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DEMOGRAPHY – NATURE, SCOPE AND SIGNIFICANCE

Unit Structure :

1.0 OBJECTIVES:

- To understand the origin and nature of demography
- To gain insight into the scope and significance of demography

1.1 INTRODUCTION

As a society, we have often heard of expressions like 'the population bomb', 'population explosion', 'teeming millions', and 'the population problem'. The media and academia is replete with discussions on poverty and environment further triggering theories and arguments related to the population growth and its impacts. Serious thinking about the issue of population started about two centuries ago. Much of the general discussion on population, especially overpopulation is based on the alarmist view that unbridled population growth is like a 'ticking bomb' and is a threat to survival. This has also led to the opposite view that the population should be treated not as a threat but a valuable resource. Varied groups such as economists, urban planners, reformers, political groups, academicians, statisticians have been interested in studying population growth trends. One such area is the field of demography and population studies.

Demography is the scientific study of human populations with respect to their size, structure, and dynamics. The study of the causes and consequences of the growth, structure, and composition of populations is

also considered a part of demography. A major part of demography focuses on estimates and projections of the size and characteristics of the population and on the components of population change. It also studies population processes, population distribution, population structure and population characteristics.

The word 'Demography' is derived from two Greek words, "Demos' meaning population and 'Graphia' meaning 'description' or 'writing', thus the phrase, "writings about population." The earliest use of the word 'demography' was in 1855 by a Belgian statistician, Achille Guillard in his book *Elements of Human Statistics or Comparative Demography.*

Another field that is related to Demography is Population Studies. In many cases these two terms are used interchangeably, but some scholars have distinguished between the two. Population Studies is concerned with understanding the kinds of changes taking place in the size and nature of human populations. It is also concerned with why these changes are taking place. Demography is concerned with the hard core analysis of numbers. Population Studies investigates the determinants and consequences of demographic phenomena. In other words, 'Demography' encompasses limited spheres and it studies only the decisive factors of population growth. 'Population Studies' focuses on the social, economic, geographical, political and biological aspects of population growth. It also studies behavioural aspects affecting the reproductive behavior of people and also the interrelationships between all factors.

Fertility, mortality and migration (discussed in following modules) are the three basic aspects which influence the population of a particular place.

1.2 DEFINITIONS OF DEMOGRAPHY

There are varied definitions of demography which emphasize on specific aspects of the population. Some definitions emphasize on the quantitative aspects while others focus on the qualitative aspects of a society.

Barckley defines demography as "The numerical portrayal of human population." The Oxford Dictionary of Economics defines demography as "The study of the characteristics of human populations." The above definitions emphasize quantitative aspects of demography and therefore may have limitations. Some other authors have defined demography by taking into account the quantitative as well as qualitative aspects of population studies.

A holistic definition is provided by Hauser and Duncan, who define demography as "the study of the size, territorial distribution and

composition of population, changes therein, and the components of such changes, which may be identified as natality, mortality, territorial movement (migration), and social mobility (change of status)." According to Donald J. Bougue, "Demography is a statistical and mathematical study of the size, composition, spatial distribution of human population, and of changes overtime in these aspects through the operation of the five processes of fertility, mortality, marriage, migration and social mobility. Although it maintains a continuous descriptive and comparative analysis of trends, in each of these processes and in its net result, its long run goal is to develop a body of theory to explain the events that it charts and compares."

Check Your Progress
1. Can you explain the term Demography?

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1.3 NATURE AND SCOPE OF DEMOGRAPHY

Demography has a very vast scope and it encompasses varied aspects of society. It studies whether demography is an art or science, or a macro or micro study.

Demography studies the following:

a) **Population size** means the number of people in a country, a state, a city, a region, or the world at any given time. The size and shape of population is not definite and keeps on changing. Moreover, the unique customs, traditions, beliefs, social-economic conditions, value systems and orientation towards health care and family planning will impact the size of the population.

b) **Population growth or decline** refers to changes in the number of people in a given geographic area over time.

c) **Population processes** refer to fertility, mortality and migration. Birth rate and death rate are the decisive factors that influence the size and shape of population. Additionally, factors like age of marriage, customs related to marriage and motherhood, health care facilities, socio-economic conditions also affect the birth rate and death rate.

d) **Factors related to population processes** include; diseases and socioeconomic characteristics related to mortality, family formation, labour force participation, governmental policies related to fertility,

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differences in income and opportunities in various areas, war, immigration policies, and economic motives for migration.

e) **Population distribution** refers to geographic distribution, such as among states or between rural and urban areas. Migration plays an important role in the distribution of population and supply of labour. Demography studies the factors responsible for internal and external migration of people, the effects of migration on the migrants and the place where they migrate. Urbanization is another factor in the distribution of population within the country. Demographers are interested in studying the factors responsible for urbanization and the problems associated with urbanization and its solution.

f) **Population structure** deals with composition and density of population. Composition refers to such factors as age and sex-ratio, percentage of aged population, rural and urban population, distribution according to religion, language and occupation, etc. Density of population is studied in the context of problems within a specific geographical location and to devise possible developmental strategies for the future.

g) **Population characteristics** refer to education, income, labour force participation, marital status, race, ethnicity – or any other characteristic that has a value for each member of the population and does not have the same value for everyone.

1.4 DEMOGRAPHIC PERSPECTIVES

There are two ways to understand population change: an aggregate approach and a micro behavioural approach.

a) **An aggregate approach**: This approach addresses issues related to the components of population change. Issues related to the role of births, deaths and migration impacts changes in population size. This perspective deals with macro social demographic processes. It examines how the levels of childbearing, mortality, and movement of population result in the growth or decline of a population.

This perspective is important for understanding when and where the population is increasing or declining. In the 1960s and 1970s this perspective alerted the world to the future implications of high rates of population growth in the less developed regions of the world. Awareness that high fertility - wherein there are many more births than deaths - was the main reason for high population growth. This motivated the development of family-planning programmes and policies in the less developed region of the world.

b) **A casual or micro-behavioural approach**: This approach studies the causal factors or behavioural mechanisms that lead to the decisions

that people make. It also studies the behaviours that individuals adopt to help them implement their decisions.

Check Your Progress

1. What does Demography Studies?

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2. Explain its approaches.

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1.5 SIGNIFICANCE OF DEMOGRAPHY

Demographic analysis is used to address a wide variety of scientific and policy questions. Any field in which a number of people with their varying characteristics relate to utilization of a service, such as health care, public transport, public education, sanitation, or housing facilities, uses the results of demographic analysis. Population explosion is a reality and therefore the study of population and its problems have become very important in every sphere of life.

a) **Relevance to Economy**: Demography helps us in understanding the growth rate of the economy and its tally with the growth rate of population. If population increases faster, the pace of development of the economy will be slow. Rapid population growth has detrimental consequences. It reduces per capita income, leads to unemployment, lowers the standard of living, impacts the environment and puts a burden on existing social infrastructure. Demography helps highlight these problems and directs problem solving.

b) **Relevance to Society:** Rapid population increase leads to innumerable social problems. Demography is important for estimating future school enrolments, for projecting demand for utilities and services, such as electricity, transport route and capacity, public health care services, etc.

Migration and urbanization are associated with the growing population which further lead to law and order problems. Demographic consideration and demographic analysis are important when we try to understand the dynamics or causes of various social problems. There

could be variation in the outcomes which are related to age, sex, education, race or ethnicity. Demographic data is essential as the state and non-governmental organizations can use this information to adopt appropriate measures to solve them.

c) **Relevance to Economic planning:** Population growth and economic planning are interrelated. Data related to the current trend of population growth will direct the path for future economic planning of the country. Population growth trends are kept in mind when planning for agriculture and industrial products, for providing social and basic services such as health care, education, transport, education or urban planning. Population data is also used to project future trends related to fertility, size of family, etc. and enable this data to formulate policy measures relating to family planning.

d) **Relevance to Administration:** Administrators refer to finding of population studies and devise strategies to run the government. Research has indicated that in under-developed countries, there is a strong link between all social and economic problems and uncontrolled growth of the population. The task of the administrator is to find solutions to the problems arising out of population growth. Most important of the problems are urbanization and migration, which trigger other problems such as, slums, pollution, water supply and drainage, electricity, transport, etc. in cities.

These problems require pinpointed solutions such as, improvement in sanitation facilities, removal of stagnant and polluted water, slum clearance, slum rehabilitation, clean water supply, better sewerage facilities, public health services, schools, etc.

e) **Relevance for Political System:** Democratic and political systems are founded on a robust knowledge of demography. The census figures reflect the reality of each state and constituency. The addition or deletion to the number of voters after each election helps to find out the rate, nature, extent and direction of migration.

Census data reveals population trends, voter characteristics such as; gender of voters, level of education, age structure, level of earning, occupational structure, etc. This information is used by political parties as an election strategy to raise issues and provide solutions in their election manifestos at the time of elections.

1.6 CONCLUSION

The relevance of demography and population studies to the understanding of contemporary growth trends cannot be emphasized enough. Both the disciplines have varied focus but intersect with each other at several points. By taking an interdisciplinary approach to

population growth, rather than treating it as a numerical increase will help policy makers and administrators to look at its population not as a liability, but as an important resource that can be utilized in nation building.

1.7 SUMMARY

Demography is the scientific study of human populations with respect to their size, structure, and dynamics.

There are varied definitions of demography which emphasize on specific aspects of the population.

The scope of demography is very vast, as it studies the following: the population size, population growth or decline, population processes, population distribution, population structure and characteristics.

There are two ways to understand about population change: an aggregate approach and a micro behavioural approach.

Demography is significant to the economy, society, economic planning, administration and political planning.

1.8 QUESTIONS

1. Define demography. Examine the nature and scope of demography.
2. Discuss the relation between demography and population studies. Elaborate on the nature and scope of demography.
3. Examine the significance of demography to the economy and society.

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2A

CONCEPTS AND FACTORS - NUPTIALITY, FERTILITY, MORTALITY

Unit Structure :

2A.0 OBJECTIVES:

- To examine the interaction between concepts related to population growth
- To understand the dynamics of demographic transition

2A.1 GENERAL INTRODUCTION

The size and other characteristics of naturally occurring populations are constantly changing. Usually such change is slow and gradual and hardly visible at any given time. Occasionally, there could be a dramatic transformation in population as a result of natural disasters, technological innovations, etc. In such instances, we observe terms like "explosion", "boom" or "collapse". However, regardless of rate of change from gradual to explosive and all points in between, the root cause of

population growth or decline can be traced to the interactions among the three vital events: birth, death and migration. This section deals with three important concepts associated with demographic transition, viz; Nuptiality (Marriage), Fertility (Birth) and Mortality (Death).

2A.2 NUPTIALITY

2A.2.1 INTRODUCTION

Marriage is a universal institution and is prevalent in ancient, traditional and modern societies. Nuptiality is the frequency of marriages, characteristics of marriages and dissolution of marriages in a population. The study of nuptiality covers first marriages and the remarriages of divorced or widowed or separated persons. Such an approach is important in efforts to understand the patterns and levels of fertility. The frequency of marriage, the age at which they are concluded and the frequency of separation/divorce, widowhood and remarriage are important factors of the fertility dynamics. Therefore it is of paramount importance to assess and verify the important role of nuptiality in affecting demographic transition, especially in fertility. Evaluation of nuptiality patterns can provide essential information for understanding the mechanisms through which the demographic system reacts to the social and economic changes. This was already recognized by the population scientists of the late 18th and 19th centuries, especially by Malthus. The relationship of marriage to fertility and population growth was a central theme of Malthusian theory.

According to the multilingual Demographic dictionary, "The study of nuptuality deals with the frequency of marriages". It deals with the characteristics of persons, united in marriage, and with the dissolution of such unions.

Marriage entails a change in status: from any other-marital status to the status of married. Marriage is the union of a man and a woman as established by law. The fact of getting married changes the structure of the population (change in civil status) and has an influence on fertility, as most births are to married couples. A distinction is made between first and subsequent marriages:

- A first-time marriage is the union of a man and a woman who have both never previously married. To date, the majority of marriages represent this type of union.
- A subsequent marriage is any marriage where at least one of the spouses has previously been divorced or widowed.

The primary determinant of population growth in most countries is the birth rate. Since the family is the structural unit primarily responsible for births throughout the world, changes in the rates of marriage and divorce play an important indirect role in population growth.

2A.2.2 NUPTIALITY AT THE GLOBAL LEVEL

A study of the state of nuptiality in the world and of its trends requires a preliminary examination of the types of conjugal unions (marriages) and of the circumstances through which they are established.

a) Monogamy: The most frequent conjugal unions all over the world are monogamous in nature. However, special attention needs to be given to the polygamous unions, which are particularly prevalent among the African populations.

In Western societies, marriages are the occasions of legal procedures. Therefore, there is systematic registration of marriage by agencies responsible for the collection of statistical data. This eases the task of a demographer as information is readily available. However, in some cultures marriages are solemnized through simple religious ceremonies, or they may be the result of traditional processes characteristic of certain ethnic or religious groups and their customary practices.

b) Polygyny: Polygamous marriages are allowed by Muslim law. However these marriages do not appear to have great demographic importance in the Muslim countries along the Mediterranean and in Iran. The political developments of recent years can only strengthen this trend; for instance, polygyny is now outlawed in Tunisia and discredited in several other countries including Iran and Egypt.

Studies conducted by scholars such as Blanc (1959) insist that polygyny has a notable importance mostly among the populations of Sub-Saharan Africa. It is characterized not by a small number of husbands, each having many wives; but by a large number of husbands with only a few wives each (two wives per husband). At the same time, limited number of women living in a population will set a limit to polygyny. Polygyny is essentially practiced by elderly men who at first have been monogamous, but later have wed several wives successively at various points in time.

c) Consensual Unions: Consensual (or free), unions play a variable part in different human societies, and are a common feature in Latin America. According to Mortara (1963), a consensual union is not an introduction or a conclusion to marriage but rather a substitute for it. It is difficult to measure the frequency of consensual unions because these are generally omitted by the census.

2A.2.3 NUPTIALITY IN NON-WESTERN COUNTRIES

In non-western countries all over the world, culturally different from the Western countries, the intensity of nuptiality is very high. In several Asian countries such as India, Taiwan, Korea and others, marriage is compulsory and universal. Therefore nearly all women marry at least once. There is a need to study the respective traditions of these countries:

the laws that govern family formation, the function of marriage, and the concept of family are all found to be widely different from those in the West.

India is probably one of the few Asian countries for which studies of nuptiality have been the most comprehensive and exhaustive. An Indian marriage is preceded by an engagement. The engagement is equally sacrosanct which has a binding character similar to that of marriage. Indeed, this is what Indian studies of nuptiality identify as the beginning of marriage; in the case of women it constitutes a true child marriage. The mean age for most girls especially in rural India is 14 years, which constitutes a child marriage. Nuptiality in India is affected by age of marriage, caste and religion, prejudice against remarriage of widows. However, recent trends suggest that the practice of remarriage is no longer considered a taboo.

2B.3 FERTIITY SOCIAL AND ECONOMIC DETERMINANTS

2B.3.1 INTRODUCTION
Fertility is the actual ability to give birth to a baby. The biological causes – general health of girls, various diseases, especially sex related, lack of reproductive power, infecundity (sterility), quality of food intake-definitely have something to do with child bearing. Population scientists agree that improved social and physical environment, State's greater attention to social and health sector, better education for all, improved health care, better nutrition, lower infant, child and maternal mortality are some of the reasons behind check in growth rate of population. Social and cultural factors play a decisive role in controlling population growth rate throughout the world.

The social and economic determinants of fertility can be understood in terms of two categories of factors: Indirect social factors regulating fertility, and Direct social factors.

2B.3.2 INDIRECT SOCIAL FACTORS REGULATING FERTILITY
It is important to understand that every means of fertility control has to be seen in the context of the social and cultural heritage of a particular society. Two societies may follow the same method of birth control, but their origins as well as their purposes could be very different. There is a strong correlation between fertility and most of our social and economic practices. Behind any social event such as Birth of a baby, there are a host of variables whose effects cannot be easily predicted. A number of intermediate variables play a critical role in the analysis of change in fertility in a given population, which are as follows:

a) **Marriage rate**: Marriage is regarded as one of the most sacred institutions in all societies. Though marriage is universal, most countries

have certain regulations about who ought not to marry and the permissible age of marriage. The marriage rate is the number of marriages that take place within a particular group of people over a given period. Marriage rates can be used to compare influence of social changes on marriage experience in a particular age group with the experiences of the same age group in previous or subsequent years. In India, the proportion of married couples in 15-19 (age of wife) has progressively come down both in rural and urban areas. Marriage rates are the highest in the 20-24 age group. A number of factors such as education of girl child, economic independence and change in mindset could be responsible for this trend.

b) Decline in Death Rates: Since the middle of the twentieth century death rates all over the world have declined rapidly. In the last 50 to 60 years food production, medical facilities, transport and communication network have improved greatly in the developed as well as developing countries. Some of the developing countries have lowered their death rates so much so that they are almost at par with the achievements in death control in the developed countries. The people in the developed countries willingly have accepted a small family norm and adopted suitable means of birth control. This is possible because of faster control over death rates. Overall life expectancy in developed countries has seen an increase because of lower Infant Mortality Rate (IMR) and high standard of living. This trend is catching up in the developing countries too. Gone are the days of large families when the average woman gave birth to anywhere between 10-12 children.

c) Age of Marriage: India was the first country to officially adopt family planning as early as in 1951. However, because India is a parliamentary democracy, stern measures to control size of family could not be implemented. After long discussions, the minimum age of marriage for girls was raised to 18 years in 1976, although population experts insisted that the minimum age should have been 21 years for the girls. Compulsory registration of marriage also plays an important role in ensuring that age norms for marriage are not violated.

The reproductive age for women is 15 to 49 years. Early marriage means possibility of large families. In the West, since people marry late, the size of the family is controlled. In fact, the number of childless couples is on the rise in Western countries.

d) Polygamy: For a long time polygamy was a common practice among males in India and many other countries. Most countries today have strong laws against having a second wife is the man already has a wife by an earlier marriage. In India, polygamy was fairly common among higher castes and socially and economically influential persons even a century back. Giving a girl in marriage in such families (regarded as 'kulin") often was considered a status symbol.

e) Separation and Divorce: Separation and divorce are common phenomena in the West, whereas there are lower incidences of separation and divorce in the East.   The nature of impact separation and divorce could have on the birth rate of a country or a segment of the population would depend on the following factors: the rate of divorce/separation, age of husband and wife at the time of separation, rate of remarriage, etc.

f)   Widowhood: Most countries are showing resistance to widow remarriage. Widow remarriage is legally protected in India. In spite of legal protection, incidences of widow remarriage in India and other orthodox countries is not quite popular yet.   Widow remarriage is comparatively more prevalent among tribal, lower caste groups and in some religious communities.

f) Post-partum Abstinence: Sexual relation during the period when the child is breast fed is a taboo in most societies. This period can sometimes extend to 2 years or more which in turn impact fertility.   In orthodox families the mother and child remain under direct care and supervision of the mother-in-law or the elderly lady of the house. The greater the delay in the restart of the menstrual cycle, the larger would be its impact on the birth rate.

g) Menstruation and Abstinence: Abstinence during menstruation is recommended for different reasons in different societies.   However, the period during menstruation is too small to have any significant impact on birth rate.

h) Celibacy: Some people do not marry throughout their life. However, this number is very small as societies encourage people to marry and to lead a normal family life.

i)   Frequency of coitus: Sexual intercourse (coitus) does not happen every day. Frequency of sexual intercourse depends on health conditions, mental state, excessive physical activities, and family quarrels. Sexual intercourse is a personal and sensitive issue. Therefore, it is practically impossible to undertake a fact-finding survey regarding the same.

j) Education: Education especially in the developed countries have led to increase in socio-economic status. Rational and scientific attitudes towards forces of nature, including child birth have freed us from the grip of primitive ideas and age old traditions.

k) Occupation: Traditional occupations vis-à-vis modern technology based jobs have some differential impacts on births. New jobs in the industry and manufacturing sector require people to travel. This has given man a space totally different from the one in which he was reared and nurtured. There is a disintegration of the joint family structure, which has contributed to a reduction in the birth rate.

l) Income: The relationship between income and fertility is very complex. In urban areas, families may restrict the birth of children, as these are considered as liabilities.   In rural areas irrespective of economic status, children are considered as assets.

m) Urban-Rural Differential: Birth rate among urban people is significantly less than that among rural people.   This is true of both developed and developing countries.   Some of the key differentials between the two groups of people are: level of education, modern occupation, dependence on monthly salary, health facility, standard of living, fast pace of life, etc - all are in favour of urban people.

n) Religious Faith: Religious belief and birth control or lack of it is interrelated. Buddhism has discouraged high birth rate.   The Hindu religion stresses more on spirituality than on morality in its concern for human fertility.   In the Arab countries, polygamy was a rule than exception. The holy Koran does not clearly state the number of children one should have. While the Catholic and Protestant Churches are against artificial control of birth.

2B.3.3 DIRECT SOCIAL FACTORS
Fertility is directly related to abortion, infanticide, use of contraceptives, etc.

a) Oral Pills and other Contraceptive Devices: Many tribal societies have been found to use certain herbal and medicinal plants – their roots and leaves, for temporary sterilization of both men and women.   With the discovery of birth control pills and contraceptive devices, birth protections have become more scientific and fail-proof.

b) Abortion: Premature termination of pregnancy has been there and would continue to play a major role as long as the pregnancy is unwelcome. Abortion has been practiced in orthodox societies for a long time. In India, abortion was legalized once the family planning movement gained momentum. India passed the Medical Termination of Pregnancy Act (MTP) in 1971. But the law has been grossly misused. Sex-selective abortions in India have been extensively used in some states and some segments of population to prevent female births.

c) Temporary and Permanent Sterilization: Most of the developing countries have adopted permanent sterilization for their birth control programme. However, it is difficult to study the impact of sterilization on birth rate. Men and women in India undergo sterilization after 35 years of age, that too after having borne 4-5 children. However, experts believe that without sterilization the number of births could have been much more.

d) Infanticide: Infanticide has remained a common curse in all societies. Both religious and economic reasons are responsible for infanticide. Various societal factors such as, continuation of family lineage through

males, higher religious status of males, perspective of males as assets and females as liabilities, are responsible for infanticide.

2C.4 MORTALITY

2C.4.1 INTRODUCTION

There are two fundamental differences between fertility and mortality situations prevailing in any country or society. Even in remote past, when life was uncertain and depended on the mercy of nature, death rate compared to birth rate was small. In a demographic sense, mortality means the frequency of death in a population. Number of factors work together to keep the death rates down, such as proper shelter, technological knowledge, access to health care, ability to fight diseases and natural calamities. There is also a shift in the age pattern of mortality, from one in which childhood diseases and deaths were common to a situation where disease and mortality are highly concentrated at older ages. The driving force in this transition is socioeconomic development accompanied by investments in public health and education.

Globally it is estimated that life expectancy at birth has increased to 70 years in the period from 2010-2015. Earlier the life expectancy was 46 years (between 1950-1955). Also, the share of the world's population living in countries with life expectancy of 70 years has risen from 1 percent to more than 55 percent during the same period. While the probability of dying in early childhood – that is, the number of deaths below age five per 1,000 live births – have fallen from nearly 215 to 50 per 1,00 live births.

The reduction of mortality, particularly child and maternal mortality has been a core target of the internationally agreed development goals such as those contained in the Programme of Action of the International Conference on Population and Development, the United Nations Millennium Declaration and the 2030 Agenda for Sustainable Development. Accurate estimates of mortality are crucial for assessing progress towards these goals and the health of populations more generally.

2C.4.2 MORTALITY DIFFERENTIALS

Despite a very impressive progress at the global level, large disparities remain in the levels of mortality observed across countries and regions. These differentials result from the following factors:

a) Mortality Differences by age and sex: Age and sex are the two major components in all demographic analyses. In most developing countries, pregnancy continues till the birth of at least one male child. In all societies and countries sex ratio at birth is in favour of male babies. Although male babies are in small excess at the time of birth, their death rate is also high in the days and months following the birth.

Women have a somewhat greater risk of life, mostly at the initial years when they start giving birth to babies. Once they are out of the early childbearing age, their life risk remains at a lower level compared to their male counterparts. Kerala's achievement in containing death at all ages is amazing. But the BIMARU (Bihar, Madhya Pradesh, Rajasthan and Uttar Pradesh) and four other states (Orissa, Gujarat, Assam and Haryana) distort the all-India picture altogether.

b) Mortality differences by Residence: Because of very high population density, rising environmental pollution level due to the presence of unwholesome manufacturing industries and lack of free space and fresh air, cities and towns are steadily becoming infamous. Further, lack of sanitation, crowing, waterlogging makes cities breeding ground for ill-health and diseases.

c) Mortality Differences by Occupation or Profession: Occupations largely determine the family income. This in turn decides the physical conditions of residence of the worker and his family. Occupational hazards are integral to certain occupations such as, mining, foundries, paint and chemical industries, cement factories, explosive manufacturing, etc. as compared to white collar jobs. Risk of life is greater in industrial occupations than in traditional occupations.

d)Mortality Differences by Geographical Factors: The hot humid atmosphere in Africa, Asia and Latin America has a decisive role on mortality and morbidity of people living in these continents. Mortality due to climatic conditions has reduced considerably, but physical factors do contribute to death rates. Global warming and its effects, in the form of natural disasters such as Tsunamis, cyclones, earthquakes impact specific geographical regions.

e) Mortality Differences by Religion: There appears some difference in mortality among various religious groups in India. The religious groups are not necessarily uniformly distributed throughout the length and breadth of the country. So when we try to compare mortality among various religious groups, we have to bear in mind the special features that accompany these pockets or regions.

f) Mortality Differences by Conditions of Peace and War: There are mortality differences between peace and war conditions. Malthus said that war along with epidemics and famine are positive checks against population growth. War is now fought with technology and principal target often is dense cities, economic zones and key defense installations. Today's nuclear warfare and biological weapons have the capacity to decimate millions of people within a matter of minutes.

g) Behavioural choices: Mortalityis also influenced by behaviours. Although people would prefer to live a longer rather than a shorter life, behaviours such as smoking, alcohol consumption, poor diet, health

problems, affect the chances that people will die early. It is interesting to examine the factors that motivate people to change from these unhealthy behaviours to more healthy behaviours.

h) Other Mortality Differentials: Demographers have drawn our attention to a few mortality differentials. The death rate among married persons generally is lower than among unmarried persons. The discipline and norms of married life help increase the life expectancy. It is also a fact that women live much longer than men and a high proportion of the aged women are widows, especially in orthodox countries like India. Apart from marital status, the most dominant denominator in most mortality is income poverty.   Excessive labour, malnutrition, poor physical surroundings, dwellings and neighbourhoods make the poor people easy targets of diseases. Mortality rate is highest among the poor.

2C.4.3 INFANT AND CHILD MORTALITY

Discussion on mortality would remain incomplete if mortality of infants and children are not discussed. Life expectancy at birth, which also is an indirect estimation of mortality level in a population, largely depends upon the survival of infants and children. Demographers study the first year of a child's life with keen interest. These infants symbolize the true future of a population. The number of children celebrating their first birthday gives a clear picture of the composition of the population, the ratio between its various segments, birth and survival rates. The mortality rate of infants in most countries still remain a critical indicator of health awareness, health infrastructure and planning, economic progress, education of mothers, availability of life-saving drugs, primary vaccination cover, etc. in that country.

Another issue while studying infant mortality is that of 'Reproductive wastage', which refers to all the deaths between the start of pregnancy and the fifth year of the child. The time period of reproductive wastage is divided as follows:

a) Pre-natal mortality: refers to all fetal wastages. Natural and planned abortion is mostly responsible of fetus wastage. Scientists observe that the chance of stillbirth is at its lowest when the age of the expecting mother is about 25 years and when there is a gap of 3 years between the last birth and the present pregnancy.

b) Infant Mortality: Death of a baby born alive but not surviving till his/her first birthday is considered as infant mortality. Bourgeois-Pichat (1952) have classified infant mortality into two casual categories – endogenous and exogenous mortality. Endogenous deaths are those that are caused by factors such as the congenital malformations, the circumstances of prenatal life, and the birth process. Exogenous causes refer to those cases in which the infant picks up the factors which cause its death in the environment in which it lives. Exogenous death is caused by infection, parasitic and respiratory diseases, accidents and other environmental and external causes.

c) Child Mortality: Death of infants and children under age of five is referred to as child mortality. According to the UNICEF, most child deaths in developing countries (70 percent) result from one of the following five causes or a combination of these: acute respiratory infections, diarrhea, measles, malaria and malnutrition.

2C4.4 MATERNAL MORTALITY

Maternal mortality is the death of a woman while pregnant or within 42 days of termination of pregnancy, irrespective of the duration, cause or site of the pregnancy. Scholars argue that the roots of maternal mortality lie in social, economic, health and political factors. Medical interventions carried out by trained experts are important in reducing maternal mortality. Family care and regular check-up during the entire period of pregnancy is crucial for the health of the mother and unborn child. Maternal mortality is generally low in societies that value women's education and enjoy higher social status. Vigorous health and family welfare campaign together with medical insurance programme has the potential to bring down infant, child and maternal mortality.

2D.5 CONCLUSION

Improving health services and providing cost-effective and high-impact interventions that address the needs of women and newborns across the continuum of care is important. An emphasis on care during pregnancy and around the time of birth remains critical as means of saving lives. Socio-economic inequalities are closely associated with observed levels of child health and mortality. Health policies that focus on reducing inequalities, as proposed by the United National Children Fund (UNICEF), will be more beneficial than just focusing on improving overall levels of health. For a nation, while it is important to invest in maternal, adolescent and child health, it is critical that these efforts target the most economically vulnerable children and their families.

2.6 SUMMARY

Nuptiality is the frequency of marriages, characteristics of marriages and dissolution of marriages in a population. The study of nuptiality covers first marriages and the remarriages of divorced or widowed or separated persons.

A study of the state of nuptiality in the world and of its trends requires a preliminary examination of the types of conjugal unions (marriages) and of the circumstances through which they are established.

Nuptiality is impacted by types of conjugal unions such as; monogamy, polygyny and consensual unions.

In non-western countries all over the world, culturally different from the Western countries, the intensity of nuptiality is very high.

Fertility is the actual ability to give birth to a baby.

The social and economic determinants of fertility can be understood in terms of two categories of factors: Indirect social factors regulating fertility, and Direct social factors.

Mortality means the frequency of death in a population.

Despite a very impressive progress at the global level, large disparities remain in the levels of mortality observed across countries and regions.

Mortality differentials need to be understood in terms of age, sex, residence, occupation, income, religion, etc.

The mortality rate of infants in most countries remain a critical indicator of health awareness, health infrastructure and planning, economic progress, education of mothers, availability of life-saving drugs, primary vaccination cover, etc. in that country.

Maternal mortality is the death of a woman while pregnant or within 42 days of termination of pregnancy, irrespective of the duration, cause or site of the pregnancy.

Socio-economic inequalities are closely associated with observed levels of child health and mortality.

2.7 QUESTIONS

1. Define nuptiality. Examine nuptiality in the global and Indian context.
2. Discuss the relevance of nuptiality in demographic transition.
3. Define fertility. Discuss the social and economic determinants of fertility.
4. Elaborate on the direct and indirect social and economic factors affecting fertility.
5. What is mortality? Elaborate on the various forms of mortality.

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2B

DECLINING SEX-RATIO – CAUSES AND MEASURES

Unit Structure

2B.0 OBJECTIVES

- To understand the concept of sex-ratio
- To evaluate the social implications of India's skewed sex-ratio.

2B.1 INTRODUCTION

The status of women in a country is indicated by the sex-ratio of that country. In a situation where social conditions are favourable to women, the sex-ratio would be healthy. At the global level the sex-ratio is 1045 females per thousand males. However, some countries of south and south-east Asia such as Pakistan, India and Bangladesh form an exception to this general rule. The adverse social conditions in these countries have caused a skewed sex-ratio which has continued to decline through the last century. These regions have shown a marked development and progress in the health sector in terms of availability of health care services, control or arrest of epidemic diseases, lowering of mortality rates and increase in per capital income, the sex-ratio over the last century has shown a steady decline. It appears that the benefits of technology have bypassed women. Science and technology are increasingly being used to engineer a society where there are decreasing numbers of women.

2B.2 CONCEPT OF SEX-RATIO

Sex-ratio is the number of females per thousand males in a population. If the sex-ratio is nearly one, there is balance between the sexes and indicates gender equality. But if it is too less or too much greater than one, it indicates gender imbalance in the population. Any sexual imbalance in a population usually leads to a social disequilibrium (Kishore, 2002, UNADI 980). Female infanticide and feoticide can be understood by the study of sex-ratio in 0-6 years age group. The Economic Times (2019) states that in the Indian population Census of 2011, the population ratio was 940 females per 1000 males. During the 2017 SRS survey (Simple Registration System), Chattisgarh reported the highest sex-ratio at birth (961), while Haryana recorded the lowest (833).

Check Your Progress
1. Can You give a brief definition of Sex Ratio?

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2B.3 CAUSES OF DECLINING SEX-RATIO

A number of reasons have been put forth to explain the declining sex-ratio, such as dowry system, tradition of female infanticide, etc. However, it is important to understand the decline in the context of a particular historical juncture in specific geographic areas (e.g. Parts of India, S. Korea, China in the late 1980s) and its absence in other parts. The decline has to be understood in terms of regional and community variations also.

To understand this issue better, Ravindra, (1992) proposed a DELTA hypothesis. The phenomenon of Sex Selective Abortions (SSA) operates in societies that display specific characteristics at any given point of time.

● Discrimination against women to a point of seeking their elimination;
● Ethical sanctions for such elimination;
● Laws conclusive to such sex-selective elimination;
● Technology available to large sections of population;
● Adoption on a small family norm.

2B.3.1 Discrimination :
Discrimination against women is a universal phenomenon due to the prevailing patriarchal attitudes. Its means of expression and intensity vary from culture-to-culture, nation-to-nation, and time-to-time. While

discrimination against women exists across cultures, it acquires a dangerous proportion in the form of female foeticide and female infanticide in countries like India. Female infancticide was practiced by certain militant castes especially in Rajasthan, Gujarat, UP, Bihar and parts of Tamil Nadu, the impacts of which are felt even in the twenty first century. For.eg. In Dang district, at the Gujarat-Rajasthan border, 8 brothers of the same family are married to the same woman, as getting a wife is extremely difficult in this region (India Today, 2001). In another incident, the 200-odd families in a Rajput dominated village in Western Rajasthan's Barmer district have 2 to 4 male children each on an average. There are only 2 (two) girls in the entire clan. At a conservative estimate the ratio is 400 male children to 2 (two) female children. Deora village of Jaisalmer district has the distinction of receiving a *baraat*(bridegroom's part) after 110 years in 1997 when the only girl in the village got married.

Women have become victims of a number of social practices, such as Sati, and restriction on widow remarriage. Women belonging to the deprived or lower sections of the society have to face discrimination at multiple levels due to not only their gender but also economic and caste status. Discrimination against women is more rampant and deep rooted in the Northern and Western parts as opposed to Southern and Eastern India. It manifests in different forms such as inaccessibility to health care and nutrition, sex stereotyping, curb on freedom of movement and of taking important decision in life and negligible role in economic processes.

2B.3.2 Ethical Sanctions :
Certain religions have forbidden abortion. For the Judo-Christian tradition, abortion is a taboo. Hence it would be difficult to witness the phenomenon of SSA in societies where the Judo-Christian culture is predominant. On the other hand, in comparison, in Hindu religion, abortion is a lesser sin; especially if it happens to be the abortion of a less-valued female child, the stigma is even less. Religious or cultural justifications from mythologies are interpreted to support this practice. (According to mythology, Kansa, Lord Krishna's maternal uncle was warned that he would be killed by a child of his sister. Hence, he tried to kill Krishna's elder sister immediately after her birth. Some dominant castes in the North, who consider themselves to be Lord Krishna's descendants, try to justify the practice of female infanticide by tracing it to the above mentioned mythological roots.)

The cultural ethos in India is shaped by its religion. The pro-life movement which is so strong in the West is weak in India. As a result, in India, prenatal sex detection is followed by members of various religions. In general, life of a woman, whether before or after birth is not valued at all.

2B.3.3 Legal Aspects :
In India, abortion is punishable under Sections 312 to 316 of the Indian Penal Code (IPC). However, the Medical Termination of

Pregnancy (M.T.P.) Act, 1971has liberalized the provisions of this Code. Although the act was not framed as a response to the feminists' concerns, it made abortion relatively easily available to women, especially married women. As per one of the provisions of the Act, a married woman is allowed to undergo abortion on the condition of 'failure of contraceptives'. Aborting a fetus solely on the grounds of sex is not allowed under any Act. However, it is not difficult to see the connection between sex detection and SSA, as a woman may undergo sex detection test at one place and thereafter, seek abortion at another place.

The gross misuse of this act has been widely reported, but has been underplayed by all players; right from enforcing authorities, to doctors, to medical health professionals. A study conducted by Sathe (1988), has observed that there has always been a strong lobby advocating sex-selective abortions as an effective population control tool. The population control agenda, along with the attitude which supports son preference not only among society members, but also policy makers and implementers has allowed SSA to go unchecked. This is facilitated first through the misuse of the M.T.P. Act and later through gross neglect of the PNDT (Pre-Natal Diagnostic Techniques) or PCPNDT Act (Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994.

In the developed countries medical practice is closely monitored and regulated. In India, except for the provisions of the Consumers Protection Act, 1986, there is no effective legislation in India to check malpractices or ethical violations in medical practices. Additionally, medical practitioners in India are a revered lot and enjoy a prestigious status, which makes them immune to any legal action. Though there exist a number of laws, they are dead letters in practice due to lack of political will.

2B.3.4 Technology available to large sections of population:
For centuries, there have been rudimentary methods of determining the sex of the unborn child. It is only with the advent of modern technology such as amniocentesis and similar techniques with almost 100% accuracy have sex selective abortions emerged as a 'phenomenon'. In 1980s, there was a ban on sex determination in government institutions. This lacuna was filled up by private clinics which provided mostly accurate results at an affordable cost. In the absence of proper regulation, it was easy to set up a sex determination facility, along with the network of willing gynecologists who could, for a handsome fee, collect amniotic fluid from a pregnant woman and sent it to these labs. That is how Mumbai became the first nerve centre of sex determination business in India, with the slogan ' Pay 500 now, save 50,000 later', referring to the amount that would be saved by parents for their daughter's dowry.

2B.3.5 Adoption of a small family norm:
Small family norm is a product of the 'development package'. It might seem ironic that SSA has been accepted by societies which have

reached a certain degree of 'development'. The consumerist culture has also contributed to the acceptance of the 'small family norm'. People prefer to keep the family size to a minimum so that each member is able to benefit from the fruits of development. But the same process of development has not been successful in removing age-old prejudices and biases against the girl child.

Cumulative factors responsible for declining sex-ratio in India would be as follows:

- Preference for the male child due to religious or cultural reasons. Sikhs, Hindus, Muslims and Jains have marked a lower sex-ratio as compared to Christians and Buddhists.

- Low status of women leading to gross neglect in and outside their homes.

- Discrimination against girl child and indifferent attitude towards women.

- Social and economic dependence of women enhancing their vulnerability.

- Stigma attached to being an unmarried women enforcing her into suppression and torture.

- The evil of the dowry system in India that has percolated to regions across most states also causes suicides and homicides .

- Easily accessible and affordable procedures for sex determination before and during pregnancy.

- Unethical medical practices leading to illegal sex determination and abortions.

- Two child norm forcing parents to undergo sex-determination.

- Lack of political power for women.

- Lack of quality health services.

Check Your Progress
1. Can you explain any 5 factors responsible for declining Sex Ratio?

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2B.4 IMPLICATIONS OF DECLINING SEX-RATIO

A declining sex-ratio reflects gross discrimination against one sex with society. In India it confirms what is common knowledge – that girls are less desirable or unwanted. One of the main reasons for this seems to

be a practice that demeans women and treats them like material goods – the need to pay dowry to get them married. Daughters are seen as a burden and financial responsibility. Any form of investment in them – in the form of nutrition, education, health, general well-being - is seen as futile as it will not help the natal family's future security.

The increasing deficit of girls is creating a social imbalance within society. The situation in certain pockets in India is equally alarming. Indian media has reported the absence of brides in Rohtak, Haryana. There are certain regions (Uttar Pradesh, Bihar, Rajasthan) in our country where few girls are born. Since this means that there are no brides for the eligible and ever growing son population, they are likely to import girls from other regions of the country. This has created another social problem – the purchase of young girls from poor regions. There are reports of womanless Haryana cobbling together some families by shopping for women from West Bengal and Orissa (Philipose, 2006). These girls suffer immense physical, emotional and psychological trauma as they are treated like commodities. This further contributes to the deterioration of their status in society.

Field reports from Gujarat suggest the resurgence of "Sata" system (a man is allowed to marry a girl, only in exchange of his sister marrying the bride's brother). Often, there is a chain of such 'Sata' marriages, making marriage a prison for the woman. A woman cannot break away from such union even if she faces violence and brutality at the hands of her husband. There is always a danger that in retaliation, other marriages in the "Sata" chanin may break leading to further violence.

Agnihotri (2003) states that going by the historical trends, the sex-ratio deficit would continue to worsen into a serious sex-ratio imbalance. There are increased instances of trafficking and sex trade, and re-emergence of practices like polyandry (one woman married to more than one man). Young girls are caught in this vicious cycle of discrimination and gender inequities, which is now propelled by newer and more accurate technologies of sex selection. This dismal situation leads to further exploitation and abuse of women and more violence against them.

2B.5 RECOMMENDATIONS

It is important to understand the intricacies of the problem and search for a mechanism to curb the skewed sex-ratio in the country. At this point we need to be aware of certain limits and fallacies as these could have long term repercussions. The biggest challenge in the policy domain is of the policy makers, decision makers at the national and international levels who believe that there are managerial quick-fixes to the problem of skewed sex-ratio. 'Daughters cannot be mass produced'. There cannot be technical solutions for social problems. It is important to eradicate girl child deficit on moral, social and economic grounds because women are

the cornerstone of Indian family and form a big part of the Indian labour force. Some of the recommendations are as follows:

a. Role of civil society: The State needs to have political will and commitment to uphold the right to equality. Any legislation without societal support is bound to fail.

b. Responsibility of the medical community: The medical profession cannot be expected to be more ethical than the society in which it operates. The medical community in India needs to take an unequivocal stand in educating the masses. This way the community could regain their lost credibility and social respect.

c. Relaxing the two-child norm: There is sustained pressure from the State to enforce the two-child norm. This will prove to be the precipitating factor in the demographic catastrophe as more families will prefer boys to girls. The State needs to emphasize on gender equality and reverse its policy measures.

d. Implementation of laws: The PCPNDT Act is a fine piece of legislation (with certain limitations) which can go a long way in curbing sex selection. The law needs to be implemented in letter and spirit, resulting in quick convictions. This can send a signal to the corrupt medical professional and families willing to bend the law.

e. Inclusion of men in the campaign: An important lacunae of the previous campaigns and policy measure has been the exclusion of men. It is important to drive home the point that the issue of 'disappearing daughters' is not a woman issue but a social issue that will impact the society as a whole.

f. Parallel discrimination of women: There is a need to curb the parallel process of femicide through discrimination which, is closely linked to the issue of 'quality of life' for the vast majority of Indian women. If the female embryo manages to survive and takes birth, the lives of women are no less than hell. The lives of women in India are threatened by neglect, violence, undernourishment and secondary status.

g. Need for introspection: As a society we need to introspect and ask ourselves a few questions about the genesis, proliferation of the problem and our role in its possible solution. Since the problem is of our making, the solution to the problem should be within us as a society.

Check Your Progress
1. Mention a few reasons for declining sex ratio in India.

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2B.6 CHINA'S ONE-CHILD POLICY: DISASTROUS CONSEQUENCES

In 1980, the Chinese government implemented the 'one-child policy' in order to limit Chinese families to one child each. The objective of the policy was to address the growth rate of China's population, which the government viewed as being too high. Families which complied with the policy, were offered incentives such as financial perks and greater employment options. Apart from this benefit, there were no other gains.

The one-child policy produced consequences beyond the goal of reducing population growth. Most prominent consequence was the resultant sex-ratio was skewed toward males. Traditionally, male children are preferred as sons inherit the family name and property. When families had to choose only one child, they preferred the boy and having a girl became highly undesirable. This resulted in a rise in abortions of female fetuses propelled by the availability of ultrasound sex determination techniques. The baby girls that were born were abandoned, or placed in orphanages or became victims of infanticide. Over time, the gap widened between the number of males and females. The young boys were referred to as young monarchs because of the pampering they received as the only child of the family. It eventually led to a situation in which there were fewer females available for marriage.

China has to confront a number of social ills especially those related to women. A one child per couple policy, population control policy and modern medical technology have combined to create a demographic nightmare that threatens China's stability.

Sporadic efforts have been made to modify the one-child policy. The policy was enforced for most Chinese into the 21st century. In late 2015 the government announced that the one-child limit per family would end in 2016 and from then on all families would be allowed to have two children.

2B.7 CONCLUSION

The declining child sex-ratio is the indicator of accelerated disequilibrium in favour of males. The slow disappearance of women has received scant attention from academicians, policy planners and implementers. There have been warning signs of this problem, but we as a society have preferred to ignore it.

Prenatal sex determination is a human rights violation. The tests that detect sex must be view as one tool of gender violence against women. The right to choose the sex of offspring cannot be understood in the absence of rights to life, health, nutrition, equality, and decision making which are unavailable to vast majority of women.

2B.8 SUMMARY

Indian society has a marked preference for a male child, both for perceived economic and traditional reasons. Preference for the male child is problematic as it devalues the female child and denies her basic right for survival, growth and development.

Sex-ratio is the number of females per thousand males in a population.

A number of reasons have been put forth to explain the declining sex-ratio, such as dowry system, tradition of female infanticide. To understand this issue better, Ravindra, (1992) proposed a DELTA hypothesis which delineates the factors responsible for the skewed sex-ratio.

A declining sex-ratio reflects gross discrimination against one sex with society. In India it confirms what is common knowledge – that girls are less desirable or unwanted. Women are treated as cattle or commodities, and are victims of trafficking and sex-trade. Also the re-emergence of practice of polyandry is associated with declining sex-ratio.

Since there cannot be technical solutions to social problems, the solution has to be from the 'inside' rather than the 'outside'.

2B.9 QUESTIONS:

1) What are the causes of declining sex-ratio?
2) Examine the consequences of skewed sex-ratio.
3) Discuss the recommendation for addressing India's declining sex-ratio.
4) Discuss India's problem of unfavorable sex-ratio with examples from China.

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3

MIGRATION – DEFINITION, MEANING AND CHARACTERISTICS

Unit Structure :

3.0 OBJECTIVES:

- To understand the concept of migration and related terms
- To understand the factors responsible for migration.

3.1 INTRODUCTION

The history of human civilization indicates that people have moved from one place to another, sometimes in small numbers, on occasions it has taken the form of mass exodus. Migration is the movement of people from one location to another and widely associated with change of permanent place of residence. Migration is one of the three demographic components of population change, the other two being fertility and mortality. It is most difficult to measure, model and forecast migration. Unlike fertility and mortality, migration is not a single unique event in time and space. Instead the process of migration can repeat itself over the lifetime of an individual.

There are two types of migration: internal migration and international migration. Internal migration is the movement of people from one place to another place in a given country. International migration is the movement of people from one country to another in order to take up employment or establish residence or to increase standard of living.

Migration may be classified as rural to urban, urban to urban, urban to rural and rural to rural. Migration results in redistribution of people at the point of origin and at the place of destination. Population tends to move from areas with low opportunity to areas with better opportunities. Intensive agriculture, establishment of industries and higher living standards are the major reasons for providing higher work opportunities.

Various scholars have studied migration for different purposes. Sociologists have dealt with the social and cultural consequences of migration. While geographers have laid stress on the time, distance and significance of migration, economists emphasized on the economic aspects of migration.

3.2 DEFINITION OF MIGRATION

According to Eisenstadt, "migration is the physical transition of an individual or a group from one society to another. This transition usually involves abandoning one social setting and entering another and different one".

Caplov states that, "migration is a change of residence and need not necessarily involve any change of occupation, but it is closely associated with occupational shifts of one kind or another".

According to the Demographic Dictionary of the United Nations, "Migration is such an event in which people move from one geographical area to another geographical area. When people leaving their place of residence go to live permanently in another area, then this is called migration."

While there is no universally accepted definition of migration – time, space and purpose of the movement are critical in understanding migration and migration related statistics. Two fundamental aspects of movement are: a) desire to settle permanently, and b) staying for a limited period. With revolution in information technology and globalization of the economy, a qualitative change in movement of people across the globe and also within the boundaries of a country is clearly emerging. More and more people are joining modern occupations making people break the ties they so long had with their places of origin.

3.3 TYPES OF MIGRATION

Migration is of the following types:
a. **Immigration and Emigration:** When people from one country move permanently to another country, for example, if people from India move to America then for America, it is termed as Immigration, whereas for India it is termed as Emigration.

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b. **In-migration and Out-migration:** In-migration means migration occurring within an area only, while out-migration means migration out of the area. Both types of migration are called internal migration occurring within the country. Migration from Bihar to Maharashtra is in migration for Maharashtra, while it is out-migration for Bihar.

c. **Gross and Net Migration**: During any time period, the total number of persons coming in the country and the total number of people going out of the country for residing is called gross migration. The difference between the total number of persons coming to reside in a country and going out of the country for residing during any time period is termed as net migration.

d. **Internal Migration andExternal Migration:** Internal migration means the movement of people in different states and regions within a country from one place to another. On the other hand, external or international migration refers to the movement of people from one country to another for the purpose of permanent settlement.

e. **Forced migration:** Forced migration exists when a person is moved against their will (slaves), or when the move is initiated because of external factors (natural disaster or civil war) or displaced people (development projects).

Check Your Progress

1. Can you explain the meaning of Migration

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2. Mention its types.

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3.4 CHARACTERISTICS OF MIGRATION AND MIGRANTS

There are some common characteristics of migrants and migration. They are as follows: demographic, educational, economic and employment characteristics.

3.4.1 Demographic Characteristics:

a. One of the important migrant characteristics is the age selectivity. According to a general survey observation, there is a high proportion of migration among the people of young adult ages who tend to move from their native places to other places.

b. Generally migration occurs among the young generation in search of employment opportunities or better employment or for higher standard of living. In this regard, it is found that the proportion of migration in the labour force is higher than the proportion of migrants to the total population of the area.

c. Younger people with basic levels of schooling provided in rural areas move to urban areas with a desire to acquire certain skills in any occupation.

d. A major part of female migration occurs on account of marriage at the young adult age. In recent times, it is evident that there is an increase in the number of women migrating on account of higher educational qualifications and supporting aspirations.

e. There is also an occurrence of associational migration, i.e., wives and daughters who move along with their employed male family members to cities and set up families.

f. Independent female migration for seeking livelihood in cities is also on the rise.

g. Another demographic pattern that is frequently observed in migration is 'chain migration'. The mobility of people tends to be to those places where they have relationships and where the old migrants serve as a link to the new migrants. In other words, people tend to migrate in places where they have kinship chains and networks of relatives and friends who provide a support system to the new migrant.

3.4.2 Educational Characteristics:

There is a strong association between the level of educational standard provided in rural areas and the propensity to migrate to cities. The young men and women in their early teens who have completed their school education and desire to acquire higher education show a greater tendency to move to urban centers. This phenomenon is predominantly seen in India. Young people move as there are limited job opportunities for them in rural areas.

3.4.3 Economic Characteristics:

A large pool of rural to urban bound migration consist of poor, landless and unskilled labour. For them economic opportunities in rural areas are scanty and in some areas non-existent. Hence, it is seen that the majority of the labour force moves to the cities in the absence of agricultural operations. This also reflects the seasonal nature of migration. These seasonal migrants return to their native places as soon as the agricultural operations start.   Recent studies have indicated that the permanent urban ward shift of population has increased with the emergence of the industrial sector in the urban areas.

3.4.4 Socio-cultural Characteristics:

Several migration currents reflect proximity, socio-historical, cultural and linguistic ties. People usually move to places where there is

similarity of language, culture and traditions as their own. In many cases it is observed that migrants choose the same destination and same occupation. For eg. In the construction industry, the task of masonry, plumbing, tile work, painting and other specialization draws people from specific regions.

3.5 DETERMINANTS OF MIGRATION

There are a number of reasons why people migrate to urban areas. Broadly, they can be identified as 'Pull factors' or 'Push factors'. A dominant reason why people migrate is to make an attempt to improve their life and chances. They have to plan a survival strategy. Migration and the accompanying risks and opportunities are an integral part of that strategy. The issues that influence the quality of their lives, especially incomes, drive people in what demographers describe as the 'push' that their places of living provides. Push factors are those which force people to move such as, low wages, lack of employment opportunities, lack of access to facilities that have a bearing on their health, education, wars, famine, discrimination, indebtedness, etc. On the other hand, pull factors are those which encourage people to move such as, security, higher standard of living, political and religious freedom, better environment, etc.

The important factors which motivate people to move can be classified into five categories: Economic factors, demographic factors, socio-cultural factors, political factors and miscellaneous factors

3.5.1 Economic Push and Pull Factors: Because of economic restructuring, job prospects often vary from one country to another and within regions of the same country. Several studies have suggested that migration is primarily motivated by economic factors. This is especially true in the developing countries which are characterized by labour intensive tasks, low agricultural income, agricultural unemployment and underemployment. Economic factors push the migrants towards developed areas with greater job opportunities. The basic economic factors which motivate migration may be further classified as 'Push Factors' and 'Pull Factors'. The push factors are factors that compel a person, for a variety of reasons, to leave the place and go to some other place.

The common push factors are low productivity, unemployment and underemployment, poor economic conditions, lack of opportunities for advancement, exhaustion of natural resources and natural calamities. In rural areas introduction of capital intensive methods of production into agricultural sector, and mechanization of certain processes has decreased the need for labour. The non-availability of alternative sources of income in rural area is also important factor for migration.

The Pull factors are factors which attract the migrants to an area. For example, opportunities for better employment, higher wages, facilities, better infrastructure, better working conditions, and attractive amenities.

3.5.2 Demographic Factors: The differences in the population growth rates of different regions of a nation have been found to be a determinant in the internal migration. Fertility and the natural increase in population are generally higher in rural areas which drifts towards the cities. Another important demographic factor in internal migration is marriage, as females follow their spouses to their marital residence.

3.5.3 Socio-cultural Push and Pull Factors: Socio-cultural factors may force people to emigrate from a country. Sometimes family conflicts, the quest for independence, also cause migration especially among the young generation. Improved communication facilities, transportation, impact of television, good network, cinema, urban-oriented education and resultant change in attitudes and values also are responsible for migration.

3.5.4 Political and institutional Push and Pull Factors: Historically, forced international migration has occurred for two main cultural reasons: slavery and political instability. Today a number of refugees constitute a part of large groups who migrate internally as well as internationally. According to the United Nations, refugees are people who have been forced to migrate from their homes and cannot return for fear of persecution because of their race, religion, nationality, membership in a social group or political opinion.

Political conditions can also operate as pull or push factors. People from autocratic or military regimes may be attracted to democratic countries that encourage individual choice in education, career and place of residence. After Communists gained control of Eastern Europe in the late 1940s, many people in that region were attracted towards the democracies in Western Europe and North America. Communist governments in Eastern Europe restricted or completely clamped down on emigration. They feared that they would lose their most able workers. The most visible symbol of restricted emigration was the Berlin Wall, which the Communists built to prevent emigration from Communist-controlled East Berlin into democratic West Berlin.
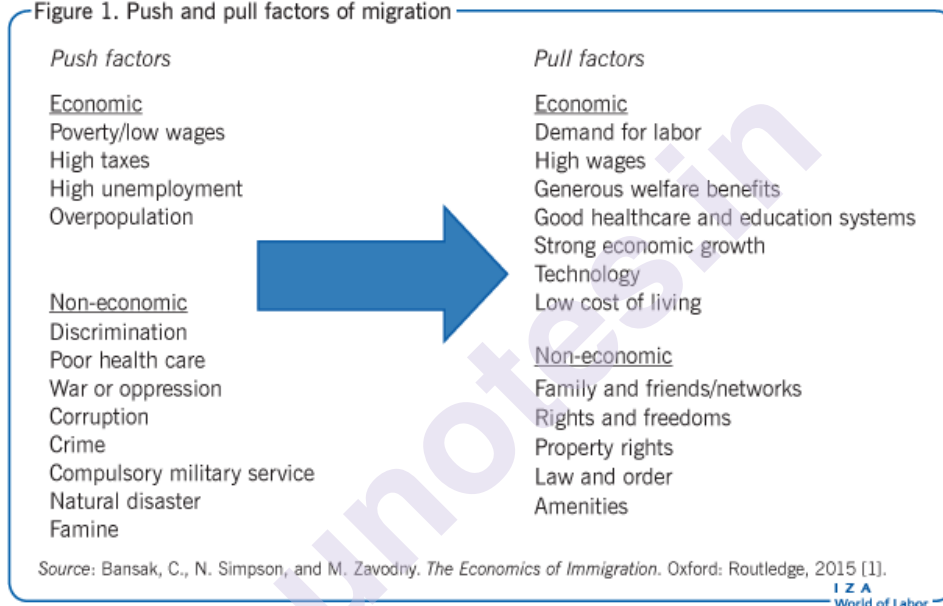
3.5.5 Environmental Push and Pull Factors: People migrate for environmental reasons, pulled toward physically attractive areas and pushed from hazardous ones. In an age of improved transport and communication systems, people can live in environmentally attractive areas that are relatively remote and yet not feel isolated from employment and entertainment opportunities. Attractive environments for migrants include mountains, seasides and warm climates.

Migrants are also pushed from their homes by adverse physical conditions. Water – either too much or too little - poses the most

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common environmental threat. Many people are forced to move by water-related disasters because they live in a vulnerable area. A lack of water pushes others from their land. The capacity of rivers to sustain human life has declined because of population growth, pollution and low rainfall. Consequently, many of the rural dwellers have been forced to move into cities and rural camps, where they survive on food donated by the government and relief organizations.

3.5.6 Miscellaneous Factors: There is migration from one place to another in response to famine, war and displacement in traditional economies. Closeness of cultural contacts, cultural diversity, great vitality associated with cities, individual attitudes are also associated with migration.

Figure 1. Push and pull factors of migration

Push factors

Economic
Poverty/low wages
High taxes
High unemployment
Overpopulation

Non-economic
Discrimination
Poor health care
War or oppression
Corruption
Crime
Compulsory military service
Natural disaster
Famine

Pull factors

Economic
Demand for labor
High wages
Generous welfare benefits
Good healthcare and education systems
Strong economic growth
Technology
Low cost of living

Non-economic
Family and friends/networks
Rights and freedoms
Property rights
Law and order
Amenities

Source: Bansak, C., N. Simpson, and M. Zavodny. *The Economics of Immigration*. Oxford: Routledge, 2015 [1].

I Z A
World of Labor

3.6 CONCLUSION

Ever since the origin of the human race, migration has been one of the inevitable activities of man. Migration involves the permanent movement of individuals or groups across symbolic or political boundaries into new residential areas. All types of migration have their positive and negative, economic, social, cultural and environmental impacts. There is an immediate need to change the policy level discourse on migration by reconsidering key documents and policies. This will help migrants to be construed as healthy contributors to the economy rather than solely depending on it.

3.7 SUMMARY

Migration is the movement of people from one location to another and widely associated with change of permanent place of residence.

There are various types of migration: immigration and emigration, in-migration and out-migration, gross and net migration, internal and external migration, and forced migration.

A number of factors are responsible for migration: economic factors, demographic institutional factors.

3.8 QUESTIONS

1. Define Migration. State the types of migration .
2. Evaluate the characteristics of Migration and migrants.
3. Delineate the causes of migration.
4. Examine the factors responsible for migration.

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4

THE RIGHT TO THE CITY - HENRY LEFEBVRE AND PATTERNS OF MIGRATION: CASE STUDY OF MUMBAI

Unit Structure :

4.0 OBJECTIVES:

- To understand the main tenets of Lefebvre's theory
- To examine the problems that hinder the right of the migrants to the city

4.1 LEFEBVRE'S 'RIGHT TO THE CITY'

Henri Lefebvre (1901-1991) was a neo-Marxist theorist and existentialist philosopher, a sociologist of urban and rural life. He also studied the State, international flows of capital and movement of social space. He had witnessed the modernization of everyday life, the industrialization of the economy and suburbanization of cities in France. Lefebvre's attention was drawn to the urban environments as the contexts of everyday life and the expression of social relations of production. According to Lefebvre, 'the urban' is not a certain population, a geographic size or a collection of buildings. Nor is it a node, a transshipment point or a centre of production. Instead, from a phenomenological viewpoint, the urban is social centrality, where the

many elements and aspects of capitalism intersect in space despite often merely being part of the place for a short time, as is the case with goods or people in transit.

Today sociologists and activists all over the world have insisted that the main problem of neoliberal global restructuring is that it has disenfranchised democratic citizens. The process of disenfranchisement means to deprive someone the rights and privileges; in this case, a right to inhabit a city. There is a transfer of control from citizens and their elected governments to transnational corporations. In effect, the neoliberal project aims towards a specific form of globalization: to increase the functional integration of all people and places into one single, laissez-faire, and capitalist world economy.

Scholars opposing this form of globalization feel that the growing power of capital within the neoliberal format will have disastrous consequences. They fear that this will disenfranchise the mass of people and exclude them from the decision making process. A range of scholars in geography, urban studies, political economy, and other fields argue that this form of globalization has increased disenfranchisement, encouraged authoritarianism and crippled democracy. There is abundant research that examines the relationship between political-economic restructuring and urban governance. These scholars argue that; 1) the current form of political-economic restructuring has triggered significant changes in the institutions of urban governance, and 2) those changes in governance have further impacted in a negative way (disenfranchised) urban inhabitants with respect to decisions that shape the geography of the city, and by extension, their lives and livelihoods.

Among those scholars who have tried to study the potential responses to disenfranchisement, the idea of the 'right to the city' has received immense attention. The intellectual roots of the idea are to be found in the writings of Henri Lefebvre.

Since urban space is central to the theory of 'right to the city', it is important to understand Lefebvre's notion of space. According to him, space includes; perceived space, conceived space and lived space. Perceived space refers to the relatively objective, concrete space people encounter in their daily environment. Conceived space refers to mental constructs of space. This would include creative ideas about and representations of space. Lived space is the complex combination of perceived and conceived space. Our everyday life and social relations take place in the context of lived space. Production of urban space, necessarily involves reproducing the social relations that are bound up in it. For Lefebvre then, "the *right to the city* is like a cry and a demand….a transformed and renewed *right to urban life.*"

The right to the city involves two principal rights for urban inhabitants: 1) Right to participation, and 2) Right to appropriation. The

right to participation maintains that the city dwellers should participate and play a central role in any decision related to the production of urban space. The role of citizens should be central and direct. This decision making should be in collaboration with the State (local, state or national level) and a multilateral institution (a WTO trade ruling).

The right to appropriation includes the rights of inhabitants to physically access, occupy and use urban space. In other words, urban dwellers have the right to be physically present in the space of the city and the right to use its resources. According to Lefebvre, appropriation gives inhabitants the right to 'full and complete usage' of urban space in the course of everyday life.

Criticism: While scholars agree that the right to the city is useful for urban dwellers, they feel that the path should be tread with caution. The right to the city does offer an approach that is both exciting and disturbing. It is exciting because it offers a radical alternative that challenges the present form of capitalism and liberal-democratic citizenship. On the other hand, it is disturbing because we cannot know what kind of a city these new urban politics will produce. This could pose a democratic challenge to marginalization and oppression. At the same time new forms of dominations could emerge. The right to the city could have significant negative impacts on cities. Therefore, the right to the city is not a panacea. It needs to be seen not an ultimate solution to current problems, but as an opportunity to engage in a new urban politics, more specifically urban politics of the inhabitant.

4.2 PATTERNS OF MIGRATION: MIGRANTS' (DENIED) RIGHT TO THE CITY

4.2.1 The Historical Context
The history of cities in the Indian subcontinent goes as far as the middle of the third millennium B.C. with the emergence of cities such as Harappa and Mohenjodaro in the Indus Valley Civilization. Many such new cities have emerged, and many have declined. The dynamics of city growth shows that migration has been an important component of all cities which were centres of trade and commerce. This important economic function could not have been sustained with migration and migrants. There are a number of factors responsible for migration such as; business, education, marriage, natural calamity and conflicts, etc.

Internal migration has contributed to the growth and development of Indian cities. Article 19 of the Indian Constitution guarantees freedom of movement and freedom to settle anywhere within the territory of India. Yet, this right is hampered by lack of access to civic amenities, housing, sanitation, housing and employment. The migrants also face restrictions on their political and cultural rights because of linguistic and regional difference. This discrimination manifests in the form of the 'Sons of the

Soil" (Bhoomi Putra) policy, which whips up anti-migrant feelings. The migrants are poor and uneducated. This makes them vulnerable to exploitation and oppression. Therefore, the condition of the migrants needs to be the central focus in urban policy making and planning.

Migration raises a central issue for the right to the city – the right for everyone, including the migrants to enjoy the benefits that the city has to offer. The Right to the City perspective seeks to improve conditions of the migrants and provides a new alternative perspective to counter the negative effects of the neo liberal economic policy. It also recognizes the valued contribution of urban migrants in the making of the city.

4.2.2 Migration and Formation of Cities - The most important component of urbanization is migration. In India, almost 31%, i.e., one-third of the population lives in urban areas. At a pan-India level, 377 million people are spread over about 8000 cities and towns. The cities and towns are hierarchically linked with each other but predominantly embedded in the spatial organization of the national economy. The spatial structure of the Indian economy has been shaped by the three port cities, viz., Mumbai, Chennai and Kolkata. Delhi entered the list after it became the capital city in 1911. Together these cities form a nucleus in their respective regions and have dominated the urbanization scenario with inter-regional flow of migration.

With increasing economic growth, wealth is being concentrated in cities and urban centres, along with the gap between rural and urban income levels, wages and employment. This process is not only exclusionary in the regional sense, but also as a social and spatial process within the city.

4.2.3 Internal Migration: Trend and Pattern – Indian cities are growing as a result of internal migration. According to the Human Development Report, 2009, the number of those who moved across the major zonal demarcations within their countries was nearly four times larger (740 million) than those who moved internationally (214 million).

a) Migration to urban areas: India's urban population has grown exponentially. It was recorded to be 79 million in 1961, 377 million in 2011. It is estimated to reach 600 million by 2030. The increase in migration rate in urban areas is because of female migration in recent years, apart from marriage migration. Migrants in urban centres are predominantly engaged in the informal sector. Most of them are exposed to the vagaries of the labour market and lack social security.

b) Seasonal and Temporary Migration – Migrants move for a short duration in the lean season from their current place of residence on a yearly basis. Several studies indicate that seasonal or temporary migration is more prevalent among the socio-economically deprived groups such as

scheduled castes and tribes, and among the poorest of the poor and landless labourers.

Check Your Progress
1. Mention the types of Migrations

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4.2.4 Migrants' Exclusion and Denial of Rights – Migration has immense benefits for the economy. Migration transfers labour from areas of surplus to areas of deficit, raising the overall productivity of the labour force and minimizing the gaps in the labour market. Migrants bring new skills and innovative practices and are willing to take risks, which locals are vary of . Employers in many cases prefer to work with migrants as they are hardworking, disciplined and pliable and can be paid less, cutting the cost of production.

Migrants also contribute to the diversity of cultural life in the city. The contribution of trading communities, such as the Gujaratis, Marwaris, and Parsis to the trade and commerce of the city cannot be denied. Migrants also sent remittances back to their residence. This shows that migration brings benefits not only to the destination areas but also the region of their origin.

The (denied) right to the city has to be understood in the context of growing sentiments against migrants especially in destination areas. In India, the exclusion and discrimination against migrants take place through political, administrative and market mechanism. The migrants right to the city is strongly denied in the political defence of the 'Sons of the Soil', which whips passion in favour of creating vote banks along ethnic and linguistic lines.

The migrants are vulnerable to the uncertainties of the labour market, face discrimination and violence, health risks, and also the risks of natural calamities,

Migrants also lack identity proof and proof of residence in the city. This is a huge barrier to their inclusion as they cannot be included in the voters' list. Thus they cannot exert their basic right to vote. Lack of residential proof also means that they are excluded from opening a bank account, getting a ration card or a driving license. The recent UID (Unique Identification) project also insists on residential proof.

The denial of political rights for migrants is linked to the denial of the right to housing in the city. They face unhealthy and inhuman

conditions, considering that most migrants live in slums and poor neighbourhoods.

Women who accompany the males to the city face greater risk of exclusion. Women are employed in the construction work, domestic or daily wage labour. They are paid lower as compared to their male counterparts. They have little or no access to drinking water, toilet facilities at work and face the risk of sexual harassment. The children of migrants are denied their right to education as seeking admission to school is difficult and the language barrier makes it even more difficult for the child to cope.

4.2.5 Challenges of Migrants' Inclusion – The process of ethnic polarization and a negative attitude towards the process of migration has worked to keep the migrants in exclusion. This mindset has obstructed the mainstreaming of migration into the development strategies of the country. It has to be kept in mind that increasing the migrant's inclusion will help to deepen the notions of citizenship, expand the horizon of freedom and inspire a sense of equity and faith in human rights.

a) Creating a positive attitude towards migrants – Building a positive attitude towards migration and migrants and their valuing their contribution to the making of the city is a long drawn process, but it is necessary. This will pave the way for their social, economic, political and cultural inclusion in the city.

b) City planning and migrants – City planning is not a reality in India. All the cities problems and woes are blamed on the migrants, which leads to hatred and violence against them. Even if there is a master plan for the city, it is devoid of inclusiveness as the master plan is technically prepared and bureaucratically envisioned with little involvement of the citizens. A Right to the City approach would democratize the preparation of the Master Plan, making it inclusive as a core city development strategy. This could provide opportunities not only to realize the inhabitants' (and migrants) rights within the city but also their rights to change the city according to their needs.

c) Migration and governance - Migrants are always blamed for rising crime and problems of law and order in the city. The main reason for this perception is that migrants are anonymous in the city as they lack identity and inclusion into urban citizenship. Local NGOs can be roped in to certify the residential status of the migrants, which could facilitate access to other facilities such as a ration card, bank account, etc. Doing so would provide migrants a passage to urban citizenship.

d)Government policies and programmes - Government policies have ignored and not recognized the issue of migration and protection of migrants' rights. Though policy documents such as the 11th and 12th –Five

Year Plans recognize the significance of urban transition in a positive light, there is no reference to the migration issue.

Urban development is a State subject in India, but the Centre formulates the policies. The Jawaharlal Nehru Urban Renewal Mission (JNNURM) and Rajiv Awas Yojana (RAY) are significant steps in addressing the needs of the urban poor, but not specifically with reference to the migrants. For example, in Mumbai all those who have been living in slums but arrived after the year 2000 would lose the right to housing under slum rehabilitation programmes. This indicates the manner in which urban policies and programmes are discriminatory against the migrants.

Check Your Progress
1. What are the issues faced by migrants ?

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4.2.6 Policy Recommendations

Firstly, the policy makers must recognize that the development process and migration go hand-in-hand. Therefore, the government should create policies that facilitate internal migration. This issue should be addressed at the level of city planning and city development agenda. All efforts should be taken by the government to integrate migrants politically, economically, socially, culturally and spatially. This requires immense attitudinal change in the governmental bodies that are in charge of policy making. It is necessary to gain insight and historical understanding of how migrants have contributed to the making of the city. Mumbai is what it is today because of the varied contribution of several communities migrating to the city from across the length and breadth of the country. These communities have had to face hostility and resistance from several quarters. To ease this situation, it is necessary to highlight the contribution of migrants to the city through organizing workshops, conferences, and communicating through print and electronic media in order to bridge the gulf between migrants and local communities.

Secondly, Policy documents such as the 12th - Five Year Plan, JNNURM and City Development Plans should recognize the value of migration and incorporate the concerns of migrants into these policy documents.

Thirdly, The twin pillars of an inclusive city are: 1) democratization of city governance, and 2) Political inclusion of migrants in decision making process. A rights-based approach will usher in an era of freedom and human development, with wellbeing of the migrants as a central focus.

4.3 CONCLUSION

Lefebvre's perception of the Right to the City argues for migrants right to participate in decision making as a marker of freedom and human development. Migration is an important component of urban transition, especially in the third world countries, yet not much attention is given to the dynamics of migration within the development policy. Migrants contribute to the social, economic, political and cultural landscape of the city. The Constitution of India guarantees the right to movement within the country. Yet, this right is hampered by lack of access to civic amenities, housing, sanitation, housing and employment. There is a need to democratize urban governance and usher in an era in which all urban residents play a central role in production of urban space.

4.4 SUMMARY

The neoliberal global restructuring has disenfranchised democratic citizens. The process of disenfranchisement means to deprive someone the rights and privileges; in this case, a right to inhabit a city

The right to the city involves two principal rights for urban inhabitants: 1) Right to participation, and 2) Right to appropriation
The Right to the City is not an ultimate solution to current problems, but is an opportunity to engage in a new urban politics, more specifically urban politics of the inhabitant.

Migration raises a central issue for the right to the city – the right for everyone, including the migrants to enjoy the benefits that the city has to offer.

Indian cities are growing as a result of internal migration.

Migration has immense benefits for the economy. Migration transfers labour from areas of surplus to areas of deficit, raising the overall productivity of the labour force and minimizing the gaps in the labour market.
The process of ethnic polarization and a negative attitude towards the process of migration has worked to keep the migrants in exclusion.

Government policies have ignored and not recognized the issue of migration and protection of migrants' rights.

All efforts should be taken by the government to integrate migrants politically, economically, socially, culturally and spatially. This requires immense attitudinal change in the governmental bodies that are in charge of policy making

4.5 QUESTIONS

1. Discuss the key tenets of Lefebvre's theory on 'Right to the City'.

2. Examine the patterns of migration in the context of denial of right to the city.

3. Elaborate on the policy recommendations relating to the migrants right to the city.

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RIGHT TO HEALTH WITH REFERENCE TO WOMEN AND CHILDREN

Unit Structure :

5.0 OBJECTIVES

- To understand the history behind the different rights related to health.
- To learn about the right to health from International and National perspective.
- To explore the right to health at National and International level for women and children.
- To learn about its practical application.

5.1 INTRODUCTION

Health is an important part of every human being irrespective of class, country and gender, age. Rights are something which you have been given as a citizen, as a human being as a member of society. Right to health forms an important part as a member of the society. The present

chapter is focussed on understanding the different rights related to health both at National and International level. This chapter is divided into five sub topics –

1. Right to health from International Conventions/ Declarations perspective
2. Right to health from Indian perspective
3. Right to health from International and Indian framework for Women
4. Right to health from International and Indian framework for Children

Let us now look into the details of the first section -

5.2 RIGHT TO HEALTH FROM INTERNATIONAL / GLOBAL PERSPECTIVE

1. WHO (World Health Organisation) –
        WHO is a member of the United Nations. It has a constitution which was established on 7 April 1948. The constitution states that 'Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity. The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion and political belief, economic or social condition. The health of all peoples is fundamental to the attainment of peace and security. Unequal development in different countries in the promotion of health and control of diseases, especially communicable disease, is a common danger'. This WHO description of health shows that health cannot be restricted to only physical conditions but mental wellbeing too.

2. Universal Declaration of Human Rights (1948) -
        In the Article 25 the reference is made to health. It states -
(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing and housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

3. International Convention on the Elimination of All Forms of Racial Discrimination (1969), Article 5 (iv) discusses that everyone has the right to public health, medical care, social security and social services.

4. International Covenant (Agreement) on Economic, Social and Cultural Rights (1976), discusses about health in Article 7, Safe and healthy working conditions and Article 12.

It also points out several areas to work upon by the states like -

(a) There needs to be provision for the reduction of the still birth-rate and of infant mortality and for the healthy development of the child.
(b) Improvement should be made in all aspects of environment, industrial hygiene.
(c) Proper steps should be taken for prevention, treatment and control of epidemic, endemic, occupational and other diseases.
(d) There needs to be creation of conditions which would assure to all medical service and attention to people in the event of sickness.

There are several other Instruments that discuss about Right to Health like:

• The Convention relating to the Status of Refugees;

• The International Convention on the Protection of the Rights of All Migrant Workers and members of Their Families;

• The Declaration on the Protection of Women and Children in Emergency and Armed Conflict;

• The Standard Minimum Rules for the Treatment of Prisoners;

• The Declaration on the Rights of Mentally Retarded Persons;

• The Declaration on the Rights of Disabled Persons;

• The Declaration on the Rights of AIDS Patients.

5. Declaration of Alma-Ata on Primary Health Care, 1978

Governments at Alma-Ata repeated Health for All by 2000, and it was insisted on primary health care. This Declaration is not binding on governments but it stresses on the commitment of the governments/states towards achieving the right to health.

Check Your Progress

1. How does WHO defines health?

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2. State the description of health as given by Universal Declaration of Human rights?

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5.3 RIGHT TO HEALTH IN THE INDIAN CONTEXT

There are several articles, which discuss health. The state is also responsible for several important aspects concerned with wellbeing of the population like water, sanitation, hospitals, primary health centres, women and child development, solid waste management, regulation of slaughter houses, tanneries etc.

DIRECTIVE PRINCIPLE OF STATE POLICY AND HEALTH Part IV of the Indian Constitution imposes duty on states through several articles like - .

- Article 38 enforces liability on the state to maintain social order for the welfare of the people.
- Article 39(e) related with workers to protect their health.
- Article 41 notes that it is the duty of the state to provide public assistance specially to sick and disabled citizens.
- Article 42 points out that it's a primary responsibility of the state to protect the health of infants & mothers by maternity benefit.
- Article 47 states that it is the principal responsibility of the state to raise the level of nutrition, standard of living.

5.4 RIGHT TO SOCIAL HEALTH

The social right is well expressed with persons suffering from HIV/Aids as these people face lot of discrimination in their day to day lives. The courts have protected people with HIV/AIDS against discrimination in employment and services, but the issue of the right to health of persons with HIV is a new and emerging area of judgement. One of the first litigations on the issue of HIV/AIDS in India is Lucy D' Souza vs. State of Goa in which S. 53(1) (vii) of the Goa Public Health Act, 1987, the petitioner argued that the medical officials used to isolate the person. In a way HIV was seen as a contagious disease. The verdict came that such discrimination was not right and this was against the WHO which states Aids is not contagious as well was against Article 15 of the Constitution. A recent Full Bench decision of the Andhra Pradesh High Court views AIDS as a public health issue and one that needs to be seen in terms of the constitutional guarantee to the right to life, making employers and health providers accountable for any negligence, omission or failure to conform to procedure.

5.5 CORONAVIRUS AND THE ROLE OF STATE

The Pandemic coronavirus has impacted throughout the world. The Indian Government has invoked 'The Epidemic Diseases Act, 1897 through which curfew was implemented. Ordinance was also passed whereby the Health workers are harmed and found guilty then imprisonment from 6 months to 7 years would be given. Strict Lockdowns

are implemented all over the country. Government also gave relief packages under the National Rural Mahatma Gandhi Employment Scheme., Pradhan Mantri Garib Kalyan Package. A press statement declared by the Government points out that More than 33 crore poor people received financial assistance of Rs 31,235 crore under the Pradhan Mantri Garib Kalyan Package Rs 10,025 crore disbursed to 20.05 crore to Women Jan Dhan account holders Rs 1405 crore disbursed to about 2.82 crore old age persons, widows and disabled persons. Technology has also been used like Robots are being used, Drone is being used to keep track of people, Apps like Aarogya Sethu app have been made and put to use. Health workers insurance schemes are also given.

Check Your Progress

1. During the Covid-19 virus which app has been launched by the Government of India?

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2. State the meaning of right to social health?

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5.6 RIGHT TO HEALTH – CHILD AND ADOLESCENCE

Who is a child? The answer to this is difficult technically as in different acts the age is described differently. For e.g. The Right of Children to free and compulsory education Act, 2009, states a child as someone who is from 6 to 14. Prohibition of Child Marriage Act 2006 calls a child as someone Prohibition of Child Marriage Act 2006 Calls a child as someone who has not completed 21 age if male and if female then 18. So, a common consensus can be drawn as a child is someone who is below 18 years.

The physical and mental health of a child impacts the wellbeing of a country and society at large. It is the state's responsibility to take care of both born and unborn children. Understanding a child's health cannot be clubbed into one framework. A child's health is influenced by a number of factors like his surrounding, family conditions etc. For e.g. Children who reside on streets, children growing up with families who are nomads, tribal children, all would have different kinds of body and mind. During war, during crises children are the most affected. For e.g. Children have walked

to reach home during coronavirus lockdown at times with their parents for more than 100 km.

- **International Covenant (Agreement) on Economic, Social and Cultural Rights (1976) discusses different rights about children in two articles-**

Article 10
- Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such a period working mothers should be accorded paid leave or leave with adequate social security benefits.
- Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

Article 12
The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child

- **Child Rights Convention (CRC), 1989**

    Articles 23 and 24 of the CRC recognise the right to health for all children.

- Article 23 ensures the rights of a mentally or physically disabled child to dignity; to enjoy a 'full and decent life'; to special care and encourages the promotion of self-reliance so that the child may actively participate in the community.

- According to Article 24, States must recognise the right of the child to "the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. They should ensure that no child is deprived of his or her right of access to such health care services. States Parties shall pursue full implementation of this right and in particular, shall take appropriate measures to reduce infant and child mortality, ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care, combat disease and malnutrition, including within the framework of primary health care, through application of readily available technology and through the provision of adequate nutritious food and clean drinking water, taking into consideration the dangers and risks of environmental pollution."

- Article 24 ensures appropriate prenatal health care for mothers, ensures access to information particularly of parents and children, access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breast-feeding, hygiene and environmental sanitation and the prevention of accidents. States Parties will promote and encourage international co-operatives with a view to achieving progressively the full realisation of the right recognised in the present Article, in keeping with particular needs of developing countries.

- **Indian Government Programs Targeting Child Health and Development -**

     The Integrated Child Development Services (ICDS) initiative was launched in 1975. Janani Suraksha Yojna was started in 2005, and modified in 2011 to include the newborns (now known Janani Shishu Suraksha Yojna), to provide free care to pregnant women and sick newborns. The National Rural Health Mission (NRHM) was launched in 2005 to address the health needs of underserved rural areas. The plans include having mobile medical units in unreserved areas, mother and child health wings and free drugs and diagnostic services at district hospitals, and other areas like sanitation, education and nutrition.

     In 2013, this mission was expanded to include urban areas (urban health mission, both now included as sub-missions under National Health Mission. Rashtriya Bal Swasthya Karyakram was started in 2013 to screen diseases specific to childhood – developmental delay, disabilities, birth defects and deficiencies. This initiative is aimed at screening over 270 million children of 0-18 years of age. Children diagnosed with illnesses would be receiving follow up, including surgeries, free of cost under NRHM.

Check Your Progress

1. Discuss some main points of the Child Rights Convention 1989?

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2. State the two main articles named which are focussed on International Covenant (Agreement) on Economic, Social and Cultural Rights (1976) discusses different rights about children rights?

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5.7 RIGHT TO HEALTH - WOMEN

Women are the most affected ones as they do household chores, outside work, carry water from long distance, bear the child. The health problems of women increases due to economic reasons as well due to unjust practices like untouchability in a country like India.

International Guarantees for Women's Right to Health

There are several agreements for which India is a signatory; these agreements stand as a guideline for building our own rights for women. The following are the list -

1. In the context of Women's Right to Health, discrimination on the basis of sex is prohibited in the Universal of Declaration of Human Rights and in Article 2 of the two most significant International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights.

2. Convention on the Elimination of Discrimination Against Women (CEDAW), 1965 Article 12 establishes the responsibility to adopt adequate measures to guarantee women access to health and medical care, no discrimination, including access to family planning services. It also establishes the commitment to guarantee adequate maternal and child health care. Provide training curricula of health workers include comprehensive, mandatory, gender-sensitive courses on women's health and human rights, in particular gender-based violence.

3. The International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966 Article 12 (1) recommends that the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

4. The Fourth World Conference on Women - Platform for Action (The FWCW Platform) 1995 points out that the human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence.

5. The World Conference on Human Rights (WCHR) 1993 recognises the importance of the enjoyment by women of the highest standard of physical and mental health throughout their life-span.

6. Vienna Declaration and Programme of Action (Adopted by the World Conference on Human Rights on 25 June 1993) the human rights of women and of the girl-child are an unchallengeable, integral and indivisible part of universal human rights.

7. The International Conference on Population and Development Programme of Action (The ICPD Programme Action, 1994) discusses the reproductive rights for women.

- **Indian Context**

    The Constitution directs the state to initiate measures to establish justice, equality, ensure dignity, etc. which has a direct bearing on women's health through Articles 14-17, 19. Article 47 states that it is the Duty of the State to raise the level of nutrition and the standard of living and to improve public health.

    Article 42 and 43 specially addresses the States responsibility to make provisions for securing just and human conditions of work and maternity relief.

    The Indian Penal Code takes care of the girl child for that purpose, feticides (section 315), infanticide, seduction (section 366).

    Maternity Benefits Act, 1961, states the maximum period for which any woman is entitled to maternity benefits is 12 weeks i.e., six weeks up to and including the day of her delivery and 6 weeks immediately following that day. The Act provides for payment of maternity benefits to the women employees at the rate of average daily wage for the period of their actual absence immediately preceding and including the day of their delivery and for 6 weeks immediately following that day.

Check Your Progress

1. Discuss Maternity Benefit Act, 1961.

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2. What does Convention on the Elimination of Discrimination Against Women (CEDAW), 1965 briefs about women's right?

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5.8 SUMMARY

- WHO is a member of the United Nations. It has a constitution which was established on 7 April 1948. The constitution states that 'Health is

a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity. There are several important declarations, conventions for which India is a signatory. The Right to health is primarily discussed in Article 38, Article 39, Article Article 42 , Article 47 states that it is the principal responsibility of the state to raise the level of nutrition, standard of living. The right to health for children both born and unborn (conceived) is the responsibility of the state. Having better health for women and children is a sign of a progressive society.

5.9 QUESTIONS

1. Discuss the various International Declarations/ conventions on right to health
   (Ans – Point 1)
2. Discuss in brief Right to Health for women
3. Explain the right to health for children.
4. Write in brief Right to health with reference to the role of state in limiting the pandemic Coronavirus.

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6

THE RIGHTS OF PERSONS WITH DISABILITIES (DIFFERENTLY ABLED) ACT (RPWD) 2016
AND
SURROGACY AND POLITICS OF REPRODUCTION

Unit Structure :

6.0 OBJECTIVES

- To sensitize individuals.
- To make ourselves aware of the rights.
- By learning the rights you can help someone in need, file RTI, PIL and contribute in the betterment of the people with a disability population.

6.1 KEY TERMS

● Disability – A phenomenon which is a result of the interaction between a person with a health condition and a particular environmental context
● Benchmark Disability – A person having at least 40% disability of any type recognized under the RPWD Act 2016.
● PIL – Public Interest Litigation – This is filed in the court directly when someone seeks justice for a common good as a human kind.

6.2 CHAPTER DIVISION

The present chapter is divided into two sections. The first section would discuss the Rights of Persons with Disabilities (Differently abled) Act (RPWD) 2016 and the second section is called Surrogacy and Politics of Reproduction.

6.3 INTRODUCTION

The present chapter is divided into two sections the first section would discuss about the According to Census 2011, in India, out of the 121 crore population, about 2.68 crore persons are 'disabled' which is 2.21% of the total population. 17% of the disabled (differently abled) population is in the age group 10-19 years and 16% of them are in the age group 20-29 years. 1.24% of the total children (0-6 years) are disabled. 27% of the disabled children aged 5-19 years are not attending educational institutions. The question on disability was not canvassed in the Census from 1941 to 1971. In Census 1981, information on three types of disability (totally blind, totally crippled, and totally dumb) was collected. This shows for years the population has suffered This makes understanding the rights of disabled population very important as they are one major part of our own community which needs due attention.

6.4 CONCEPT OF DISABILITY

Before learning about the Disability Act let us first try to understand the concept of disability. The Statistical profile on Disabled Persons in India (2016) points out that there is no clear universal definition of disability. Yet, disability could be seen as the 'result of the interaction between a person with a health condition and a particular environmental context. Disability can also be seen as something which involves some degrees of difficulty, limitation or dependence, ranging from slight to severe. However, there is a problem with this description of disability as it can vary from one place to another. For example, having access to technical aids, services or medication, or physical adaptation to the environment may allow individuals to overcome their disabling conditions.

6.5 UNITED NATIONS CONVENTION

The United Nations Convention on the Rights of persons with disabilities was held in the year 2006. India signed the convention in the year 2007. Thereafter, our country created the Rights of Persons with Disabilities Act and it was passed on the 27th December, 2016. The convention laid down several guidelines for the empowerment of the disabled population like –

a) Cultivating Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
b) Encouraging Non-discriminatory practises.
c) Striving for full and effective participation and inclusion in society.
d) Having respect for difference and acceptance of persons with disabilities as part of human diversity and humanity.
e) Develop equal opportunity and equality
f) Develop accessibility;
g) Promote equality between men and women;
h) Create more opportunities for evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities;

On the basis of above principles/guidelines the Right of persons with disabilities Act in India was updated. Before Rights of Persons with Disabilities Act 2016, which was in operation the Act was known as **The Persons with Disabilities (Equal opportunities, Protection of Rights and full Participation) 1995 i.e. PWD Act.**

Check Your Progress
1. Discuss the concept of Disability(Differently abled) in few lines

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2. State any five guidelines of United Nations Convention

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6.6 KEY POINTS OF RPWD ACT 2016

- The Government ensures that the persons with disabilities would enjoy the right to equality, a life with dignity and respect. The government would also take measures to ensure that women and children lead a life with confidence in society. Any kind of violence, abuse, exploitation would not allow or encourage. The government would take necessary steps to rescue, protect and rehabilitate victims. In addition, create awareness among people.

- The National Disaster management authority and the state disaster management authority shall take appropriate measures to ensure inclusion of persons with disabilities under the Disaster Management Act, 2005

- No child with disability shall be separated from his or her parents on the ground of disability except on an order of competent court on the grounds for best interest of the child.

- People with disabilities should have enough access to reproductive rights, family planning information. Government has to promote various methods for preventing disabilities. Screen all the children at least once a year.

- The people with disabilities should have polling stations accessible to them as well as the electoral process needs to be well informed. It is the responsibility of the Election commission and state election commission to have it in the disabled friendly manner.

- People with disabilities also have equal access to justice, court or any other judicial power in the state.

- It is the state duty to encourage education among the disabled population. It has to monitor, support, build accommodation and monitor the participation. Periodic survey also has to be conducted every five years to identify the gaps. Vocational training programmes should be developed so that self-employment opportunities are created.

- No discrimination should be made during employment.

- Every Government should appoint a Grievance Redressal Officer and he/she would be informing the Chief Commissioner or the State Commissioner. A register of complaints would be maintained and every complaint would be enquired within two weeks of its registration. If the concerned person is not satisfied with the outcome/ no action is taken then he/she can approach the District level Committee on disability.

- The government has to initiate research and development activities through institutions for empowerment of persons with disabilities.

- A history museum which chronicles and interprets the historical experiences of persons with disabilities needs to be made so that the talent, interest is enhanced and encouraged.

- The sports authorities would do their needful to help and promote participation in sports so that sporting talents are given enough opportunity and funds would be allocated for the same.

- All Government institutions of higher education receiving aid from the government shall reserve not less than 5 per cent seats for persons with benchmark disabilities. The government would also be responsible for identifying posts, category for these vacancies.

- Schemes would be made in favour of people with disability whereby – 5 % reservation would be made for allotment of agricultural land and housing, development, poverty alleviation schemes and in all such relevant schemes, priority would be given to women with benchmark disabilities.

- 5% Reservation in allotment of land on concessional rate, where land is to be used for the purpose of promoting housing, shelter, setting up of occupation, business, enterprise, recreation centres and production centres.

- There should be facilities at bus stops, ticket machines, toilets, parking spaces, railway stations.

6.7 COMPARISON BETWEEN ACT 1995 AND 2016

- The 1995 act had mentioned only 7 disabilities whereas the 2016 act considers 21 disabilities like cerebral palsy, dwarfism, muscular dystrophy, acid attack victims, hard of hearing, speech and language disability, specific learning disabilities, autism spectrum disorders, chronic neurological disorders such as multiple sclerosis and Parkinson's disease, blood disorders such as haemophilia, thalassemia, and sickle cell anaemia, and multiple disabilities.

- The reservation allowed was only 3% now 5% is a reservation given.

- The terminology mental retardation is replaced by intellectual disability.

Check Your Progress
1. List out any three points of the **RPWD Act 2016**

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2. List out the twenty one disabilities mentioned in the act of 2016.

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6.8 CASES

- Manif Alam vs Indian IIT (Delhi), on 16 February, 2018 in this case, the student Manif (MSC Maths) had failed the exam and he was asked to leave the Institute. However, he approached the court and thereafter the judgement was passed stating that if the student is capable to pass the entrance exam thereafter it is the responsibility of the institute to take care and coach the students to clear the exam
- Rajive Raturi vs Union Of India on 15 December, 2017 where Rajive filed a PIL and pointed out the violation of the Rights for Disability Act, 2016 wherebythe infrastructure is not disabled friendly in the city. The court directed respective states to take action and make it disable friendly

6.9 CRITICISM

Narayan, Thomas (2017) point out that on scrutiny of the Act, it is observed that though mental illness has been included as a condition of disability, special needs of persons with mental illness (PMI) and their families have not been properly addressed. The GST on the equipment used by disabled people adds a burden to their expenses. As it's a basic need for them, GST adds up a problem. The percentage various from 5% t0 18% paid The upcoming budget if it looks into it then there could be a solution to the problem.

Check Your Progress
1. Discuss one case related to Disability rights

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2. Criticise the Disability Act, 2016.

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6.10 SUMMARY

As per Census 2011, in India, about 2.68 Crore persons are 'disabled' which is 2.21% of the total population. As a signatory of the United Nations Convention we have to ensure equal rights to the people with disability. The Rights of persons with disabilities Act, 2016 is at present under implementation. This act focuses on nearly all areas like rights, protection safety, family, justice, role of education, educational institutions, employment, reservation, protection of the people who face disability. This act has 21 categories which are seen as disability in an individual like the new inclusions like acid attack etc. The Act also talks about 5% reservation in several areas right from education to housing. The Act prior to this was that of 1995 Act. However, the present act could be improvised like GST concession should be given more to the people who face disability. To explain the practical example of implementation of the 2016 Act two case studies are also given where the act is being used to seek justice.

6.11 QUESTIONS

1. Discuss in brief about the Disability Act 2016. (Answer – Key points)
2. According to you, why studying Disability is important and discuss about Right to Disability Act. (Answer- Introduction, key points).
3. Write in brief the Disability Act (2016) and compare it with the earlier act.

6.12 OBJECTIVES

● To learn Surrogacy
● To learn about the Surrogacy (Regulation) Bill.
● To understand the problems with new technologies related to reproduction.

6.13 KEY CONCEPTS

● **Surrogacy –** An arrangement where a woman bears the child of another being and gives it to them.
● **Altruistic Surrogacy –** Surrogacy where no money is involved except for medical and insurance is paid to the surrogacy mother.
● **Assisted reproductive technology (ART) -** Assisted reproductive technology (ART) is used to treat infertility. It includes fertility treatments that handle both a woman's egg and a man's sperm. It works by removing eggs from a woman's body. The eggs are then mixed with sperm to make embryos. The embryos are then put back in the woman's body. In vitro fertilization (IVF) is the most common and effective type of ART. ART procedures sometimes use donor eggs,

donor sperm, or previously frozen embryos. It may also involve a surrogate or gestational carrier.

6.14 SURROGACY

Surrogacy as defined by the bill of 2019 is 'a practice where a woman gives birth to a child for an intending couple with the intention to hand over the child after the birth to the intending couple'. In other words, a woman rents her womb for another couple/ woman. Surrogacy examples are used even in popular cinema like in the Hindi movie, Chori Chori Chupke Chupke, Preity Zinta acts as surrogate mother.

6.15 SURROGACY PROCESS

- **Traditional** – In traditional surrogacy, the surrogate is also the biological mother of the child she carries. Her egg is fertilized using sperm from the intended father or a donor using intrauterine insemination.

- **Gestational** – In gestational surrogacy, the child is not biologically related to the surrogate mother. The embryo is instead created using an egg from the intended mother or a donor and sperm from the intended father or a donor using in vitro fertilization. Once the egg is fertilized in the laboratory, the embryo is transferred to the surrogate.

Check Your Progress
1. Define Surrogacy according to the bill of 2019.

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2. What is Gestational Surrogacy

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6.16 BILLS RELATED TO SURROGACY

There are mainly two bills which are currently into practice- The Surrogacy (Regulation) Bill, July, 2019 and February 2020.

In surrogacy mainly two parties are involved, let us say, one who needs a child and the other is the bearer of the child. Surrogacy is permitted in the country only under these conditions –

(i)   for intending couples who suffer from proven childlessness;

(ii)   the couple being Indian origin and married for at least five years;

(iii)   between 23 to 50 years old (wife) and 26 to 55 years old (husband);

(iv)   they do not have any surviving child (biological, adopted or surrogate); this would not include a child who is mentally or physically challenged or suffers from life threatening disorder or fatal illness

(v)   Other conditions that may be specified by regulations.

(vi)   Indian Single Woman (only widow or Divorcee)

(vii)   The surrogacy bill prevents single parents, same-sex couples, transgender persons, live-in partners and foreign nationals from using a surrogate mother.

- The 2020 Bill states that any 'willing' woman can be a surrogate She could be related to the couple or not having any blood relation. However, commercial surrogacy is prohibited in India. i.e. A woman having a child just because she is in need of money is not allowed. If the woman is bearing the child then all she can be given by the person who wants a child is basic medical expenses and insurance coverage of 36 months such form is called Altruistic surrogacy.

- Surrogacy clinics cannot undertake surrogacy related procedures unless they are registered by the appropriate authority. Clinics must apply for registration within a period of 60 days from the date of appointment of the appropriate authority.

- A child born out of a surrogacy procedure will be deemed to be the biological child of the intending couple. An abortion of the surrogate child can be done if the child born is at risk of physical or mental abnormalities. Abortion can be done only with a written consent of the surrogate mother and the authorisation of the appropriate authority. This authorisation must be compliant with the Medical Termination of Pregnancy Act, 1971. Further, the surrogate mother will have an option to withdraw from surrogacy before the embryo is implanted in her womb.

- Undertaking or advertising commercial surrogacy; (ii) exploiting the surrogate mother; (iii) abandoning, exploiting or disowning a surrogate child; and (iv) selling or importing human embryos or gametes for surrogacy. The penalty for such offences is imprisonment up to 10 years and a fine up to 10 lakh rupees. The Bill specifies a range of offences and penalties for other contraventions of the provisions of the Bill.

- As noted earlier the bill restricts the couples who are of same sex. On a critical viewpoint it can be said that all the homosexuals are restricted from having a child

Check Your Progress

1. Do you think commercial surrogacy is allowed in India?

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2. What should be the age of the husband and wife who wish to have a surrogate child according to the bill?

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6.17 POLITICS OF REPRODUCTION

With globalisation and access to technology the whole idea of motherhood has changed. In the olden times people used to worship fertility goddess perform rituals to have children. At present they at times continue to do so, however in addition the new technology is also being used. A woman without a child is still continued to be stigmatised, there is still a social pressure to have a child. The privatization of hospitals and access to fertility clinics has brought about a change in the whole system of family. Several assisted reproductive techniques are used like IVF – however, it has its own set of consequences.

Madage (2010) in her article titled 'Ethical issues in Assisted Reproductive technologies' studied 25 subjects in Maharashtra and she points out that many women were burdened by the treatment.

These technologies are based on profit and at times don't work enough as promoted. In addition to that it also creates a lot of mental harassment on the part of the subjects. She gives few cases in which the women are not informed about the procedure properly and even proper information is not given.

She also points out that at times women end up signing forms and as the forms are written in English and these women are not aware of the language they are giving consent to others without knowing what the hospitals are going to do with their own bodies. Too much of rush in the hospital too makes women not give enough space to clear their own doubts. The article also questions and points out how even those who can't afford the treatment also get into the trap and even end up not having children and huge debt due to medical expenses or even losing their own

self esteem. She also points out there are several health problems due to the drugs intake in these women

Check Your Progress

1. Do you think there are ethical issues connected with the usage of ART, If yes then justify this line how?

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6.18 SUMMARY

Surrogacy is the act where a female carries a child of another couple and hands it over to them. There are two Bills which are presently referred, 2019 and Surrogacy Regulation Bill 2020. Any woman can be a surrogate mother however she can be given only money for insurance or medical expenses etc. Commercial surrogacy is completely prohibited in the country. The 2020 bill allows widows, divorcee to have children through surrogate mothers which otherwise was restricted to only couples.

The assisted reproductive technologies have changed immensely the reproduction practices altogether. As those who can't afford the treatments are also getting into it and which leads to a lot of stress and debt among people. Lack of proper information and process also leads to a new set of problems among women.

6.19 QUESTIONS

1. Write a brief note on Surrogacy law in India?
2. Explain the main points of the Surrogacy Regulation Bill, 2019 and 2020.
3. Discuss Surrogacy and the problems associated with assisted reproductive systems.

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7

CRIME AND JUSTICE -
Overview of the Criminal Justice System in India: Police, Courts and Law

Unit Structure :

7.0 OBJECTIVES

- To Introduce the learner with the Criminal Justice System of India
- To Understand the various components & the functioning of the Criminal Justice System
- To evaluate the process involved in the criminal Justice System

7.1 INTRODUCTION

"Wherever law ends, tyranny begins." Are the words of John Locke which emphasise the need to have a proper system in order to curb the criminal activities. In the absence of an effective law machinery, the society would fall prey to tyranny and normlessness, giving rise to anomie.

Criminal justice system refers to the structure functions and decision processes of agencies that deal with the crime prevention, investigation, prosecution, punishment and correction. The criminal justice system is a loose confederation of agencies that perform different functions and are independently funded, managed and operated.

Criminal justice refers to the agencies of government charged with enforcing law, adjudicating crime and correcting criminal conduct. The criminal justice system is essentially an instrument of social control. Although society maintains some form of social control, it only deals with moral, and not legal, misbehaviour. The power to punish the criminal lies only with the criminal justice system.

7.2 OBJECTIVES OF THE CRIMINAL JUSTICE SYSTEM

The main objectives of the criminal justice system are as follows.
• To prevent the occurrence of crime.
• To punish the criminals.
• To rehabilitate the criminals.
• To compensate the victims as far as possible
• To maintain law and order in the society
• To deter the offenders from committing any criminal act.

To attain these objectives, a network consisting of police, judiciary and correctional services constitute the criminal justice system.

These agencies process suspects, defendants and convicted offenders and are interdependent as the decision of one agency affects the others.

7.3 FRAMEWORK OF THE CRIMINAL JUSTICE SYSTEM

The basic framework of the system is provided by the Legislative, Judiciary and the Executive branches of the government.

7.3.1 The Legislature
The state and federal legislatures, define crime, fix sentences, and provide funding for the criminal justice agencies. All laws in India, criminal as well as other, are made by Parliament as well as the state legislature in accordance with the provisions of the Constitution of India.

7.3.2 The Judiciary
Trial courts adjudicate the guilt of persons charged with the crimes and appellate courts interpret the law according to the constitutional principles. Both state and federal appellate courts review legislative decisions and decide whether they fall within the boundaries of state law.

Judicial review gives the courts the power to evaluate legislative Acts in terms of whether they conform to the Constitution. If there is a contradiction with the constitution an appellate court may strike it down.

7.3.3 The Executive Branch

Executive power is given to the President, Governors, and Mayors. On criminal justice matter they have the powers to appoint judges and heads of agencies, such as police chiefs and directors of Department of corrections. In addition, elected officers can lead efforts to improve criminal justice by putting forth legislative agendas and mobilising public opinion.

Despite their independence, these agencies of criminal justice system are interrelated because what one agencies does affects all others. This is the main reason why they are termed as a system.

Maintaining order by enforcing the laws and curbing their violation is the main objective of the criminal justice system.

The Criminal justice system comprises of the police, judiciary and correctional services. The Criminal Law provides the basic framework for the whole criminal justice system.

Check Your Progress

1. What is the meaning of Criminal Justice System?

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2. Which are the 3 branches of the cRiminal Justice System?

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7.4 COMPONENTS OF CRIMINAL JUSTICE SYSTEM

The Components of Criminal Justice System play a major role in protecting the principles of the constitution and maintaining a peaceful environment which is free from any threat. Let us now look at the basic components of the criminal justice system.

7.4.1 POLICE

Just as there are many laws there are also many violators of the same. As a man protecting agency the police in all societies the developed or underdeveloped has to preserve and protect the basic need of human survival and social intercourse. Police has always been and continues to remain the central agency of criminal justice system the safety and liberty of the people depend upon the laws and the Constitution, but in practice the decisions of the legislature and the courts would remain merely on paper if there is no police to enforce them.

7.4.1.1 Police and the Constitution of India

The Constitution puts police and public order in the state list of the seventh schedule giving the state Legislature the power to legislate these subjects. The Constitution a definite role of supervision and coordination to the union government also in the matters pertaining to the police. While police and public order are within the state field or legislative competence , preventive detention for reasons connected with the security of a state, the maintenance of public order and persons subjected to such detention are under concurrent jurisdiction of Parliament as well as the state legislature. If there is enough justification, Article 249 of the Constitution empowers the Parliament to intervene in the state police administration.

7.4.1.2 Police Acts

The police act of 1861, describes the framework of police as the nucleus structure around which the various central and bearing state laws have grown to organise policing at village, Tehsil, district, State and union levels. The police Act of 1888 was enacted to create general police districts embracing parts of two or more provinces. The police (Incitement in Disaffection) Act, 1922 was enacted to Penalise any attempt by means of threats, intimidation and otherwise to induce members of the police force to refrain from doing their duties and to spread disaffection amongst them. The police forces (Restriction of Rights) Acts, 1966 provides for the restriction of certain rights conferred by part three fundamental rights of the Constitution in their application to the members of the forces charged with the maintenance of public order so as to ensure proper discharge of the duties and maintenance of discipline among them.

Police departments serves to maintain order, provide services and to enforce the laws. Police officers operate in the department and control the crime. They cooperate with their prosecutors in criminal investigations, for which gathering evidence is necessary for obtaining convictions in the court. This is the reason why police men are the most visible representatives of the government. In the hour of need, danger, crisis, when a citizen does not know what to do and whom to approach the policeman happen to be the most approachable and trustworthy persons. The police man should be dynamic, approachable and helpful but at the same time should be strictly disciplined, impartial in order to enforce the laws. Let us now look at the Roles, Functions and Duties of the Police.

7.4.1.3 Role, Functions & Duties of the Police
The roles and functions of a police personnel are as follows:

- To protect the life, liberty, dignity and human rights of the people by upholding and enforcing the laws impartially.

- To promote and preserve public order.

- To prevent and control terrorist activities, maintain communal harmony and other situations affecting public security.

- To protect public property including roads, railways, bridges and establishments against vandalism and any kind of violence.

- To prevent crimes, and reduce the opportunities for the commission of crime through preventive action and measures as well as by aiding and cooperating with relevant agencies in implementing measures for prevention of crimes.

- To accurately register all complaints brought by a complainant or other representative in person or received by post, email or other means, and take prompt action after duly acknowledging the receipt of the complaint.

- To register and investigate all cognizable offences coming to their notice and supplying a copy of First Information Report (FIR) to the complainant.

- To protect individuals who are in the danger of physical harm to their person or property, and to provide necessary protection to them.

- To facilitate orderly movement of people and vehicles, to control highways and traffic on roads.

- To collect intelligence relating to matters affecting public peace, and all kinds of crimes including social offences, communalism, terrorism, extremism and other measures relating to national security, and disseminate to all concerned agencies.

Check Your Progress
1. Mention any 5 Roles & Functions of the Police.

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7.4.2 Bar : Prosecution & Defence
Another important component of the criminal justice system is the bar which includes Prosecution as well as Defense. It plays a major role in the administration of the criminal justice by assisting the judiciary in reaching to the truth in criminal cases. Prosecution is where the accused are faced with the consequences of their crime. Lawyers handling such cases are called prosecutors. The prosecution wing of the Bar includes the

Attorney General of India and Advocate General for each state and Public Prosecutors, Additional Public Prosecutors, Special Public Prosecutor, Assistant Public Prosecutors and Police Prosecutor. They represent the union and the state governments before the courts at various levels.

Those representing the offenders are the defence attorneys. They play a critical role as they provide a defence for the offender, ensuring the protection of their rights. Defence attorneys can be appointed to offenders who cannot afford to hire one. The legal practitioners enrolled as advocates work as defence lawyers on behalf of the accused in the magistrate court, session courts or in the High Court as well as the Supreme Court.

Check Your Progress
1. Can you explain the difference between the Prosecution & Defense?

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7.4.3 The Judiciary

In governance of the State Government, the Judiciary assumes a significant and special importance. Justice has to be administered through the courts. The judiciary, therefore, becomes the most prominent and outstanding wing of the constitutional system for fulfilling the mandate of the constitution. The constitution has provided for a single integrated system of courts to administer both, central & state laws.

7.4.3.1 The Supreme Court

The Supreme Court of India is at the top of the entire judicial systems. The Supreme Court acts as Federal court for determination of disputes between the constituent units of the Federation. It is the highest interpreter of the Constitution and plays the role of its guardian and saviour. Under article 32 of the Constitution, it is to act as the protector of the fundamental rights of the people. The Supreme Court is the highest court of appeal in civil as well as criminal matters.

7.4.3.2 High Courts

The High Court of India is at the top of the hierarchy in each state but are below the Supreme Court. It can conduct trials for all offences including those punishable with death. Article 214 of the Constitution of India states that there shall be a High Court for each of the states. In addition to that, article 231 of the Constitution provides setting up of one High Court for two or more states. For example, High Court at Guwahati's jurisdiction is spread over not only in the State of Tripura but also to other States of North East India. The Bombay High Court is located at Mumbai, the capital city of the State of Maharashtra. However, its jurisdiction

covers the States of Maharashtra and Goa, and the Union Territories of Dadra and Nagar Haveli and Daman and Diu. Works of most High Courts consisted of appeals from the lower courts and summons, petitions in terms of Article 226 of the Constitution of India.The Jurisdiction of each High Court varies from the other.

7.4.3.3 District Courts

District Courts in India take care of judicial matters at the District level.

These courts are controlled by the High Courts of the respective states to which the District belongs. All appeals in civil matters from the District Courts lie to the High Court of the State. There are many secondary courts also at this level, which work under the District Courts. There is a court of the Civil Judge as well as a court of the Chief Judicial Magistrate. While the former takes care of the civil cases, the latter looks into criminal cases and offences.

7.4.3.4 Lower Courts

In some States, there are some lower courts (below the District Courts) called Munsif's Courts and Small Causes Courts. These courts only have original jurisdiction and can try suits up to a small amount. Thus, Presidency Small Causes Courts cannot entertain a suit in which the amount claimed exceeds Rs 2,000. However, in some States, civil courts have unlimited pecuniary jurisdiction. Judicial officers in these courts are appointed on the basis of their performance in competitive examinations held by the various States Public Service Commissions.

7.4.3.5 Tribunals

Special courts or Tribunals also exist for the sake of providing effective and speedy justice (especially in administrative matters) as well as for specialised expertise relating to specific kind of disputes. These Tribunals have been set up in India to look into various matters of grave concern. Some of the important Tribunals that need a special mention are as follows:
• Income Tax Appellate Tribunal
• Central Administrative Tribunal
• Intellectual Property Appellate Tribunal, Chennai
• Railways Claims Tribunal
• Appellate Tribunal for Electricity
• Debts Recovery Tribunal
• Central Excise and Service Tax Appellate Tribunal

For instance, the Rent Controller decides rent cases, Family Courts try matrimonial and child custody cases, Consumer Tribunals try consumer issues, Industrial Tribunals and/or Courts decide labour disputes, Tax Tribunals try tax issues, etc.

The above description of the judiciary as a component of the criminal justice system displays a well-defined hierarchy of criminal courts that exist in India in order to administer criminal justice.

Check Your Progress
1. **Mention the different types of courts.**

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2. **Can you explain the difference between Supreme Court & High Court**

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7.4.4 Correctional services

Punishing the criminals is not the only objective of the criminal justice system. The latent functions of the criminal justice system involves inducing changes in the behaviour of the offender and re-socialising him or her to become a responsible citizen of the society. Correctional agencies play a major role in reforming the offenders to make them fit for the society and not to dehumanise them by giving harsh punishments. If even after the punishment, the offender continues to display criminal behaviour the entire process would be futile as it would defeat the main purpose of the criminal justice system. The role of correctional services therefore becomes extremely important. It mainly consist of prisons, probation and parole.

7.4.4.1 Prisons

The state list and of the Constitution of India includes the prisons, reformatory, Borstal institutions and other institutions of light nature. The legal base for prisons is section 4 of the Prisons Act which requires the state government to provide accommodation for prisoners in their territories. Further, under section 417 of the Code of Criminal Procedure, 1973, a state government may direct in what place a person liable to be imprisoned or committed to custody is to be confined. The most common jail institutions in India are the Central Jail, District Jail and sub-jails. The other types of establishments are the woman jails, children or Borstal schools, Open jails and special jails.

There are also open prisons where there are open places or area fixed permanently under any order of the state government for the detention of the prisoners. The objective is to save the prisoners from the

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long-term effects of prison life and a continuous exposure to criminal culture in the traditional prisons. The main objective here is to prevent the impairment of the mental outlook of the offender.

Special jails are the prisons which provide for the confinement of a different class of prisoners which are categorised as follows.
a. Prisoners who have committed serious violations of prison discipline.
b. Those showing tendency towards violation and aggression.
c. Habitual offenders
d. Group of professional and organised criminals.

In order to prevent the contact of the young offenders with the adult ones, young offenders are kept in separate institutions which are known as Borstal schools. The main emphasis over here is to impart education to the young offenders so that they can grow up as a responsible citizen.

7.4.4.2 Probation

Mission refers to the conditional suspension of imposition of a sentence by the court, in selected cases, specially of young offenders, who are not sent to prisons but are released on probation, after they agree to abide by certain conditions. Probation has been described by the economic and social Council of the United Nations as one of the most important aspects of the development of rational and social policy.

7.4.4.3 Parole

Parole is an administrative scheme in which a convict is released after serving some part of the sentence awarded to him and the release is not the result of any court decision. If an offender, released on parole is found to have improved and is sustained from criminal conduct, he gets remission of the rest of the sentence and for sometimes, at least a part of sentence.

Parole shares some of the characteristics of probation of being selective, based on a thorough study of the environment and the personality factors of the offender. The basic difference between probation and parole is, to release on probation is a judicial decision whereas to release on parole is purely an administrative action. In probation the offender is released without sending him to jail but in case of parole a convict is released after serving some part of the sentence awarded to him.

Check Your Progress
1. What are different types of Prisons?

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2. Explain Parole.

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3. Explain Probation.

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7.4.5 Law

Keeping in mind the Constitution of India all the laws whether criminal or civil, or made by the Parliament or the state legislature. The Constitution is the source of all the criminal laws in the country, may be reckoned as the supreme criminal law. The Constitution provides for a federal polity where Parliament as well as the state legislature share the powers to frame the laws. The subjects have been divided into three categories, viz.

1. The union list
2. The State List
3. The Concurrent List

Parliament and the state legislatures have the exclusive power to make laws for the subjects under the union list and the state list. With regard to the concurrent list, both Parliament as well as the state have concurrent jurisdiction to make laws. In case of conflict between the laws made by Parliament and the state legislature the law made by the Parliament shall prevail upon the other.

The Indian Penal Code (IPC) is a substantive law which deals with the offences and provides punishment for the same . It is divided into 23 chapters containing 511 sections out of which 386 sections are punitive provisions for various offences while the rest contain definitions, exceptions and explanations.

The main law of criminal procedure in India is the Code of Criminal Procedure, 1973 (CrPC) which is divided into 37 chapters consisting of 484 sections. Two schedules – the first, classifying the offences under I.P.C and against other laws, and the second, containing forms-have also been appended to it. The Code of Criminal Procedure deals with the constitution of courts, their powers, various processes to compel appearance of persons.

Basically, IPC deals with the crimes and punishments; CrPC tells about the criminal trial procedure & CPC (Civil Procedure Code) covers the procedure for civil suits, family disputes, etc.

1. Can you explain the difference between IPC & CrPc?

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7.5 CONCLUSION

To conclude, one can say that the important organs of the Criminal Justice System of India are the Police, the Judiciary & the Correctional Services that play a significant role in curbing the criminal activities taking place in the society. All three need to be unbiased and have an impartial attitude towards every citizen. The Laws in India which are framed keeping in mind the constitution of India play a major role in imparting justice to the individuals and so are amended from time to time. However, in many of the cases, the procedure takes years because of certain loopholes within the system. But in most of the cases the criminal gets punished and the victim gets justice. Majority of people are of the view that "Justice Delayed is Justice Denied", but in order to prevent any innocent from facing trouble, sometimes the investigation is faster but the decision takes time.

Thus, all the components of the Criminal Justice System, work to impart justice and to maintain law and order in the society. Loopholes in any one of the component leads to injustice & failure of the entire system.

7.6 SUMMARY

Agency of the government which is charged with imposing law, adjudicating crime and correcting criminal Khanna is known as the criminal justice system. It is essentially a legal system and control which serves to curb criminal activities within the society and create an environment that is peaceful and free from any fear or threat. The Police, the Judiciary, The Bar: Prosecution & Defense and the correctional Services play a major role in helping the victim to get justice.

The Police departments serves to maintain order, provide services and to enforce the laws. Police officers operate in the department and control the crime. They cooperate with their prosecutors in criminal investigations, for which gathering evidence is necessary for obtaining convictions in the court.

Another important component of the criminal justice system is the bar which includes Prosecution as well as Defense. It plays a major role in the administration of the criminal justice by assisting the judiciary in reaching to the truth in criminal cases.

The Judiciary assumes a significant and special importance. Justice has to be administered through the courts. The judiciary, therefore, becomes the most prominent and outstanding wing of the constitutional system for fulfilling the mandate of the constitution. The constitution has provided for a single integrated system of courts to administer both, central & state laws.

Correctional Services play a major role not only in punishing the offenders but also resocialising them to become better and responsible citizens of the society.

Thus, all the components of the Criminal Justice System, work to impart justice and maintain law and order in the society. Loopholes in any one of the component leads to injustice & failure of the entire system. In the absence of an effective law machinery, the society would fall prey to tyranny and normlessness, giving rise to anomie.

7.7 QUESTIONS

1. Give an overview of the Criminal Justice System in India
2. Discuss Criminal Justice System and the Role of Police as a Law Enforcement Agency.
3. Briefly discuss the Criminal Justice System and the Role of BAR as its important concept.
4. Explain the Criminal Justice System and discuss the importance of judiciary as an outstanding wing of the constitutional system

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8

RIGHTS AND DUTIES OF THE PEOPLE AND NEED FOR REFORMS IN THE CRIMINAL JUSTICE SYSTEM

Unit Structure :

8.0 OBJECTIVES

- To Acquaint the learner with the Constitutional Rights & Duties
- To understand various Rights & Duties under I.P.C & Cr.P.C
- To evaluate the Criminal Justice System
- To suggest Reforms in the Criminal Justice System

8.1 INTRODUCTION

After independence, a change of attitude was expected towards the Criminal Justice administration where people would co-operate to make it an efficient & effective machinery. Similarly, an attitudinal change on the part of criminal justice functionaries towards the people and their problems was also desired. However on the contrary, the post independence period witnessed a growth rate in the number of criminal activities which could be prevented if the people around the scene of crime had intervened or even informed the police. Hesitation on the part of many people to assist the police in investigation, and the failure of the prosecution cases because of non-cooperation of the witness, reflect that the people were not helping this in preventing and punishing the crime in a desired manner because of a number of reasons which include fear of the criminal or mere corruption.

In order to enable the people to play an active role to curb criminal activities, the lawmakers have created a large number of rights and duties of the people under various laws. Armed with his legal rights and under the obligations to perform legal duties, the people are expected to play a specific role under the criminal justice system of India.

With a view to making the people aware and updating the knowledge of others, let us know look at important rights and duties of the people under various criminal laws.

8.2 CONSTITUTIONAL RIGHTS AND DUTIES

To help people to live a peaceful and dignified life, the Constitution of India has recognised basic rights known as "Fundamental Rights". These are the basic rights required for the overall development of the human personality. Originally, the Constitution did not prescribe "Fundamental Duties" of the people but subsequently, provisions were made in the Constitution with that regard. The constitutional rights and duties of the people, important from the criminal justice point of you, are mentioned below.

- **Right to equality before law.**
  Equality before law means no person is above the law of the land and that every person, regardless of the status is subject to the ordinary law and amenable to the jurisdiction of ordinary tribunal. All persons, officials and private, rich and poor, citizens and foreigners are equally responsible for the act done by them in the territory of India. It basically means, any person regardless of his background will be punished if he or she commits a crime or breaks the law. However the Constitution allows exceptions in the case of President of India and the Governor of a state, as no criminal proceedings, whatsoever, can be instituted or continued against them in any court during their term of office.

- **Right against the practice of untouchability**
  According to article 17, untouchability has been removed and its practice in any form is forbidden. The enforcement of any disability arising out of untouchability shall be punishable offence in accordance with law. The Parliament enacted the protection of Civil Rights Act, 1955 which declares certain acts as offences, when done on the ground of untouchability and prescribes punishment for the same.

- **Right Against Retrospective Criminal Legislation**
  According to article 20 (1) a Legislature cannot make a criminal law retrospective so as to prejudicially affect the persons who have committed such acts prior to the enactment of that law.

- **Right against Double Jeopardy**

As per the provisions of article 21(2) if a person has been prosecuted and punished in a previous proceeding of an offence, he cannot be prosecuted and punished for the same offence again in a subsequent proceeding.

- **Right of immunity from self incrimination**

Clause three of article 21 provides that no person accused of any offence shall be compelled to be a witness against himself. The Supreme Court makes it clear that in order to claim the immunity from being compelled to make a self-incrimination statement, it must appear that a formal accusation has been made against the person at the time when he is asked to make the incriminating statement. He cannot claim immunity from some general enquiry or investigation on the ground that the statement may at some later stage lead to an accusation.

- **Right to life and personal liberty**

Article 21 provides that no person shall be deprived of his life or personal liberty except according to procedure established by the law. It means that no man can be subjected to any physical coercion that does not admit to legal justification.

- **Right against Arbitrary Detention**

Sub clause (1)of article 22 provides that no person who is arrested shall be detained in custody without being informed, as soon as maybe, on the grounds of such arrest nor shall he be denied the right to consult, and to be defended by a legal practitioner of his own choice. Sub clause (2) of the article makes it obligatory to produce an arrested person before a magistrate within a period of 24 hours of such arrest excluding the period of journey from the place of arrest in the court of magistrate. No such arrested person person shall be detained in custody between 24 hours without the authority of a magistrate.

- **Right against Exploitation**

The Constitution lays down certain provisions to prevent exploitation of the weaker sections of the society by any other individual or even by the state. Article 23 has provided safeguard against the expectations of human beings. In pursuance of the provisions of this article, Parliament has enacted the Bonded Labour System (Abolition) Act, 1976, which abolishEs the system of bonded labour and prescribes punishments for the defaulters.

What are Fundamental Rights?
1.   Can you explain at least 5 Fundamental Rights?

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8.3 FUNDAMENTAL DUTIES

Just as we have certain rights, every individual also has to perform certain duties. If one does not care to perform the duties, one does not deserve any rights. If the citizens behave in accordance with the expectations enshrined in the article 51 A, there will certainly be a qualitative improvement in the conditions, which are necessary for peaceful and good living.

Out of 10 duties, three which have a direct bearing on the criminal justice administration are as follows;

1.   To uphold and protect the sovereignty, unity and integrity of India.
2.   To promote harmony and 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.
3.   To safeguard public property and to abjure violence.

Thus, the Constitution has not only conferred certain fundamental rights on the people; it has also imposed certain fundamental duties on the citizens.

8.4 RIGHTS & DUTIES UNDER I.P.C

•   **Right of private defence**
The right of private defence states that it is the first duty of men to protect himself. The police of the state are not ubiquitous, and a person may then strike out for himself, or for another. The law does not expect a citizen, however law abiding he may be, to behave like a coward in any situation. The right of self defence contemplates that if a man is attacked he would be justified in the eye of a law if he holds his ground and delivers a counter-attack, provided always that the injury he inflicts in self defence is not out of all proportion to the injury with which he was threatened. However it is important to note that the right of private defence is not a weapon for committing a crime but it is for defence purpose only. Therefore this important right has to be exercised cautiously and prudently.

- **Duty to defend others**

    The Indian penal code not only defines the right to protect oneself but also imposes a duty on him to defend the body and property of others. According to section 97, the right of private defence also includes a duty. The very purpose of authorising a man under section 97 to defend the body and property of others is to cast a duty on him. However, the legal duty imposed by this section is voluntary and riot obligatory attracting penalties.

8.5 RIGHTS & DUTIES UNDER CR.P.C

    The Code of Criminal Procedure, 1973 is a major procedural law of India in criminal matters. The present Cr.P.C replaced the old code of criminal procedure, 1898 to streamline the criminal procedure introducing many reforms. The Cr.P.C delineates a number of Rights and duties of the people to enable them to participate in the administration of criminal justice system.

- **Duty to assist a Magistrate or a Police Officer**

    Section 37 of the code of Criminal Procedure requires every person to assist a magistrate or police officer. The members of the public are required to assist the police in preventing the escape of the offender; in the prevention or suppression of a branch of the peace; and in the prevention of public property.

- **Aid to person executing Warrant**

    According to section 38 of Cr.P.C, when a warrant is directed to a person other than a police officer, any other person made in the execution of such warrant, if the person to whom the warrant is directed be near at hand and acting in the execution of the warrant. The assistant to be rendered under this section is not obligatory.

- **Duty to give information of certain offences**

    According to section 39 of Cr.P.C, this activity on every person aware of the commission, or of the intention in any other person to commit certain offences such as murder, rioting, kidnapping for ransom, robbery, decoity, criminal breach of trust by public servant, offences relating to currency notes and banknotes, as specified in the section itself to give information to the nearest magistrate or police officer of such commission or intention. The person so aware, in the absence of any reasonable excuse, the burden of proving which excuse shall lie upon such person, is legally bound to do his duty failing which he shall be liable to penal action under sections 118, 176 and 202 of IPC.

- **Duty to communicate information about certain things**

    Section 40, Cr.P.C casts a duty on Village officers and person residing in a village to immediately give information about certain offences and also about certain state of things to the nearest magistrate or

police officer. The information *inter alia* maybe respecting notorious receiver of stolen property; resort of any person who is or is reasonably suspected to be a thug, robber, escaped convict or proclaimed offender; non-bailable offence or offence punishable under section 143 ,144, 145, 147 or 148 of I.P.C; occurrence of any sudden or unnatural death; and any matter likely to affect the maintenance of the order of prevention of crime, etc. The duty cast under this section is obligatory and the person failing to discharge it properly shall be liable for penal action under section 176 of IPC.

- **Duty to produce documents or other things**

    It is the duty of every person under section 91, Cr.P.C to produce any document or other thing if it is considered necessary by any court or any officer in charge of a police station for the purpose of any investigation, enquiry, trial or other proceeding under the Cr.P.C. For this purpose the court may may issue summons or a written order.

- **Duty to attend and witness search**

    Section hundred, Cr.P. C makes it compulsory for a person to attend and witness search. The section provides that any person, without reasonable cause, refuses to neglect to attend and witness a search, when called upon to do so by order or in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187, I.P.C.

- **Lodging F.I.R**

    It is considered as a right as well as the duty of every person to give information to an officer in charge of a police station about a cognizable offence. The information so given has to be registered under section 154, Cr.P.C at the police station and is commonly known as first information report.

- **Duty to appear before the police officer**

    It is the duty of every person to appear before a police officer whenever required by such officer who is making an investigation. A person who fails to do so shall be liable for punishment under section 174 and 179 of I.P.C.

- **Duty to state the truth to the police**

    Any police officer making an investigation is empowered to examine aurally any person under section 161 of the CR.P.C. Every person should answer truly all the questions relating to the case. Giving false information can be prosecuted under sections 202 and 203 of the I.P.C.

Check Your Progress

1. Can you Explain Rights & Duties under I.P.C ?

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2. What are the Rights & Duties under Cr.P.C?

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8.6 THE NEED FOR REFORMS IN THE CRIMINAL JUSTICE SYSTEM

We have already looked at the working and explored the working of the criminal justice system of India. Now let us look at the need for the reforms to be brought about in order to boost the working of the same.

- **Simplify criminal laws**
   A review of the existing criminal laws needs to be taken to repeal those which have become obsolete, make amendments in those which need changes, to cope with the present situation and enact new laws to cover new areas of the criminal activity. The procedure needs to be made simple so that a common citizen can easily understand and make use of the laws to protect their rights.

- **Compensate victims**
   The victims of the crime are the most neglected lot under the criminal justice system of India. Though there is a provision under section 357 of Cr.P.C, 1973 to compensate the victims in certain circumstances, the practice of current compensating the victims is not very much in prevalence.

   Payment of compensation should be made to the victim without waiting for the outcome of the case, which may take years and secondly the victim should get compensation irrespective of the fact whether the accused is convicted or not.

- **Declare discrimination as an offence**
   Article 15 of the Constitution prohibits discrimination on grounds of religion, race, caste, sex or place of birth. It is suggested that article 15 of the Constitution should be amended to declare discrimination an offence punishable under law so that victims of discrimination can

approach the police for registering their complaints against those who subjected them to discrimination since article 15 is a safeguard against the actions of private citizens as well as the state, necessary safeguards such as prior permission of the government before arresting or filling the chargesheets against public servants Incorporated in the law to prevent possibility of misuse of the rights.

Apart from this, amending the police act, increasing the strength of police, giving special emphasis on police training, making available residential accommodation to police and improving their image is also necessary for proper and efficient functioning of the police department who is directly responsible for maintaining law and order.

Is also necessary to increase and maintain coordination between police and prosecution. With a view of instrumental role of prosecutors in achieving success in criminal cases, it is of extreme importance that they are expert and officiant in their work. Therefore it is necessary to organise specialised training for prosecutors to sharpen their legal knowledge and to teach them to present cases in an effective and efficient manner. The increasing number of pending cases is a result of inadequate number of judges in different courts. The present number of judges in courts including the High Court and the Supreme Court, does not commensurate with the workload. Hence it is extremely necessary to increase the number of judges so that the workload can be equally distributed and the pending cases can be solved.

Action should be taken to prevent the overcrowding of jails, organise specialised training for Jain staff and involving people in administration of criminal justice system. It is of utmost importance that the people should cooperate wake the criminal justice system authority to achieve success in arresting the offenders and decreasing the rate of crime. Therefore, efforts should be made to encourage people's participation, help them realise their duties to words your nation and the rights that are gifted by the Constitution. Police has the potential to play a leading role in providing people various opportunities by way of voluntary schemes such as these committees, Mohalla committees, village defence parties, etc. Impartiality in providing justice to the people can help to build trust amongst the citizens, who have faith in the criminal justice system. It is extremely necessary to solve the cases with verdicts that do not consume much time. Most of the important cases are pending since years where the offender still roams freely, and such cases have resulted in the loss of faith in the criminal justice system. It is extremely important to restore the faith of the people in the criminal justice system by having Fast track courts to solve the cases. After all, Justice delayed, is Justice denied.

Check Your Progress

1. Do you think Criminal Justice System needs to be reformed?

8.7 CONCLUSION

The Constitution of India, the Indian penal code and the code of criminal procedure prescribed certain rights and duties to the people in order to ensure and protect their life liberty and dignity. It helps them to participate in the administration of the criminal justice system. To provide justice to the people and punishing the offenders the criminal justice system should strive to safeguard these rights of the people. They should also motivate the people to discharge their duties before realising their rights.

Without being Government servants, the people are entitled with certain police powers and are also given police duties. They can defend their own body and property as well as the body and property of others.

However, the people do not seem to be enthusiastic about their rights and duties. Generally they hesitate to perform their duties unless they are compelled by the authorities. The reason for hesitation include fear of the offender or mere ignorance.

8.8 SUMMARY

The Constitution of India has recognised basic rights known as "Fundamental Rights". These are the basic rights required for the overall development of the human personality. Originally, the Constitution did not prescribe "Fundamental Duties" of the people but subsequently, provisions were made in the Constitution with that regard. Just as we have certain rights, every individual also has to perform certain duties. If one does not care to perform the duties, one does not deserve any rights. If the citizens behave in accordance with the expectations enshrined in the article 51 A, there will certainly be a qualitative improvement in the conditions, which are necessary for peaceful and good living.

8.9 QUESTIONS

1. Explain Fundamental Rights in detail.
2. Explain Rights & Duties of citizens under I.P.C.

8.10 REFERENCES

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Question Paper Pattern

1. All Questions are Compulsory (100 Marks)
2. All Questions Carry Equal Marks
3. Figures to the right indicates marks to a sub-question

Q1. Attempt Any 2 of the following Questions (Module I) 20 Marks
a.
b.
c.

Q2. Attempt Any 2 of the following Questions (Module II) 20 Marks
a.
b.
c.

Q3. Attempt Any 2 of the following Questions (Module III) 20 Marks
a.
b.
c.

Q4. Attempt Any 2 of the following Questions (Module IV) 20 Marks
a.
b.
c.

Q5. Write Short Notes on Any 2 20 Marks
a.
b.
c.
d.

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