development

programmes in the field of education and skill formation for children with special needs. Action has been initiated to suitably emphasize disability concerns in Sarva Shiksha Abhiyan (SSA) and ensure that most of the children with disabilities are covered through inclusive education programmes.

Five composite rehabilitation centres at Bhopal, Guwahati, Lucknow, Srinagar and Sundernagar provide facilities for manpower development and ensure availability of rehabilitation services to all categories of persons with disabilities. Four Regional Rehabilitation Centres provide services to persons with special injuries at Bareilly, Chandigarh, Cuttack and Jabalpur.

Under the scheme of assistance to the disabled for purchase / fitting of Aids and Appliances (ADIP), Rs.32.40 crores had been released to benefit 1.14 lakh beneficiaries in 2005-06 up to January,2006. Artificial Limbs and Manufacturing Corporation manufactures different types of aids and appliances for disabled persons at low cost and works towards development of new prototypes and aids and appliances.

Deen Dayal Disabled Rehabilitation Scheme (earlier known as scheme to promote voluntary Action for Persons with Disabilities) provides financial assistance to voluntary organisations for running rehabilitation centres for leprosy cured persons for manpower development in the field of mental retardation and cerebral palsy and for establishment and development of special schools in the major areas of orthopaedic, speech, hearing, visual and mental disability.

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## **7.8 □ Social Security and Children**

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A 'rights based' approach has been adopted in the tenth plan with the strategy of promoting survival, protection and development of children and the adoption of the 'National Charter of Children' in February,2004 and the 'National Plan of Action for Children' in August,2005. Proposal to setup a 'National Commission for Child Rights' is under consideration of the parliament.

One of the largest child intervention programme in the world is the ICDS Scheme initiated in 1975 with a package of six basic services for children up to six years of age, and for pregnant and nursing matters. These services are : health check up, immunization, referral services, supplementary feeding , pre-school education and health and nutrition education through a single window delivery system.

Special schemes such as the Ballika Samridhhi Yojana (BSY) and Kishori Shakti Yojana (KSY) are being implemented for improving the life cycle approach of the girl child. The BSY initiated in 1997-98 provides for cash deposit in an interest bearing account to pay for the girl child's education and subsequently to revert to her on her attaining the age of 18 years. The scheme is in the process of being transferred to the States. KSY is a special intervention for adolescent girls (11-18) years, which

uses the ICDS infrastructure to provide them all round development including nutrition, literacy and vocational skills.

The scheme of Creches and Day-Care centres for children of Working and Ailing Mothers is being implemented by the Central Social Welfare Board and two other national level Voluntary Organisations, namely Indian Council of Child Welfare and the Bhartiya Adimjatik Sevak Sangha.

The policy framework and resulting interventions for addressing the issue of child labour, in most states, ranges between what could be termed as the 'preventive approach', involving suitable legal interventions- for checking and regulating the entry of children in the labour market-on one hand and the 'facilitative public interventions' for creating an environment, particularly economic for encouraging withdrawal of children from the labour market, on the other. The basic objective has been to create conducive social and economic atmosphere for discouraging the entry of children in the target age group of 5-14 years in the labour market. At the same time, states have taken recourse to publicly funded programmes that are aimed at improving accessibility and enrolment of children in schools, for instance, by providing mid-day nutrition supplements to school children or there are policies for regulating (i.e., mostly increasing) wage rates for adults through measures such as minimum wage legislations that point higher household income, thus, easing pressures on pushing children into the labour market.

The constitution of India explicitly address the issue of Child Labour Articles 24,39(e) & (f) and 45 incorporate specific provisions to secure compulsory education and labour protection for children. Following from the Constitutional provisions and directives, a number of Acts including the Child Labour (Prohibition and Regulation) Act, 1986, Factories Act, 1948 (Section 67), The Plantation Labour Act,1951 (Section 24), Merchant Shipping Act, 1951 (Section 10-9), Mines Act, 1952 (Section 45), Apprentices Act, 1961 (Section 3) etc. have been enacted and modified from time to time. The first of these, namely, the Child Labour Act, 1986 is a comprehensive statement that prohibits employment of children in certain occupations and processes. Through subsequent amendments, the working conditions of children have been regulated in all employment categories and the schedule also has been substantially enlarged to cover in all 13 occupations and 51 processes.

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## **Unit - 8 □ Role of NOGs in Promotion and Protection of Human Rights for Women, Children and for Other Backwad Classes**

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### **Structure**

#### **8.1 Introduction**

#### **8.2 The Women Community the issue of Human Rights and the Role of NGOs**

#### **8.3 Role of NGOs in Promotion of Right to Dalits, SCs and STs**

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### **8.1 □ Introduction**

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NGOs are independent development actors existing apart governments and Corporations, operating on a non-profit or not-for-profit basis, with an emphasis on voluntarism, and pursuing a mandate of providing development services, undertaking communal development work or advocating on development issues. The development of international norms, institutions and procedures for the protection of human rights has gone hand in hand with the proliferation of non-government international organizations working in human the human rights fields. Some NGOs played an important role in San Francisco during the drafting of the UN Charter. There they labled for the inclusion of human rights provisions in the Charter and far a system that would give NGOs formal institutional affiliation with and standing before UN organs. The result was Article 71 of the UN Charter, which provides that “the Economic and Social Council may make suitable arrangements far consultation with non-government organizations which are concerned with matters within its competence”.

Article 71 was implemented in due course by ECOSOC. It establishes a formal system that enables qualified NGOs to obtain one of three types of consultative status with the organization. The existence of this system has encouraged the creation of more NGOs, the adoption of similar consultative systems by other international and regional organizations, all of which has produced more NGOs. Today, as a result, there exist a myriad of these groups throughout the world. Some specialize in only one subject, such as human rights, health, or environment matters, others focus either on more general interests and agendas or on particular issues of a given speciality.

Whether or not they have a former affiliation with an inter-governmental organization, the NGO's resemble domestic pressure groups or lobbyists. Human rights NGO's have played a particularly important role in the evolution of the international system for the protection of human rights and in trying to make it work. Governments which violate human rights are always eager to make sure that the applicable international human rights norms, institutions and procedures remain weak and ineffective. The human rights NGO's provide a needed counterpoint to these government attitudes and deserve much of the credit for the progress that has been made in recent decades.

The functions human rights NGO's perform differ depending upon the purpose for which they established, their resources, the geographic regions in which, they operate and the nature of their membership. There are NGO's which are interested in the world-wide promotion of human rights. Others limit their activities in specific regions or sub-regions (for example, Central America, Africa, Asia) or to specific countries or issues. Amnesty International, the Lawyers Committee for Human Rights, the International League for Human Rights, the International Commission of Jurists, the Watch Committees, to cite but a few well-known NGO's have world-wide interests.

The methods NGO's employ in the pursuit of their goals also differ from group to group. Some choose to resort to only one or a limited number of techniques or activities be it the preparation reports, the filing of complaints with international organizations, the promotion of international legislation, lobbying before national and international legislation, lobbying before national and international bodies, and so on. Others use all these tools depending upon the circumstances. Some NGO's limit themselves to the protection of specific groups or to specific concern. This is true of the Anti-Slavery Society, the Minority Rights Group, or the international committee of the Red Cross. Others have much broader concerns.

The notion of human rights is dual in character. On the one hand philosophers like Aristotle have emphasized the valuable choice-making characteristic of human beings that all governments should protect. On the other hand in the legalist tradition, political scholars have observed that human rights are an ideology for minimizing the danger of arbitrary

action of the State against the citizens. Both the choice-making and ant tyrannical connotations of human rights are equally important, especially in guiding public policy.

The association of human rights with human development and emergence of rights-based approaches to development policy are increasingly finding place in discussions on international development. Rights-based approaches have evolved from the international human rights framework, from social cultural and political struggles and debates and a historical transition from clientelism to citizenship. Until recently, narrow definitions of human rights (related to civil and political liberties) were being promoted in international development as an aspect of good governance. But a right-based approach is understood to be broader because all rights including economic, social and cultural rights are considered indivisible, inter-related and interdependent.

The ideology of the United Nations is that human rights are meant to inform and guide development policies. Human development is only meaningful and sustainable when designed to ensure the realization of human rights. States have responsibility to protect and promote universal respect for and fulfilment of human rights in their individual and joint actions.

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## **8.2 □ The Women Community, the Issue of Human Rights and the Role of NGOs**

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The Seventh Plan document on socio-economic programmes for Women's has clearly stated that voluntary agencies are to be fully involved in launching an organized campaign against social evils affecting women. They have thus been given a prominent place in the Plan document. The NGO focus on women-specific issues in programmes is still in its formative stages. So far, efforts have largely focussed on employment generation at the micro-level.

Despite the year 2001 being declared the year for Empowerment of women, the status of women in India causes concern, with socio-economic indicators showing a disturbing trend a falling Child sex-ratio, rising poverty and unemployment, starvation deaths linked to the denial of right to life and livelihood and displacement of tribal people. These are not isolated trends but needs to be seen in the light of globalization and rising caste and religious intolerance, which have increased varied forms of violence against women, as a group have faced adverse impacts owing to globalisation and the pursuit of neo-liberal policies by governments. The problem persists despite the vibrant resistance by the women's movement to this over the past several decades.

The absence of land reforms has resulted in the dispossession of rural and tribal women and the denial of land rights. Caste discrimination impedes effective political participation by elected dalit women representatives and heightens violence. The majority of girls and women being trafficked for prostitution are from Dalit and tribal communities.

It is recommended that states should have a specific monitoring mechanism to track missing girls and women in rural areas.

Voluntary organisations have an enormous task at hand in the new millennium. They not only have to work for the economic empowerment of women, but also address the issues of social, political and cultural empowerment. For economic empowerment, voluntary organisations have a major role to play in training, skill building and in providing credit facilities. They have a role in bringing in attitudinal change in people on gender equality, education of girls, the menace of dowry, wife-beating etc. Voluntary organisations and women's groups also have a role to force changes in policies, laws, rules and regulations on women. The overall focus has been to enhance the status of women. Questions are asked about unequal gender relations within various classes and communities, particularly in urban settings. The dowry tradition is one focus of attention in this context. Consumerism stimulates the demand for dowries and consumerism too is attacked by women's groups. Dowries accentuate son preference and female infanticide. These practices are also attacked by women's groups. The emphasis by environmentalists on the need to deal with deforestation, scarcity of fodder and the increasing difficulty of obtaining water in rural areas, made a big impact on women's movement. It became clear that these environmental issues had a particularly adverse impact on the work and lives of women. Thus Eco-Feminism was born. The question of gender inequality in the context of deteriorating environment came to the fore.

The Self-Employed Women's Association (SEWA) was established in 1972. It grew out of the women's wing of the Textile Labour Association. SEWA's aim was to unionise women workers in the unorganised sector. 'It deals with issues such as minimum wages, rights to land, occupational health, home-based workers and access to credit. SEWA combines three movements; labour, co-operative and development. SEWA has 30,000 members and it has organized 30 all-women co-operatives. In 1982 an attempt was made to establish SEWA BHARAT, that is women's groups all over India affiliated with SEWA, Ahmedabad. Many organisations were established but some have closed down and others claim complete independence.

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### **8.3 □ Role of NGOs In Promotion of Rights To Dalits, SCs & STs**

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The issue of human rights is a very important component of the socio-economic development programme for the uplift of the dalits and tribals. Basic to all the developmental efforts for the uplift of the dalits and the tribals is respect for their human rights, respect for their right to equality and equal opportunity, their right to a life with dignity, the right to enjoy the rights guaranteed by our Constitution. Statutes and schemes are important, but they become meaningless in the absence of a commitment to enforce them and to implement

them. The annual report of the Ministry of Welfare for the year 1994-95 records not only a higher incidence of poverty among Scheduled Castes and Scheduled Tribes, but also a slower elimination of the extent of poverty among them. Voluntary organizations do have an important role in remedying this situation. There are hundreds of voluntary organizations which work quietly among the less privileged, in the remote areas of our country, satisfied and happy with the changes they are able to bring about. They need to be brought into the national focus, for their work needs to be appreciated, emulated and rewarded.

This brings us to the role of the NHRC in supporting voluntary organizations. In the development of a working relationship with NGOs, the commission has identified specific areas. These cover articulation of complaints of human rights violations; association in matters of inquiry into complaints, awareness creation through education and training; and joint action on issues in respect of which NGOs have specialized knowledge. The commission is firm in its belief that the protection and promotion of human rights in our country require courage and commitment of NGOs, and their ability for sustained handwork. The work of the commission has convinced it of the need for working closely with NGOs. There will be a widening and deepening of the relationship in the years to come. Voluntary organizations are watch-dogs as well as trend setters; watch dogs of what we must protect and preserve; and trend-setters of change and transformation.

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## **8.4 □ Role of NGOs In The Promotion of The Rights of The Children**

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NGOs have played a significant role and have been in the forefront providing services to children. There has been a shift from the welfare approach to thrust on development and empowerment in the interventions for children. The NGOs have developed several strategies based on child rights perspective to intervene on behalf of children and protect their rights. Many NGOs and grass-roots organizations have intervened with various approaches. Some of the interventions have been in the following kinds of activities.

- Research and documentation.
- Advocacy at all levels to bring about structural and policy changes.
- Preparing alternative reports on status of child rights.
- Promoting networking and co-ordination among NGOs to jointly advocate on issues which affect the rights of the child.
- Awareness building.
- Mobilization of public opinion.
- Intervening in special cases of violations.
- Providing a platform for expression of children's concerns
- Direct actions like raids and liberation of children in servitude.

- Building pressure groups.
- Capacity building (building in the necessary skills, structures, attitudes and knowledge, required to work better).
- Lobbying with the government to review existing schemes towards being more child-oriented.
- Running field action projects to reach out to children.
- Direct work with children and their communities.

Several international organizations like UNICEF (United Nations Children's Fund), UNDP (United Nations Development Programme), UNIFEM (United Nations Development Fund for Women) WHO (World Health Organization), ILO (International Labour Organisation), FAO (Food and Agriculture Organization), UNESCO (United Nations Educational, Scientific and Cultural Organization), UNFPA (United Nations Fund for Population Activities), CARE (Cooperative for Assistance and Relief Everywhere), Save the Children and the IBRD (International Bank for Reconstruction and Development) are actively involved in the development and protection of Child rights. Some other important agencies, including Human Rights Watch Defence for Children International (DCI), International Society for the Prevention of Child Abuse and Neglect (ISPCAN) and End Child Prostitution in Asian Tourism (ECPAT), work towards promoting the rights of the child.

NGOs have significant roles and crucial tasks in the struggle for the realization of the rights of children and in the elaboration and further development of the standards and rights affirmed by the national and international laws, developing more effective implementation by monitoring resource allocation, child development programmes and projects and undertaking evaluation thereof helping develop participatory, community level structures for delivering resources and services to meet the basic needs of the children. Advocacy and lobbying will also be necessary in support of proposals for law reform and standard settings. Rights are of limited values unless they can be effectively asserted. NGOs have an important role to ensure effective assertion of rights. Additional tasks include critiquing national reports prepared by governments and where appropriate, preparing alternative NGO reports on the subject/. At the regional level NGOs will also need to explore ways of using regional human rights machinery and instruments to address regional specificities and disparities and developing regional positions and strategies regarding issues relating to children. At the international level, NGOs' vital role will include identifying specific areas for international co-operation and technical assistance to realize the rights of the child. The challenge for child rights NGOs lies in applying a participatory empowerment approach to the development of the rights of the child.

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## **8.5 □ NGOs And Child Labour**

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Non-government organization have played an active vital role in making child labour visible, raising levels of public concern, and protecting the working children. They have mentioned the conditions in which the children work and helped launched the long indispensable process of changing public attitudes, providing alternatives and access to justice. A number of NGOs have taken up the issue of child labour and bonded labour and carried out programmes to throw light on this issue. The interventions are in the areas of counselling, awareness raising, social mobilization, encouraging community participation, releasing children from work providing vocational training, enrolling children in schools and ensuring their retention monitoring the function of school, bringing children into the formal mainstream schooling system, preparing educational fits'and facilitating interaction between the various stake holders like government officials, teachers, employers, etc.

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## **8.6 □ Role Played By NGOs in the Areas of Exploitation And Trafficking**

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NGO initiatives in India have been restricted primarily to networking, lobbying /advocacy and welfare services to the victims and their children. There are some organizations which have tackled the issue of trafficking for prostitution but in a different perspective, like sensitizing and taking preventive measures among caste based communities of prostitutes, through programmes for their children, specially the girl child. Intervention by NGOs and Women's groups on the issue of trafficking take the following forms :

- Advocacy for the rights of those who are trafficked for the purpose of prostitution.
- Advocacy for the rights of migratory labour or for those who are trafficked for labour.
- Networking for united action to prevent trafficking by like minded groups.
- Lobbying for changes in legislation.
- Advocacy for rights of women in prostitution.
- Providing welfare services for health, education and childcare.
- Running of shelter / safe homes.
- Facilitating rehabilitation and repatriation.
- Providing information about laws, policies and programmes.

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## **8.7 □ NGO Interventions in the Juvenile Justice System**

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There are several Central and state government schemes and NGO interventions in the administration and implementation of the Juvenile Justice Act. The interventions are

in the areas of preventive, institutional, non-institutional, as well as rehabilitative work. Observation homes; Juvenile homes, special homes and aftercare homes are run by the government as well as by the NGOs. The government also provides grant-in-aids to the NGOs to run the homes. The services provided by these homes might include medical treatment, education, accommodation, vocational training, recreation and job placement. The intake of children depends on the age and category of the child. Some of these categories are : street children, orphans, semi-orphans, girl children, children from broken families, children of anwed mothers, and school dropouts.

The interventions seem to be concentrated within urban areas prime cities and in certain geographical areas. The NGOs appear to be working in an individualized, small scale manner and their efforts are thus fragmented and confined to certain areas and to certain specified-categories of children. There are network organizations as well working with street children and other underprivileged children for their survival, protection and development. A good example of evolving partnerships reach out to children is the childline intervention, a national twenty four-hour, free phone emergency outreach service, which tries to link children in need of care and protection to long-term services. Any child/adult concerned can call 10-9-8 (1098) free of charge. This include regular follow-up. It is a project of the Ministry of social Justice and Empowerment, Government of India, in partnership with NGOs the UNICEF, and the corporate sector.

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## **8.8 □ NGO Interventions in Elementary Education**

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Pioneering initiatives by NGOs have drawn attention to new models of classroom pedagogy, teacher training, school management, and so on. NGOs have played a crucial role in advocating for the right to education to be a fundamental right and helping to foster public participation in schooling matters. NGO interventions are generally concerned with activities relating to primary education, literacy, non-formal education, education for street children, child labour, education for groups with physical or mental disability, 1 education for the marginalized or socio-economically deprived groups, education for the girl child, networking and advocacy.

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## **8.9 □ Conclusion**

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The conventional theory of Human Rights presumes a homogeneous civil society and a strong and legitimate democratic state that will protect the rights of life, liberty and freedom of the individual. This is a very narrow perspective of human rights. Our ideology is based on a perspective and practice of human rights that is universal in its applicability but accommodates the specifics of our pluralistic society. It is based on the indivisibility of I human rights rooted in the mandate laid down in the Universal Declaration of Human Rights

the Indian Constitution, the two main UN convents of Civil and Political Rights and Economic, Social and Cultural Rights and several International Treaties ratified by India. Human Rights are also collective rights of communities and people for continuing sustainable development, eco-system and livelihoods. The human rights mandate is heard in the voices of the oppressed and explaited, of indigenou people, fishing communities, women, dalits, children, workers, artisans and peasants; it is the voices from below of the resurgent civil society of sustainble livelihood and eco-system, popular gpvnerance and equitable development.

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### **8.10 □ References**

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- i) Child Rights in India Law, Policy and Practice : Asha Bajpai Oxford University Press.
- ii) Human Rights In India : C.J. Nirmal (editor) Oxford University Press,
- iii) NGOs As Prime Movers : Shivani Dharmarajah Kanishka Publishers.

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### **8.11 □ Exercises**

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- i) What is human rights ? Write in details about the available human right protection measure in Indian soil.
- ii) What roles can be played by NGOs protecting the human rights connected with the women of our society.
- iii) Do you think dalits one deprived of human rights ? How and why ? Illustrate the role of NGOs in promoting the right's to dalits SCs and STs.
- iv) Write an essay on role of NGOs in the promotion of the rights of the children.

