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EMERGENCE OF THE STATE FROM SOCIETY

The State is usually described as *'society politically organized'*. Society is an association of human beings, who live a collective life and form social relations to fulfil their needs of life. That may be physical, emotional, intellectual, and spiritual. The presence of the societal institutions like family, clans, tribes, villages, religious institutions, educational institutions, workplace associations etc. in a society is a fact, which cannot be denied. Society is the whole web of social relationship based on kinship affinity, language affinity, religious affinity, common conscience of individuals and territorial affinity. Social relationships are governed by necessity, custom, courtesy, morality, mutual understanding, agreement or even contract.
When a society is governed by common set of laws, rules, regulations, and obey a supreme authority, it qualifies for being a State. The State fulfils the need of political organization of society to realize the purpose of collective living. This is what we understand from the famous phrases used by Aristotle (384 -322 BCE) in his treatise Politics, where he observed that *'Man is a social animal; Man is a political animal'*.Thus, the State is formed out of society. The Society is the primary association. A State is formed to regulate the political activity of individuals for social order. The State depends on society for its existence, and not vice versa.

R.M. MacIver (1882-1970) in his famous work **The Modern State** has observed thus: *'There are social forms like the family or church or the club, which owe neither their origin nor their inspiration to the state; and social forces, like custom or competition, which the state may protect or modify, but certainly does not create; and social motives like friendship or jealousy, which establishes relationships too intimate and personal to be controlled by the great engine of the state………. The State in a word regulates the outstanding external relationships of men in society.'*

DEFINITIONS OF STATE

There is no accepted definition of the state and it has been differently defined by various writers from time to time. **Machiavelli, in his book The Prince defined state *'as the power which has authority over men'*.** Notwithstanding the disagreement amongst there writers, most of them agree in ascribing to the state the three elements: people, territory and government. Disagreement became prominent in respect of the fourth element, that is, sovereignty. However, the concept of the state is the central theme of the political theory. The state is a social Institution that evolves according to the socio- economic conditions of society. The state is only an aspect of the whole social system. State is a particular portion of society politically organized for the protection and promotion of its common interests. It is main political consciousness which formed the state.
An illustrative list of definitions provided some of the leading political thinkers is provided below:
Harold J. Laski (1893-1950), a British political philosopher in his literary work **An Introduction to Politics** (1931) defines State as *'a territorial society, divided into government and subjects claiming within its allotted physical area supremacy over other associations'*.

Aristotle (384-322 BCE) defines State as *'an associations of families and villages for the sake of attaining a perfect and self -sufficient existence'.*

Salmond defines state as *'an association of human beings established for the attainment of certain ends by certain means, the ends being defense against external enemies and the maintenance of peaceable and orderly relations within the community itself.'*

THE CONCEPT OF WELFARE STATE

The concept of social justice is an ideal which can be achieved if conditions of the social organization permit the authorities to adopt the necessary measures to secure the ideal. Hence, the legal and Constitutional character of the state contributes a lot to the attainment of the ideal of social justice. If the state is founded upon the idea of the welfare of the people then the authorities are duty bound to implement the idea of welfare and thus achieve the idea of Words social justice. In other/a welfare state can provide the means for the attainment of the ideal of social justice.

After considering the prominent definitions available in the sociological literature, Desai identifies the following unique features of the welfare state:

(i) A welfare state is a positive state. This means that, unlike the 'laissez faire' of classical liberal political theory, the welfare state does not seek to do only the minimum necessary to maintain law and order. The welfare state is an interventionist state and actively uses its considerable powers to design and implement social policies for the betterment of society.

(ii) The welfare state is a democratic state. Democracy was considered an essential condition for the emergence of the welfare state. Formal democratic institutions, especially multi-party elections, were thought to be a defining feature of the welfare state. This is why liberal thinkers excluded socialist and communist states from this definition.

(iii) A welfare state involves a mixed economy. A 'mixed economy' means an economy where both private capitalist enterprises and state or publicly owned enterprises co-exist. A welfare state does not seek to eliminate the capitalist market, nor does it prevent public investment in industry and other fields. **By and large, the state sector concentrates on basic goods and social infrastructure**, while private industry dominates the consumer goods sector.

INTRODUCTION

- The welfare state is a concept of government in which the state plays a key role in the protection and promotion of the economic and social well-being of its citizens. It provides a social security net which may include education, housing, sustenance, healthcare etc. Without ensuring equality of opportunity and equitable distribution of wealth, the welfare of the marginalised and deprived sections of society cannot be ensured.

- India at the dawn of the independence inherited several economic (chronic poverty) and social challenges, for example, vulnerable sections of the society such as women, Dalits, children were deprived of basic means of living.

- In this context, the Indian Constitution imbibes the concept of the welfare state, which can be depicted in the form of Fundamental Rights and the other as Directive Principles of State Policy (DPSP).
- Fundamental rights sought to implement political equality and Directive Principles of State Policy sought to implement socio-economic equality.
- In pursuance of this, the Indian state has provided many schemes and policies. For example:
  - Enforcing Article 16(4) the government can provide for reservation of appointments or posts in favour of any backward class that is not adequately represented in the state services.
  - In pursuance of Article 21A, the Parliament enacted the Right of Children to Free and Compulsory Education (RTE) Act, 2009.
  - This Act seeks to provide that every child has a right to be provided full-time elementary education.
  - The Maternity Benefit Act (1961) and the Equal Remuneration Act (1976) have been made to protect the interests of women workers.
  - Schemes like Ayushmann Bharat, Jal Jeevan Mission, Saubhagya scheme etc. are all steps towards fulling the mandate of the welfare state.

CONCLUSION

The welfare state is the mandate of any mature democracy. Therefore, both citizenry and government should strive to make society more inclusive and equitable. While equality of opportunity provides all the sections of the society a level playing field, equitable distribution of wealth empowers them to maximize their productivity and contribution in society. Government schemes like Stand Up India, Start Up India, Jan Dhan Yojana and policies like land reform policies, reservations for the marginalised sections in job opportunities are some of the steps being taken by the government in this direction to ensure equitable distribution of wealth and to provide equality of opportunity.

THE SALIENT FEATURES OF A WELFARE STATE

A welfare state is regarded as a system wherein minimum social responsibilities for certain minimum standards of individual and communal welfare are set. In this grandiloquent design a progressive pattern of society is generally and deservedly envisioned. In that design or process of its perennial evolution it encompasses various diverse illustrious stages like a Laissez Faire state, Totalitarian State, Police State, Social
Service State, Social State, Communist State and a totalitarian state etc.These evidently declare that variegated functions devolve on the state; from the maintenance of law and order to the protection from foreign invasion, liberty of individual to be secured, nationalization and nation-building programmes, building up private initiative, intuition drive and enterprise etc. For a welfare state committed to the high ideals of Justice, Liberty and Fraternity, a democratic form of government is most suitable, proper and meaningful to garment the individual with the virtues of liberty, freedom, justice and equality of law and equal protection of law. A welfare State undertakes to create a moral and intellectual climate for its people as a whole. The scope of State activity is extended to subserve the general and basic needs of the citizen, i.e., his need for food, shelter, work, leisure and the like. It is immaterial if the activities of this nature tend to affect-the profit motive of private individuals. The distinction of public or private ownership does not stand in the way of the positive role which the State has to play. Reasons are, therefore, advanced in favor of the State's control over transport and communication, educational recreation, libraries and museums and even parks and other places of public utility. State investment is allowed on items for which private investment is lacking. The State can own or acquire such industries which are ill-managed. Even State monopoly in certain trades to the total or partial exclusion of private persons may be felt desirable, if necessary, in the public interest. State monopoly is advocated on the ground that unregulated capitalism tends to retard healthy competition and is likely to create an overgrowing concentration of wealth which generates class conflicts posing a threat to public peace.

A welfare State has to protect the general social interest in all possible ways. The legislative policies of the State are, hence, directed towards this objective. An elaborate emphasis is given to the immediate social problems. The welfare state works on empirical and pragmatic criteria to judge each social issue on its merits by affording a most practical solution to the problem in hand. Social welfare is a programme launched to solve all social problems. The solution of social problems will automatically bring about social justice. Social welfare and social justice are, therefore, not equivalent or synonymous expressions.

Social Welfare is a measure while social justice is an achievement. Social welfare is the means and social justice is the end. In the modern political thought, democracy is preferable to any other form of Government. A republic is further preferable to autocracy or aristocracy. The end of democracy is liberty but the end of republic is equality. Democracy creates conditions for the liberty of the individuals. The republic enforces conditions for equality both of status and of opportunity in the socio economic field. A theory composite of the democratic and republican principles represents the compound State known as a democratic republic. A republic, therefore, stands for liberty and equality both. Since a democratic republic fulfils the needs of society by turning its legislative process to regulate socio-economic matters, it is also known as the welfare State - a State that strives to secure the welfare of the people by establishing the essential conditions of good living. A welfare state shall endeavor to secure, by suitable legislation or economic organization or in any other way, to all workers agriculture, industrial or otherwise, work a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. For this purpose, the State activity can extend, if need be, to the right of interference in production, labour welfare, taxation for social uplift, price, regulation on commodities, social insurance, employment, agriculture and the like.

The welfare aspect of the State is not confined to a class of the poor or rich, of owners or workers, but spreads to the society as a whole, especially to those who are deprived of the basic conditions of good living, whether by their own deficiencies or by operation of defective laws or prevalence of social dogmas. It is therefore incumbent upon the State to promote with special care the educational and economic interests of the weaker sections of the people, of those who are socially and economically backward, of those who are physically or mentally handicapped. It is also the duty of the State to take care of children and women to protect them from social injustice and all forms of exploitation.

The term 'Welfare State' is used roughly to describe a society which possesses all or some of the following characteristic:

i) an all embracing scheme of social security against normal risks and hazards of life such as accidents, sickness, unemployment, old age, etc. ;
ii) Provision of a number of free services by the State such as free primary education, free medical aid, etc. ;
iii) the maintenance of full employment for the working force of the country whatever the cost may be; the State takes the responsibility of providing jobs for all able bodies workers willing to work;
iv) fair degree of equality of incomes and opportunity, for all citizens based upon redistribution of taxation and beneficience of public expenditure; and
v) The public ownership of utility services and basic industries.

The Welfare State is identified with the improvement of the conditions of life physically, mentally, emotionally, economically and politically, of socially handicapped individuals or otherwise disadvantaged individuals or groups. The ultimate aim is to provide social security for all which includes social assistance in some free services and social insurance i.e., some benefits on a contributory basis. Among the economic advantages of the welfare state may be mentioned equality, social security, economic democracy, full employment and so on. There are political advantages too e.g., social contentment and dignity of the individual.

ORIGIN OF THE CONCEPT OF WELFARE STATE

The term 'welfare state' has its origin in the term 'WHQL FARR STAAT (Welfare State). It probably looks back to 'welfare budget of 1909' and owes something to German’Whol Fahr

Staat' of the same period. American conservatives in United States used welfare measures in Roosevelt regime in 'New Deal' and brought into operational welfare measures like National Assurance, National Insurance, and National Health Service etc.

According to Robson the origin of welfare state is from these sources:

From French Revolution came the ideas of liberty, equality and fraternity;

From Utilitarianism came the ideas of the greatest happiness of the greatest number;

From Bismark and Beveridge came the ideas of social insurance and social security;

From Fabian socialists came the ideas of public ownership and basic industries and essential services;

From John Maynard Keynes came the doctrines controlling trade cycles and avoiding mass employment;

From Sydney Bestrico Webb came the ideas banishing poverty, and introducing the industrial democratic role of Trade Unions and cleaning base of society.

From Titmus and Hobhouse and Leonard came various other ideas.

Against the background of various social problems and conditions Great Britain became the foremost pioneer of welfare state measures in its efforts to solve its practical problems.It is for this reason Maurice Bryce says 'Welfare State is a practical answer to the British problems of industrial development and mass society. Under the Poor Law "all able-bodied compulsorily had to work and the aged, sick and children were to be provided for, out of compulsory tax which was to be levied by Parish Overseers. The poor were classified into three categories:

i) Poor by defect (such as impotency, descrepit etc.)
ii) Poor by casuality, and
iii) Thriftless Poor.

Vagrancy was punished. The rogues and able-bodied were given jobs or else they were in 'danger of the statute of the poor' to be whipped.

THE FUNCTIONS OF A WELFARE STATE

The primary functions of a welfare state are:
i) To afford equality of opportunity;
ii) To afford basic standards of living; in keeping with human dignity to all;

Whatever their station in life and the social system, and within a democratic framework and within a world at peace.

The Welfare State is mainly concerned with promoting an all-round welfare and development of the citizens; it is concerned with the wellbeing of the entire nation. The concept of Welfare State reached its maturity in the Twentieth Century; the State now takes care of the welfare of all the people.

THE CONCEPT OF WELFARE STATE IN INDIA

In the Indian context 'Dana' was the earliest conception of the social welfare - 'the philosophy - Underlying it was known as 'Dana', 'Dharma' or ' Dhamma'. Daria, literally meant sharing and 'dharma' had a variety of meanings ranging from duty or obligation to charity or equity.

During the Moghul period, in medieaval times in India the charity was known as 'Khairat' (meaning giving alms). The goal of social welfare in this Age was described as 'Lok Sangraha' 'Loka Sreya' or 'Sarvodaya' in Indian history.

Welfare activity existed in India in some form or the other - in some crude form during the rule of Khalifs, Tughlaks, Shersha and Akber's times, and earlier during Chalukyas, Cholas, Mauryas etc. and in a better form during the Golden Age of Guptas and Vikramaditya and still earlier in the best divine form during the epic 'Rama Rajya' times. Our Smrities and Srutis advocated the best and laudable form of welfare measures unknown to this material and mundane world till today. Inspired by these only Vivekananda said, once, 'Him I call Mahatma whose heart bleeds for the poor'; it was a clarion call even to the West to help poor, at one time looking to the world around us and the poor man's plight without even a heart, renders sane advice by advocating 'So long as millions live in hunger and ignorance, I hold everyone a traitor, who while educated at their expense pays not the least heed to them.

HISTORICAL DEVELOPMENT OF THE CONCEPT OF WELFARE STATE IN INDIA

For over three and a half centuries India was under foreign domination. In 1600, East India Company with the sole policy of trading with India was established and later tended to reduce India to the status of a colonial dependency. It tended to disintegrate traditional economy of the country, which was largely self-sufficient, by making India a supplier of raw materials and a market for manufactured good. Indians were oppressed and made to work in factories without remmunerative wages. The East India Company which came to India as a Trading Company slowly shed its commercial character and became a political organization in later years. By 1858 the Company rule came to an end. British Crown assumed sovereignty over India and the British Parliament enacted the first Statute for the Governance of India - under the direct rule of the British Government - the Government of India Act 1858. This Act serves as the starting point of the present survey because it was dominated by the principle of absolute imperial control without any popular participation in the administration of the country.

The British Government was only concerned with the collection of revenues and neglecting essential duties of Government to herald a Welfare State. This does not mean that Government was inactive to the needs of people in India. No doubt, measures were taken to regulating public safety, health and morality, labour, trade and business and education. But to what extent did these measures satisfy the Indian people in the wake of 20th century thought. All this measure was mostly in their interest to improve their trade and power. Active pursuit of public welfare is the accepted canon of modern political and social philosophy. State is looked upon to protect labour from exploitation, women from masculine domination, children from paternal indifferences and neglect, and the poor from the dispensation of punitive relief. The State has to guard against disease, disorder and immorality.

> ***A*** welfare state is regarded as a system wherein minimum social responsibilities for certain minimum standards of individual and communal welfare are set. In that design or process of its perennial evolution it encompasses various diverse illustrious stages like a Laissez Faire State, Totalitarian State, Police State, Social Service State, Social State, Communist State and a Totalitarian State etc.

These evidently declare that variegated functions devolve on the state from the maintenance of Law and Order, to the protection from foreign invasion, liberty of individual to be secured, nationalization and nation-building programmes, building up private initiative initiation, drive and enterprise etc.
Therefore, for a welfare state of our constitutional dream only a democratic form of Government is most suitable, proper and meaningful to garment the individual with the tonics of liberty, freedom, justice and equality of law and equival protection of laws.

In assisting democracy to don the saffrons of socioeconomic transformation, an invisible thread of constitutional continuity from irretrievable torn past, to always available future contact, should be established through garmet of socioeconomic revolution and process of law.

This is rendered inimitable and not realizable with odd counters and Utopian roadblocks in the absence of patriotic fervor fretting and fuming always for a real progress. Juris is Law and prudential is knowledge. The knowledge of Law should inform that dedicated spirit is demanded from both bench and the bar, government and/governed. Such a dedicated judiciary and nation can unravel hidden miseries and progress unhindered towards just order*, This kind of dedication is a must - which can be termed patriotic jurisprudence or law, the knowledge of which patriotically rendered, will lead us to the right path on the journey to welfare state.

The helping hand is provided in Part-Ill and Part-IV of our Constitution itself. The Directive Principles of State Policy are meant to subserve this purpose only. The highest law of the law achieves it, through its massive efforts of socioeconomic transformation.

MODERN WELFARE STATE

Irrespective of the classification, functions of a modern welfare state include the maintenance of law and order, establishment of justice, defence, public security and foreign relations, maintenance of public health and sanitation, water supply, transport and communication system, supply of power, electricity and essential commodities, control of banking, currency and inflation, preservation of forests, checking of trading and control of prices and measurements etc. Other functions include the removal of social exploitation and establishment of social unity, provision of economic and other benefits to weaker sections, social security to old age people, widows, orphans and disabled, protection of workers by regulating minimum wages, pension, education of the masses, encouragement of art and literature, scientific and technological research and cultural exchanges to increase the spirit of cultural unity and harmony among the masses.

CONCEPT OF SOCIAL LEGISLATION

Legislation is an instrument to control, guide and restrain the behavior of individuals and groups living in society. Individuals and groups left in absolute freedom may clash with each other in the pursuit of their self interest at the cost of others. They cause grave harm to society leading to chaos. Legislation is one of the many institutions which controls and directs individual action into desirable channels. Others being social customs, traditions, religious prescription etc. Law is a vast subject having many branches. In a broad sense, all laws are social in character, in a narrow sense only those laws that are enacted for the purpose of social welfare are categorized as social legislation. There are several types of legislations such as taxation, corporate, civil, criminal, commercial etc.

Legislation is that branch of law which is an aggregate of the laws relating to the various socio-economic condition of the people. It is a social institution that embodies the social norms created on the initiative of a competent legislative agency. These laws are enacted keeping in view the needs of the time, the circumstances of the nation and its socio-political ideals. Let us take a look at some of the definitions of social legislation. Dr. R.N. Saxena defines social legislation as 'any act passed by the legislature or a decree issued by the government for the removal of certain social evils or for the improvement of social conditions or with the aim of bringing about social reform. **A comprehensive definition of the term social legislation is found in the Dictionary of Sociology by Fairchild. According to this definition social legislation means laws designed to improve and protect the economic and social position of those groups in society which because of age, sex, race, physical or mental defect or lack of economic power cannot achieve health and decent living standards for themselves**. Social legislations, according to Prof. Gangrade, involves an active process of remedy by preventing or changing the wrong course of society or by selecting among the courses that are proved to be right. To sum up these definitions social legislation can be defined as special laws which are passed with the special purposes of improving the socio-economic position of the specific groups such as women, children, elderly, scheduled castes, scheduled tribes, physically and mentally challenged, unorganized workers, agricultural and landless laborers and other such vulnerable groups.

SOCIAL LEGISLATION: NEEDS AND OBJECTIVES

The need and importance of social legislation in a Welfare State cannot be undermined. Our Constitution reflects the aspirations of masses to become a welfare state where everyone enjoys the right to live a dignified life and right to the pursuit of happiness are fundamental. In broader sense, everyone in the country men is entitled to have basic human rights such as right to life, employment, work health, education, etc. Now these rights can only be secured through State action. Social legislation gives us a proper formalized legal framework for achieving these goals. It is a known fact that as social order undergoes changes, new problems and demands arise which cannot be allowed to go out of hand. Problems such as juvenile delinquency, new forms of crime, socio-economic injustices, socio-economic inequalities, problems of social security have to be tackled through welfare legislations. It is important to have social legislation to meet the existing social needs and problems. It also anticipates the direction of social change. Thus, Social legislation is needed

i) To ensure social justice,

ii) To bring about social reform,

iii) To promote social welfare,

iv) To bring about desired social change.

v) To protect and promote of rights of socio-economically disadvantaged groups of the society.

OBJECTIVES OF SOCIAL LEGISLATION

Social legislation derives its inspiration from our constitution and has the following specific objectives:

i) Removal of discrimination on the grounds of sex, religion, caste, class etc. and promotion of equality to all.

ii) Safeguard the rights of the weaker section such as women, children, elderly, widows, destitute and the backward classes.

iii) Eradication of traditional malpractices and social evils such as untouchability, dowry, child marriage, female infanticide etc.

iv) Provision of social security.

Social legislation is required for (i) protection and promotion of rights, (ii) prevention of individual and social disorganisation, (iii) proactive action, (iv) pioneering social reforms in social institutions and, (v) progressive social values for desired social order. In brief, the main aim of social legislation is to change and reorganise society by improving its social and economic condition. Each individual of the society has to be given equal rights and equal opportunities. Social legislation aims to address social problems through legislative means, and initiates process of social reform and social change based on sound social rules. Since the process of social change in fast social legislation also provides desired direction to changes.

SOCIAL JUSTICE

The term social justice implies a political and cultural balance of the diverse interests in society. Democracy is the only means by which is indeed a dynamic process because human societies have higher goals to attaintion. Social justice is an integral part of the society. Social injustice cannot be tolerated for a long period and can damage society through revolts. Therefore the deprived class should be made capable live with dignity. Social justice is a principle that lays down the foundation of a society based on equality, liberty and fraternity. The basic aim and objective of society is the growth of individual and development of his personality. The concept of social justice is a revolutionary concept which provides meaning and significance to life and makes the rule of law dynamic. When Indian society seeks to meet the challenge of socio-economic inequality by its legislation and with the assistance of the rule of law, it seeks to achieve economic justice without any violent conflict. The ideal of a welfare state postulates unceasing pursuit of the doctrine of social justice.

JUDICIARY

In India we have the rule of law. What this means is that laws apply equally to all persons and that a certain set of fixed procedures need to be followed when a law is violated. To enforce this rule of law, we have a judicial system that consists of the mechanism of courts that a citizen can approach when a law is violated. As an organ of government, the judiciary plays a crucial role in the functioning of India's democracy. It can play this role only because it is independent.

WHAT IS AN INDEPENDENT JUDICIARY?

Imagine a situation in which a powerful politician has encroached on land belonging to your family. Within this judicial system, the politician has the power to appoint and dismiss a judge from his office. When you take this case to court, the judge is clearly partial to the politician. The control that the politician holds over the judge does not allow for the judge to take an independent decision. This lack of independence would force the judge to make all judgments in favour of the politician. Although we often hear of rich and powerful people in India trying to influence the judicial process, the Indian Constitution protects against this kind of situation by providing for the independence of the judiciary. One aspect of this independence is the 'separation of powers'. This, as you read in Chapter 1, is a key feature of the Constitution. What this means here is that other branches of government – the legislature and the executive – cannot interfere in the work of the judiciary. The courts are not under the government and do not act on their behalf. For the above separation to work well, it is also crucial that all judges in the High Court as well as the Supreme Court are appointed with very little interference from these other branches of government. Once appointed to this office, it is also very difficult to remove a judge.

It is the independence of the judiciary that allows the courts to play a central role in ensuring that there is no misuse of power by the legislature and the executive. It also plays a crucial role in protecting the Fundamental Rights of citizens because anyone can approach the courts if they believe that their rights have been violated.

WHAT IS THE ROLE OF THE JUDICIARY?

Courts take decisions on a very large number of issues. They can decide that no teacher can beat a student, or about the sharing of river waters between states, or they can punish people for particular crimes. Broadly speaking, the work that the judiciary does can be divided into the following:

Dispute Resolution: The judicial system provides a mechanism for resolving disputes between citizens, between citizens and the government, between two state governments and between the centre and state governments.

Judicial Review: As the final interpreter of the Constitution, the judiciary also has the power to strike down particular laws passed by the Parliament if it believes that these are a violation of the basic structure of the Constitution. This is called judicial review.

Upholding the Law and Enforcing Fundamental Rights: Every citizen of India can approach the Supreme Court or the High Court if they believe that their Fundamental Rights have been violated.

WHAT IS THE STRUCTURE OF COURTS IN INDIA?

There are three different levels of courts in our country. There are several courts at the lower level while there is only one at the apex level. The courts that most people interact with are what are called subordinate or district courts. These are usually at the district or Tehsil level or in towns and they hear many kinds of cases. Each state is divided into districts that are presided over by a District Judge. Each state has a High Court which is the highest court of that state. At the top is the Supreme Court that is located in New Delhi and is presided over by the Chief Justice of India. The decisions made by the Supreme Court are binding on all other courts in India.

In India, we have an integrated judicial system, meaning that the decisions made by higher courts are binding on the lower courts. Another way to understand this integration is through the appellate system that exists in India. This means that a person can appeal to a higher court if they believe that the judgment passed by the lower court is not just.

CONCEPT OF SUBSTANTIVE LAW

The law which defines rights and liabilities is known as substantive law. It is so called because it puts in a clear-cut and precise form the substance of the subject matter for enforcing which the courts of law and the officers of law exist. The function of substantive law is to define, create or confer substantive legal rights or legal status or to impose and define the nature and extent of legal duties or liabilities. Substantive law defines, in regard to a specific subject the legal relationship of people among themselves or their relationship with others people or between them and the State. Any wrong done by an individual, group of persons or the state against the other(s) will make the wrong-doer accordingly liable to the others. Wrongs may be either civil or criminal. Substantive law refers to all categories of public and private law, including the law of contracts, property, torts and crimes of all kinds.

For *a civil* wrong, law calls upoil and forces the wrong-doer to perform his part of contract; to do the act in question which it was his legal duty or obligation to have done the very act, or the failure or the denial to do which is the wrong in question against which remedy is sought. Where such performance, known in legal language as specific performance, is not possible then the wrong-doer is liable to pay damages or compensation to the one who suffers from such wrong.

It could be a wrong against any private person or against society as such, or against the State itself. State has right and power to maintain the law and order within the community, to keep society intact, if it has been disturbed.

A criminal wrong, on the other hand, has an altogether different character. A criminal wrong is an act or omission which is made punishable by any law for the time being in force; and, in legal language, it is called an offence. Substantive law deals with the "substance" of your charges, incase of any crime done against the other. Every charge is comprised of elements. Elements are the specific acts needed to complete a crime. Substantive law requires that the prosecutor prove every element of a crime in order for someone to be convicted of that crime. What elements are required will depend on the crime with which you are charged vis-a-vis the State's Substantive laws. For example: Suppose you are charged with a felony driving while intoxicated.

Here, at four States the prosecutors are required to prove that:
i) You were driving or operating a motor vehicle.
ii) Driving on a public roadway.
iii) Driving while you were intoxicated.
iv) And that you have prior convictions, if any, for driving while intoxicated.

Substantive law is the statutory or written law that governs rights and obligations of those who are subject to it. It defines the legal relationship of people with other people or between them and the State. In other words, substantive law defines, in regard to a specific subject, the legal rights and relationship of people with other people or as between them and the State. Substantive law defines civil rights and responsibilities /liabilities in civil law as well as crimes and punishments in the criminal law. It is codified in legislated statutes or can be enacted through the initiative process. For example: Murder is an offence under the Indian Penal Code (IPC) and is defined therein. The IPC also provides for punishment for the crime. This is known as substantive law. Similarly, the provision of the Indian Contract Act, 1872 are substantive in nature. Substantive law has increased in volume and changed rapidly in the twentieth century as the Central and State legislatures have enacted statutes that displace many common law principles. The Indian Contract Act, the Transfer of Property Act, the Industrial Disputes Act, the Indian Penal Code is instances of substantive law.

CONCEPT OF PROCEDURAL LAW

The law which tells about how the courts and the officers dealing with the law act in giving effects to the substantive law of the land is known as ***Adjectival or Procedural law.*** 'Civil' and 'Criminal' laws are not two water-tight compartments. There are several wrongs for which there are both civil and criminal liabilities and there may be actions which are both civil and criminal in nature.The law of procedure is that branch of law which governs the process of litigation.
It embodies the rules governing the institution and prosecution of civil and criminal proceedings. Procedural law comprises the rules by which a court hears and determines what happens in civil or criminal proceedings. Historically, the law known to many is substantive law, and procedural law has been a matter of concern to those who used to preside as judicial officers or those who advocate law. But, over time, the courts have developed rules of evidence and procedure, which also fall under procedural law mostly related to fairness and transparency of the process.

According to Salmond (Fitzgerald, 2006) the law of procedure is the law of actions. The word 'actions' is used in the sense to include all legal proceedings. Procedural law deals with the means and instruments by which the ends of administration of justice are attained, i.e. effective administration or application of substantive law. Procedural law is the vehicle providing the means and instruments by which those ends are attained. It ***regulates*** the conduct of the Courts and the litigants in respect of the litigation itself, whereas substantive law ***determines*** their conduct and relations in respect of the matters litigated. In brief, the procedural law: informs about the process that a case will go through (whether it goes to trial or not); determines how a proceeding concerning the enforcement of substantive law will occur; and prescribes the practice, procedure and machinery for enforcement of the rights and liabilities. The Indian Evidence Act, the Limitation Act, the Code of Civil Procedure, the Code of Criminal Procedure is instances of procedural law.

INTERRELATIONSHIP AND DIFFERENCES BETWEEN SUBSTANTIVE LAW AND PROCEDURAL LAW

It is interesting for us to know the relationship and differences, if any, between the substantive law and procedural law. Both are related to each other as follows.
1) Substantive law and procedural law are the two main categories within the law. One without the other is useless. Both are essential for delivery of justice.
2) Procedural law is an adjunct or an accessory to substantive law and renders the enforcement of substantive rights very effective.
3) Both, substantive law and procedural law, are codified in the form of rules. While the substantive law refers to the body of rules that stipulate the rights and obligations of individuals and collective bodies, the procedural law is also the body of rules, but governing the process of determining the stipulated rights and liabilities of the parties in the given facts and circumstances.
4) Substantive laws and procedural laws exist in both civil and criminal laws. But, in criminal law, if the procedural law is used to prevent commission of offences then it assumes the character of substantive law as well.

We also need to understand the difference or the distinction between the substantive law and procedural law. Substantive law precedes the procedural law. Procedural laws sub-serve the substantive laws in the sense that the former will act as a means to promote and achieve the interests, objectives, aims or goals of the latter.

Justice Schroeder (Sutt **v** Sutt, 1969) explained in a family law case, that "It is vitally important to keep in mind the essential distinction between substantive and procedural law". Substantive law creates rights and obligations, and is concerned with the ends which the administration of justice seeks to attain. It defines the actual law set down by the legislature, such as elements of a right, liability obligation, crime, penalties to be imposed, rules of evidence, etc. Procedural law defines the manner in which the case proceeds and will be handled. In a criminal case, if the state violates a substantive rule of law, that is more likely to result in reversal of a conviction than a violation of criminal procedural law (unless the violation relates to a constitutional or legal protection).

We can conclude that the substantive law defines the rights and duties, while procedural law provides the machinery or mechanism for enforcing the rights and duties. However, the clear differentiation between substantive law and procedural law is that the latter sub-serves the former. Even though both these laws are affected by Supreme Court opinions and are subject to constitutional interpretations, each serves a different function in the civil and criminal justice system. A legal action is started by taking out a writ in civil case, by a summon
or an arrest in a Criminal case, and ends by the trail and judgment in the court itself, followed by the execution of the judgment.

Whether the law is civil or criminal, it may all be classified as substantive law and procedural law. From this point of view, we may divide law into 4 branches as follows:

i) Civil Substantive law, ii) Civil Procedural law, iii) Criminal Substantive law, and iv) Criminal Procedural law. With the above clarity on the concepts of substantive law and criminal law as well as the relationship and the distinction between the two broad braches of law, let us now have a look at the substantive and procedural laws with special reference to civil and criminal laws.

CIVIL LAW

Civil law can be both substantive and procedural. The civil substantive law refers to what the statute or regulation actually says. Civil procedural 1aw refers to both statutory as well **as** other rules set out by the court or other competent agency for handling the application of the law.

For instance, the **law** says that "you can't make loud noises after 10 P.M. within the city limits". Then,

1) the substance of the law is; i) the loud noise, ii) the time, iii) the place, and iv) the prohibition.

2) The procedure of law may be to call the police, lodge a complaint, appear before the court at specified time and place, testify in a certain manner, etc.

The above instance has illustrated the substantive and procedural aspects of law.

CIVIL SUBSTANTIVE LAW

As mentioned in Unit-l of this Block, law is a set of codified rules. So, the Acts/Statutes are nothing but the codified rules in respect of specified matter(s). These substantive laws (Acts/Statutes) are made by Parliament at the Central level, or the Legislature at the State level or other competent law-making body at that respective level. The substantive laws so made cover wide range of subjects and many different laws. Just to provide you clarity, some specific instances of civil substantive laws are given below.

- Law of Contract - The Indian Contract Act, 1872.
- Law of Marriage -The Hindu Marriage Act, 1955.
- Labour Law - includes many Acts covering different labour related matters.
- Law of Transfer of Property - The Transfer of Property Act, 1882.
- Law of Torts - No particular Act (legislation), but based on certain wellestablished/recognized principles and rules.

CIVIL PROCEDURAL LAW

Though the substantive laws are very important, the value and importance of procedural law, or otherwise called adjudicative law, cannot be under-estimated. It is a set of rules codified as a procedure and its main function is to facilitate the process of adjudication to meet effectively the ends of substantive law. The rules of procedure are intended to be a handmaid to the administration of justice, and they must, therefore, be constructed liberally and in such manner as to render the enforcement of substantive rights very effective. Thus, the procedural law is an adjunct or an accessory to substantive law. The Code of Civil Procedure, 1908 is an instance of procedural law in India. The code of civil procedure is an adjective law; It neither creates nor takes away any right. It is intended to regulate the procedure to be followed by civil courts in adjudicating substantive rights under different substantive laws. Before 1859, there was no uniform code of civil procedure. There were different systems of civil procedure in different parts of the Country. The first uniform Code of Civil Procedure was enacted in the year 1859. But, that Code was not made applicable to the Supreme Courts in the Presidency Towns and to the Presidency Small Cause Courts. Though some amendments were made therein and the code was applied to the whole of British India, there were many defects in it, and, therefore, a new code was enacted in 1877. Again, another code was enacted in 1882, which was also amended from time to time. In the year 1908, the present Code of Civil Procedure was enacted. It was amended by two important Amendment Acts in 195 1 and 1956. Due to some defects, again in 1976, the code was further enacted which was also not found sufficient. In pursuance of "Justice Malimath committee the code was amended by the Amendment Acts of 1996 and 2002. In *Saiyad Mohd.* **v** *Abdulhabib* (1988, p.1624) the Supreme Court stated that "A procedural law is always in aid of justice, not in contradiction or to defeat the very object which is sought to be achieved by substantive law. Procedural law is always subservient to the substantive law. Procedural law cannot give what is not sought to be given by a substantive law, nor it can take away what is given by the substantive law.

LAWS PERTAINING TO SOCIAL PROBLEMS

1. Traditional (Dowry, Child marriage, child labour, casteism/untouchability)

2. Overpopulation

3. Economical (Poverty, sanitation, housing ,slums, unemployment , corruption , Regionalism and Language Conflicts)

4. Educational Literacy, primary education, lack of quality and skill based education, lack of management of need and training educated human resources.

5. Violence Related Domestic violence, violence/crime against women and children, violence against SC,ST, Communal violence, terrorism ,naxalism.

6. Addictions Drugs, alcohol , tobacco

7. Gender discrimination Female feticide, male dominance, depriving equal opportunities for females

Traditional Indian society has many traditions and believes which have been being practiced since ages. Some traditions created many social problems due to stubbornness, illiteracy and lack of awareness. Some important problems related to traditions as below

1. Dowry,

2. Child marriage,

3. child labour,

4. Casteism /untouchability

DOWRY

The durable goods, cash, and real or movable property that the bride's family gives to the bridegroom, his parents, or his relatives as a condition of the marriage. This evil practice turned as religious tradition in the name of `streedhan` by Manu since ancient time documented proof over the Epics era (200 BC to 700 AD) . Due to this tradition the parents of girl get huge economic burden , total economic collapse, increased domestic violence against women , married women suicides, murder sexual physical exploitation of married women. Every year in India dowry related 8455 deaths occurs and about 1 lakh cases of domestic violence against married women as per 2014 NCB REPORT Despite of laws this evil practice is day by worsening , more educated bridegroom more the rate of dowry.

DOWRY RESOLUTION /LAWS/ACTS:

1. Dowry Prohibition Act, 1961

Under this act demanding, taking, offering giving dowry is punishable offence with punishment of imprisonment of a term not less than 5 years and cash fine not less than 15000 or amount involved in dowry. Even advertising in any sort of media any offer/demand direct or indirect is also punishable as above.

2. Govt.of India has framed the Maintenance of Lists of Presents to the Bride and the Bridegroom Rules, 1985.

There are also several state level amendments to the Dowry Prohibition Act.

3. The Indian Penal Code, 1860 (IPC) Amendment:

Section 304B: Dowry death is specific punishable offence which has punishment of 7 yrs or for life imprisonment. Any death of married woman within 7 yrs of marriage with evidence prior burns and injuries or suspicious death is punishable section 113B of the Evidence Act, 1872 ("Evidence Act"): punishes those who escapes from dowry prohibition act 1961 .

Section 113A of the Evidence Act: Provides a similar presumption of abetment of suicide (which is an offense under Section 306 IPC), in case of death of a married woman within a period of seven years of her marriage.

IPC 302: judiciary can presume dowry death in specific evident cases under IPC 302 with punishment of death sentence or life imprisonment of husband n his relatives.

IPC 406: Implies recovery of dowry from bridegroom

4. Protection of Women from Domestic Violence Act, 2005:

It's an amendment in 1983 Act to protect women from cruelty and harassment; Section 498A IPC was specifically included The Domestic Violence Act encompasses all forms of physical, verbal, emotional, economic and sexual abuse and forms a subset of the anti-dowry laws. It provides

Protection orders - prohibiting a person from committing domestic violence;

Residence orders - dispossessing such person from a shared household; custody orders - granting custody of a child; and

Compensation orders - directing payment of compensation.

Child Marriage

Child marriage is defined as the union of two people, at least one whom is below the age of 18. Child marriage in India, according to the Indian law, is a marriage where either the woman is below age 18 or the man is below age 21. Most child marriages involve underage women, Before 19th century child marriage was predominant all over world but more magnitude in India which still a social problem. Its seen in Hindu Muslims and all low economic illiterate groups . In medieval period social disorganization due to lack of governance and chaos. Local Jahgirdars, landlords, and mighty fringe elements used to exploit females to save it child marriage was adopted. This one is a presumptive hypothesis as all religions practice child marriage in past n present. Today 40% of worlds child marriages occur in India . 47% females AND IN RURAL 56% marry under the age of 18 yrs. UNICEF REPORT 2009. Census 2001 showed 7% decrease Census 2011 showed 3.7% decrease in child marriages.

Resolutions/ Acts/ Laws for Child Marriages

1. The Child Marriage Restraint Act of 1929: The legal age for marriage in India is 18 years for women and 21 for men. Any marriage of a person younger than this is banned in India under this act. a male between 18 and 21 years marrying a child imprisonment of up to 15 days, a fine of 1,000 rs, or both. a male above 21 years imprisonment of three months and a possible fine. anyone who performed or directed a child marriage ceremony imprisonment of up to three months and a possible fine, The punishment for a parent or guardian of a child imprisonment of up to three months or a possible fine. It was amended in 1940 and 1978 regarding ages and punishments mentioned above.

2. The Prohibition of Child Marriage Act, 2006: Advocacy at the Supreme Court, GOI brought the Prohibition of Child Marriage Act (PCMA) in 2006, and it came into effect on 1 November 2007. Prohibition in place of restraint the ages of adult males and females the same Forced child marriage child provided choice to void the marriage up to 2yrs after adulthood or in certain situation before that too. Valuables, gifts, money has to return back if null n void the marriage. Girl must be provided residency until her marriage or adulthood. Children born from such marriage are legimate. Punished for male marrying child and guardian, n persons attending, directing up to two years of imprisonment or a fine or both

Child labor

Child labor is the practice of having children engage in economic activity, on part or -time basis. The practice deprives children of their childhood, and is harmful to their physical and mental development. Poverty, lack of good schools and growth of informal economy are considered as the important causes of child labour in India. The 1998 national census of India estimated the total number of child labour, aged 4–15 -- 12.6 million, out of a total child population of 253 million in 5-14 age group. A 2009-2010 nationwide survey found child labor prevalence had reduced to 4.98 million children (or less than 2% of children in 5-14 age group). The 2011 national census of India found the total number of child labour, aged 5– 14, to be at 4.35 million,[and the total child population to be 259.64 million in that age group. The child labour problem is not unique to India; worldwide, about 217 million children work, many full-time.

Initiatives to prevent child labor

Non-governmental organisations Many NGOs like Bachpan Bachao Andolan, Child Fund, CARE India, Talaash Association,Child Rights and You, Global March Against Child Labour, RIDE India, Childline etc. have been working to eradicate child labour in India.

Acts /Resolution

The Factories Act of 1948: The Act prohibits the employment of children below the age of 14 years in any factory. The law also placed rules on who, when and how long can pre- adults aged 15–18 years be employed in any factory.

The Mines Act of 1952: The Act prohibits the employment of children below 18 years of age in a mine.

The Child Labour (Prohibition and Regulation) Act of 1986: The Act prohibits the employment of children below the age of 14 years in hazardous occupations identified in a list by the law. The list was expanded in 2006, and again in 2008.

The Juvenile Justice (Care and Protection) of Children Act of 2000: This law made it a crime, punishable with a prison term, for anyone to procure or employ a child in any hazardous employment or in bondage.

The Right of Children to Free and Compulsory Education Act of 2009: The law mandates free and compulsory education to all children aged 6 to 14 years. This legislation also mandated that 25 percent of seats in every private school must be allocated for children from disadvantaged groups and physically challenged children.

The Child Labour Prohibition and Regulation Act 1987 : formulated based on Gurupadswamy Committee(1979) to find about child labour and means to tackle it in 1986 enacted in1987, A National Policy on Child Labour was formulated in 1987 to focus on rehabilitating children working in hazardous occupations. The Ministry of Labour and Employment had implemented around 100 industry-specific National Child Labour Projects to rehabilitate the child workers since 1988.

Casteism/ Untouchability

The caste system in India has its roots in ancient India ; Manusmriti described 4 varn 1.Brahman 2.kshatriy 3,vaishya 4, kshudra Where kshudras todays sc st obc sbc people are ill treated ,dIscriminated and very inhuman behaviour with them in past like untouchabilty existed. Even after great efforts by many national reformist, leaders, social workers and by Dr. Babasaheb Ambedkar still our society didn't get rid of this evil. Caste-based discrimination has at times even led to violence. The caste-system also makes the working of democracy in our country difficult. Society gets divided into artificial groups that tend to support the candidate who belongs to their caste.

Article 46 of the Constitution of India, expressly provides that the State shall promote with special care the educational and economic upliftment of the Weaker Sections of the people, in particular of SCs & STs and shall protect them from injustice and all forms of exploitation. The Indian Constitution vide Article 15 lays down that no citizen shall on grounds of religion, race, caste, sex or place of birth be subjected to any disability or restriction. It also guarantees that every citizen shall have equality of status and opportunity 3.Protection of Civil Rights Act, 1955 : It is article 17 furtherance , untouchability was abolished and its practice in any form is forbidden 4.SC/ST (Prevention of Atrocities) Act, 1989 : atrocities against SC ST are brought under criminal IPC with strigent punishment ,Speedy trial ,Special courts 5. the Constitution 65th Amendment Act, 1990, National Commission for SCs and STs was constituted w.e.f. 12th March, 1992 with wide functions and powers of Civil Court to take up matters which are of vital importance for socio economic development for SCs and STs.

Overpopulation Indian census 2011, the population of India 1,210,193,422. The second most populous country of the world after China . India will be world's number-1 populous country, surpassing China, by 2025. stabilisation of population can take place by 2050. Effects: Unemploment,manpower utiliisation, overburden on infrastructure/services, Resource depeletion,inalfation increased demand, hunger poverty, crimes etc Causes: Erly marriage and universal marriage system, poverty illitracy,ageold cultural norms, etc

Resolution / Acts/ Policies :

1. National Family Welfare Programme: launched in 1951 with the objective of "reducing the birth rate to the extent necessary to stabilize the population at a level consistent with the requirement of the National economy

2. The Reproductive and Child Health Programme: launched in October 1997 incorporating new approach to population and development issues, as exposed in the International Conference in Population and Development held at Cairo in 1994.The programme integrated and strengthened in services/interventions under the Child Survival and Safe Motherhood Programme and Family

Planning Services and added to the basket of services, new areas on Reproductive Tract/Sexually Transmitted infections (RTI/STI).

3. The National Population Policy: In 2000 affirms the commitment of government towards voluntary and informed choice and consent of citizens while availing of reproductive health care services and continuation of the target free approach in administering family planning services. 4. The National Rural Health Mission (2005): Provide effective healthcare to rural population ; aims at effective integration of health concerns with determinants of health like sanitation and hygiene, nutrition and safe drinking water through a District Plan for Health.

5.Urban family welfare schemes: provide services through setting up of Health Posts mainly in slum areas 6. Sterilization Beds Scheme: reservation of Sterilization beds in govt. Hospital

WOMEN-SPECIFIC LEGISLATIONS:

1. The Immoral Traffic (Prevention) Act, 1956:

2. The Dowry Prohibition Act, 1961 (28 of 1961) (Amended in 1986)

3. The Indecent Representation of Women (Prohibition) Act, 1986

4. The Commission of Sati (Prevention) Act, 1987 (3 of 1988)

5. Protection of Women from Domestic Violence Act, 2005

6. The Sexual Harassment of Women at Workplace (PREVENTION, PROHIBITION and REDRESSAL) Act, 2013

7. The Criminal Law (Amendment) Act, 2013 : made more strigent amendments in previous acts probihibiting violence against women . provisions

8. Protection of Children from Sexual Offences Act (POCSO): The Protection of Children from Sexual Offences Act (POCSO Act) 2012 was formulated in order to effectively address sexual abuse and sexual exploitation of children.

TERRORISM

Terrorism is the systematic use or threatened use of violence to intimidate a population or government for political, religious, or ideological goals. Terrorism found in India includes ethno-nationalist terrorism (LTTE, bodo , ULFA ,Assam, NE groups etc), religious terrorism (KHALISTANWADI, POST BABARI AND KASHMIR RELATED TERRORISM, etc), left (Naxalism) and now right wing terrorism (CONTRAVERSIAL INVOLVEMENT OF RIGHT WING GROUPS) , and narco terrorism (NE states and Punjab). SATP (South Asian Terror

Portal) has listed 180 terrorist groups that have operated within India over the last 20 years, many of them co-listed as transnational terror networks ; Of these, 38 are on the current list of terrorist organizations banned by India under its First Schedule of the UA(P) Act, 1967. According SATP recent report till october 25th 2015 From 1988 uptill now total 47234 incidents, 14723 civilians and 6181 security personels lost lives.

1. Terrorist and Disruptive Activities (Prevention) Act (1985) 2. Prevention of Terrorist Activities Act (2002) 3. Unlawful Activities Prevention Act (1967 with 35 amendments till 2008) Laws against Terrorism

COMMUNAL VIOLENCE

In India It includes acts of violence by followers of one religious group against followers and institutions of another religious group, often in the form of rioting. Religious violence in India, especially in recent times, has generally involved hindus and muslims, although incidents of violence have also involved christian, sikhs, SC/ST (buddhists). Though Since independence,India has always maintained a constitutional commitment to secularism , sporadic large-scale violence sparked by underlying tensions between sections of the Hindu and Muslim communities. These conflicts also stem from the ideologies of hindutva versus islamic extremism and prevalent in certain sections of the population. It dangerously destabilizing the indias basic ethos and strong fundamental base tht is unity in diversity. according to amnesty international every year average 130 citizens lose their lives and nation suffers trillions of loss of property and get setback jolt to progress and unity .

LAW PREVENTING COMMUNAL VIOLENCE

There is no yet any separate law as such a bill for tackling communal violence 2005 is pending in parliament. Presently communal violence is handled using by various sections of IPC only . Some as below .. Section 141 Unlawful assembly. Section 146 Rioting. Section 150. Hiring, or conniving at hiring, of persons to join unlawful assembly. Section 154. Owner or occupier of land on which an unlawful assembly is held. Section 155 Liability of person for whose benefit riot is committed. Section 156. Liability of agent of owner or occupier for whose benefit riot is committed. Section 157. Harboring persons hired for an unlawful assembly. Section 158 Being hired to take part in an unlawful assembly or riot Section 159 Affray. Section 160. Punishment for committing affray.