LEGAL REGULATION OF ECONOMIC ENTERPRISES
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1.1 Introduction

In the preamble to the Constitution of India achievement of the following objectives have been supposed – “WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN, SOCIALIST, SECULAR, DEMOCRATIC, REPUBLIC¹ and to secure to all its citizens: JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; and to promote among them all FRATERNITY assuring the dignity of the individual and the unity and integrity of the nation²; IN OUR CONSTITUENT ASSEMBLY this twenty sixth day of November 1949 , do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.”

The preamble encompasses the ideals and desires of the people of India. To achieve one of these golden ideals – “Equality of status and of opportunity” – the Right to equality has been carried in the constitution which clearly negates any type of inequality based on caste, religion, creed, gender and place of birth. Thus the constitution of India guarantees equality among men-men, women-women and men-women³. The constitution of India guarantees the right to equality under Section 14. Equality is the most vital foundation of Indian democracy. The doctrine of equality is an important sub-doctrine of judicial administration and is incorporated in the constitution⁴. The Section 14 makes all inequality generally illegal and guarantees legal equality for all persons. The Section 14 under Right to Equality is the most important and which has been emphasized most in recent years by the courts. The Universal Declaration of Human Rights, 1948 also declares in Article 7 - “All are equal before the law and are entitled without any discrimination to equal protection of the law”. The same doctrine has been incorporated in the Section 14 of our constitution.

1.2 Objectives

The Supreme Court has declared the Right to Equality as the fundamental element of the constitution. It cannot be separated from the Right to Equality. In the preamble of the constitution the Right to Equality has been

¹ Added by the 42nd amendment of the Constitution of India, 1976 (applicable from 3.1.1977)
² Ibid
³ Para 14-15 of the Constitution of India
made the cornerstone i.e. any constitutional change that minimizes or takes the Right to Equality would be unconstitutional and null. Neither the parliament nor the legislature of any state can violate the Right to Equality. Equality is the fundamental characteristic of the constitution of India and unequal treatment with equal people and equal treatment with unequal ones would be taken as disrespect to this fundamental structure of the constitution of India.

1.3 Section – 14

The Section 14 provides for prohibition of discriminatory practices or discrimination of other kinds. The dimensions of equality included in the Section 14 have been expanded through judicial declarations. According to the provisions of Section 14 - “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India”. This provision coincides with the 14th revision of the American constitution which deals with equal protection and declares that – “No state would deny to any person within its jurisdiction the equal protection of the laws.” The first statement is a negative hypothesis which ensures that no one is privileged. Everyone is equal before the law and no one is above law irrespective of his or her rank or position. This is equivalent to the second sub-doctrine of Diceyan of the British judicial administration. Nevertheless it is not a complete law and there are several exceptions, for instance the foreign diplomats have been exempted from the country’s judicial process. The section 361 exempts the President. The governors of states and judges have also been included in the list. Certain groups and trade unions too have been granted privileges by the constitution. The second statement “equal protection of the laws” expresses a positive doctrine. It does not mean that one law should be equally applied to all people or that all the laws should be applied in various circumstances of the country. Equal protection of the laws doesn’t at all mean that the law would equally treat everyone without any inequality. This exhibits equality of treatment in equal circumstances. It says that equals should be treated equally. Without any discrimination based on caste, religion, money, social status or political influence, everyone would be treated equally. The doctrine of equal protection of the laws does not mean that the same laws would be applied to all the people; it rather means that similar laws would be applied to people of similar class. Similar laws would be applied in similar circumstances.

5 Wade and Philips, Constitution and Administrative Law 87 (1977)
6 Jagannath Prasad vs. State of Uttar Pradesh, AIR 1961 SC 1245
Equals should not be treated unequally and unequal should not be treated equally\(^7\). Section 14 makes provisions for equality before the law but the truth remains that nature has not created everyone equal and we all do not live in similar circumstances. Therefore it would be unjust to apply same laws to everyone. Therefore equality before the law does not at all mean that similar laws would be applied to people living in different circumstances\(^8\). People from different classes have different needs. It is therefore appropriate to treat them differently. The legislature has to face varied problems created from varied human relations. Therefore in order to achieve these objectives the legislature needs power. The Section 15(1) says that the State shall not discriminate against any citizen on grounds only of religion, race, caste, gender, and place of birth or any of them.

1.4 – Section 15

The Section 15(1) prohibits discrimination on certain grounds. According to the Supreme Court, the prohibition of discrimination on the basis of cast and religion encourages national identity. It does not negate the diversity of Indian culture; it is meant to protect it\(^9\). The Section 15(1) is an extension of the Section 14. The Section 15(1) especially applies the doctrine of general equality incorporated in the Section 14. The same doctrine of classification exists in both Section 15(1) and Section 14. The combined effect of Section 15(1) and Section 14 is not that the state cannot pass equal laws but rather that while passing equal laws the inequality included within should be based on reasonable basis. According to Section 15(1) religion, creed, caste, gender or birthplace cannot be reasonable basis for classification. According to Section 15(1) discrimination implies an element of unfavourable prejudices. Discrimination based on any of these or other basis is not an offense under Section 15(1) and 15(2) but is an offense under Section 14. If religion, creed, caste, gender or birthplace is the factors taken into cognizance by the legislature, then it would not be considered discrimination based on facts. But if the legislature has discriminated on the basis of a single factor where no other factor is present, it would be against the law under Section 15(1).

\(^7\) Gauri Shankar vs. Union of India AIR 1995 SC 55

\(^8\) Chiranjeet Lal vs. Union of India AIR 1951 SC 41

\(^9\) Valsamma Pal vs. Kochin University AIR 1996 SC 1011-1019
Section 15(1) is like an expansion of Section 14. Just as Section 14 does, the Section 15 also covers all the activities of the state. But the subject-area of Section 15(1) is lesser than that of Section 14. Section 14 applies equally to all citizens and non-citizens. Section 15 applies only to citizens. Any non-citizen cannot demand his or her rights under Section 15 but can do so under Section 14. The Section 14 permits a reasonable classification on any logical grounds. The Section 15 has mentioned certain grounds on whose basis classification cannot be done.

1.4.1 Section 15(3)

The Section 15(3) allows making special provision for women and children. This section underlines the fact that for centuries, women have been socially and economically deprived in India and could not therefore participate equally in the socio-economic activities of the country. The objective of Section 15(3) is to eradicate the socio-economic backwardness of women and to empower them so much that equality between men and women could be established. The objective of Section 15(3) is to make women resolute and betterment of their condition. Thus Section 15(3) exempts the state from the conditions mentioned in Section 15(1) and allows it to make provisions for granting social and economic equality to women. This gives rise to an ambiguity. Does Section 15(1) defend any provision favourable to women or just ensures it in their favour? When we look at it from a better point of view, it seems that whenever the state makes special provisions for women and children, one cannot consider it as discrimination on the basis of gender only. This is the cumulative effect of Section 15(3) and Section 15(1) although generally no discrimination has been done on the basis of gender. The constitution itself has made room to accommodate special provisions for women and children. When we read Section 15(3) and Section 15(1) together, it becomes clear that the state can discriminate against men in favour of women against men but cannot do vice versa. Although under Section 15(3) the state can create reasonable provisions in favour of women but these should comply with the provisions mentioned in Section 15(2). The following example would help us understand the execution of Section 15(3) – According to Section 497 of I.P.C., the crime of adultery only applies to man and woman cannot even be considered an abettor. This comes under a special provision for women and is protected under Section 15(3). According to the Supreme Court\textsuperscript{10}, gender is a basis for classification although discrimination can be done on it but in accordance

\textsuperscript{10} Yousuf Abdul Aziz vs. State of Maharashtra AIR 1954 SC 1618
with the Section 15(3) the state is capable to create special provisions for women and children. The sections 14 and 15 collectively recognize the last statement of Section 497 which prohibits a woman to be punishable as an abettor. Maintaining the provision made in Section 497, in an earlier case, the Bombay High Court said that under Section 497 discrimination is not based on the fact that the woman’s gender is different than man’s but rather on the basis of the condition of women in the country and that therefore special provisions are mandatory for their protection. The post of Probationary Officer is under a general category for men and women but the post of the head of the institutes for destitute women is reserved only for women. In the B.R. Anchori v/s State of Gujrat\textsuperscript{11} case this discrimination was challenged. The High Court determined that only the fact that there exists a general category in which candidates from both genders can be appointed does not mean that appointments to all the posts in the higher categories should be made without any discrimination. Keeping in mind the nature of job, the state government has decided that any institute exclusively for women can only be headed by a woman only. The Section 15(3) has empowered the state to create special provisions for women and children and the case cannot be addressed as illegal. In the important State of Andhra Pradesh v/s P.B. Vijaykumar\textsuperscript{12} case, the Supreme Court determined that under Section 15(3), the state can make provisions for women’s reservation in government jobs, and the rule to give preference to women in case of other eligibility factors being similar up to 30% is acceptable. It is argued that under Section 15(2) reservation is acceptable for backward classes but not for women. Therefore there cannot be a provision for women’s reservation because discrimination in public services on the basis of gender is a violation of Section 16(2). Overruling this logic, the Supreme Court determined that such a provision can be made under section 15(3). While the Section 15(1) prohibits any gender – discrimination, the Section 15(3) empowers the state to make special provisions for women. Therefore the Section 15(3) directly exempts the state from the prohibition of Section 15(1).

1.5 Section 16

The Section 16 is another extension of Section 14. Both the sections are interrelated. The Section 16 receives its roots from Section 14. The Section 16(1) elaborates the generality of Section 14 and grants legality to “equality in opportunity” in relation to state-generated employment.

\textsuperscript{11} 1988 lab IC 1465
\textsuperscript{12} AIR 1995 SC 1648
An important difference between the Section 16 and 14 is that while Section 14 provides equal protection to both citizens and non-citizens, Section 16 applies only to citizens and not to non-citizens. The section 16(1) guarantees equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. According to Section 16(2) – “No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect or, any employment or office under the State.” According to Supreme Court’s determination, the doctrine of “equal wages for equal work” is included in Sections 14, 16, 39(B) and the preamble to the constitution itself. Although no such doctrine is clearly included in the constitution, now it has been established as a fundamental right. In the State of Madhya Pradesh v/s Pramod Bhartiya case, the Supreme Court determined that the doctrine of “equal wages for equal work” is included in Section 14. This rule is a part of Sections 14 and 16(1) and has been stated in Section 16(1) and comes under the state’s policy making and directs the state to make policies related to this doctrine. The Court has stated this doctrine as follows – “The doctrine of ‘equal pay for equal work’ would be applicable to equal work but it does not mean equality in all matters. The difference in mode of selection will not affect the application of the doctrine of ‘equal pay for equal work’ if both the class of persons perform similar functions and duties under the same employer and that it does not allow the state to discriminate between two classes in the matter of pay. But it cannot be said that this cannot be done in accordance with the state policy because it violates Section 14. Fundamental rights and policies cannot exclude each other.” If both the class of persons execute similar duties under the same employer then the state is not allowed to discriminate between two classes in the matter of salary. The court emphasized that it was not an absolute rule but was necessarily a fact. Although it is not described clearly in the constitution, but it is one constitutional objective. The doctrine of equal pay and equal work does not apply in case the employers are different. The principle of equal pay for equal work cannot be applied, though the employees of the Regional Rural Banks can claim parity with the employees of their sponsor banks. Article 14 allows for reasonable classification meaning thereby that there must be a clear basis of doing so. The basis for classification should have a logical relationship with the objective of classification. The doctrine of equal pay and equal work applies where the parity in pay is based without any or unreasonable basis and employees getting unequal

13 AIR 1993 SC 286
14 Jaipal vs. State of Haryana AIR 1988 SC 1504
15 Kshetriya Kisan Gramin Bank vs D.B. Sharma And Others on 15 November, 2000
pays are recruited by the same employer for equal work. The fact that the nature of planning and policies is temporary is irrelevant. If it is proved once that duty and the nature of functions are equal, the doctrine of equal pay and equal work is applicable. But this doctrine cannot be applied invariably to professional services. For instance dressing a wound by a doctor and a compounder cannot be treated as equal. Similarly junior and senior lawyers cannot be given equal remuneration. This doctrine cannot be applied to professional services at no cost. Doctors with unequal eligibilities can be put in different grades in the matter of pay but that too when they are in charge of hospitals. Equality of work can be determined on the basis of educational qualifications. Amount of responsibility and quality of a post can become the basis of classification. Administrative capability can become the basis of pay. As the Supreme Court had said equality must be among equals. Unequal cannot claim equality. The principle of equal pay for equal work cannot be applied where two classes are employed in two different institutions and whose duties and quality of work are also different.

1.6 Section 21

This Section guarantees protection of life and personal liberty. It is the sanctuary of human rights in the field of fundamental rights. That’s why it is correctly addressed as the fundamental right of fundamental rights. Just the way the right to personal liberty has granted new elements, the Right to Life has become synonymous with human dignity which is the foundation of all human rights. In the Francis Coralie Mullin v/s Delhi Administration case, Justice Bhagwati described the importance of Right to Life. The right to life enshrined in Article 21 cannot be restricted to mere animal existence. It means something much more than just physical survival. It is not mere physical existence; it has a spiritual existence too. Every limb or faculty through which life is enjoyed is thus protected by Article 21 and a fortiori, this would include the faculties of thinking and feeling. Now deprivation which is inhibited by Article may be total or partially neither any limb or faculty can be totally destroyed nor can it be partially damaged. Moreover it is every kind of deprivation that is hit by Article 21, whether such deprivation be permanent or temporary and, furthermore, deprivation is not an act which is complete once and for all:

16 Jaipal vs. State of Haryana AIR 1988 SC 1504  
17 State of Uttar Pradesh vs. J. P. Chaurasiya (1989 SCC 121)  
18 Garhwal Jal Sammelan Karmchari vs. State of Uttar Pradesh AIR 1997 SC 2143  
19 AIR 1981 SC 746
is a continuing act and so long as it lasts, it must be in accordance with procedure established by law. Therefore any act which damages or injures or interferes with the use of any limb or faculty of a person either permanently or even temporarily, would be within the inhibition of Article 21. In the Olega Telis v/s Bombay Municipal Corporation case\textsuperscript{20}, the Supreme Court determined that the Right to Livelihood is included in Section 21. Justice Chandra Chood said, “The sweep of the right to life conferred by Article 21 is wide and far reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law.” This has been included under policy matters in sections 39 (D) and 41, therefore it is the responsibility of the state. It can be proved through various examples that the Right to Live is the main one from which several other rights are born. The question arises in the Indian circumstances as to what limit can fundamental rights be enforced\textsuperscript{21}.

1.6.1. Protection of life and personal liberty means protection of every limb of the body

The right to life is much beyond mere animal existence. It is not confined only to the protection of every limb of the body. In the Kharak Singh v/s State of Uttar Pradesh case\textsuperscript{22}, the Supreme Court declared that the expression “life” used in Article 21 is something more than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. It means living with full dignity. The adjective “bodily” used under this article does not confine its meaning but is there to rather clarify the meaning of the word “liberty” used in Article 19. In the A. K. Gopalan v/s State of Madras case\textsuperscript{23}, the Supreme Court said under Section 21, “bodily freedom” only implies “physical freedom”. The right to travel anywhere in India under section 19 is different to the right to physical freedom, granted in Section 19. Thus the court limited the terminological meaning of “bodily freedom”. In the Kharak Singh v/s State of Uttar Pradesh case\textsuperscript{24}, the Supreme Court rejected the aforementioned decision. And decided that a police visit to the petitioner’s house in the night is a violation of his physical freedom.

\textsuperscript{20} AIR 1986 SC 180
\textsuperscript{21} Ibid, According to Chief Justice Chandra Chood (Pg 185)
\textsuperscript{22} Kharak Singh vs The State Of U. P. & Others on 18 December, 1962
\textsuperscript{23} A.K. Gopalan vs The State Of Madras on 19 May, 1950
\textsuperscript{24} Kharak Singh vs The State Of U. P. & Others on 18 December, 1962
1.6.2 Right to live with human dignity

In the Maneka Gandhi case\(^{25}\), the Supreme Court added a new dimension to Article 21. The court decided that “the right to live in not confined to mere physical existence. It incorporates the right to live with human dignity. In the Francis Coralie vs The Union of India\(^{26}\) case, the court said that the right to life cannot be restricted to mere animal existence. It means something much more than just physical survival. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. It means living with full dignity which is necessary to make a human life complete. It includes fundamental rights of dwelling, food, clothing, education, expression through various media, freely travelling and meeting people. Following the decisions of the two aforementioned cases, the Supreme Court decided in the Peoples’ Union for Democratic Rights v/s Union of India case\(^{27}\) that nonpayment of minimum wages to the workers involved in various schemes of Asian Games was a violation of their rights of livelihood with human dignity granted under Article 21. Citing the decision of the majority, Justice Bhagwati said that the rights and facilities granted under various labour laws to the workers employed by contractors were meant to keep human dignity intact and keeping them deprived of the same was a violation of Article 21. He further noted that not following and applying the various labour laws by private contractors and state-run institutions was a clear violation of the right to live with human dignity. This historic decision gave birth to a new judicial revolution. Millions of workers working in factories, sports, etc. were provided protection. Their rights to earn minimum wages, and deserve drinking water, medical and residential facilities were reinstated. It was decided in Chandra Rajakumari vs Commissioner Of Police, Hyderabad case\(^{28}\) that the right to life incorporated the right to live with human dignity and propriety, therefore organizing beauty contests that violated the dignity and propriety of women was a violation of Article 21. Therefore under the Andhra Pradesh Objectionable Performances (Prohibition) Act, 1956, Section 3, such contests intending to cause blackmail can be banned. In the State Of Maharashtra vs Chandrabhan case\(^{29}\) it was decided that paying a Re. 1 per month remuneration to a government employee during suspension period was illegal as it was a violation of Article 21.

\(^{25}\) Maneka Gandhi vs Union Of India on 25 January, 1978  
\(^{26}\) Francis Coralie Mullin vs The Administrator, Union of Delhi on 13 January, 1981  
\(^{27}\) AIR 1982 SC 1473  
\(^{28}\) Chandra Rajakumari And Anr. vs Commissioner Of Police, Hyderabad on 27 October, 1997  
\(^{29}\) State Of Maharashtra vs Chandrabhan, on 7 July, 1983
1.6.3 Right to good living standard

In the Ahmedabad Municipal Corporation v/s Khan Ghulab Khan case\textsuperscript{30}, the Supreme Court considered the mandate of human right to shelter and read it into Article 19(1)(e) and Article 21 of the Constitution and the Universal Declaration of Human Rights Article 25(1) of the Universal Declaration of Human Rights declares that everyone has the right to standard of living adequate for the health and well-being of himself and his family. It includes food, clothing, housing, medical care and necessary social services. The articles 39 and 38 direct the state to provide facilities and opportunities to its people. According to articles 38 and 46 the state is directed to promote of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections. The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation. In the Olga Tellis case\textsuperscript{31}, the Supreme Court comprehended that the right to livelihood was a fundamental right under section 21 but it also mentions that this is not an absolute right. Public places are not meant for individual employment. Removal of slums by municipal corporations from public places is reasonably not inappropriate or unjust. But the court ordered to ensure optional arrangements for the slum-dwellers.

1.6.4 Right to livelihood and work

In the Begulla Bapi Raju versus State of Andhra Pradesh case\textsuperscript{32} the Court determined that the Right to livelihood is not a fundamental right under article 21. In this case the court had considered it correct to the fact that the surplus land would vest in the State and the State in its turn would give it to the poor and the downtrodden and thus such a deprivation will be protected under Art. 39. In the Olga Tellis\textsuperscript{33} case, better known as the ‘Slum Dwellers Case’, a five-judge bench of the Supreme Court decided that the right to livelihood was inclusive in Article 21. The footpath and slum dwellers of Bombay had challenged the Municipal Corporation Act, 1888, the relevant provisions of which are contained in Sections 312(1), 313(1) (a) and 314 on the basis that within the confines of the above act.

\textsuperscript{30} Ahmedabad Municipal Corporation vs Nawab Khan Gulab Khan, on 11 October, 1996
\textsuperscript{31} Olga Tellis & Ors vs Bombay Municipal Corporation 10 July, 1985
\textsuperscript{32} Begulla Bapi Raju versus State of Andhra Pradesh, 23 August, 1983
\textsuperscript{33} Olga Tellis & Ors vs Bombay Municipal Corporation 10 July, 1985
the Municipal Corporation had prohibited vendors from doing business on footpaths, roads and other public places and had ordered their evacuation. Declaring the above provisions legally correct the court declared that vending at public places is not a fundamental right and reasonable restrictions could be applied. In the Delhi Development Horticulture Employess v/s Delhi administration case, the court declared that the right to life under Section 21 is inclusive of the right to work but it cannot be incorporated as a fundamental right. The country is still not sufficiently capable therefore it has been incorporated in the policy making provisions of Section 41.

1.6.5 Right to shelter

In the Chameli Singh v/s State of Uttar Pradesh case the Supreme Court declared that the Right to shelter is a fundamental right of every. According to the court "Living in a systemized society does not merely mean that the physical needs of human body are fulfilled. It means allowing everyone to grow in every respect. The Right to shelter includes sufficient food, water, clean atmosphere, education, medical facility and a roof. Providing shelter to a man does not merely mean protecting his or her life and limbs. It means a shelter where he or she finds opportunities for his or her physical, mental, intellectual and spiritual development.

1.6.6 Right to health

In the Vincent Panikurlangara vs Union of India case the Supreme Court decided that maintenance and improvement of public health comes under the right to live with human dignity under Article 21. A healthy body is necessary for all human activities. It is the duty of a welfare state that it takes all measures to maintain public health. According to the Article 47 in The Constitution Of India, “Duty of the State to raise the level of nutrition and the standard of living and to improve public health The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.” According to the Pt. Parmanand Katara vs Union of India case in a historic decision the Supreme Court decided that under Article 21 every doctor has professional obligation to

34 A.I.R. 1927, S.C. 2117
35 Pt. Parmanand Katara vs Union Of India on 28 August, 1989
extend immediate services to protect life of injured persons without waiting for completion of legal or police formalities.

**for all asbestos factories of the country –**
1. All asbestos factories would have to mandatorily provide health insurance to its workers.
2. In case of each professional health hazards, the effected employee would be eligible for a compensation of Rs. 1 Lakh.
3. To maintain compulsorily and keep preserved health records of each workman for a period of 40 years from the date of beginning of the employment or 10 years after the cessation of the employment, whichever is later?
4. The Membrane Filter test, to detect asbestos fibre should be adopted by all the factories or establishments at par with the Metalliferrous Mines Regulations, 1961; and Vienna Convention and Rule.
5. All the factories whether covered by the Employees State Insurance Act or Workmen’s Compensation Act or otherwise are directed to compulsorily insure health coverage to every worker.

1.6.7 **Right to pollution free environment**

In the Subhash Kumar vs State Of Bihar And Ors on 9 January, 1991 case it was decided that every citizen has the Right to live including the right to enjoyment of pollution free water and air. A citizen has a right to invoke Article 32 for removing pollution. Right to enjoy pollution free water and air is incorporated within the Right to Life of article 21. Rural Litigation and Entitlement Centre Dehradun v/s State Of Uttar Pradesh case the pollution caused by limestone-mining in Dehradun was brought under the cognizance of the court through a public interest litigation. The court appointed an inquiry committee and issued orders to stop mining after the committee submitted its report. In the Shriram Foods & Fertilizers case the Supreme Court stopped a unit of the company based in a residential area of Delhi to produce Oleum, a harmful gas until sufficient security measures were applied. The escape of Oleum gas from the factory had caused severe damage to the people and employees residing in the neighbourhood. In this matter the managers of the company were directed to deposit Rs. 20 Lakh as security and Rs 15 Lakhs as bank guarantee to compensate the victims.

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36 Subhash Kumar vs State Of Bihar, on 9 January, 1991
37 Rural Litigation & Entitlement Centre vs State Of U.P on 30 August, 1988
38 M.C. Mehta vs Union Of India, December, 1986
In another case namely M.C. Mehta vs. Union of India\textsuperscript{39} the Supreme Court issued orders of immediate closure of tanneries in Jajmau, Kanpur so that pollution in the Ganga could be checked. This matter was brought into the cognizance of the court through a Public Interest Litigation by a social worker. The Supreme Court determined that pollution in the Ganga is a public nuisance. The Supreme Court said that the state has failed to execute the laws governing water pollution and control and that the laws have been confined to mere documents. The court decided that although the petitioner was not a resident of the concerned area, he held the rights to file a Public Interest Litigation. The court directed the Water Board of the Kanpur Municipal Corporation to make a proposal for checking water pollution and ordered it to shift the dairy away from the limits of the city and also to build a sewage line in the labourers’ colony. Public amenities should be built for the poor and it should be prohibited to throw dead humans and animals into the Ganga. No licenses to establish new industries should be issued before proper measures were taken to stop pollution. These directives would be applicable to all the municipalities and municipal corporations, through which the Ganga flows.\textsuperscript{40} According to traditional doctrines, development and environment are each other’s opposites but the modern concept of sustainable development has changed everything. It was underlined in the Stockholm Declaration of 1972. Later the report of the World Committee on Environment and Development, “Our Common Future”, spoke about it in detail. The Norwegian Prime Minister G.S. Brundtland headed the committee. The concept of “Polluters Pay” is a vital ingredient of the Concept of Sustainable Development. According to another ingredient i.e. Precautionary Principle –

1. The state should take up measures in order to check factors that harm the environment.
2. Scientific Ambiguity should not be allowed to profit wherever there is a danger of serious and permanent damage.
3. The development agency or industrialist should be made responsible for any such damage. In the case of Indian Council for Environmental Legal Action vs. The State of India\textsuperscript{41} the Supreme Court applied the concept of “Polluters Pay”. The Supreme Court decided that simple, practical and appropriate laws should be applied in this matter depending upon the circumstances of the country. The court said that person(s) establishing hazardous industries would be responsible for any damage even though the required precautionary measures were taken up. In

\textsuperscript{39} M.C. Mehta vs Union Of India, September, 1987
\textsuperscript{40} M.C. Mehta vs Union Of India, September, 1998
\textsuperscript{41} (1996) 2 J.I. (S.C.) 196 AIR 1996 S.C.W. 1069
another case, the court accepted the Precautionary Principle and the Concept of “Polluter Pays”.

1.6.8 Right of Privacy

According to the Govind vs. State of Madhya Pradesh case\(^{42}\) the Right of Privacy is under the Article 21, but it is not an absolute right and can be prohibited under public welfare.

1.6.9 Right of Education

In the historic decision of Mohini Jain vs. State of Karnataka case\(^{43}\) the Supreme Court decided that every citizen has the Right of Education under the Article 21. In this case the petitioner had challenged the legality of the Karnataka Education Institution (Prohibition of Capitation Fees) Act 1983, according to which the tuition fees were fixed as follows – Rs. 2000 for state institutions, Rs. 25,000 for students of Karnataka state and Rs. 60,000 for students belonging to outside Karnataka. A resident of Uttar Pradesh, the petitioner was denied admission because she could not pay Rs. 60,000 in fees. A two-judge bench of the Supreme Court decided that the Right of Education under the Article 21 was incorporated within the Right to Life. Charging capitation fees by colleges is equivalent to depriving the citizens of their fundamental rights. It is illegal and violates Section 14. It is an indiscriminate classification. Education is not a saleable commodity in India. No citizen can practice his fundamental rights without education. In the Unni Krishnan vs. State of Andhra Pradesh case\(^{44}\) the managers of colleges requested reconsideration towards decisions in the aforementioned Mohini Jain case. The full fledged 5-judge jury of the court upheld the recommendations of the Mohini Jain case but with a condition that the Right of Education was limited to children up to 14 years. This right would depend upon the state’s economic conditions, wherever higher education is concerned. The states are bound by the articles 41, 45 and 46 whether by building their own institutions or recognizing private ones. Private institutions have become mandatory in the present perspectives. But the state must practice appropriate control over them so that marketization of education can be stopped. Fixed fees with the consent of the state cannot be termed Capitation Fees. In the Unni Krishnan vs. State of Andhra Pradesh case\(^{45}\) the Supreme Court has

\(^{42}\) AIR 1975 SC 1295  
\(^{43}\) (1992) 3 SCC 666  
\(^{44}\) (1993) 1 SCC 645  
\(^{45}\) AIR (1993) 1 SCC 645
decided provided that 5% of the 50% seats reserved for those paying fees would be reserved for Non Resident Indian students and who would be admitted after qualifying the respective eligibility tests. In the T.M.A. Foundation vs. State of Karnataka case related to Minority institutions, the Supreme Court reversed the decision regarding capitation fees and admission in the Unni Krishnan vs. State of Andhra Pradesh case. According to Section 191(1) (G) and Section 26 all citizens and under Section 30 minority institutions can establish and run educational institutions but under Section 19(6) reasonable prohibitions can be applied. The right to establish and run minority educational institutions is also not absolute. Reasonable prohibitions can be applied on them keeping in mind public and national interests. The expanse of the decision in the T.M.A. Foundation vs. State of Karnataka case made it difficult to be executed. Therefore the petitioners went to the court again. In the Islamic Academy of Education vs. State of Karnataka case regarding such circumstances, a 5-judge jury was appointed so that the previous contradictions and suspicions could be ruled out. On the matter of fixing the fees by non-funded professional institutes, the court said that these institutes can charge a fixed fee along with which they could charge extra money for the development etc. of the institutes. They would be exempted from any state intervention as long as they don’t make any profit. But this right is not beyond control.

1.7 Section 39 (D)

According to Section 39 (D) “The state would ensure equal work and equal pay for both men and women.” The Parliament had passed the Equal Pay Act 1976 in order to ensure the execution of the provisions of Section 39 (D). This act makes provisions for equal work and equal pay for both men and women. Provision for the appointment of an officer in cases of non-compliance in this matter has also been made. The Supreme Court determined in the Randheer Singh vs. Union of India case that “equal work and equal pay” is not a fundamental right but is included in para 14 and 16. The preamble to the constitution the word “Socialism” provides for this very objective.

1.8 Article 42

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48 AIR 1982 SC 879
According to Article 42 the State shall make provision for securing just and humane conditions of work and for maternity relief. The Article 42 provides an extensive base to the Indian Labour Law. Speaking about Article 42 and Article 43, the Supreme Court said that the constitution expresses deep concern for the welfare of workers. Although the court cannot promote it but the directive forces have declared it to be a constitutional objective.

**Practice Questions**

**True/False**

1. Both citizens and non-citizens have the protection of Article 14. (True/False)

2. Article 14 permits classification on any logical basis but it has been prohibited under Article 15 on some basis. (True/False)

3. Article 15 prohibits any gender discrimination therefore special provisions for women are illegal. (True/False)

4. The state can discriminate against men in favour of women but not vice versa. Therefore it is against the Right to Equality. (True/False)

5. Maneka Gandhi granted new dimension to Article 21. (True/False)

6. The Right to die is included in the Right to Life under Article 21. (True/False)

**1.9 Summary**

The preamble encompasses the ideals and desires of the people of India. To achieve one of these golden ideals – “Equality of status and of opportunity” – the Right to equality has been carried in the constitution. The Section 14 provides for prohibition of discriminatory practices or discrimination of other kinds. Section 14 protects from discriminatory state practices. The dimensions of equality incorporated in Article 14 have been extended through judicial declarations. The doctrine of equal protection of the laws does not mean that the same laws would be applied to all the people; it rather means that similar laws would be applied to people of similar class. The Section 15(1) is an extension of the Section 14. The Section 15(1) especially applies the doctrine of general equality incorporated in the Section 14. The same doctrine of classification exists in both Section 15(1) and Section 14. Section 14 applies equally to all citizens and non-citizens. Section 15 applies only to citizens. Any non-citizen cannot demand his or her rights under Section 15 but can do so under Section 14. The Section 15(3) allows making special provision for women and children. The objective of Section 15(3) is to eradicate the socio-economic backwardness of women and to empower them so much that equality between men and women could be established. In the...
important State of Andhra Pradesh v/s P.B. Vijaykumar case, the Supreme Court determined that under Section 15(3), the state can make provisions for women's reservation in government jobs, and the rule to give preference to women in case of other eligibility factors being similar up to 30% is acceptable. The Section 16(1) is another extension of Section 14 and makes “equality in opportunity” under state-generated employment. According to the directives of the Supreme Court the doctrine of ‘equal work and equal pay’ has been included in the articles 14, 16 and 39(B). The Section 14 permits a reasonable classification on any logical grounds i.e. the relationship between the basis for classification and its objectives should be clear. The Right to Life granted under Article 21 is not restricted to mere animal existence. It means something much more than just physical survival. It is not mere physical existence; it has a spiritual existence too. The aspects of this right are dependent on the economic growth of the country as well i.e. those rights are also included in the fundamental ones that are necessary for complete self-expression. In the Olga Tellis case, the Supreme Court comprehended that the right to livelihood was a fundamental right under section 21 but it also mentions that this is not an absolute right. Under Article 39(D) and 41, it has been included in the principles of policy and is therefore the responsibility of the state. In the Ahmadabad Municipal Corporation v/s Khan Ghulab Khan case, the Supreme Court considered the mandate of human right to shelter and read it into Article 19(1)(e) and Article 21 of the Constitution and the Universal Declaration of Human Rights Article 25(1) of the Universal Declaration of Human Rights declares that everyone has the right to standard of living adequate for the health and well-being of himself and his family. According to articles 38 and 46 the state is directed to promote of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections. The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation. In the Consumer Education and Research Center v/s Union of India case the Supreme Court decided that the employees have a fundamental right to health while working and after retirement. The court said that all the officials, private individuals and factory owners are bound by law under articles 32 and 142.

Traditionally development and environment are each other’s opposites but the modern concept of sustainable development has changed everything. The concept of “Polluters Pay” is a vital ingredient of the Concept of Sustainable Development. The Parliament had passed the Equal Pay Act
1976 in order to ensure the execution of the provisions of Section 39 (D). This act makes provisions for equal work and equal pay for both men and women. The Article 42 provides an extensive base to the Indian Labour Law. Speaking about Article 42 and Article 43, the Supreme Court said that the constitution expresses deep concern for the welfare of workers.

1.10 Important Terminology

**Diceyan Concept:** A.V. Dicey was a British jurist from the 19th century. He propounded the Rule of Law i.e. the Concept of Judicial Administration which means that the law is supreme and is applicable equally to all. Principles of policy – Principles of policy of the state mentioned in Part 4 of the constitution have been taken from the constitution of Ireland. These incorporate the objectives which every state must strive towards.

1.11 Answers to practice questions

1. True
2. True
3. False
4. False
5. True
6. False

1.12 Reference Books

1. पांडे, डॉ. जयनारायण, भारत का संविधान, ४४ वां संस्करण, सेंट्रल लॉ एजेंसी
3. बसु आचार्य, डॉ. दुर्गा दास, भारत का संविधान — एक परिचय, नवं संस्करण, पुनर्प्रकाशन २००९,

1.12 Reference / Useful Material

1-Mk0 ts0ts0 vkj mik/;k;] Hkkjr dk iafo/kku
1.12 Essay-type Questions

1. What are the fundamental rights under the constitution of India?
2. What do you understand by Right to livelihood and dwelling?
3. How can one access the Right of Education?
4. Define the Right to Privacy.
Block – 1. The Rationale of Government Regulation

Unit Construction

2.1 Introduction
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  2.3.3 Industrial Policy -1973
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2.5 Private and Public Sectors, Joint Ventures
  2.5.1 Government or state level Government enterprises to implement certain projects under joint venture scheme with or without public participation
  2.5.2 Public Sector Ventures and Joint ventures between Cooperative or other employees
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2.6 Achievements of New Economic Policies

2.6.1 Increase in GDP
2.6.2 Import
2.6.3 Fiscal Deficit
2.6.4 Foreign Currency Deposit
2.6.5 Agricultural Production
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2.7 Summary

2.8 Important Terminology

2.9 Answers to Practice Questions

2.10 Books for Reference

2.11 Reference/ Useful Material

2.12 Essay Type Questions
2.1 Introduction

The Indian Economy is ranked 11\textsuperscript{th} from the viewpoint of GDP and 3\textsuperscript{rd} from the viewpoint of PPP (Purchasing Power Parity) in the world. India is one of the important economies of G-20 and is a member of BRICS (group of Brazil, Russia, India, China and South Africa). The per capita income of an average Indian was estimated to be $3,694 which is ranked 129\textsuperscript{th} in the world, thus placing the Indian economy among lower-middle economies. After independence (after 1947 and some years after that), the Indian economy was inspired by the Soviet model of development which involved massive Government sector, high import duties and several intervention policies. It resulted in massive incompetence and rampant corruption. Later India adopted the policy of free market in the leadership of the then Finance Minister of India, Manmohan Singh. P. V. Narsimharao was the then Prime Minister. These powerful economic changes helped the country’s economy grow rapidly and the per capita income also saw a rise. The highest economic growth was recorded in India during middle 1990’s. India is one of the fastest growing economies of the world. It can chiefly be contributed to increasing middle-class consumers, big manpower and huge foreign investment. India is the 19\textsuperscript{th} biggest exporter and 10\textsuperscript{th} biggest importer of the world. In the fiscal budget of 2011-12 the economic growth rate was measured to be approximately 7%.

2.2 Objectives

After having gone through this unit you would be able to comprehend –

1. New economic policies
2. A background to new economic policies
3. Contribution of new economic policies

2.3 Economic Policy Statement after 1956

The national consensus was in favour of rapid industrialization after independence in 1947 which was not only the key to economic growth but also held the key to achieve economic sovereignty. Indian economic policy was formulated through successive resolutions and policy declarations. Priority was given to industrial growth through successive 5-year plans.
Building on the so-called "Bombay Plan" in the pre-Independence era, the first Industrial Policy Resolution announced in 1948 laid down broad contours of the strategy of industrial development. At that time the Constitution of India had not taken final shape nor was the Planning Commission constituted. Moreover, the necessary legal framework was also not put in place. Not surprisingly therefore, the Resolution was somewhat broad in its scope and direction. Yet, an important distinction was made among industries to be kept under the exclusive ownership of Government, i.e., the Government sector, those reserved for private sector and the joint sector. Subsequently, the Indian Constitution was adopted in January 1950, the Planning Commission was constituted in March 1950 and the Industrial (Department and Regulation) Act (IDR Act) was enacted in 1951 with the objective of empowering the Government to take necessary steps to regulate the pattern of industrial development through licensing. This paved the way for the Industrial Policy Resolution of 1956, which was the first comprehensive statement on the strategy for industrial development in India.

### 2.3.1 Industrial Policy Statement - 1956

The Industrial Policy Resolution - 1956 was shaped by the Mahalanobis Model of growth, which suggested that emphasis on heavy industries would lead the economy towards a long term higher growth path. The Resolution widened the scope of the public sector. The objective was to accelerate economic growth and boost the process of industrialization as a means to achieving a socialistic pattern of society. Given the scarce capital and inadequate entrepreneurial base, the Resolution accorded a predominant role to the State to assume direct responsibility for industrial development. All industries of basic and strategic importance and those in the nature of public utility services besides those requiring large scale investments were reserved for the Government sector. The Industrial Policy Resolution - 1956 classified industries into three categories. The first category comprised 17 industries (included in Schedule A of the Resolution) exclusively under the domain of the Government. These included inter alia, railways, air transport, arms and ammunition, iron and steel and atomic energy. The second category comprised 12 industries (included in Schedule B of the Resolution), which were envisaged to be progressively State owned but private sector was expected to supplement the efforts of the State. The third category contained all the remaining industries and it was expected that private sector would initiate development of these industries but they would remain open for the State as well. It was envisaged that the State would facilitate and encourage
development of these industries in the private sector, in accordance with
the programmes formulated under the Five Year Plans, by appropriate
fiscal measures and ensuring adequate infrastructure. Despite the
Demarcation of industries into separate categories, the Resolution was
flexible enough to allow the required adjustments and modifications in the
national interest. Another objective spelt out in the Industrial Policy
Resolution – 1956 was the removal of regional disparities through
development of regions with low industrial base. Accordingly, adequate
infrastructure for industrial development of such regions was duly
emphasized. Given the potential to provide large-scale employment, the
Resolution reiterated the Government’s determination to provide all sorts
of assistance to small and cottage industries for wider dispersal of the industrial base and more equitable distribution of income. The Resolution, in fact, reflected the prevalent value system of India in the early 1950s, which was centered around self sufficiency in industrial production. The Industrial Policy Resolution – 1956 was a landmark policy statement and it formed the basis of subsequent policy announcements.

2.3.2 Industrial Policy Measures in the 1960’s and 1970’s

Monopolies Inquiry Commission (MIC) was set up in 1964 to review
various aspects pertaining to concentration of economic power and
operations of industrial licensing under the IDR Act, 1951. While
emphasizing that the planned economy contributed to the growth of
industry, the Report by MIC concluded that the industrial licensing system
enabled big business houses to obtain disproportionately large share of
licenses which had led to pre-emption and foreclosure of capacity.
Subsequently, the Industrial Licensing Policy Inquiry Committee (Dutt
Committee), constituted in 1967, recommended that larger industrial
houses should be given licenses only for setting up industry in core and
heavy investment sectors, thereby necessitating reorientation of industrial
licensing policy. In 1969, the monopolies and restrictive Trade Practices
(MRTP) Act was introduced to enable the Government to effectively
control concentration of economic power. The Dutt Committee had defined
large business houses as those with assets of more than Rs.350 million.
The MRTP Act, 1969 defined large business houses as those with assets
of Rs. 200 million and above. Large industries were designated as MRTP
companies and were eligible to participate in industries that were not
reserved for the Government or the Small scale sector. The new Industrial
Licensing Policy of 1970 classified industries into four categories. First
category, termed as ‘Core Sector’, consisted of basic, critical and strategic
industries. Second category termed as ‘Heavy Investment Sector’, comprised projects involving investment of more than Rs.50 million. The third category, the ‘Middle Sector’ consisted of projects with investment in the range of Rs.10 million to Rs.50 million. The fourth category was ‘Delicensed Sector’, in which investment was less than Rs.10 million and was exempted from licensing requirements. The industrial licensing policy of 1970 confined the role of large business houses and foreign companies to the core, heavy and export oriented sectors.

2.3.3 The Industrial Policy Statement – 1973

With a view to prevent excessive concentration of industrial activity in the large industrial houses, this Statement gave preference to small and medium entrepreneurs over the large houses and foreign companies in setting up of new capacity particularly in the production of mass consumption goods. New undertakings of up to Rs.10 million by way of fixed assets were exempted from licensing requirements for substantial expansion of assets. This exemption was not allowed to MRTP companies, foreign companies and existing licensed or registered undertakings having fixed assets of Rs.50 million and above.

2.4 The Industrial Policy Statement – 1977

This Statement emphasized decentralization of industrial sector with increased role for small scale, tiny and cottage industries. It also provided for close interaction between industrial and agricultural sectors. Highest priority was accorded to power generation and transmission. It expanded the list of items reserved for exclusive production in the small scale sector from 180 to more than 500. For the first time, within the small scale sector, a tiny unit was defined as a unit with investment in machinery and equipment up to Rs.0.1 million and situated in towns or villages with a population of less than 50,000 (as per 1971 census). Basic goods, capital goods, high technology industries important for development of small scale and agriculture sectors were clearly delineated for large scale sector. It was also stated that foreign companies that diluted their foreign equity up to 40 per cent under Foreign Exchange Regulation Act (FERA) 1973 were to be treated at par with the Indian companies. The Policy Statement of 1977 also issued a list of industries where no foreign collaboration of financial or technical nature was allowed as indigenous technology was already available. Fully owned foreign companies were allowed only in highly export oriented sectors or sophisticated technology...
areas. For all approved foreign investments, companies were completely free to repatriate capital and remit profits, dividends, royalties, etc. Further, in order to ensure balanced regional development, it was decided not to issue fresh licenses for setting up new industrial units within certain limits of large metropolitan cities (more than 1 million population) and urban areas (more than 0.5 million population).

2.3.5 Industrial Policy Statement -1980

The industrial Policy Statement of 1980 placed accent on promotion of competition in the domestic market, technological upgradation and modernization of industries. Some of the socio-economic objectives spelt out in the Statement were

i) optimum utilization of installed capacity,
ii) higher productivity,
iii) higher employment levels,
iv) removal of regional disparities,
v) strengthening of agricultural base,
vi) promotion of export oriented industries and
vii) Consumer protection against high prices and poor quality.

Policy measures were announced to revive the efficiency of Government sector undertakings (PSUs) by developing the management cadres in functional fields viz., operations, finance, marketing and information system. An automatic expansion of capacity up to five per cent per annum was allowed, particularly in the core sector and in industries with long-term export potential. Special incentives were granted to industrial units which were engaged in industrial processes and technologies aiming at optimum utilization of energy and the exploitation of alternative sources of energy. In order to boost the development of small scale industries, the investment limit was raised to Rs.2 million in small scale units and Rs.2.5 million in ancillary units. In the case of tiny units, investment limit was raised to Rs.0.2 million.

2.3.6 Industrial Policy Measures during the 1980s

Policy measures initiated in the first three decades since Independence facilitated the establishment of basic industries and building up of a broad-based infrastructure in the country. The Seventh Five Year Plan (1985-1900), recognized the need for consolidation of these strengths and initiating policy measures to prepare the Indian industry to respond
effectively to emerging challenges. A number of measures were initiated towards technological and managerial modernization to improve productivity, quality and to reduce cost of production. The Government sector was freed from a number of constraints and was provided with greater autonomy. There was some progress in the process of deregulation during the 1980s. In 1988, all industries, excepting 26 industries specified in the negative list, were exempted from licensing. The exemption was, however, subject to investment and locational limitations. The automotive industry, cement, cotton spinning, food processing and polyester filament yarn industries witnessed modernization and expanded scales of production during the 1980s. With a view to promote industrialization of backward areas in the country, the Government of India announced in June, 1988 the Growth Centre Scheme under which 71 Growth Centers were proposed to be set up throughout the country. Growth centers were to be endowed with basic infrastructure facilities such as power, water, telecommunications and banking to enable them to attract industries.

2.4 Industrial Policy Statement- 1991

The Industrial Policy Statement of 1991 stated that “the Government will continue to pursue a sound policy framework encompassing encouragement of entrepreneurship, development of indigenous technology through investment in research and development, bringing in new technology, dismantling of the regulatory system, development of the capital markets and increased competitiveness for the benefit of common man”. It further added that "the spread of industrialization to backward areas of the country will be actively promoted through appropriate incentives, institutions and infrastructure investments". The objective of the Industrial Policy Statement - 1991 was to maintain sustained growth in productivity, enhance gainful employment and achieve optimal utilization of human resources, to attain international competitiveness, and to transform India into a major partner and player in the global arena. Quite clearly, the focus of the policy was to unshackle the Indian industry from bureaucratic controls. This called for a number of far-reaching reforms: A substantial modification of Industry Licensing Policy was deemed necessary with a view to ease restraints on capacity creation; respond to emerging domestic and global opportunities by improving productivity. Accordingly, the Policy Statement included abolition of industrial licensing for most industries, barring a handful of industries for reasons of security and strategic concerns, social and environmental issues.
Compulsory licensing was required only in respect of 18 industries. These included, inter alia, coal and lignite, distillation and brewing of alcoholic drinks, cigars and cigarettes, drugs and pharmaceuticals, white goods, hazardous chemicals. The small scale sector continued to be reserved. Norms for setting up industries (except for industries subject to compulsory licensing) in cities with more than one million population were further liberalized. Recognizing the complementarily of domestic and foreign investment, foreign direct investment was accorded a significant role in policy announcements of 1991. Foreign direct investment (FDI) up to 51 per cent foreign equity in high priority industries requiring large investments and advanced technology was permitted. Foreign equity up to 51 per cent was also allowed in trading companies primarily engaged in export activities. These important initiatives were expected to provide a boost to investment besides enabling access to high technology and marketing expertise of foreign companies. With a view to inject technological dynamism in the Indian industry, the Government provided automatic approval for technological agreements related to high priority industries and eased procedures for hiring of foreign technical expertise. Major initiatives towards restructuring of Government sector units (PSUs) were initiated, in view of their low productivity, over staffing, lack of Technological upgradation and low rate of return. In order to raise resources and ensure wider public participation PSUs, it was decided to offer its shareholding stake to mutual funds, financial institutions, general public and workers. Similarly, in order to revive and rehabilitate chronically sick PSUs, it was decided to refer them to the Board for Industrial and Financial Reconstruction (BIFR). The Policy also provided for greater managerial autonomy to the Boards of PSU’s. The Industrial Policy Statement of 1991 recognized that the Government’s intervention in investment decisions of large companies through MRTP Act had proved to be deleterious for industrial growth. Accordingly, pre-entry scrutiny of investment decisions of MRTP companies was abolished. The thrust of policy was more on controlling unfair and restrictive trade practices. The provisions restricting mergers, amalgamations and takeovers were also repealed.

2.4.1 Industrial Policy Measures Since 1991

Since 1991, industrial policy measures and procedural simplifications have been reviewed on an ongoing basis. Presently, there are only six industries which require compulsory licensing. Similarly, there are only three industries reserved for the Government sector. Some of important policy measures initiated since 1991 are set out below –
Since 1991, promotion of foreign direct investment has been an integral part of India’s economic policy. The Government has ensured a liberal and transparent foreign investment regime where most activities are opened to foreign investment on automatic route without any limit on the extent of foreign ownership. FDI up to 100 per cent has also been allowed under automatic route for most manufacturing activities in Special Economic Zones (SEZs). More recently, in 2004, the FDI limits were raised in the private banking sector (up to 74 per cent), oil exploration (up to 100 per cent), petroleum product marketing (up to 100 per cent), natural gas and LNG pipelines (up to 100 per cent) and printing of scientific and technical magazines, periodicals and journals (up to 100 per cent). In February 2005, the FDI ceiling in telecom sector in certain services was increased from 49 per cent to 74 per cent. Reservation of items of manufacture exclusively in the small scale sector has been an important tenet of industrial policy. Realizing the increased import competition with the removal of quantitative restrictions since April 2001, the Government has adopted a policy of de-reservation and has pruned the list of items reserved for SSI sector gradually from 821 items as at end March 1999 to 506 items as on April 6, 2005. Further, the Union Budget 2005-06 has proposed to de-reserve 108 items which were identified by Ministry of Small Scale Industries. The investment limit in plant and machinery of small scale units has been raised by the Government from time to time. To enable some of the small scale units to achieve required economies of scale, a differential investment limit has been adopted for them since October 2001. Presently, there are 41 reserved items which are allowed investment limit up to Rs.50 million instead of present limit of Rs.10 million applicable for other small scale units. Equity participation up to 24 per cent of the total shareholding in small scale units by other industrial undertakings has been allowed. The objective therein has been to enable the small sector to access the capital market and encourage modernization, technological upgradation, Ancillarisation, sub-contracting, etc. Under the framework provided by the Competition Act 2002, the Competition Commission of India was set up in 2003 so as to prevent practices having adverse impact on competition in markets. In an effort to mitigate regional imbalances, the Government announced a new North-East Industrial Policy in December 1997 for promoting industrialization in the North-Eastern region. This policy is applicable for the States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura. The Policy has provided various concessions to industrial units in the North Eastern Region, e.g., development of industrial infrastructure, subsidies under various schemes, excise and income-tax exemption for a period of 10 years, etc. North
Eastern Development Finance Corporation Ltd. has been designated as the nodal disbursing agency under the Scheme. The focus of disinvestment process of PSUs has shifted from sale of minority stakes to strategic sales. Up to December 2004, PSUs have been divested to an extent of Rs.478 billion. Apart from general policy measures, some industry specific measures have also been initiated. For instance, Electricity Act 2003 has been enacted which envisaged to de-license power generation and permit captive power plants. It is also intended to facilitate private sector participation in transmission sector and provide open access to grid sector. Various policy measures have facilitated increased private sector participation in key infrastructure sectors such as, telecommunication, roads and ports. Foreign equity participation up to 100 per cent has been allowed in construction and maintenance of roads and bridges. MRTP provisions have been relaxed to encourage private sector financing by large firms in the highway sector. Evidently, in the process of evolution of industrial policy in India, the Government’s intervention has been extensive. Unlike many East Asian countries which used the State intervention to build strong private sector industries, India opted for the State control over key industries in the initial phase of development. In order to promote these industries the Government not only levied high tariffs and imposed import restrictions, but also subsidized the nationalized firms, directed investment funds to them, and controlled both land use and many prices. In India, there has been a consensus for long on the role of government in providing infrastructure and maintaining stable macroeconomic policies. However, the path to be pursued toward industrial development has evolved over time. The form of government intervention in the development strategy needs to be chosen from the two alternatives: ‘Outward-looking development policies’ encourage not only free trade but also the free movement of capital, workers and enterprises. By contrast, ‘inward-looking development policies’ stress the need for one’s own style of development. India initially adopted the latter strategy. The advocates of import substitution in India believed that we should substitute imports with domestic production of both consumer goods and sophisticated manufactured items while ensuring imposition of high tariffs and quotas on imports. In the long run, these advocates cite the benefits of greater domestic industrial diversification and the ultimate ability to export previously protected manufactured goods, as economies of scale, low labour costs, and the positive externalities of learning by doing cause domestic prices to become more competitive than world prices. However, pursuit of such a policy forced the Indian industry to have low and inferior technology. It did not expose the industry to the rigours of competition and therefore it resulted in low efficiency. The inferior technology and
inefficient production practices coupled with focus on traditional sectors choked further expansion of the India industry and thereby limited its ability to expand employment opportunities. Considering these inadequacies, the reforms currently underway aim at infusing the state of the art technology, increasing domestic and external competition and diversification of the industrial base so that it can expand and create additional employment opportunities. In retrospect, the Industrial Policy Resolutions of 1948 and 1956 reflected the desire of the Indian State to achieve self-sufficiency in industrial production. Huge investments by the State in heavy industries were designed to put the Indian industry on a higher long-term growth trajectory. With limited availability of foreign exchange, the effort of the Government was to encourage domestic production. This basic strategy guided industrialization until the mid-1980s. Till the onset of reform process in 1991, industrial licensing played a crucial role in channeling investments, controlling entry and expansion of capacity in the Indian industrial sector. As such industrialization occurred in a protected environment, which led to various distortions. Tariffs and quantitative controls largely kept foreign competition out of the domestic market, and most Indian manufacturers looked on exports only as a residual possibility. Little attention was paid to ensure product quality, undertaking R&D for technological development and achieving economies of scale. The industrial policy announced in 1991, however, substantially dispensed with industrial licensing and facilitated foreign investment and technology transfers, and threw open the areas hitherto reserved for the Government sector. The policy focus in the recent years has been on deregulating the Indian industry, enabling industrial restructuring, allowing the industry freedom and flexibility in responding to market forces and providing a business environment that facilitates and fosters overall industrial growth. The future growth of the Indian industry as widely believed, is crucially dependent upon improving the overall productivity of the manufacturing sector, rationalization of the duty structure, technological upgradation, the search for export markets through promotional efforts and trade agreements and creating an enabling legal environment.

2.5 Private and Government Sectors, Joint Ventures

The principle of joint sector (similar to joint ventures in some of the developing countries), wherein Government and private entrepreneurs join hands to establish new enterprises is indeed an old one for India. It was quite common for many of the erstwhile princely States (the State of Baroda, Travancore and Cochin and Hyderabad, to name only a few) to
share risk capital in large industrial projects. Apart from this, it was a widely shared view that the state in the independent India would have to play an active role in providing financial and other support to new and small entrepreneurs. Air India International provides a notable example of private sector and the state coming together to establish business enterprises. The company was established by the Tatas in 1948. The Government of India provided 49 per cent of the equity capital of the company. The Government subsequently acquired an additional 2 per cent equity from Tata Sons Ltd to convert it into a government company. In spite of the government holding 51 per cent of the equity, the Air India continued to be under the management of the Tatas until it was fully taken over by the Government of India in 1953. There were twelve other undertakings in 1966-67, in which the Central Government had a substantial stake in equity capital without having direct managerial control. In a few cases equity participation by foreign companies in public sector enterprises (PSEs) was also allowed. Madras Fertilizers Ltd., for example, was established as a joint enterprise in participation with Amoco Inc., USA and National Iranian Oil Co., Iran. These two foreign companies were partners in Madras Refineries Ltd., too. Cochin Refineries Ltd., was established with the participation of Phillips Petroleum Co., USA and Duncan Brothers Ltd., Lubrizol India Ltd., with the Lubrizol Corporation, USA and Triveni Structuralss Ltd., with Voes-Alpine, Austria. Maruti Udyog Ltd. a joint venture with Suzuki Motor Co Ltd., Japan is one of the most important cases where a foreign private corporation has been invited to join hands with the Government. A feature of all the above cases appears to be that public sector holdings are of majority nature and these are managed by Government nominated boards with representation of the foreign collaborator on the board of directors. The Industrial Policy Resolution, 1956 (IPR, 1956) envisaged that the state would help the private sector in fulfilling the role assigned to it within the framework of planning and the industrial policy in force from time to time. In doing so, the state will continue to foster institutions to provide financial aid to these industries and special assistance will be given to enterprises organized on co-operative lines for industrial and agricultural purposes. In suitable cases, the State may also grant assistance to the private sector. Such assistance, especially when the amount involved is substantial, will preferably be in the form of participation in equity capital, though it may also be in part in the form of debenture capital. In September 1960, the Government of Maharashtra appointed a Consultative Committee on the Third Five Year Plan, which set up a Study Group on "Joint Sector Enterprises for Industrial Development" under the Chairmanship of Shri R.G. Saraiya. Messrs Naval H. Tata, S.M. Joshi, A.R. Bhat, R.M.
Deshmukh and A.B. Bardhan were the other members. The Study Group, in its report submitted in May 1961, expressed the opinion that in order to achieve maximum development of industries and spread industrialization into the interior, it was necessary to put to the best use the resources - managerial ability available with the Government on the one hand and the private sector on the other. The concept of joint sector, the Group opined, could be used in furtherance of this objective. The Study Group also felt that joint sector schemes would relate generally to such industries for development of which private enterprise or investment will not easily be forthcoming. The joint sector scheme was expected to attract entrepreneurs to the relatively backward areas of the state in the matter of industrial development. With regard to organisation, management and control of joint sector enterprises, the Group emphasised the need to have mutual trust in all such cases of joint investment by the state and private entrepreneurs. The Group observed:

(a) The pattern of association should be such that Government can have a substantial voice in public interests in the policy matters of the undertaking but so that, in cases where the managing partner proves to be lame duck or it is considered necessary for his specific actions or inactions to displace him, the Government can intervene and take over the management too for a limited or unlimited period and extent without recourse to the provisions of the Industries (Development and Regulation) Act, 1951.

(b) The distribution of ownership should be so worked out that there is the minimum concentration of capital in the hands of individuals or associated groups, this being, however, circumscribed in suitable cases ... and the desirability of associating available and reputed entrepreneurship within the country itself or even from abroad where foreign capital is necessary and forthcoming. Thus, the concept of joint sector as visualised by the Study Group headed by Mr. Saraiya was in the form of an industrial organisation that would promote industrial development in the State (Maharashtra in this case) in general and the backward regions of the state in particular.

The State of Andhra Pradesh was one of the earliest to set up an Industrial Development Corporation (APIDC). The APIDC started providing support to private enterprises in the form of risk capital during the 'sixties. The Central Government or Central Public Enterprises having necessary expertise or experience in industry may sometimes join with the State.
2.5.1 Government or State Level Government Enterprises (to implement certain projects under joint venture scheme with or without public participation)

Central Government or Central Public Enterprises having necessary expertise or experience in industry may sometimes join with the State Government or state level public enterprises to implement certain projects under joint venture scheme with or without public participation. Ventures of public sector enterprises and/or State Governments with no identifiable private promoter but with the participation of general public under this category the public at large will participate in the risk capital along with the State Government or state level public enterprises. The majority equity of 51 per cent or more may be held by the State or PSEs and the balance by the general public through public issue of shares. As per the definition of the Companies Act, 1956, such companies are, however, treated as Government companies.

2.5.2 Public Sector Ventures and Joint ventures between Cooperative or other employees

Joint venture between public enterprise and Co-operatives or workers of an enterprise
In this form of joint venture, a part of equity is held by a co-operative society and the rest by public sector enterprise or Government. Similarly, part of the equity might be held by workers individually or an organisation formed by them.

2.5.3 Joint venture between public enterprises and domestic private entrepreneurs

In this category, the State Government or State Government Undertakings, who are assigned promotional and developmental role hold licences for projects to be implemented under joint venture scheme, invite prospective private promoters to participate in the project. The equity pattern of the proposed enterprise would be such that state level promotional agencies will hold minimum of 26 per cent, the private promoter 25 per cent and balance 49 per cent will be subscribed by the public at large. On the other hand, the private promoter who holds
industrial license may approach the state level agencies to implement the license in the joint sector.

2.5.4 Joint venture between public enterprises and foreign collaborators

In this case, public enterprise jointly with foreign collaborators with or without an Indian private promoter may participate in the share capital to promote an enterprise as a joint venture. PSEs that hold individual licences may also directly enter into an agreement with foreign collaborators to participate in the joint venture. Experience shows that in some state-level public enterprises have entered into such agreements. In this type of joint ventures, state holds 26 per cent, foreign collaborators 25 per cent and the balance by the general public. In case the joint sector enterprises also involve Indian promoters, the guidelines indicate that state corporations should hold a minimum of 25 per cent, Indian entrepreneur 20 per cent foreign promoter 20 per cent and the balance 35 per cent offered to the general public. It may be noted that only category (4) and (5) involve private promoter. It is also necessary to mention that many private sector companies are not treated as JSEs in spite of the fact that public financial institutions hold substantial shares in them. On the other hand, companies not less than 51 per cent of whose paid-up share capital is held by the Central Government, State Governments, Government-owned corporations including public financial institutions are treated as if they were Government companies for purposes of appointing auditors. The coverage of the definition of a public financial institution under the Companies Act, 1956, underwent changes as a number of institutions were de-notified. This resulted in limiting the application of this provision. The main point that is sought to be made here is that a number of companies remain outside the joint sector framework in spite of public sector having more than 25 per cent holding in their risk capital. If the recommendations of ILPIC are taken in their spirit most of such companies should have been treated as belonging to the joint sector. In practice, however, it turned out to be otherwise. In some cases foreign companies were directly involved in joint ventures with the State or SIDCs. For example, Punjab Anand Lamp Industries Ltd. was promoted as a joint venture of Punjab State Industrial Development Corpn. Ltd. (PSIDC) and N.V. Phillips BV, Netherlands), and C.L. Anand and the balance by the public. Noble Explochem is a joint venture between State Industrial Corporation of Maharashtra Ltd. (SICOM) (28 per cent) and AB Bofors Sweden, Dyno Industries, Norway and Swedish Fund for Industrial
Cooperation with Developing Countries together holding part of the equity capital. It is also relevant to mention that a special resolution needs to be passed for (re)appointing auditors if not less than 25 per cent of the subscribed share capital is held whether singly or in any combination by –
(a) A public financial institution or a Government company or Central Government or any State Government, or
(b) Any financial or other institution established by any Provincial or State Act, in which a State Government holds not less than fifty-one per cent of the subscribed share capital, or
(c) A nationalised bank or an insurance company carrying on general insurance business.
Such companies are treated as 'deemed Government companies'.

2.6 Achievements of New Economic Policies

2.6.1 Increase in GDP

The actual national income growth was 4.7% before the new economic policy was adopted. This growth rate saw a successive increase to 5.0% and 8.2% in 1993-94 and 1996-97 respectively, though it came down to 6.2% in 2000-01

2.6.2 Imports

When seen from the perspective of the new economic policy there were ups and downs in the Import growth rate. It fell from 22% of 1990-91 to 11% of 1991-92. It leapt up to 32.4 in 1992-93 only to fall by up to 15% in 1993-94 although the Import growth rate was measured to be 14.5% in 2001-02.

2.6.2 Fiscal Deficit

The new economic policies had emphasized to reduce the fiscal deficit by the limit of 3% of GDP. The fiscal deposit was reduced up to 5.9% in 1991-92 and up to 5.2% in 1992-92. There is no denying the fact that after the new economic policies our fiscal deficit has been brought under check but the government is still far from reaching its goal. It grew up to 7.9 in 1995-96 before coming down to 6.4 in 2000-01. The new economic policies have had a positive effect on our foreign reserves. Compared to
Rs. 6,251 Crores it grew to Rs. 58,446 Crores and further to Rs. 1,972.04 Crores in 1994-95 and 2000-01 respectively.

2.6.5 Agricultural Production

A positive impact of the new economic policies was seen in agricultural production. It was 3% before new financial amendments were put into practice. It was reduced to 1.9% in 1991-92 but grew up to 6.6% and 6.3% in 1994-95 and 2000-01 respectively.

2.6.5 Foreign Investment

A positive impact of the new economic policies was seen in foreign investment as well. In 1990 the government gave approval to Rs. 8213 Crores of foreign investment. A further approval to direct foreign investment worth Rs. 12,163 Crores and Rs. 20,319 Crores was sanctioned in 1995-96 and 2000-01 respectively.

Practice Questions – Fill in the blanks:

1. From the viewpoint of PPP (Purchasing power parity) in the world India is the …… largest economy in the world.
2. After independence the Indian economy was inspired by the ….. model of economic development
3. The Planning Commission was constituted in the year …..
4. The objective of the economic policies after independence in 1947 was to ……
5. The Industrial Policy Resolution - 1956 classified industries into …… categories.
6. Industrial Policy of economic reforms before 1991 was based upon ……
7. Under the new industrial licensing policy, industries were classified into ……
8. After the economic reforms of 1991, the policy of …… was adopted and most industries were delicensed.
9. The new economic policies have had a …… impact on our fiscal deficit.
10. The protected environment before 1991 gave birth to many ……
2.7 Summary

The national consensus was in favour of rapid industrialization after independence in 1947 which was not only the key to economic growth but also held the key to achieve economic sovereignty. Indian economic policy was formulated through successive resolutions and policy declarations. Priority was given to industrial growth through successive 5-year plans. Building on the so-called "Bombay Plan" in the pre-Independence era, the first Industrial Policy Resolution announced in 1948 laid down broad contours of the strategy of industrial development. The Planning Commission was constituted in March 1950 and the Industrial (Department and Regulation) Act (IDR Act) was enacted in 1951 with the objective of empowering the Government to take necessary steps to regulate the pattern of industrial development through licensing. This paved the way for the Industrial Policy Resolution of 1956, which was the first comprehensive statement on the strategy for industrial development in India. The Industrial Policy Resolution - 1956 was shaped by the Mahalanobis Model of growth, which suggested that emphasis on heavy industries would lead the economy towards a long term higher growth path. The other objective of the Resolution was to eradicate regional disparities through industrial growth. As a matter of fact this declaration expressed India's value-based policies and had the objective of self-sufficiency in industrial production. Subsequently, the Industrial Licensing Policy Inquiry Committee (Dutt Committee), constituted in 1967, recommended that larger industrial houses should be given licenses only for setting up industry in core and heavy investment sectors, thereby necessitating reorientation of industrial licensing policy. In 1969, the monopolies and restrictive Trade Practices (MRTP) Act was introduced to enable the Government to effectively control concentration of economic power. The new Industrial Licensing Policy of 1970 classified industries into four categories. With a view to prevent excessive concentration of industrial activity in the large industrial houses, this Statement gave preference to small and medium entrepreneurs over the large houses and foreign companies in setting up of new capacity particularly in the production of mass consumption goods. This Statement emphasized decentralization of industrial sector with increased role for small scale, tiny and cottage industries. The industrial Policy Statement of 1980 placed accent on promotion of competition in the domestic market, technological upgradation and modernization of industries. There was some progress in the process of deregulation during the 1980s. In 1988, all industries, excepting 26 industries specified in the negative list, were exempted from licensing. The exemption was, however, subject to investment and
locational limitations. Initially India adopted a closed market strategy but later encouraged open trade. Economic reforms were adopted after 1991. The objective of the Industrial Policy Statement - 1991 was to maintain sustained growth in productivity, enhance gainful employment and achieve optimal utilization of human resources, to attain international competitiveness, and to transform India into a major partner and player in the global arena. Quite clearly, the focus of the policy was to unshackle the Indian industry from bureaucratic controls. This called for a number of far-reaching reforms - A substantial modification of Industry Licensing Policy was deemed necessary with a view to ease restraints on capacity creation, respond to emerging domestic and global opportunities by improving productivity. Thus only three industries are now reserved for public sector. Reservation of items of manufacture exclusively in the small scale sector has been an important tenet of industrial policy. Realizing the increased import competition with the removal of quantitative restrictions since April 2001, the Government has adopted a policy of de-reservation and has pruned the list of items reserved for SSI sector gradually from 821 items as at end March 1999 to 506 items as on April 6, 2005. Further, the Union Budget 2005-06 has proposed to de-reserve 108 items which were identified by Ministry of Small Scale Industries. The investment limit in plant and machinery of small scale units has been raised by the Government from time to time. To enable some of the small scale units to achieve required economies of scale, a differential investment limit has been adopted for them since October 2001. Presently, there are 41 reserved items which are allowed investment limit up to Rs.50 million instead of present limit of Rs.10 million applicable for other small scale units. Under the framework provided by the Competition Act 2002, the Competition Commission of India was set up in 2003 so as to prevent practices having adverse impact on competition in markets. In an effort to mitigate regional imbalances, the Government announced a new North-East Industrial Policy in December 1997 for promoting industrialization in the North-Eastern region. The actual national income growth was 4.7% before the new economic policy was adopted. This growth rate saw a successive increase to 5.0% and 8.2% in 1993-94 and 1996-97 respectively, though it came down to 6.2% in 2000-01. When seen from the perspective of the new economic policy there were ups and downs in the Import growth rate. It fell from 22% of 1990-91 to 11% of 1991-92. It leapt up to 32.4 in 1992-93 only to fall by up to 15% in 1993-94 although the Import growth rate was measured to be 14.5% in 2001-02. There is no denying the fact that after the new economic policies our fiscal deficit has been brought under check but the government is still far from reaching its
A positive impact of the new economic policies was seen in agricultural production and foreign investment as well.

### 2.8 Important Terminology

**Gross Domestic Product - GDP**
The monetary value of all the finished goods and services produced within a country's borders in a specific time period, though GDP is usually calculated on an annual basis. It includes all of private and public consumption, government outlays, investments and exports less imports that occur within a defined territory.

\[
\text{GDP} = C + G + I + \text{NX}
\]

where "C" is equal to all private consumption, or consumer spending, in a nation's economy
"G" is the sum of government spending, "I" is the sum of all the country's businesses spending on capital, "NX" is the nation's total net exports, calculated as total exports minus total imports. (\(\text{NX} = \text{Exports} - \text{Imports}\))

**Purchasing Power Parity - (PPP)**
PPP is an economic theory that states residents of one country should be able to buy the goods and services at the same price as residents of any other country over time. It is used to calculate relative value of currency.

**Fiscal Deficit**
When the government expenses exceed the total revenue generated (excluding loans), Fiscal Deficit comes into being. Deficit is different than loan in the sense that it means the collection of annual loss.

### 2.9 Answers to Practice Questions

1. Third
2. Soviet model
3. March 1950
4. Self reliance
5. Three
6. Closed markets
7. Four categories
8. Open markets
9. Positive
10. Imparities
2.10 Books for Reference

2. Ratan Sen, Industrial Relation in India

2.11 Books for Reference/ Useful Material

1. Neeru Vashisht, Student Guide to Business Organization

2.11 Essay Type Questions

3. Describe the achievements of the new Industrial Policy.
4. What do you understand by joint ventures?
Block– 1. The Rationale of Government Regulation
Unit– 3. Regulation of Economic Activities; Disclosure of Information

Unit Construction

3.1 Introduction
3.2 Objectives
3.3 Types of Economic Activity
3.4 Setting up business as an Indian or a Foreign Company
   3.4.1 As an Indian Company
      3.4.1.1 Joint Venture
         3.4.1.1.1 Advantages for foreign investors in joint ventures
         3.4.1.1.2 Disadvantages
      3.4.1.2 Wholly Owned Subsidiary Companies
         3.4.1.2.1 Advantages
         3.4.1.2.2 Disadvantages
   3.4.2 As a Foreign Company
      3.4.2.1 Project Office
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3.5 Procedures for
   3.5.1 Procedures for FDI
      3.5.1.1 Procedure under Automatic route
      3.5.1.2 Investment in New Industries
      3.5.1.3 Investment in Existing Companies
   3.5.2 Procedure under Government approval (FIPB)
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3.6 Infrastructural investment in India
   3.6.1 Ports
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3.6.7 Renewable Energy

3.7 Disclosure and Information
  3.7.1 Concept of Open Government and Right to Information
  3.7.2 Right to Information Movement
  3.7.3 Right to Information Act, 2005

3.8 Summary
3.9 Important Terminology
3.10 Answers to practice questions
3.11 Reference Books
3.12 Useful study materials
3.13 Essay type questions
3.1 Introduction

Economic activities are related to production, distribution, exchange and consumption of goods and services. The primary aim of the economic activity is the production of goods and services with a view to make them available to consumer. "Human activities which are performed in exchange for money or money's worth are called economic activities." In other words, economic activities are those efforts which are undertaken by man to earn Income, Money, and Wealth for his life and to secure maximum satisfaction of wants with limited and scarce means. "Human activities which are not performed for money or money's worth are called non-economic activities." Here, there is no monetary consideration in exchange for such activities, e.g. going to the temple or a student helping his or her classmate in studies.

3.1 Objectives

After going through this unit you would be able to understand –

- Economic activities
- Government Policies for Foreign Direct Investment
- Advantages and Disadvantages of Foreign Direct Investment
- Foreign Investment in various sectors in India
- Right to Information

3.3 Types of Economic Activity –

1. Profession

Profession is an occupation carried on by professional people like Doctors, Lawyers, Engineers, etc. They provide specialized services in return for fees. To become a professional, a man requires specialized knowledge and professional qualification. For e.g. Doctors need specialized knowledge in medicine, a lawyer need a degree in law, etc.

2. Employment

Employment is a type of occupation under which one person provides his services, physical or mental to someone else in return for which he gets
salary or wage. The person who employs is called employer and the person who is employed is called employee or worker.

3. Business

Business is an economic activity concerned with production and distribution of goods and services with the aim to earn profit. It includes all those activities which are directly or indirectly concerned with production, purchase and sale of goods and services. So the production, marketing, advertising, warehousing, insurance, banking, etc. are all business activities. Many steps have been taken by India in the last decade to achieve economic growth and reduce poverty. The most important step was taken in 1991 when doors were opened for foreign investment by abolishing all official hurdles. Foreign Direct Investment has emerged as an important source of employment in developing nations (including India) because it helps in building a competitive atmosphere, generating manpower, developing industries and unifying international trade.

3.4 Setting up business as an Indian or a Foreign Company

A foreign company planning to set up business operations in India has the options of starting as an Indian Company or a Foreign Company.

3.4.1 as an Indian Company

A foreign company can commence operations in India by incorporating a company under the Companies Act, 1956 Joint Ventures or Wholly Owned Subsidiaries.

3.4.1.1 Joint Venture

Foreign Companies can set up their operations in India by forging strategic alliances with Indian partners as listed/ non listed companies.

3.4.1.1.1 Advantages for foreign investors in joint ventures

1. Established distribution/ marketing set up of the Indian partner
2. Available financial resource of the Indian partners
3. Established contacts of the Indian partners which help smoothen the process of setting up of operations
4. It is supposed to be a good strategy for entering foreign markets, especially where commerce and nation related risks are higher.
5. It makes business activities easier in different competitive conditions.
6. It provides the advantage of smaller investment and lesser resources for entering foreign markets.

### 3.4.1.1.2 Disadvantages

1. Joining together of two companies from two different countries, backgrounds, experiences and capabilities creates an artificial and uncomfortable environment while working jointly towards common goals of resource-management etc. Working within equal co-operative conditions creates problems in routine work which might aggravate in future.
2. There always is the fear of disclosure of technological secrets. It is always possible that the potentially stronger foreign partner can utilize information thus gained to its own profit which might cause damage to the original company.
3. In joint ventures, profit has to be shared with the regional partner besides making further investments for plans of future extensions.

### 3.4.1.2 Owned Subsidiary Companies

Foreign companies can also set up wholly owned subsidiary in sectors where 100% foreign direct investment is permitted under the FDI policy. For registration and incorporation, set of applications have to be filed with Registrar of Companies (ROC). Once a company has been duly registered and incorporated as an Indian company, it is subject to Indian laws and regulations as applicable to other domestic Indian companies.

#### 3.4.1.2.1 Advantages

1. Effective control over Subsidiary Companies
2. One can save on the investment in diverting information and capability to other firms and in the training of personnel, thus earning full profit.
3. Reduces the risk of spread.

### 3.4.1.2.2 Disadvantages

1. The risk level is high.

### 3.4.2 As a Foreign Company

Foreign Companies can set up their operations in India through Liaison Office/Representative Office as well. Liaison office acts as a channel of communication between the principal place of business or head office and entities in India. Liaison office cannot undertake any commercial activity directly or indirectly and cannot, therefore, earn any income in India. Its role is limited to collecting information about possible market opportunities and providing information about the company and its products to prospective Indian customers. It can promote export/import from/to India and also facilitate technical/financial collaboration between parent company and companies in India. Approval for establishing a liaison office in India is granted by Reserve Bank of India (RBI).

#### 3.4.2.1 Project Office

Foreign Companies planning to execute specific projects in India can set up temporary project/site offices in India. RBI has now granted general permission to foreign entities to establish Project Offices subject to specified conditions. Such offices cannot undertake or carry on any activity other than the activity relating and incidental to execution of the project. Project Offices may remit outside India the surplus of the project on its completion, general permission for which has been granted by the RBI.

#### 3.4.2.2 Branch Office

Foreign companies engaged in manufacturing and trading activities abroad are allowed to set up Branch Offices in India for the following purposes - Export/Import of goods; Rendering professional or consultancy services; Carrying out research work, in which the parent company is engaged; Promoting technical or financial collaborations between Indian companies and parent or overseas group company; Representing the
parent company in India and acting as buying/selling agents in India; Rendering services in Information Technology and development of software in India; Rendering technical support to the products supplied by the parent/ group companies; Foreign airline/shipping company. A branch office is not allowed to carry out manufacturing activities on its own but is permitted to subcontract these to an Indian manufacturer. Branch Offices established with the approval of RBI, may remit outside India profit of the branch, net of applicable Indian taxes and subject to RBI guidelines.

Permission for setting up branch offices is granted by the Reserve Bank of India (RBI). Branch Office on “Stand Alone Basis” would be isolated and restricted to the Special Economic zone (SEZ) alone and no business activity/transaction will be allowed outside the SEZs in India, which include branches/subsidiaries of its parent office in India. No approval shall be necessary from RBI for a company to establish a branch/unit in SEZs to undertake manufacturing and service activities subject to specified conditions. Such offices can undertake any permitted activities. Companies have to register themselves with Registrar of Companies (ROC) within 30 days of setting up a place of business in India. Reserve Bank has given general permission to foreign companies for establishing branch/unit in Special Economic Zones (SEZs) to undertake manufacturing and service activities. The general permission is subject to the following conditions:

a) Such units are functioning in those sectors where 100 per cent FDI is permitted;
b) Such units comply with part XI of the Companies Act, 1956;
c) Such units function on a stand-alone basis.

Under the provisions of FEMA the working units would have to contact an authorized dealer of foreign exchange with necessary documents. Such offices can undertake any permitted activities within FEMA (Foreign Exchange Management Act), 2000.

3.5 Procedures for FDI

Foreign direct investment applications are considered in India under two routes:

(i) Procedure under Automatic route
(ii) Procedure under Government approval (FIPB)

3.5.1 Procedures for FDI
3.5.1 Procedure under Automatic route

No prior approval is required from the government or RBI for FDI under the Automatic Route. Only information to the RBI within 30 days of inward remittances or issue of shares to Non Residents is required. The investment should be in accordance with the recommended guidelines. This procedure applies to new investments in Indian companies and not to those in which shares are bought from old shareholders. This route is available to all sectors/ activities where there is no “Sector Cap” i.e. those sectors where 100 per cent FDI is permitted or those which have been permitted investment through Automatic route under “Sector Cap”.

3.5.1.1 Investment in New Industries

FDI up to 100% is allowed under the automatic route in all activities/sectors except the following, which require prior approval of the Government. Investment in Public sector undertakings and Export-based units based in EP, SEZ, EHTP and STP comes under Automatic route. Investment under Automatic route is governed by Sectoral Policy and Equity Cap and the Reserve Bank of India ensures their compliance.

Any change in the Sectoral Policy and Sectoral Equity Cap is notified through SIA (Secretariat for industrial assistance) by the Department of Industrial Policy & Promotion.

3.5.1.1 Investment in Existing Companies

Besides new companies, automatic route for FDI/NRI/OCB investment is also available to the existing companies proposing to induct foreign equity. For existing companies with an Expansion programme, the additional requirements are that
(i) The increase in equity level must result from the expansion of the equity base of the existing company without the acquisition of existing shares by NRI/OCB/foreign investors,
(ii) The money to be remitted should be in foreign currency and
(iii) Proposed expansion programme should be in the sector(s) under automatic 11 routes. Otherwise, the proposal would need Government approval through the FIPB.
For this the proposal must be supported by a Board Resolution of the existing Indian company.
For existing companies without an expansion programme, the additional requirements for eligibility for automatic approval are
(i) That they are engaged in the industries under automatic route,
(ii) The increase in equity level must be from expansion of the equity base and
(iii) The foreign equity must be in foreign currency.

3.5.2 Procedure under Government approval (FIPB)

For investment activities not covered by the “Automatic Route”
Government approval for FDI/NRI/OCB through the FIPB shall be
necessary. Joint proposals that include foreign investment and foreign
technical cooperation are also approved by the government on the
recommendation of FIPB. All cases of FDI, except NRI’s and 100%
Export-oriented units, should be presented to the Department of Economic
Affairs, Ministry of Finance. NRI’s and 100% Export-oriented units
should be present their cases to SIA (Secretariat for Industrial Assistance) in the
Department of Industrial Policy and Promotion. Applications can be
presented at Indian missions abroad, which redirects them further to the
Department of Economic Affairs.

3.5.2.1 Regulations and Procedures

1. Free from license-related problems (including expansion of existing
   units)
2. Under mandatory industrial license; and
3. More than permissible limit of investment in plant and machinery in
   small units and for continuation of production of reserved products
   or in the matters where exemption from industrial licensing has
   been taken back.

For FDI/ investment by NRI’s/ investment by foreign companies in
the following categories, Government approval through FIPB shall be
necessary –

1. All proposals that require an Industrial License.
2. All proposals in which the foreign collaborator has a previous
   venture/tie up in India. (Although this condition does not apply to
   Information Technology industries.)
3. All proposals relating to acquisition of shares in an existing Indian
   company.
4. All proposals falling outside notified sectoral policy/caps or under sectors in which FDI is not permitted. Areas/sectors/activities hitherto not open to FDI/NRI/OCB investment shall continue to be so unless otherwise decided and notified by Government.

RBI has granted general permission under Foreign Exchange Management Act (FEMA) in respect of proposals approved by the Government. Indian companies getting foreign investment approval through FIPB route do not require any further clearance from RBI for the purpose of receiving inward remittance and issue of shares to the foreign investors. Such companies are, however, required to notify the Regional Office concerned of the RBI of receipt of inward remittances within 30 days of such receipt and to file the required documents with the concerned Regional Offices of the RBI within 30 days after issue of shares to the foreign investors.

3.5.3 FDI in Small Scale Industries

An industrial undertaking is defined as a small scale unit if the investment in fixed assets in plant and machinery does not exceed Rs 10 million. A small scale unit is not permitted more than 24 per cent equity in its paid up capital from any industrial undertaking either foreign or domestic. However there is no bar on higher equity holding for foreign investment if the unit is willing to give up its small scale status. In case of foreign investment beyond 24 per cent in a small scale unit which manufactures small scale reserved item(s), an industrial license carrying a mandatory export obligation of 50 per cent would need to be obtained. When a small scale unit exceeds the prescribed small scale limit of investment in plant and machinery by way of natural growth and continues to manufacture small scale reserved item(s), it requires a Carry on Business (COB) License. Also, if exemption from Industrial licensing granted for any item is withdrawn, the industrial undertakings that are manufacturing such item(s) require COB license.

3.6 Infrastructural investment in India

India is an emerging economy wherein more than a billion people. It's infrastructure that provides essential services also exhibits reliability, low-cost production and market-competition as well. The public sector investment in the country’s infrastructure is insufficient to lay the foundation for a potent future. The estimated investment for infrastructure in the 11th 5-year Scheme is estimated to be $34,500 Crores. Statistics
show that there is shortage of electricity and potable water in large parts of India. Roads in bad shape, cargo-handling, and ports and airports become causes of delay. These have traditionally been under the administration of the government. In contrast the country has developed exponentially in the field of telecommunication. This difference is mainly due to private sector investment in the field of telecommunication while there has mainly been public sector investment in other areas. India adopted ways to make the economy liberal in 1991 and encouraged FDI. Many steps have been taken to uplift Indian infrastructure. Traditionally a large part of the infrastructure has been owned and managed by the government. It was realized that if the infrastructure was left to stay dependent upon solely state-grants, the infrastructural growth rate would become slow. The government is also proactively encouraging private sector investment, to speed up development. Therefore private sector has also been included in it now. The tasks of development and marketing related to infrastructure have been assigned to private sector through various agreements. They are granted the right to build and run the infrastructure and generate revenue, though the right of ownership stays with the state. The government proposes other such ways too. Powers have been divided between central and state governments in India. Certain sectors are absolutely reserved for the central government while some are under joint control (central and state governments). An examination of the existing laws, regulations and procedures shows that they are the results of ad hoc mentality, which have worsened by the overlapping powers in central and state governments. The regulatory infrastructure in various sectors has been developed without any coordination. Sometimes only one category of laws and/or policy controls a specific sector without any regulatory authority that would have controlled its development and maintenance. For example there is no supreme regional authority for complete control in the field of transport; nevertheless there is the National Highway Authority of India which apart from regulating and maintaining all national highways, is also responsible for their development. Besides, most of the 26 states of the country have their own agencies for their respective highways. Thus the investors are not at the mercy of one single independent regulatory authority. To make the situation worse, only one organization holds the rights to make related laws, administration, and settlement of disputes. This creates a number of complications. Despite clear and mandatory provisions made in the constitution there has been no distribution of power. Sometimes disputes arise between central and state governments relating to regulatory authorities. For instance a dispute arose when the government of Gujarat passed the The Gujarat Gas (Regulation of Transmission, Supply and Distribution) Act, 2001. The Supreme Court of
India the act saying that Regulation of Transmission, Supply and Distribution of natural gas was an exclusively central subject and state government had no legislative power to enact such legislation. It further said that state government was allowed to make legislatures for gas and related activities for medical, industrial and other similar purposes only.

From 1991 onwards, the central and various state governments set up some independent regulatory authorities on regional basis. The point to be kept in mind here is that the various ministries responsible for different sectors and the extensive administrative organizations they work through, are stuffed with bureaucratic obstacles. Although infrastructure is granted an important place for economic growth, it is surrounded by basic and complex problems. For example no clear definition has been provided for infrastructure by any committee of the Indian government. Nevertheless a committee has prepared a formal list after scrutinizing the various laws regarding infrastructure in which telecommunication and energy sectors have also been included among others. It is surprising to note that several crucial sectors so important for the country’s integrated growth e.g. educational or health institutions do not find a place in the aforementioned list.

3.6.1 Ports

There are 12 large and 187 small ports on the extensive Indian seashores. The large ports that carry 74% of total sea-transport load carried goods weighing more than 463 Lakh tonnes during last fiscal year and compared to the previous year showed a growth of 9.5%. Traditionally ports are developed in the whole world under state-ownership. Same was the case with India in the past but today private sector and foreign investors are being encouraged to develop and run ports. The ports act as gateways to India’s international trade and manage more than 90% of it. The government of India acknowledged the importance incorporated in port projects, which normally include long-term development programmes. Flexible monetary schemes were encouraged keeping in mind their high budget and its shortage. Several large ports are being developed presently by national and international houses. With certain conditions, the government has permitted FDI in the privatization and development
schemes of ports. FDI is permitted in this sector under “automatic route”; 51% FDI is permissible in schemes that provide support services to sea-transport viz. Management and maintenance of piers, loading and unloading etc. 74% foreign shares have been allowed in construction and maintenance projects of ports and harbours. Apart from this 100% FDI has been allowed for ports development schemes under “automatic route”. The most important thing here is the fact that no tax would have to be paid for 10 years on such investments. As a result, several maritime and non-maritime companies are being encouraged to invest in this field. Some major ports are maintained by the government of India while the others are maintained by the respective state governments where the ports are located. A Tariff authority was appointed for major ports in 1997, which only controls and manages revenue-related matters of only the major ports not of smaller ones. The Major Ports Trust is entitled to establish an independent body for the Tariff Authority to control tariff and rates of transport and property lease. Although the power of this body is confined to collecting revenues, it cannot regulate other aspects of this sector. In recent times, for the first time the government of India is preparing an extensive National Marine Development Policy that would encourage private investment, enhance quality of service and encourage competition. This policy also aims at encouraging investment at high levels so that middle and long term objectives could be achieved.

3.6.2 Railways

An Indian railway is one of the biggest singly-managed rail networks in the world, managing more than 63,000 km. of railway tracks. Its financial expanse is so massive that a separate rail-budget is presented in addition to the national budget. The corresponding railway policy is controlled by the ministry of railways and is incorporated in the railway board comprising chairman, financial commissioner and other members representing engineering, technology, power and personnel. Much cheaper and accessible, the railway is preferred for very-long distance journeys. In recent years it has face competition from airways but hike in fuel prices has reduced the competition. The current railway track has to bear too much burden because the Indian Railways is the sole operator of passenger rails and high-speed rails on these tracks. Keeping it in mind,
the Government of India has decided to invest five billion dollars for the expansion of railway tracks. Simultaneously, the Railway department has made plans to take care of the current shortcomings and to develop its capacity depending upon the requirements. The Government of India has also taken such steps that involve lesser expenditure and higher returns on investment. These include connectivity with ports, upgradation of tracks, telecommunication, renewal of property and modernization of passanger terminals. Indian Railways has realized the need for its swift growth keeping in mind the increasing demand for freight containers. Until recently, the public sector enjoyed monopoly on the transport of containers but the field has now been opened to competition and private companies so that public–private partnership (PPP) could be encouraged for infrastructural development. Keeping an eye on these developments, Rail Land Development Authority (RLDA) has been set up with the objective of encouraging and supervising PPP. The Indian railway has offered 500 acres of land for the development of railway stations, freight terminals and rail-link projects. Apart from this the Indian railway has identified 22 railway stations that would be modernized on public–private partnership (PPP) model.

3.6.3 Highways and Roads

The 3.3 million km. road-network of India is second in the world. Although the Indian roads are responsible for 65% of goods-transport and 80% of passanger-transport, their quality and expansion is insufficient. This therefore comes under priority sector of development. The Government of India spends 4 billion dollars per anum on it and encourages private and foreign investments too. The partnership of private sector, based on the Build-Operate-Transfer (BOT) model, is on the rise and accounts for 36% of the total investment. In each case, the builder or developer can be allowed to collect toll tax on the respective roads, which are parts of National Highway Development Project (biggest ever road-project). The National Highway Authority of India (NHAI) is the prime public body that looks after the development of all the roads under the direct control of central government. This same body settles all tenders through competitive bidding either on contract or BOT-basis. To encourage investment in road-development the government has exempted all road-
projects from income tax for 10 years. Apart from this the NHAI considers subsidies and Viability Gap Funding for border-projects. The government has prepared agreements for model discounts as well.

### 3.6.4 Airports

During the last financial year, 95 million passengers and 1.5 million (?) of goods were carried from Indian airports, which is 30% more in 2006-07 than in 2005-06. 11% increase was seen in freight transport in one year. Air transport especially saw a growth of 27.15% between 2003 and 2007. In the first quarter of 2007 a record increase of 37.74% was recorded. According to an estimate, this sector would attract investments worth 30 billion US Dollars. In the past the Government of India took care of the development and management of airports till they were handed over to the Airports Authority of India in 1984. The Airports Authority of India Act 1994 was revised in 2003 and private investment was allowed in almost all sectors of the infrastructural development of airports. The concessional agreement for the development of airports has been made on PPP and BOT models. Generally the government holds a joint 26% partnership with private sector but two recently developed projects in Kolkata and Chennai are fully privately owned. There are 126 airports in India and are operated by the Airports Authority of India. Five of these are located in metropolitan cities and are responsible for majority of transport. The government is considering private investments in the airports of 25 cities. This apart the government of India is also considering upon a new Air Policy which incorporates corporatization of air transport control system. The government of India has set up a policy to encash India’s massive cultural and natural heritage through international tourism in order to make air transport more affordable. Investments worth 9 billion US Dollars would be needed for this purpose in next 5 years. A Greenfield airport is one where a private company or a public-private company builds and operates new airports on (Build, Operate, Transfer) BOT or (Build, Operate, Own) BOO models. Nonetheless such projects need prior permission of the government. A Greenfield airport can be allowed to operate on alternative or simultaneous basis with the existing airport. Through Automatic Route, the government has allowed 100% FDI for Greenfield airports. For the development of other airports, a recommendation of The Foreign Investment Promotion Board (FIPB) is required for more than 74% FDI. To encourage this scheme airport projects have been made 100% tax-free for 10 years. The majority of recent airport-development schemes are centred...
on passengers rather than on goods-transportation. The government statistics have estimated a growth from 1020 Tonnes (2006-07) to 1745 Tonnes (2011-12). This growth is due to both the increasing financial activity as well as the growth in swift and reliable transportation of perishable goods. Keeping these factors in mind, the government has made it mandatory for Greenfield airports to provide separate storage and loading facilities for transportation of goods.

### 3.6.5 Telecommunication

The Telecommunication sector is generally guided by the Telecom Regulatory Authority of India (TRAI) Act, 1997. TRAI is the body that controls telecommunication and internet services in the country. Compared to other sectors the telecommunication sector exhibits a balanced public-private partnership. The government of India has allowed 100% FDI in manufacturing of telecommunication equipment while 74 to 100% FDI is allowed in other related telecommunication services. In order to create a more effective environment the government has set up a committee to fix a levy for the telecommunication sector, since this sector has to bear several other taxes and fees. Since the government expects a 150% growth in this sector, opportunities for 22 billion US Dollars worth of investment are open to FDI and private investors.

### 3.6.6 Energy

India possesses the fifth largest energy-production capacity in the world. Despite heavy investments in the energy sector, there is an acute shortage of electricity in both urban and rural areas. Most of India’s electricity distribution and transmission is owned either by public sector or State Electricity Boards, although recently private sector’s participation has grown. Plans have been made for massive production projects in participation with private sector. The main laws governing this sector are Electricity Act, 2003 and National Electricity Policy, 2005. Central Electricity Authority set up under Electricity (Supply) Act, 1948 provides all technical and financial assistance to the Ministry of Power. The construction and management of all electricity production and distribution has been handed over to Central Power Corporation. The power grids and all present and future distribution projects are collectively responsible for setting up of National Power Grid. The Rural Electrification Corporation, working under Ministry of Power and Power Finance Corporation, provides
financial support for rural electrification and makes timebound loans for projects. The Central Electricity Regulatory Commission, an independent regulatory body looks into the matters among central public units. The government of India is keen to attract private investors in this sector and there has already been a proposal for 100% FDI in production, distribution and transmission of power. To encourage it a 10 year income-tax exemption in first 15 years of operation has been offered. For bigger projects (more than 1000 HW production-capacity) import duty has been exempted for capital machinery etc. Private partnership in production and distribution in this sector has become increasingly visible and several private sectors have acquired distribution-licence. Apart from this a 1.50.000 MW of hydroelectric capacity has been achieved till now and it is expected that in next 2-3 years power-distribution would be open to private bidding. It is expected that in next 7 years around 200 billion UD Dollar worth of investment would go into this sector.

3.6.7 Renewable Energy

Realizing the importance of alternative sources of energy, the government of India set up a separate ministry for Renewable Energy which develops solar energy, wind energy and energy from garbage. The ministry also develops and executes policies for rural electrification. The objective of the ministry is to develop new and sustainable energy-sources in order to fulfil the energy demand of the country which cannot be done through conventional means. In order to set up the world’s largest renewable energy programme, the government of India has taken several steps at village and small town levels.

3.7 Disclosure and Information

The most ignored among the people’s rights in all democratic countries is the Right to Information. Despite its importance, it has not been properly honoured in many countries including India. Now the Right to Information is considered an international law. Many states have now incorporated it into their constitution and the Right to Information now has found a prominent place in several international conventions and The Universal Declaration of Human Rights (UDHR), The International Covenant on Civil and Political Rights (ICCPR) and The European Convention on Human Rights (ECHR) etc. The Right to Information has both internal and supportive values. The internal value is proven by the very fact that citizens have the right to know. It is an important step towards a
meaningful democracy. In fact it can promote development in a country like India. Thus its supportive value is underscored. Information provides intelligent choices and an opportunity to keep an eye on both the elected representatives and bureaucrats who collectively work for the people’s welfare. Thus both responsibility and transparency are encouraged. the Right to Information has been raised to the status of international human right and societies are progressing from non transparent and secretive systems towards open and transparent systems. Sweden was the first country to make a law for transparency in 2000. On the lines of dictatorship, in liberal countries people are deprived of those fundamental informations which should be in the domain of public right. The main problem is that the present ruling system doesn’t bear any answerablity. All human rights are dependent upon the Right to Information. In India the feudal social fabric has exploited the formal democratic system for their advantage while the literate ones are too busy to build their own careers to realize the gravity of social inequality. Therefor the Right to Information movement has the support of one and all. The fight for the guarantee of Right to Information was first fought by some illiterate peasants of Rajasthan. They had been working during the famine of mid 1990’s and were cheated by the government when time came for the payment of their wages. This was the beginning of a mass movement and the parliament had to ultimately pass the Right to Information Act in 2005.

3.7.1 Concept of Open Government

In today’s field of Administrative law, two of the most important areas are - the Right to Information and Open Government. Democracies all over the world have begun to give utmost importance to open and transparent governments. There are certain informations that have to be kept secret for public and national interests. Sometimes secrecy is maintained in case of some important person but it should not be overdone. In a modern democracy there should be emphasis on transparency but there must be a balance between secrecy and open government. Many logics could be put forth in favour of a transparent government-Fundamentally the most important aspect of democracy is people’s participation in the government, but people cannot properly participate unless they know what is going on in the country. A modern democratic state is answerable to people and it is therefore people's right to know the how-and-why of the policies and programmes of the government. The other factor that holds government’s transparency justified is the fact that in a welfare state the government holds immense power due to its active participation and this power could be used to influence economic favours and individual freedom. It is
therefore very important that these powers should be used for public welfare and should not be misused. This objective can only be achieved when people have a right to official information rather than the government keeping its actions behind a curtain of secrecy. Since power corrupts and absolute power corrupts absolutely, so wherever major powers are involved, there is the inherent danger of the fact that these powers are used for personal and corrupt ends rather than for general public welfare. It is therefore necessary that people have access to as much information about the government’s activities as possible. This is only possible through open and transparent governance. India’s progress on the path of open and transparent governance has been slow. Nevertheless one should keep in mind that this advice was given by Justice Bhagwati in the historical S.P. Gupta v/s Union of India case.

### 3.7.2 Right to Information Movement

The Mazdoor Kisan Shakti Sangathan, an organisation of peasants and rural labourers in Rajasthan began a ground-level movement which later took the shape of Right to Information movement on a much larger scale. The struggle for the Right to Information in mid 1990’s in Rajasthan was rooted in the public accounts of a development project under Panchayati Raj. When workers on government employment works in villages of central Rajasthan found they were not being paid the standard minimum wage and that despite increased spending rural infrastructure was non existent or sub standard, they decided to demand copies of the accounts of money spent in their name either as payment of wages or on infrastructure. The struggle that began for copies of bills, vouchers and muster rolls of development works won a state law, even though not ideal, on the Right to Information. It has also expanded into a nationwide demand for a comprehensive law covering all spheres of democratic functioning. Of greatest significance in this struggle has been the growing understanding even among the non literate people that this right is critical to their other livelihood entitlements. The struggle has illustrated that the Right to Information is not only a component of our Right to Freedom of Speech and Expression but is also a part of our fundamental right under Article 21 of the Constitution – the Right to Life and Liberty. The villagers of central Rajasthan have understood, and have made a large section of enlightened opinion in the country understand, that access to records of development work in villages would help in obtaining the minimum wage, the entitlement under the ration quota and the medicines the poor should receive in public health centres. It would also help in preventing abuse by the police, and even in preventing delay and subterfuge in implementation
of other livelihood entitlements. This had thus not remained confined to the fundamental Right of expression as explained by the Supreme Court in the S.P. Gupta case. The belief that the Right to Information is an important link between the Right of expression and the Right to Life and Liberty provided a vital change to the public debate. The fact that the Right to Information to people signifies the aspirations of the people, underlines the above change.

3.7.3 The Right to Information Act, 2005

The parliament had passed the Freedom of Information Act in December 2002 but could not be brought into practice because the official gudget did not mention the date of its passage. Later the The Right to Information Act, 2005 was passed and came into effect from 12 October 2005 onwards, although nine state governments including those of Karnataka (2000), Goa (1997), Tamilnadu (1997), Delhi (2001), Maharashtra (2002), Assam (2002), Madhya Pradesh (2003), Jammu and Kashmir (2004) and Rajasthan (2000) had adopted it. Sweden had taken this issue up in 1776 but our attitude was a waiving one. Even small countries like Nepal and new ones like South Africa also took decisions in the favour of it. Even Pakistan brought forth an ordinance to that effect in 1997 (which could not be revived after being “lapsed”). The Right to Information emerged from the Right of expression and the Right to Life and Liberty. The Supreme Court had decided that the Right to Information was within the above rights since a proper corresponding law was missing. The Right to Information in among the central points of other fundamental rights viz. right to environment, food, health and livelihood etc. The biggest impact of the Right to Information is upon the administrative system. From the point of view of the citizens, the Right to Information is the biggest weapon available ti people. Because of all the above reasons, the passage of this Act signifies the biggest victory of the people after independence. If we leave out certain half-baked references of this Act that had to face extensive criticism, no one can doubt that it marks a journey from secrecy and darkness to transparency and openness. Section 5 of the official Secrets Act 1923 declared it a crime to exchange any official secret information. Under Section 22 of the Right to Information Act, 2005 “The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.” The Section 23 further says “No court shall entertain any suit, application or other proceeding in respect of
any order made under this Act and no such order shall be called in question otherwise than by way of an appeal under this Act.”

**The Right to Information Act empowers every citizen to demand the following from the government:**

1. Any question or information from the government
2. Copy of official decisions
3. Inspection of official documents
4. Inspection of official work
5. Samples

All units that have been set up within the constitution or other laws or official ordinances or are controlled by the government and government-aided NGO’s come within the ambit of this act. It is a very effective step in the direction of bringing corruption to an end. It has been very effective in exposing corruption.

**There are four touchstones on which the influence of the Right to Information Act can be measured –**

1. Expansion of the Act i.e. the nature of organizations/institutions upon which it can/cannot be applied.
2. Propogation of reachable informations.
3. Independence of organizations/institutions which would decide those disputes between public and the state, that are related to the disclosure of a specific information.
4. Legal action against deliberate or mal-intended non disclosure of information.

As the Supreme Court has explained the Right to Information flows from Para 19(1) of the constitution therefore any restriction on this right can only be taken as justified on the grounds that are permitted as exceptions in Para 19(2) of the constitution. It says “Nothing shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.” It is the state’s responsibility to prove that the restrictions have been imposed within the constitutional limits. The above mentioned Right to Information Act and other laws incorporate several exceptions which impose restrictions upon the Right to Information. Many among them are not justified on the basis of Para 19(2) and are hence illegal. Therefore the number of the exemptions must be made fewer. No one can take away or prohibit the rights granted by constitution. In the matter of freedom of information, defence and security related organizations have been exempted and are kept outside the limit of the
proposed law. Even the states have been given an option that they can exempt security and police related organizations in this matter. It is an irony that while on the one hand this act makes life related informations available within 48 hours, it exempts on the other these very organizations which have been charged of violating rights to life, human rights and civic liberty. It negates the most important lesson learnt from the ground level public accounts movement of Rajasthan. Another flaw of the Right to Information Act that it exempts private bodies like companies and NGO’s from making their matters public. It would be relevant here ro remind that the language of Para 19(1) – “All citizens shall have the right” makes it clear that this right is granted to all and sundry universally. On the contrary the Para 14 grants negative rights and this right is available only against the actions of the state, according to this “The State shall not deny”. Thus the utility of the Right to Information is not limited to the state only, it in fact grants the right against the whole world including the private sector. This was made clear in the People’s Union for Democratic Rights v/s Republic of India case. Other legal provisions that use similar language are found in Paras 17, 23 and 24. Since the Right to Information flows from para 19(1), whose domain is so extensive that it logically includes the private sector too. Therefore ant Act that incorporates this cannot exclude private sector from its domain legally and this fact also applies to unjust and illegal exemptions. The Right to Information Act empowers the citizens in the spirit of the constitution. It therefore underlines the fact that the number of exemptions in the Act should be minimized and should not exceed those mentioned in para 19(2) and should incorporate all private organizations working in public space. The other logic for including companies, trusts, societies and organizations is that the state is minimizing its participation in public sector more and more and is handing it over to private sector, which affects the lives of citizens. It is fully justified therefore that the private organizations should also be made transparent and they should be made responsible to the people. The Bhopal Gas tragedy reminds us that non transparency and irresponsibility to public in the private sector can result is massive destruction.

**Practice Questions**

1. Economic Activity includes –
   a. Business
   b. Service
   c. Profession
   d. All the above
2. A foreign company that is planning a business operation in India can set up its business as –
   a. As in Indian company
   b. As a foreign company
   c. As both the above
   d. As none of the above
3. Direct foreign investment can be brought in India by –
   a. Automatic route
   b. Government’s Permission
   c. As both
   d. As none of the above
4. Foreign investment is not allowed in-
   a. Railways
   b. Telecommunications
   c. Infrastructure
   d. Defence
5. Which statement is untrue –
   a. India’s road network is the second largest in the world
   b. India has opened its doors of almost all industries to private companies
   c. A separate Rail Budget is presented in India
   d. The Indian government has allowed 100% FDI in all sectors
6. The Right to Information Act 2002 was applied in February 2003. (True/False)
7. The Right to Information is the most important among fundamental rights. (True/False)
8. Transparency and Responsibility of the administration cannot be fixed without The Right to Information. (True/False)
9. Before the central The Right to Information Act, related laws were in practice in several states. (True/False)
10. The Right to Information Act 2005, the official Secrets Act 1923 was made null and void. (True/False)

3.8 Summary -

Human activities which are performed in exchange for money or money’s worth are called economic activities. Business, employment, and profession are incorporated in them. Many steps have been taken in India for eradication of poverty and economic growth in the last decade. The biggest such step was taken in 1991 when foreign investment was allowed in the country through removing all official hindrances. A foreign company planning to set up business operations in India has the options of starting...
as an Indian Company or a Foreign Company. Foreign Companies can set up their operations in India through Liaison Office/Representative Office as well with the permission of the RBI. Foreign direct investment applications are considered in India under two routes:

(i) Procedure under Automatic route
(ii) Procedure under Government approval (FIPB). No prior approval is required from the government or RBI for FDI under the Automatic Route. For investment activities not covered by the “Automatic Route” Government approval for FDI/NRI/OCB through the FIPB is necessary.

An industrial undertaking is defined as a small scale unit if the investment in fixed assets in plant and machinery does not exceed Rs 1 million. A small scale unit is not permitted more than 24 per cent equity in its paid up capital from any industrial undertaking either foreign or domestic.

India is an emerging economy wherein more than a billion people. It's infrastructure that provides essential services also exhibits reliability, low-cost production and market-competition as well. The public sector investment in the country's infrastructure is insufficient to lay the foundation for a potent future. The estimated investment for infrastructure in the 11th 5-year Scheme is estimated to be $34,500 Crores. India adopted ways to make the economy liberal in 1991 and encouraged FDI. Many steps have been taken to uplift Indian infrastructure. Traditionally a large part of the infrastructure has been owned and managed by the government. Powers have been divided between central and state governments in India. Certain sectors are absolutely reserved for the central government while some are under joint control (central and state governments). Despite clear and mandatory provisions made in the constitution there has been no distribution of power. Sometimes disputes arise between central and state governments relating to regulatory authorities. Thus the investors are not at the mercy of one single independent regulatory authority. From 1991 onwards, the central and various state governments set up some independent regulatory authorities on regional basis. The point to be kept in mind here is that the various ministries responsible for different sectors and the extensive administrative organizations they work through, are stuffed with bureaucratic obstacles. Although infrastructure is granted an important place for economic growth, it is surrounded by basic and complex problems. For example no clear definition has been provided for infrastructure by any committee of the Indian government. There are 12 large and 187 small ports on the extensive Indian seashores. The large
ports that carry 74% of total sea-transport load carried goods weighing more than 463 Lakh tonnes during last fiscal year and compared to the previous year showed a growth of 9.5%. Some major ports are maintained by the government of India while the others are maintained by the respective state governments where the ports are located. With certain conditions, the government has permitted FDI in the privatization and development schemes of ports. In recent times, for the first time the government of India is preparing an extensive National Marine Development Policy that would encourage private investment, enhance quality of service and encourage competition. This policy also aims at encouraging investment at high levels so that middle and long term objectives could be achieved. An Indian railway is one of the biggest singly-managed rail networks in the world, managing more than 63,000 km. of railway tracks. Its financial expanse is so massive that a separate rail-budget is presented in addition to the national budget. The Government of India has decided to spend $5 Billion for the management of railway tracks. The Railway Department has simultaneously prepared a scheme for improving the general condition of Indian railways. Recently the Rail Land Development Authority (RLDA) has been set up with the objective of encouraging and supervising PPP. The 3.3 million km. road-network of India is second in the world. Although the Indian roads are responsible for 65% of goods-transport and 80% of passenger-transport, their quality and expansion is insufficient. The partnership of private sector, based on the Build-Operate-Transfer (BOT) model, is on the rise and accounts for 36% of the total investment. In the past the Government of India took care of the development and management of airports till they were handed over to the Airports Authority of India in 1984. The Airports Authority of India Act 1994 was revised in 2003 and private investment was allowed in almost all sectors of the infrastructural development of airports. There are 126 airports in India and are operated by the Airports Authority of India. Five of these are located in metropolitan cities and are responsible for majority of transport. The government is considering private investments in the airports of 25 cities. This apart the government of India is also considering upon a new Air Policy which incorporates corporatization of air transport control system. The government of India has set up a policy to encash India’s massive cultural and natural heritage through international tourism in order to make air transport more affordable. Investments worth 9 billion US Dollars would be needed for this purpose in next 5 years. The Telecommunication sector is generally guided by the Telecom Regulatory Authority of India (TRAI) Act, 1997. TRAI is the body that controls telecommunication and internet services in the country. Compared to other sectors the telecommunication sector
exhibits a balanced public-private partnership. The government of India has allowed 100% FDI in manufacturing of telecommunication equipment while 74 to 100% FDI is allowed in other related telecommunication services. India possesses the fifth largest energy-production capacity in the world. The main laws governing this sector are Electricity Act, 2003 and National Electricity Policy, 2005. Central Electricity Authority set up under Electricity (Supply) Act, 1948 provides all technical and financial assistance to the Ministry of Power. The government of India is keen to attract private investors in this sector and there has already been a proposal for 100% FDI in production, distribution and transmission of power. Realizing the importance of alternative sources of energy, the government of India set up a separate ministry for Renewable Energy which develops solar energy, wind energy and energy from garbage. The ministry also develops and executes policies for rural electrification. The objective of the ministry is to develop new and sustainable energy-sources in order to fulfil the energy demand of the country which cannot be done through conventional means. The most ignored among the people’s rights in all democratic countries is the Right to Information. Despite its importance, it has not been properly honoured in many countries including India. Now the Right to Information is considered an international law. Many states have now incorporated it into their constitution and the Right to Information now has found a prominent place in several international convenants. The fight for the guarantee of Right to Information was first fought by The Mazdoor Kisan Shakti Sangathan, an organisation of peasants and rural labourers in Rajasthan. It inspired a demand for the Right to Information on a very extensive level and in December 2002, the Right to Information Act 2002 was passed but it was never adopted since it did not find a mention in the official gudget. Later the Right to Information Act 2005 was passed and adopted on 12 October 2005, although nine state governments including those of Karnataka (2000), Goa (1997), Tamilnadu (1997), Delhi (2001), Maharashtra (2002), Assam (2002), Madhya Pradesh (2003), Jammu and Kashmir (2004) and Rajasthan (2000) had adopted it. All units that have been set up within the constitution or other laws or official ordinances or are controlled by the government and government-aided NGO’s come within the ambit of this act. As the Supreme Court has explained the Right to Information flows from Para 19(1) of the constitution therefore any restriction on this right can only be taken as justified on the grounds that are permitted as exceptions in Para 19(2) of the constitution. It says “Nothing shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred in the interests of the sovereignty and integrity of
India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.” It is the state’s responsibility to prove that the restrictions have been imposed within the constitutional limits. The above mentioned Right to Information Act and other laws incorporate several exceptions which impose restrictions upon the Right to Information. Many among them are not justified on the basis of Para 19(2) and are hence illegal. Another flaw of the Right to Information Act that it exempts private bodies like companies and NGO’s from making their matters public. Since the Right to Information flows from Para 19(1), whose domain is so extensive that it logically includes the private sector too. Therefore an Act that incorporates this cannot exclude private sector from its domain legally and this fact also applies to unjust and illegal exemptions. The Right to Information Act empowers the citizens in the spirit of the constitution. The state is minimizing its participation in public sector more and more and is handing it over to private sector, which affects the lives of citizens. It is fully justified therefore that the private organizations should also be made transparent and they should be made responsible to the people.

3.9 Important Terminology

**Covenant** - A signed and written pact between two nations.

**Renewable** - Capable of being renewed/ replaceable by new growth.

Greenfield – This term has been derived from software engineering and means a piece of usually semirural property that is undeveloped except for agricultural use, especially one considered as a site for expanding urban development.

**Special Economic Zone** - A Special Economic Zone (SEZ) is a geographical region that is designed to export goods and provide employment. SEZs are exempt from federal laws regarding taxes, quotas, FDI-bans, labour laws and other restrictive laws in order to make the goods manufactured in the SEZ at a globally competitive price.

3.10 Answers to practice questions

1. d
2. c
3. c
4. c
5. d
6. False
7. True
8. True
9. True
10. False

3.11 Bibliography


3.12 - Useful Study Material

Right to Information Act 2005

3.13 Essay Type Questions

1. Elaborate the term “Economic Activity”.
2. How can a foreign investor invest as a company in joint venture with an Indian company?
3. Which sectors have attracted maximum FDI in India?
4. Do you believe that the Right to Information Act is capable to generate transparency and responsibility in the administration?
बुनियादी दौड़, जो कि आवश्यक सेवाएं प्रदान करता है, विविध नीतियों, आर्थिक और कानूनी दृष्टि से प्रभावित नियोजन को भी दर्शाता है। यथावतीक व्योजना के तहत, बुनियादी ढाँचे में निवेश राशि 34500 करोड़ डॉलर अनुमानित की गयी है।

प्रारंभ में, भारत ने अन्य देशों को उदय बनाने वाले उपयोगों का अनुभव एवं विदेशी प्रतिष्ठित नियोजन का प्रोटोकॉल प्रक्रिया किया। भारतीय बुनियादी ढाँचे में सुधार हेतु कई उपयोग किये गये हैं। भारत में केंद्र सरकार एवं राज्य सरकारों के मध्य शक्तिके का बंटवारा किया गया है। कुछ क्षेत्रों में नया रूप से केंद्र सरकार के द्वारा आदेश हुआ है, जबकि कुछ क्षेत्र स्वयंसेवक सरकार (केंद्र एवं राज्य दोनों) के अधीन हैं। परन्तु संविधान के स्पष्ट एवं अधिनियम उपक्रमों के बावजूद शक्तिके कोई बंटवारा नहीं है। कभी-कभी केंद्र एवं राज्य सरकारों के मध्य नियोजन एवं संपर्क की समस्या से सम्बन्धित विवाद उत्पन्न हो जाते हैं। इसे देखते हुए निवेशकों को एक ऐसा संचालन देना चाहिए कि हरी एवं चालू नियोजन का समर्थन नहीं है।

सन 1991 से भारत ने अन्य देशों को उदय बनाने वाले उपयोगों का अनुभव एवं विदेशी प्रतिष्ठित नियोजन का प्रोटोकॉल प्रक्रिया किया। भारतीय बुनियादी ढाँचे में सुधार हेतु कई उपयोग किये गये हैं। भारत में केंद्र सरकार एवं राज्य सरकारों के मध्य शक्तिके का बंटवारा किया गया है। कुछ क्षेत्रों में नया रूप से केंद्र सरकार के द्वारा आदेश हुआ है, जबकि कुछ क्षेत्र स्वयंसेवक सरकार (केंद्र एवं राज्य दोनों) के अधीन हैं। परन्तु संविधान के स्पष्ट एवं अधिनियम उपक्रमों के बावजूद शक्तिके कोई बंटवारा नहीं है। कभी-कभी केंद्र एवं राज्य सरकारों के मध्य नियोजन एवं संपर्क की समस्या से सम्बन्धित विवाद उत्पन्न हो जाते हैं। इसे देखते हुए निवेशकों को एक ऐसा संचालन देना चाहिए कि हरी एवं चालू नियोजन का समर्थन नहीं है।

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सेवाओं को नियन्त्रित करती हैं। अन्य क्षेत्रों के संबंध में दूरसंचार क्षेत्र में सार्वजनिक एवं निजी दोनों क्षेत्रों की कम्पनियों की सुरक्षित भागीदारी दिखायी देती है। भारत सरकार द्वारा दूरसंचार क्षेत्र पर 43 में सम्बन्धित महत्त्वपूर्ण विविध मामलों को नियन्त्रित करती है।

भारत सरकार के पास दुनिया की भागीदारी के लिए 500 संस्थाओं को उद्देश्य नियन्त्रित किया जा सकता है।

इस क्षेत्र को नियन्त्रित करने वाली सरकार के लिए नियोजित विविध बीमियों में विविध अभिविन्यास को अनुपस्थित नियन्त्रित किया जा सकता है। भारत सरकार के पास दुनिया की भागीदारी के लिए 500 संस्थाओं को उद्देश्य नियन्त्रित किया जा सकता है।

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3.9 महत्वपूर्ण शब्दावली

प्रञाली — दो साथों के मध्य हस्ताक्षरित लिखित समझौता।
नयीकरणीय — जिसका नवीनकरण सम्भव हो/स्वाभाविक रूप से पुनः पैदा होने वाला।
श्रीनकीस्वरूप — इस शब्द की उपस्थिति सॉफ्टवेयर अभियान्त्रिकी से हुई है जिसका अर्थ है एक ऐसी परिस्थिति जो पूर्व में किए गये कार्यों द्वारा थोपे गये अवरोधों से मुक्त हो।
विशेष आर्थिक क्षेत्र — यह एक भीमार्गिक क्षेत्र होता है जिसके अन्तर्गत आर्थिक एवं अन्य विधियाँ होती हैं जो देश के विधियों से अधिक खुले रूप में बाजारों में होती हैं। देश में लागू विधियों की इस क्षेत्र में निर्धारित किया जा सकता है।

3.10 अभ्यास प्रश्नों के उत्तर :-

1. (घ) 2. (ग) 3. (घ) 4. (घ) 5. (घ)
6. असत्य 7. सत्य 8. सत्य 9. सत्य 10. असत्य

3.11 संदर्भ प्रणाली

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3.12 सहायक/उपयोगी सामग्री

सूचना का अधिकार अधिनियम, 2005

3.13 निबंधात्मक प्रश्न

1.'आर्थिक गतिविधियाँ' शब्दावली को स्पष्ट कीजिए।
2.एक विदेशी निवेशक, संयुक्त उद्यम के साथ भारत में एक कंपनी रूप में कैसे निवेश कर सकता है?
3.वे कौन से क्षेत्र हैं, जिनमें प्रत्येक विदेशी निवेश अधिकतम हुआ है?
4.वह आप समझते हैं कि सूचना का अधिकार अधिनियम प्रशासन में पारदर्शिता एवं उत्तरदायित्व की भावना विकसित करने में सक्षम है?
Unit Construction

4.1 Introduction
4.2 Objectives
4.3 Competition Policy
   4.3.1 main objectives of Competition Policy
   4.3.2 Elements of Competition Policy
4.4 Competition Policy 2002
   4.4.1 Inquiry of anti competitive agreements
   4.4.2 Inquiry of abuse of dominant position
   4.4.3 Orders in respect of combinations
   4.4.4 Taking measures for promotion of Competition Advocacy, creating Awareness and imparting Training about competition issues
4.5 Consumerism
   4.5.1 Rise
   4.5.2 Overview
   4.5.3 Response to criticism
4.6 Summary
4.7 Important terminology
4.8 Answers to practice questions
4.9 Bibliography
4.10 Useful study materials
4.11 Essay type questions
4.1 Introduction

Competition points at the A situation in a market, in which sellers independently strive for buyers patronage to achieve business objectives such as profits, sales or market share.

In other words we can say that through competition business ventures work towards achieving the target of gaining supremacy in the market. It is the foundation of an efficiently working market system. Impartial and independent competition is needed for the market economy to work effectively. Thus in competitive economy maximum utilization of resources enhances production and guarantees the interests of the consumers. It improves the quality and thus maintains political and economic democracy through minimizing investments.

4.2 Objectives

After going through this unit you would understand-

- Competition Policy
- Competition Act 2002
- Consumerism
- Opposition of consumerism

4.3 Competition Policy -

Competition policy is referred to as those Government measures that ensure impartial competition in the market and seeks to remove or improve those factors or forces that produce deformities. These measures directly affect the behaviour of enterprises and structure of the industry. It is to create healthy business environment and to promote efficiency and maximise welfare. It also ensures maximum profits for both consumers and sellers.

4.3.1 Main objectives of Competition Policy

- Create and enhance impartial competition in the market and ensure effective allocation of resources.
- Enhance market economy and secure the interest of the Consumer and producer.
• Control over centralization of economic power and encourage innovation.
• Encourage regional integration in order to support small and medium industries.
• Encourage investment in competitive companies globally and increase technical efficiency.

4.3.2 Elements of competition policy

There are two main elements of competition policy –

1. Policy to encourage competition in the local and national markets – It includes liberal trade policy, FDI policy, policies for protection of intellectual property rights, lax policy in economic and capital market as well as a liberal fiscal and exchange rate policy. Other economic policies regarding allotment of resources and encouraging better efficiency have promoted impartial competition.

2. A law should be made to stop anti-competition activities/traditions and artificial hindrances to entry. This supplementary law should be able to encourage competition in the market. An effective Competition policy promotes creation of a business environment which improves efficiencies, leads to allocation of resources in the best manner and in which abuse of market power is prevented through competition.

4.4 Competition Policy 2002

In accordance with the provisions of Competition Policy the government of India passed the Competition Act 2002. The purpose of passing the act was to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interests of consumers and ensure freedom of trade carried on by other participants, in markets in India. The Monopoly and Restrictive Trade Practices (MRTP) Act 1969 was abolished and the commission set up in accordance to the MRTP Act was also dismantled. Besides, it was felt that in this era of liberalization, privatization and globalization the existing MRTP Act needed to be changed and that there was need to promote competition in place of monopoly. The new Competition Act 2002 provides a modern structure to competition. The main objectives of this Act are as follows –
1. To set up a commission in order to eliminate practices having adverse effect on competition.
2. To promote and sustain competition in Indian markets.
3. To protect interests of consumers and to ensure freedom of trade carried on by other participants, in markets in India.

The Competition Act 2002 was revised through Competition (Revision) Act 2007. To implement the provisions of the Competition Act, autonomous i.e. the Competition Commission of India (CCI) was set up. Commission has regulatory and quasi-judicial powers. The commission was granted the following privileges –

4.4.1 Inquiry of anti competitive agreements

Anti competitive agreements were banned. All such agreements were declared null and void that confined production, supply, distribution or control of goods and services by organizations of entrepreneurs. Horizontal and vertical agreements limiting competition in the economy were identified by the Act. Examples of Horizontal Agreements between enterprises at the same stage of production, services, etc. Include –

(i) directly or indirectly determines purchase or sale prices;
(ii) limits or controls production, supply, markets, technical development, investment or provision of services;
(iii) Shares the market or source production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or in any other similar way;
(iv) Directly or indirectly results in bid rigging or collusive bidding.

Vertical Agreements between enterprises at different stages of production, distribution, etc. include:

(i) Tie-in arrangement;
(ii) Exclusive supply agreement;
(iii) Exclusive distribution agreement;
(iv) Refusal to deal;
(v) Re-sale price maintenance.

Above agreements are presumed to cause appreciable adverse effect on competition in the markets. The commission would also consider the following factors –

1. Creation of hindrances for existing partners or new entrants or keeping the present competition away from the market.
2. Banning competition for entry into the market.
3. Providing profit to the consumers.
4. Enhancement in the distribution and services.
5. Encouraging technical, scientific and economic growth.

4.4.2 Inquiry of abuse of dominant position

Under the provisions of the Act any enterprise can be banned for abuse of its dominant position. Dominant position means a specific industry holding a strong position in the context of Indian market.

**According to the Act, the following activities would be considered as cases of abuse of dominant position** –

(i) Predatory pricing;
(ii) Directly or indirectly imposes unfair or discriminatory conditions;
(iii) Limits or restricts production of goods or provision of services;
(iv) Denial of market access, etc.

**The commission would consider the following factors while identifying cases of abuse of dominant position** –

(a) Market share of the enterprise;
(b) Size and resources of the enterprise;
(c) Size and importance of the competitors;
(d) Economic power of the enterprise including commercial advantages over Competitors;
(e) Vertical integration of the enterprises or sale or service network of such enterprises;
(f) Dependence of consumers on the enterprise;
(g) Monopoly or dominant position whether acquired as a result of any statute or by virtue of being a Government company or a public sector undertaking or otherwise;
(h) Entry barriers including barriers such as regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, high cost of substitutable goods or service for consumers;
(i) Countervailing buying power;
(j) Market structure and size of market;
(k) Social obligations and social costs;
(l) Relative advantage, by way of the contribution to the economic development, by the enterprise enjoying a dominant position having or likely to have an appreciable adverse effect on competition;
4.4.3 Orders in respect of combinations

The Act controls different trade combinations. It doesn’t ban setting up of combinations. For the purposes of determining whether a combination would have the effect of or is likely to have an appreciable adverse effect on competition in the relevant market, the Commission shall have due regard to all or any of the following factors, namely –

(a) Actual and potential level of competition through imports in the market;
(b) Extent of barriers to entry into the market;
(c) Level of combination in the market;
(d) Degree of countervailing power in the market;
(e) Likelihood that the combination would result in the parties to the combination being able to significantly and sustainably increase prices or profit margins;
(f) Extent of effective competition likely to sustain in a market;
(g) Extent to which substitutes are available or are likely to be available in the market;
(h) Market share, in the relevant market, of the persons or enterprise in a combination, individually and as a combination;
(i) Likelihood that the combination would result in the removal of a vigorous and effective competitor or competitors in the market;
(j) Nature and extent of vertical integration in the market;
(k) Possibility of a failing business;
(l) Nature and extent of innovation;
(m) Relative advantage, by way of the contribution to the economic development, by any combination having or likely to have appreciable adverse effect on competition;Thus the Act doesn’t aim at bringing an end to combinations; it removes the ill effects of them.

4.4.4 Taking measures for promotion of Competition Advocacy, creating Awareness and imparting Training about Competition issues.

The CCI creates and encourages awareness and competition advocacy through following measures –

1. The commission would encourage suitable programmes and activities for creating awareness about Competition Advocacy in India and the rest of the world.
2. To take the above agenda further the commission would set up an Advocacy Advisory Committee in order to receive suggestions and recommendations of experts.

3. The commission would make use of audio-visual material to propagate Competition Advocacy for creating awareness about Competition Advocacy. The commission can outsource the professional services if required.

4. The commission can make extensive use of both print and electronic media. It can release regular press notes and bring out regular publications for the purpose.

5. The commission would encourage dialogues with stakeholders, academics, regional policy makers, central and state governments and civil society to propagate competition advocacy and encourage better decision making in economic sector.

6. The commission can also make use of researches and market research for this purpose.

7. The commission can also encourage academic and professional institutes to include the Competition Act in their syllabi.

In order to strengthen and make the commission more efficient, the CCI would set up a Competition Forum that would include experts from the fields of law, finance, public administration and management. As a matter of fact consumerism has been incorporated as a concept in the books of commerce. It has a short history as a social power. It was during 1930 when there was open protest against it in USA and this trend went on till 1940. At the beginning of 1950-1960 the protests receded. The notion of consumer interest suddenly came to the forefront with Ralph Nader protesting against powerful automobile industry. It is due to certain events in the 1970’s that the consumer is not a mere consumer buying goods at good price; he is an effective force aware of technological, managerial and environmental issues.

The Indian customer is not organized and doesn’t possess enough resources and capability to fight on the dual fronts of price and quality. What is the solution then? The most important role has to be played by the government to ensure that the consumer’s interests are protected. The government has taken some steps from time to time. Several laws were made to protect the consumer including Indian Penal Code 1886, Indian Contract Act, 1872, Civil Procedure Code, 1908, Sale of Goods Act, 1930, Weights and Measures Act, 1976 and Motor vehicles Act 1988 etc. But the fact remains that very little has been achieved in the field of protection of consumers’ interests. Consumer Protection Act 1988 was passed in the parliament for this purpose.
This Act seeks to promote and protect the rights of consumers such as:

(a) The right to be protected against marketing of goods which are hazardous to life and property;
(b) The right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practices;
(c) The right to be assured, wherever possible, access to an authority of goods at competitive prices;
(d) The right to be heard and to be assured that consumers interests will receive due consideration at appropriate forums;
(e) The right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers; and
(f) right to consumer education

As has been said in the preamble to the The Consumer Protection Bill, it seeks to provide for better protection of the interests of consumers. A major objective is to simply and swiftly settle consumer disputes and to set up quasi-judicial machinery at district, state and central levels. It is mandatory for these quasi-judicial machineries to follow the concept of natural justice. They have to be empowered through special treatment to provide relief to the consumers. The main purpose of the bill is to protect the rights of consumers buying goods and receiving services at a more extensive level.

4.5 Consumerism

Consumerism is a social and economic order that encourages the purchase of goods and services in ever-greater amounts. Criticisms of consumption began with Thorstein Veblen. Veblen's subject of examination, the newly emergent middle class arising at the turn of the twentieth century, comes to full fruition by the end of the twentieth century through the process of globalization. In this sense, consumerism is usually considered a part of media culture. The term "consumerism" has also been used to refer to something quite different called the consumerists movement, consumer protection or consumer activism, which seeks to protect and inform consumers by requiring such practices as honest packaging and advertising, product guarantees, and improved safety standards. In this sense it is a movement or a set of policies aimed at regulating the products, services, methods, and standards of manufacturers, sellers, and advertisers in the interests of the buyer. In Economics, consumerism refers to giving emphasis on consumption. In essence it is based on the belief that a freedom to select products would
result in the formation of the economic structure of the society. The word consumerism was used for “advocacy of consumer’s rights and interests” in the Oxford Dictionary in 1915.

4.5.1 Rise

Consumerism has a weak relationship with the Western world but it actually is an international event. Buying of necessary goods has been as ancient a practise as the first civilizations viz. ancient Egypt, Babylon and Rome. Consumerism took an important turn just before the industrial revolution. Capitalist development and the industrial revolution were fundamentally based on capital and industrial infrastructure for example steel, mining, oil, transport network, industrial townships and economic centres etc. In those days agricultural products, necessary goods and trade activities were developed but not as much as other sectors. Labourers had to work for 16 hours a day and six days a week. Some money and time was spared for consumer activities. Apart from this capital goods and basic infrastructure was quite long-lasting that had to be used for a long time. Henry Ford and other industrial leaders realized that mass consumption is necessary for mass production. After observing this scheme, Frederick Winslow Taylor brought his theory of scientific management to the organization of the assembly lines. It reduced the cost of production hugely. Compared to developing capitalism, consumerism was in a parax for a long time. Earnest Elmo Calkins noted to fellow advertising executives in 1932 that "consumer engineering must see to it that we use up the kind of goods we now merely use", while the domestic theorist Christine Frederick observed in 1929 that "the way to break the vicious deadlock of a low standard of living is to spend freely, and even waste creatively". The older term and concept of "conspicuous consumption" originated at the turn of the 20th century in the writings of sociologist and economist, Thorstein Veblen. The term describes an apparently irrational and confounding form of economic behaviour. Veblen's scathing proposal that this unnecessary consumption is a form of status display is made in darkly humorous observations like the following: "It is true of dress in even a higher degree than of most other items of consumption, that people will undergo a very considerable degree of privation in the comforts or the necessaries of life in order to afford what is considered a decent amount of wasteful consumption; so that it is by no means an uncommon occurrence, in an inclement climate, for people to go ill clad in order to appear well dressed." The term "conspicuous consumption" spread to describe consumerism in the United States in the 1960s, but was soon linked to debates about media theory, culture
jamming, and its corollary productivism. By 1920 most people [Americans] had experimented with occasional instalment buying.

4.5.2 Overview

Since consumerism began, various individuals and groups have consciously sought an alternative lifestyle. These movements range on a spectrum from moderate "simple living", "eco-conscious shopping", and "localvore"/"buying local", to Freeganism on the extreme end. Building on these movements, ecological economics is a discipline which addresses the macro-economic, social and ecological implications of a primarily consumer-driven economy. In many critical contexts, consumerism is used to describe the tendency of people to identify strongly with products or services they consume, especially those with commercial brand names and perceived status-symbolism appeal, e.g. a luxury car, designer clothing, or expensive jewellery. Consumerism can take extreme forms such that consumers sacrifice significant time and income not only to purchase but also to actively support a certain firm or brand. Critics of consumerism argue that many luxuries and unnecessary consumer products may act as a social mechanism allowing people to identify like-minded individuals through the display of similar products, again utilizing aspects of status-symbolism to judge socioeconomic status and social stratification. Some people believe relationships with a product or brand name are substitutes for healthy human relationships lacking in societies, and along with consumerism, create a cultural hegemony, and are part of a general process of social control in modern society. Critics of consumerism often point out that consumerist societies are more prone to damage the environment, contribute to global warming and use up resources at a higher rate than other societies. Dr. Jorge Majfud says that "Trying to reduce environmental pollution without reducing consumerism is like combating drug trafficking without reducing the drug addiction." In 1955, economist Victor Lebow stated: "Our enormously productive economy demands that we make consumption our way of life, that we convert the buying and use of goods into rituals, that we seek our spiritual satisfaction and our ego satisfaction in consumption. We need things consumed, burned up, worn out, replaced and discarded at an ever-increasing rate" Critics of consumerism include Pope Emeritus Benedict XVI, German historian Oswald Spengler (who said, "Life in America is exclusively economic in structure and lacks depth"), and French writer Georges Duhamel, who held "American materialism up as a beacon of mediocrity that threatened to eclipse French civilization". In an opinion segment of New Scientist magazine published in August 2009, reporter
Andy Coghlan cited William Rees of the University of British Columbia and epidemiologist Warren Hern of the University of Colorado at Boulder, saying that human beings, despite considering themselves civilized thinkers, are "subconsciously still driven by an impulse for survival, domination and expansion... an impulse which now finds expression in the idea that inexorable economic growth is the answer to everything, and, given time, will redress all the world's existing inequalities." According to figures presented by Rees at the annual meeting of the Ecological Society of America, human society is in a "global overshoot", consuming 30% more material than is sustainable from the world's resources. Rees went on to state that at present, 85 countries are exceeding their domestic "bio-capacities", and compensate for their lack of local material by depleting the stocks of other countries, which have a material surplus due to their lower consumption. Not all anti-consumerists oppose consumption in itself, but they argue against increasing the consumption of resources beyond what is environmentally sustainable. Jonathan Porritt writes that consumers are often unaware of the negative environmental impacts of producing many modern goods and services, and that the extensive advertising industry only serves to reinforce increasing consumption. Likewise, other ecological economists such as Herman Daly and Tim Jackson recognize the inherent conflict between consumer-driven consumption and planet-wide ecological degradation.

4.5.3 Response to criticism

Most of the response to consumerism comes from libertarian thought.

Libertarian criticisms of the anti-consumerist movement are largely based on the perception that it leads to elitism. Namely, libertarians believe that no person should have the right to decide for others what goods are necessary for living and which aren't, or that luxuries are necessarily wasteful, and thus argue that anti-consumerism is a precursor to central planning or a totalitarian society. Twitchell, in his book Living It Up, sarcastically remarked that the logical outcome of the anti-consumerism movement would be a return to the sumptuary laws that existed in ancient Rome and during the Middle Ages, historical periods prior to the era of Karl Marx in the 19th century. Historian James Livingston's book Against Thrift: Why Consumer Culture is Good for the Economy, the Environment, and Your Soul [Basic, 2011], is a pro-consumerist argument from the left. He argues that under-consumption caused the current economic crisis,
and goes beyond that to make a moral case for spending more and saving less.

**Practice Questions**

**Answer in Yes or No**
1. Impartial competition maintains market balance. (Yes/No)
2. The Competition Policy encourages centralization of economic power. (Yes/No)
3. The main objective of the Competition Policy is ensure maximum welfare of both producer and consumer. (Yes/No)
4. The Competition Commission of India (CCI) is an autonomous body that has regulatory and quasi-judicial powers. (Yes/No)
5. The Competition Act aims at stopping economic centralization resulting from combinations of industries. (Yes/No)
6. The Competition Commission would ensure all possible measures to attain the objectives of The Competition Act. (Yes/No)
7. Consumerism began in the market-oriented economy of 19th century. (Yes/No)
8. The concept of conspicuous consumption was born in the 20th century. (Yes/No)
9. According to the critics, consumerism encourages cultural pollution. (Yes/No)
10. Pope Emeritus Benedict XVI supports consumerism. (Yes/No)

**4.6 Summary**

Competition policy is referred to as those Government measures that ensure impartial competition in the market. These measures directly affect the behaviour of enterprises and structure of the industry. It is to create healthy business environment and to promote efficiency and maximise welfare. It also ensures maximum profits for both consumers and sellers. There are two main elements of competition policy – Policy to encourage competition in the local and national markets and to stop anti - competition activities/traditions and artificial hindrances to entry. The government of India passed the Competition Act 2002. The purpose of passing the act was to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interests of consumers and ensure freedom of trade carried on by other participants, in markets in India. The Monopoly and Restrictive Trade Practices (MRTP) Act 1969 was abolished. The Competition Act 2002 was revised through Competition (Revision) Act 2007. To implement the provisions of the Competition Act,
autonomous i.e. the Competition Commission of India (CCI) was set up. Commission has regulatory and quasi-judicial powers. The rights of the CCI include Inquiry of anti-competitive agreements, Inquiry of abuse of dominant position, Orders in respect of combinations, and taking measures for promotion of Competition Advocacy, creating Awareness and imparting Training about competition issues. Consumerism is a social and economic order that encourages the purchase of goods and services in ever-greater amounts. Criticisms of consumption began with Thorstein Veblen. Veblen's subject of examination, the newly emergent middle class arising at the turn of the twentieth century, comes to full fruition by the end of the twentieth century through the process of globalization. In this sense, consumerism is usually considered a part of media culture. The term "consumerism" has also been used to refer to something quite different called the consumerists movement, consumer protection or consumer activism, which seeks to protect and inform consumers by requiring such practices as honest packaging and advertising, product guarantees, and improved safety standards. The older term and concept of "conspicuous consumption" originated at the turn of the 20th century in the writings of sociologist and economist, Thorstein Veblen. The term "conspicuous consumption" spread to describe consumerism in the United States in the 1960s, but was soon linked to debates about media theory, culture jamming, and its corollary productivism. Since consumerism began, various individuals and groups have consciously sought an alternative lifestyle. In many critical contexts, consumerism is used to describe the tendency of people to identify strongly with products or services they consume, especially those with commercial brand names and perceived status-symbolism appeal, e.g. a luxury car, designer clothing, or expensive jewellery. Consumerism can take extreme forms such that consumers sacrifice significant time and income not only to purchase but also to actively support a certain firm or brand. Critics of consumerism argue that many luxuries and unnecessary consumer products may act as a social mechanism allowing people to identify like-minded individuals through the display of similar products, again utilizing aspects of status-symbolism to judge socioeconomic status and social stratification. Some people believe relationships with a product or brand name are substitutes for healthy human relationships lacking in societies, and along with consumerism, create a cultural hegemony, and are part of a general process of social control in modern society. Critics of consumerism often point out that consumerist societies are more prone to damage the environment, contribute to global warming and use up resources at a higher rate than other societies. Dr. Jorge Majfud says that "Trying to reduce environmental pollution without reducing consumerism is like
combating drug trafficking without reducing the drug addiction. "Not all anti-consumerists oppose consumption in itself, but they argue against increasing the consumption of resources beyond what is environmentally sustainable. Jonathan Porritt writes that consumers are often unaware of the negative environmental impacts of producing many modern goods and services, and that the extensive advertising industry only serves to reinforce increasing consumption. Libertarian criticisms of the anti-consumerist movement are largely based on the perception that it leads to elitism. Namely, libertarians believe that no person should have the right to decide for others what goods are necessary for living and which aren’t, or that luxuries are necessarily wasteful, and thus argue that anti-consumerism is a precursor to central planning or a totalitarian society.

4.7 Important terminology

Competition: The struggle to race ahead of others.
Consumerism: Tendency to buy and consume luxury products.
Regulation: To regulate, to control through regulating.

4.8 Answers to practice questions

1. Yes
2. No
3. Yes
4. Yes
5. Yes
6. Yes
7. Yes
8. Yes
9. Yes
10. No

4.9 Bibliography

1. Competition Act 2002
2. Consumer Protection Act 1986

4.10 Useful study materials

1. Deep Sharma, Consumer Grievances Redressal under Consumer Protection Act
2. A Treatise on Consumer Protection Laws, Indian law Institute
3. V. Balkrishnan Iradi, Consumer Protection Jurisprudence

4.11 Essay type questions

1. What are the main objectives of the Competition Act 2002?
2. What do you understand by consumerism?
3. What steps have been taken by the government to ensure the interests of the consumers?
Unit Construction

1.1 Introduction
1.2 Objectives
1.3 Development and Regulation of Industrial Units, their Management and Control
   1.3.1 Historical Periods of Development of Industrial Units
   1.3.2 Impact of Regulation on Industrial Units
   1.3.3 Impact of Laissez Fair and Social Justice
1.4 Management of Industrial Units under Industrial Revolution
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1.5 Summary
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1.1 Introduction

The history of industrial revolution was a result of successive improvement in the pathetic condition of working class. The industrial revolution reached its pinnacle after the first World War with workers getting more aware and industrialists were doing their utmost to maximize production. It had become necessary to study the living conditions of workers in order to maintain their efficiency. Governments of several nations took many important steps to improve the condition of workers because the impact of relations between the workers and industrialists directly affected the economic policies of the states. It was necessary to establish a legal system as far as the working conditions, working hours, wages, leaves etc. for the workers were concerned. All countries adopted moral and human duties. The growth of industrialization took shape in India during the latter part of the 19th century. The Indian workers were not less skilled than those in foreign countries and if they were given access to a similar working system, they would have proved equally efficient. There was need to develop techniques and respect for work. Simultaneously, it was also needed that the education and industrial sectors were changed drastically. For the first time India participated in the Industrial Summit of 1919 in Washington. Measures were taken to ensure proper economic justice to the workers. The step-by-step development of industry has a very old history. Globally the wave of industrial revolution reached far and wide after the First World War.

1.2 Objectives

The main objectives of industrial development included setting up industrial regulation and maintaining healthy relationships between workers and planners, banning illegal strikes and shutdowns, making way for collective bargaining, settling issues with registered units or trade unions, providing compensation in cases of retrenchment etc.

1.3 Development and Regulation of Industrial Units, their Management and Control

Industrial development was divided into three periods. In the first period the regulations were in favour of the industrialists. During the second period, industries saw immense growth and sense of competition grew between industrialists. The legal policies in the third period were welfare-oriented and anti-workers regulations were abolished.
1.3.1 Beginning Era (1850-1918)

Industrial development is the result of successive movement. Before the The Fatal Accidents Act, 1855, it was believed that no party was responsible for accidents and that a fatal accident was a mere incident. During the same time an anti-workers Workmen Breach of Contract Act was passed in 1860, which resulted in the Employees and Workmens (Dispute) Act 1887, through the recommendations of which the protest by mill-owners of Lancashire started affecting the India cotton industry. A second factory commission was set up on whose recommendations, Factory Act was passed in 1890. This act was aimed for providing maximum facilities to the workers so that their efficiency was maintained. Working hours were reduced and restrictions imposed upon employment of women and children. The minimum age for a child to work was increased from 7 to 9. There were hardly any leaves. The women and children were employed together and there were no separate toilets, bathrooms or restrooms for women. An inquiry committee was set up to look into these conditions which was instrumental in bringing Indian Mines Act in 1901. The prime objective of this Act was to deliver proper compensation to those workers and their dependents who were victims of accidents. This brought about unexpected improvement in the lives of workers whether working in mines or industries. It was the employer's duty to ensure safety of the workers. Through the Factory Act (Revised) 1911, the minimum age for the employment of children was raised to 15 years and employing women and children between 5:30 PM to 7:30 PM was prohibited.

2. Progressive Era (1919-1945)

The area of industrial development saw an unprecedented revolution after the First World War and feelings of competition were visible among industrialists of different countries. Machines took over in huge factories and industrial establishment came into being. Relationships between employees and employers grew more cordial and collective bargaining replaced personal contracts. An environment for the development of organizations was built and demanding for maximum facilities and better working conditions, workers started to go on strikes. As a result the government formed newer rules such as - The Workmen's Compensation Act 1923, Indian Merchants Shipping Act 1923, Trade Union Act 1926 etc. In order to improve the conditions of workers' organizations, the Royal Commission was handed over the responsibility of making recommendations after studying their conditions and appropriate demands. Rules were made for payment of wages. Children below 14 years were banned from being employed. Mandatory medical checkup of
miners and workers was emphasized upon and it was ruled that no one would be employed in case of failing to provide a physical fitness certificate. On the recommendations of the Royal Commission, Mines Act and Motor Vehicle Act came into being in 1953. Simultaneously Children Pledging of Labour Act came into existence in 1933. For the safety of mine workers The Coal Mines Safety Act 1937 was passed which made the central government responsible for supply of basic needs and ensuring security. It also made provisions for maternal leaves to female mine workers. Another act was passed in 1921 that made provisions for separate restrooms for breast feeding and toilets for women. It also provided for one day weekly leave and also declared employers responsible for accidents that victimized workers.

3. Pre-maturity and Post-independence Era (1946 onwards)

The year 1946 saw a global revolution in industrial development. It called for maximum freedom in political, commercial and industrial sectors. The U.N.O. Charter made an unprecedented declaration of providing all fundamental rights to all human beings. India gained independence on 15 August 1947 and wrote down her own constitution that made a provision for “same work same wages.” It provided relief to the workers who had been targets of discrimination and injustice in the industrial sector. The ‘DIRECTIVE PRINCIPLES OF STATE POLICY’ under PART IV of the Indian constitution emphasized upon, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations. It further said that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life. Consequently the central government called for a meeting of Labour Ministers of all states and it was decided to make an Act to ensure better livelihood, better homes and working conditions for workers. The emphasis was on maintaining healthy relationships between workers and planners, banning illegal strikes and shutdowns, and providing compensation in cases of retrenchment etc. The need to set up mediating bodies to settle issues between employers and employees was also underlined. It also recommended that registered trade organizations be granted the right to represent their cases. It was felt that the government should work towards improving the conditions of workers by providing them with housing, electricity, education, lesser working hours and means of entertainment on the lines of other more civilized and advanced countries. Since workers are the backbone of any country’s infrastructure, their contentment would undoubtedly lead to the country’s general welfare and advancement.
1.3.2 Impact of Regulation on Industrial Units

For industrial development the parliament passed several Regulations and Acts. Presently a large part of Indian population is directly influenced by Industrial Law as industrialists, workers and their families. The number of those who are indirectly influenced is bigger. The Laissez Fair based upon freedom of contract between employer and employees was insufficient in regard to healthy relationships between the two. Acts and legal decisions established Standard form of statutory contracts in place of individual contracts. These Acts and legal decisions made both parties liable to accept these and provided that newer rights and duties could be created which too would be applicable to both.

Impact on the condition of employers and workers-
The industrial Acts and legal Regulations had a special impact and consequently Paras 23 and 24 prohibited mistreatment, forced labour and bonded labour. It was provided that anyone found to be involved in these would be prosecuted. The Parliament passed the Bonded Labour System Abolition Act, 1976. The main objective of this Act was to employ workers on fixed wages in order to create economic equality. The employers were made aware of the rights of workers to avoid shutdowns and strikes. This doctrine was accepted by all developed countries. The main elements of this concept are as follows –

(a) Workers have right to set up organizations.
(b) Transformation towards a welfare state through Laissez-faire.
(c) Workers have the right of collective bargaining to make service conditions reasonable.
(d) Tripartite agreements between employees, employers and the state.

1.3.3 Impact of Laissez Fair and Social Justice

A main purpose of Industrial Law is the state’s policy of Laissez Fair and Social Justice, which in itself is a dynamic and changeable notion. Industrial Law cannot substitute for social and legal justice and high ideals. Industrial Law is similarly associated to the society the way general judiciary is. The first priority of Labour Policy in India is to guarantee maximum profit to workers and maintenance of industrial peace. The state has to work as a catalyst to recognize collective interests through programmes of change and welfare. Industrial Law grants rights to protest to workers when judicial justice is not delivered. It encourages partnership
between employees and employers and productivity. It aims to raise the standards of employees and guarantee reasonable wages to them.

1.4 Management of Industrial Units under Industrial Revolution

The term “Industrial” in India is synonymous with development of factory system, in which different relationship existed between employees and employers in different circumstances. This system had some advantages and incorporated similar interests. The aim of establishing factory system was threefold – (a) increasing the number of workers at certain sites of production; (b) Moving a rural worker to urban industrial towns where he/she would have better opportunities of employment compared to villages; and (c) Lower cost of goods produced in machines in comparison to those produced in handlooms. This brought about a change in condition of artisans. The artisan felt a psychological contentment while producing things through handloom methods. Mechanization definitely changed the condition of employers and thus Industrial Revolution was born. The management and control of industrial units had to be carried through state regulations and the parliament passed several regulations for the management of industrial units with the main aim of maintaining better relationship between employees and employers and getting the activities executed according to those regulations. The Indian Fatal Accident Act 1885 did not hold the employer responsible for accidents. But later management of industrial units was governed by regulations. The Employees Workmens (Dispute) Act of 1887 was instrumental in the passage of Factory Act 1890. This Act provided for maximum benefits to the workers and prosecution on employing children below 9 years of age. The Industrial Revolution gave birth to a new labour philosophy and the state and the employer realized the importance of labour. Wages were fixed and the following factors were emphasized for the industrial management of workers –

1. Compensation for deaths or debility
2. Time-bound payment of wages
3. Workers’ right to set up organizations, childbirth facilities to women
4. Rulebook for working conditions of workers
5. Setting up of legal body to settle industrial disputes
6. Setting up machinery and import-export of raw material
7. Strikes, shutdowns and forced retirement
8. Health and welfare – protection of workers’ wives and children
9. Bonus, gratuity, provident fund, insurance
10. Concept of “equal work equal wages”
The passage of Maternity benefit Act, 1961, Equal Remuneration Act and Child labour prohibition and Regulation Act 1986 etc. incorporate regulations of management and control of industrial units.

Ensuring the participation and privileges of workers is the task of legal regulations. This fact is mentioned in Para 43(A) of the Indian Constitution – “The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry.”

The Indian economy believes in a democratic system. The state would ensure that the interests of workers would be guaranteed whether the industry is state or privately owned.

1.4.1 Types and Functions of Industrial Management

The industrial law mentions several types of management which are not only applicable in India but in the U.K. and U.S.A. presently. These include

1. **Production Management**

The following are required for Production Management – (a) Task Analysis (b) specification and planning of production line (c) study of time, speed and exhaustion (d) Quality Control.

2. **Development Management**

The following are included in Production Management – (a) research on raw materials, machinery and processes and establishment of research laboratories (b) use and implementation of experimental plants and industrial processes (c) incorporating production design in accordance with consumer demands.

3. **Financial Management**

The following are included in Financial Management – (a) trade forecasting (b) accounts (c) statistical control (d) Budgetary control (e) insurance

4. **Distribution Management**

The following factors are taken into consideration in Distribution Management – (a) marketing (b) advertising (c) exports (d) consumer research (e) marketing management

5. **Purchasing Management**

Purchasing Management involves – (a) inviting tenders (b) making marketing contracts (c) storage and stock facilities (d) establishing control on sales.

6. **Maintenance & Transport Management**
Maintenance involves building management, security instruments and their maintenance. Transport Management involves arrangement of packaging, setting up of warehouses, arranging and coordinating land, air and sea transport.

7. **Office & Service Class Management**

Office Management involves arrangement and control of office, collection of production and distribution related data, correspondence, record management etc. Service Class Management is the management of staff involving – (a) selection and appointment of staff (b) training and distribution of services to staff (c) leaves for staff (d) management, security and protection of health and welfare schemes for staff (e) setting up industrial relations.

**Function of industrial Management in Industrial law**

Function of industrial Management in Industrial law is a new science that is continuously developing. Simultaneously management development is also growing. Functions of industrial Management in Industrial law are as follows –

1. **Forecasting**

Forecasts are made regarding profit and loss in an industrial setup. All possibilities are identified before a new industry is set up and all pros and cons are discussed. Budget forecasting is also done for industries.

2. **Planning**

Planning begins after industrial forecasting is over. Planning refers to the policies, objectives, programmes and selection of methodology for the industry. Working without planning points at short sightedness.

3. **Organization in industrial undertakings is management infrastructure** –

In Organization in industrial undertakings management is the infrastructure. Ensuring necessary acts for for any scheme or purpose and bringing order in them so that they can be handed over to individuals is called organization. The success of any industry depends upon organization and it provides equal opportunities to both the owners and staff. Organization also reduces management expenses.

4. **Direction**

Direction in industrial undertakings means running operations. It also means gaining confidence of staff towards the policies and objectives of the company and creating awareness among them through skilful direction, so that staff works with cooperation.

5. **Leadership to be industrial unit**

Maximum support and cooperation of staff is a prime factor in the success of any industry. The success or failure of industrial undertakings depends
on the leadership. The leadership has a two-fold job to do – (a) getting the rules followed (b) giving direction to staff.

6. Staffing
Whether the task is commercial or not, number of staff can be reduced through proper training and appointment.

7. Motivation
Motivation refers to inspiration since inspiration is an important factor in running of management.

1.4.2 Ways of Industrial control and Judicature in Industrial Undertakings

There are two ways of control in Industrial Undertakings –

1. General (External) control – (a) Budget control (b) Costs control (c) managerial accounting (d) financial control.
2. Internal control – management is the key to industrial success. For successful management internal control is a must which is achieved through – (a) **Discipline** - Internal control in Industrial Undertakings in the form of discipline is the foundation of management. Determination of discipline is done by the management through official inquiries and provisions for punishment. (b) **Division of work & Right duties** – the other method of internal control is by Division of work & Right duties to the right people and thus granting them privileges so they are true to their rights and duties. (c) **Unity of Direction & Command** – the official commands issued for industrial operations must be clear and should possess a mandatory unity. Good management is impossible without unity of direction. The staff should, in addition receive commands from one and not several officials, otherwise the control slackens. (d) a system of centralization and decentralization is a must for the control of Industrial Undertakings.

**JUDICATURE IN INDUSTRIAL UNDERTAKINGS**
The ultimate objective of Industrial Undertakings is socio-economic justice. Social welfare and people’s interests are the foundations of state’s policy directives. Judicature in Industrial Undertakings seeks to assist the state by finding solutions to industrial disputes. Industrial Peace refers to establishment of peace and understanding in industries and building coordination between capital and labour. Economic coordination helps production to increase and thus strengthening national economy. Economic justice re-establishes industrial peace and harmony. Encouraging national economy is the responsibility of Industrial
Judicature. It therefore is in agreement with the necessary Panchaat Labour Policy.

1.5 **Summary**

With reference to development of industrial undertakings, their regulation, management and control, we can say that the history of development of industrial undertakings begins after the first World War and spread like a revolution in the whole world. Workers were more aware while the industrialists were doing their best to increase production. It was the parliament’s duty to create economic policies and develop industrial undertakings in order to achieve the dual objective of increasing workers’ efficiency and establishing strong relations between industrialists and workers. With the aim of creating better relations between employees and employers and taking the nation on the path of industrial development, the government made several laws and Acts. These laws and Acts were mainly for-

1. Ensuring better working conditions and service-conditions of workers
2. Provisions for entertainment, leave and reat
3. Special emphasis on workers’ health and education
4. Binding to moral and human duties
5. Establishment of relationships between employees and employers
6. Encouraging collective bargaining
7. Ban on strikes, shutdowns and retrenchment
8. Judicial settlement of industrial disputes
9. Compensation for workers
10. Creation of an Act for management and control of industrial undertakings

1.6 **Important Terminology** –

**Collective Bargaining** -
The process of negotiating the terms of employment between an employer and a group of workers. The terms of employment are likely to include items such as conditions of employment, working conditions and other workplace rules, base pay, overtime pay, work hours, shift length, work holidays, sick leave, vacation time, retirement benefits and health care benefits. Employees and employers – Workers and industrialists respectively. Judicature – The court that settles industrial disputes.
1.7 Practice Questions

1. Which all Acts have been made by the parliament for industrial undertakings? What is the impact of Laissez Fair on them?
2. Under Industrial Revolution what are the main elements of the management of industrial units?
3. Discuss in short the role of Industrial Management in Industrial law.

1.8 Reference Books

1. श्रम एवं औद्योगिक विधि—सूर्य नारायण मिश्र
2. श्रमिक विधियाँ — डॉ इन्द्रजीत सिंह
3. औद्योगिक समाजशास्त्र — डॉ सुनील गोयल एवं संगीता गोयल
4. औद्योगिक मनोविज्ञान के मूल तत्त्व — प्रो सरयू प्रसाद चौबे
5. Industrial Jurisprudence — Mahesh Chandra

1.9 Useful study materials

1. A Study of Industrial Law — G. N. Kothari
2. Industrial Relations — V. V. Giri
3. Labour problems in Indian Industry - V. V. Giri
4. Report of national Commission

1.10 Essay type questions

1. Briefly explain the development of industrial undertakings and the historical background of management and control of industrial units under regulations.
2. Describe in short the types of Industrial management in Industrial Law.
3. Elaborate the control of Industrial management in industrial undertakings.
Block-2- Industrial Development
Unit-2–Sick Industrial Undertakings: Nationalization or Closure, Licence Policy, Legal Policy and Legal Process – Increasing Liberalization

Unit Construction

2.1 Introduction
2.2 Objectives
2.3 Meaning, definition, features, areas and importance of Sick Industrial Undertakings
2.4 Nationalization or Closure of Sick Industrial Undertakings
   2.4.1 Is Nationalization of Sick Industrial Undertakings necessary? Or Closure?
   2.4.2 Licence Policy and Legal Process - Increasing Liberalization
   2.4.3 Analysis of Nationalization Policy of Sick Industrial Undertakings in India
2.5 Summary
2.6 Important Terminology
2.7 Answers to Practice Questions
2.8 Books for Reference
2.9 Reference/ Useul Material
2.10 Essay Type Questions
2.1 Introduction

Industrialization is a socio-economic process of modern times. Industrialization is generally taken as increased utilization of machinery but it is a process in which small industries are replaced by mass production through huge machines. Industrialization paved the way for national prosperity and changed the social fabric of countries. Once Industrialization reached its optimum growth, it saw a gradual downfall in economic, social and political spheres – growth in production, shortage of consumption, shortage of transport and communication resources, shortage of agricultural machinery, lesser importance and more exploitation of the workers, birth of trade unions etc were some consequences. Lack of political consciousness and shortage of investments reflects industrial sickness.

2.2 & 2.3 Objective and Meaning, definition, features, areas and importance of Sick Industrial Undertakings

Meaning
Sick Industrial Undertakings refer to a process in which production is done through sick rather than fit machines. Such a change brings about a shortage and change in agricultural, transport and communication sectors. The economy begins to slide downwards. Thus a Sick Industrial Undertaking is an industry than can no longer run because of a lack of capital and raw material.

Definition
"A Sick Industrial Undertakings is the one that is incapable of production due to shortage of capital, raw material or machinery.”

According to Myrdal “A industry is said to be sick when it is incapable of production due to shortage of essential goods.”

According to Dr. P. S. Gore “An industrial unit is said to be sick when it is closed down for a long time due to technical defects and shortage of capital and raw material.”

Features
Here are the main features of sick industrial undertakings:

1. Shortage of raw material and incapability of production
2. Shortage of capital
3. Shortage of manpower
4. Shortage of machinery
5. Existence of such an industry in direct contrast with state policies
6. Natural disasters or geographical conditions that the company cannot deal with
7. Increase in production cost and reduced consumption

Areas and importance – The following table shows the impact of sick industrial undertakings on different sectors:

<table>
<thead>
<tr>
<th>Economic Sector</th>
<th>Social Sector</th>
<th>Political Sector</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Shortage of employment</td>
<td>1. Rise in population and shortage of livelihood</td>
<td>1. Shortage of political and parliamentary revisions</td>
</tr>
<tr>
<td>4. Lack of coordination among institutions that promote trade</td>
<td>4. Outbreak of rise and fall in the market.</td>
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<td>5. Instability in ownership and management</td>
<td>5. Disruption of joint family system.</td>
<td></td>
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<tr>
<td>7. Shortage of international trade</td>
<td>7. Rise of unhealthy environment.</td>
<td></td>
</tr>
<tr>
<td>8. Shortage of basic national infrastructure.</td>
<td></td>
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Impact on Economic Sector

1. **Shortage of employment** – Industrial sickness reflects shortage of employment. This shortage disrupts the development of industries, transport, banks, insurance companies and business etc. If an
industry cannot earn enough profit despite large scale production, it is bound to become sick causing a shortage of employment.

2. **Misuse of funds during transfer of industries** – A sick industry cannot be transferred elsewhere because of shortage of funds that is rooted in financial misuse. This eventually is an obstacle for national economic growth.

3. **Reduction in mechanized farming** – Industrial sickness influences mechanization of farming because the companies stop producing enough machines.

4. **Lack of coordination among institutions that promote trade** – Industrial units also reach close to closure because of lack of coordination among institutions that promote trade as a result of which the workers are terminated by the employers.

5. **Instability in ownership and management** – A sick industrial enterprises results in instability in ownership and management which in turn affects the lives of employees and their families.

6. **Shortage of transport and communication resources** - A sick industrial enterprises also results in transport and communication resources becoming ineffective thus stopping to fetch any profit that would have otherwise accrued.

7. **Shortage of international trade** – Industrial sickness might result in shortage or complete closure of international trade.

8. **Shortage of basic national infrastructure** - Industrial sickness does change the basic national infrastructure

**Impact on Social Sector** –

1. **Rise in population and shortage of livelihood** – As a result of uncontrolled rise in population industrial sickness would ultimately cause shortage of employment and livelihood. This is bound to affect socio-economic sector of the country.

2. **Exploitation of workers** - Industrial sickness results in increased exploitation of workers. The employers would like to extract more work out of lesser money. The non-intervention policy would reduce state intervention and the industrialists would exploit workers still further.

3. **Decadent family relations** - Industrial sickness results in family relations getting more decadent. People are mentally frustrated because of lack of money and cannot channelize their thoughts into positive thinking.
4. **Outbreak of rise and fall in the market** - Industrial sickness brings about unexpected highs and lows in the economic conditions.

5. **Disruption of joint family system** - Industrial sickness has caused the disruption of joint family system because more and more people preferred to migrate settle in urban areas with their small families.

6. **Lack of social consciousness** - Industrial sickness created circumstances that resembled class-struggle. People had begun to migrate and employers were free to underestimate their skills because of abundance of labour. This resulted in a frustrated social consciousness of the workers.

7. **Rise of unhealthy environment** - Industrial sickness turned the lives of workers unhealthy because abundance of labour resulted in lesser wages.

**Impact on Political Sector**

1. **Shortage of political and parliamentary revisions** - Industrial sickness affected the thoughts of those who were the masters at the time of industrial revolution including industrialists and landlords etc. People belonging to this group should have played a pivotal role in parliamentary policy-making but they too began to treat themselves incapable of doing so in the light of industrial sickness.

2. **A horrible consequence of industrial revolution** - Industrial sickness aided to render the consequences and objectives of industrial revolution powerless. The industrial revolution was supposed to help the country prosper but Industrial sickness caused several industries’ closure and the country was faced with horrible circumstances. The economic backbone of the country was broken.

3. **Impact on political consciousness** – While the industrial revolution brought about a revolution in political consciousness, industrial sickness mellowed it. Industrial sickness not only affected the economic infrastructure, it also paralysed the enthusiasm and skills of workers.

**Importance**

Industrial sickness stops a nation from becoming a super power. A country can not become such a power unless it reaches the highest levels of economic, social and political resources. It is therefore necessary that all the shortcomings of Industrial sickness are taken care of and a new Industrial revolution is brought about. It is only possible by – national economic progress through industrialization, logical restructuring of agriculture, exploitation of national resources and swift economic growth, maximum employment-generation, increased tax-returns, control and
legalization over population, growth in capital-building and making the country self-reliant in defence affairs.

2.4 Nationalization or Closure of Sick Industrial Undertakings –

Sick industrial enterprises in no way reflect national prosperity. The last resort of state non-intervention in any country is nationalization. Nationalization refers to state ownership on the resources of origin.

**Definition of nationalization of industries:**
According to Oxford Dictionary – Nationalization of industries is “transfer (a major branch of industry or commerce) from private to state ownership or control.” According to Prof. Hansen - “Nationalization refers to taking over of industries by the state in such a way that it is owned, controlled and managed by the society and social ownership strictly means society’s ownership on property be it industrial or not and be it partial or complete.” According to R. H. Tinney – “Nationalization of industries is the transfer of properties on the basis of international loss and which is not the objective but a means in itself. It aims at providing those services extensively upon which the general welfare of people depends. Nationalization is possible in communist economy. In a country with mixed economy like India, only the second form of nationalization can be visible. In India, Nationalization of industries and Public Sector are almost synonymous. Nationalization is referred to as the state’s takeover of any industry that was previously owned privately, while Public Sector addresses nationalized industries and industries set up by the state itself.”

2.4.1 Is Nationalization of Sick Industrial Undertakings necessary? Or Closure?

Nationalization of Sick Industrial Undertakings is necessary because of the following reasons:

1. **Establishment of a Socialist System** – the industrial policy is the right of the whole nation and not a privilege of select industrialists. It assists in establishing a socialist system. The public is spared from bureaucratic exploitation. In accordance with the second 5-year plan establishment of a socialist system has been marked as a mandatory means to achieve speedy development.

2. **Controlled Regional Development** – Nationalization makes development possible in all parts of the country. The government
sets up its enterprises in the less-developed regions lacking in local resources. Several industries have been set up in backward regions of the country by the Indian government.

3. **Maximum utilization of limited capital** – There always is a shortage of capital in the semi-developed nations. Therefore nationalization is necessary to make maximum and reasonable utilization of limited capital.

4. **Interests of consumers and workers** - Nationalization of industries ensures protection of the interests of consumers and workers. Commodities are made available at reasonable prices and exploitation of workers is brought to an end.

5. **Financial Security and Economic Development** - Nationalization of industries also ensures a balance between demand and supply, thus imposing a control over market rise and falls to some extent.

6. **More Financial Resources** – Achievement of financial resources for policies is facilitated by nationalized industries. The profits earned through such industries can be invested in the nation’s economic growth. The government can acquire more capital at a much less interest rate as compared to private sector nationally and internationally.

7. **Reducing Financial Disparity** – the main objective of planning is to reduce and eradicate financial disparity. Nationalization plays an important part in this.

8. **Reducing Production Cost** - Nationalized industries bring along manyfold advantages, for instance the expenses on competition and advertising are totally reduced, bringing the production cost down.

9. **Growth of Industrial Capacity** – Nationalization helps in the growth of industrial capacity. The industries are therefore nationalized and useless and unproductive units are closed.

10. **Public Welfare** – Nationalization is necessary for Public Welfare.

**Winding Up**

1. **Democratic Flaws** – Sick industries can be closed because the state is run by the public representatives in democratic system. Hereunder are the flaws of nationalization in a democratic system -

   (i) Public representatives elected democratically aren’t enough skilled to bring order to the management of sick industries. So it is
better to close them. (ii) Closure of sick industries depends upon state policies. If the state policies are aggressive closure is preferred but liberal state policies are always against closure.

2. **Faulty Procedures** – Nationalized industries are controlled and managed by the state, whose managerial procedures are faulty. Bureaucracy is responsible for this mismanagement. There is involvement of small and big officials and as a consequence the decisive process is always hampered. The nationalized industries lack the flexibility required for the success of business organizations.

3. **Decline of industrial work-capacity** – Nationalization results in the decline of industrial work-capacity. It mainly results from lack of personal interest. Individuals take keen interest in their work. At the same time the state officials never treat their work as their own resulting in snail-like progress. The staff is concerned more about formalities rather than their duties. They are not concerned with profit or loss, as a result per capita production gets reduced and costs grow higher.

4. **Corruption in management** – The state has direct intervention in nationalized industries. But the work has to be done by humans even if they have been elected to do so. Such humans give preference to their selfish interests. The policies of a person or a party are given more importance in nationalized industries. The managers follow the directives of certain important people to gain their favours. They are least concerned about the progress or failure of industries. They don’t do anything independently which is favourable to the industry or nation.

5. **Loss of consumer interests** - Nationalization results in loss of consumer interests. On the one hand their freedom to choose in infringed upon because they are forced to buy specific types of products rather than a whole range of them. The ill-effects of incapability of management and production-defects are to be borne by the consumer.

6. **Fear of individual capital** – There always is a possibility of lax industrialization because of nationalization. The industrialists begin to invest their capital in foreign countries and foreign investments also take a nosedive.
7. **Loss of public interests** – The main duty of the state is to maintain law and order. If the state begins to set up industries, the administration is bound to become lax.

8. **End of competition** – Competition is given major importance in private industries while nationalization results in bringing all industries under state control. Therefore the industries shouldn’t be nationalized.

### 2.4.2 Licence Policy and Legal Process - Increasing Liberalization

The various logics given in and against the favour of nationalization of sick industries bring one to a conclusion that nationalization causes reduction in the skill and capacity of workers and the interests of consumers suffer losses. On this basis it is required that sick industries should be completely nationalized but there has to be a mandatory Licence Policy and Legal Process. The Licence Policy and Legal Process are as under –

1. The Licence Policy should be based upon the legal process related to defence and should not be run on the basis of personal ownership.
2. The Licence Policy should be related to social welfare and economic planning.
3. The Licence Policy should be useful for public welfare such as railways, post, water, electricity etc. and should be run through a legal process.
4. Under the Licence Policy industries run by industrialists should aim to achieve goals set up by the state through a legal process.

**Increasing Liberalization** –

Increasing Liberalization is based upon the nationalization policy in India. We look at it from the point-of-view of study as follows –

1. Increasing Liberalization before freedom
2. Increasing Liberalization after freedom

**1- Increasing Liberalization before freedom**

A provision was made in the industrial policy of 1948 that the state should play an active role in the development of industries. But the state didn’t have enough resources at its disposal to participate in the industrial sector in the requisite manner. Therefore it was decided that to increase the national income the state should continue to expand its participation in the areas it was already active in. Simultaneously it was expected to take up establishing new industries. Thus through extreme courage nationalization
of industries was postponed for some time, but in this period the state had to regularize the running of private sector through requisite control.

2- Increasing Liberalization before freedom

After independence India became a democratic republic. It was accepted in the preamble to the Indian constitution that all citizens would be granted equal opportunity for justice, freedom and equality. Although the government never made a separate declaration regarding nationalization of industries, the successive industrial policies emphasized upon liberalization in 1948, 1956 and 1975 successively. The principles of the Industrial Policy of 1948 were taken as the basis of First 5-year Plan. It stated that the state should take over the development of such industries which it found suitable and which the private sector was reluctant to invest in. Therefore industries from public sector were incorporated so that capital and basic commodities were generated. In the second 5-year Plan more emphasis was given to continuous growth in production and equidistriution. It was also recommended that the state should play a more active role in industrial growth. A socialist economy was agreed upon. It was also recommended that the state should not begin development tasks in the areas where it was not willing to enter; it should rather play the pivotal role in giving a form to capital investment. The Third 5-year Plan – This plan took up the objective of setting up industries with more determination. It stated that the decisive weapon for centralization of industrial power and control over monopoly was the rapid growth of public sector. This would serve two purposes – removal of basic flaws from economic infrastructure and control over accumulation of money and income by private sector. The new industrial policy of February 1980 conformed to the basic objectives of the sixth 5-year plan such as – development, social justice and self-reliance. This policy suggested that the public sector be made more and more prosperous. Thus the policies of the Indian government aim at extending the public sector. Our goal is to build a democratic socialist society. Certain industries have been nationalized keeping this objective in mind. These include –

1. The Post and Telegraph Department was nationalized from the beginning.
2. Whole Railway Department was nationalized after independence.
3. Road and Air Transportation were nationalized in public interests.
4. All the insurance companies were nationalized in 1956.
5. National Trading Corporation was set up in 1956 in order to nationalize import and export.
6. 14 commercial banks whose total deposit was more than Rs. 50 Crore were nationalized on July 19, 1969. Six more banks were nationalized on April 15, 1980.

7. Cotton Corporation of India was established and nationalized in 1969-70.

8. Coal mines were nationalized in 1972-73.

9. Oil business was gradually nationalized and IOC (Indian Oil Corporation) was set up.

10. Sick sugar industrial units of U.P. and Bihar were taken over and Sugar Corporations were set up.

2.4.2 Analysis of Nationalization Policy of Sick Industrial Undertakings in India

The Indian economy was set up as a socialist one. For establishment of a socialist system, for wielding control over monopoly, for eradicating economic disparity, for protecting interests of consumers and workers and for controlled regional development, nationalization of industries is necessary. Nationalization is doubtlessly good but in a semi-developed country like India where courage and capital-building are less abundant, where political instability is a problem and where there is a lack of skillful and honest administrative services, one cannot underestimate the role of private sector. Nationalization of industries in favour of the nation is fine but doing so with false and politically charged motives would only hamper the economic growth of the country. While making a declaration of setting up a democratic socialism the government made use of the weapon called nationalization. Although the intervention of the state in industrial sector kept growing, the growth of social sector was not satisfactory. The public sector could not give rise to productivity on invested capital, could neither reduce economic disparity and nor could stop the tendency to centralize economic power. The industries are not threatened by nationalization or growth of public sector; they are rather scared of the policies through which nationalized industries are run so inefficiently. The need of the hour therefore is that the government should formulate and declare a clear policy of nationalization which should give equal emphasis to both public and private sectors and result in overall national prosperity.

2.5 Summary
Nationalization of Sick Industrial Undertakings, licence Policy, legal Process and increasing liberalization helped the country grow more prosperous. Since the Indian economy was set up as a socialist one for wielding control over monopoly, for eradicating economic disparity, for protecting interests of consumers and workers and for controlled regional development, nationalization of industries is necessary. But India is a semi-developed country where political instability is a problem and there is a lack of skilful and honest administrative services, one cannot underestimate the role of private sector. Nationalization is mandatory for the growth of Sick Industrial Undertakings.

2.6 Important Terminology

Industrial Sickness – Refers to sick industries that are closed down as result of lack of capital, raw material and manpower.
Socialist Economy - Socialist Economy refers to establishment of democratic socialism. Socialism aims at raising life standards of financially deprives and at assuring them a guarantee of social security from birth till death. It also aims at economic equality and equidistribution.

2.7 Practice Questions

1- Explain the main features of sick industrial undertakings in short.
2- Explain the impact of sick industrial undertakings on sectors in brief.
3- Explain the definition and meaning of sick industrial undertakings in short.

2.8 Books for Reference

1 - J.S. Rousec - Social Control
2 - J.H. Smith – Industrial Sociology
3 – Murrey – Industrial Relations and social Order

2.9 Reference/ Useful Material

1. सिंह श्री इन्द्रजीत–श्रमिक विधियों
2. मिश्र सूर्य नारायण–औद्योगिक श्रमिक विधियों
3. उपाध्याय व जय जय राम–औद्योगिक श्रमिक विधियों
2.10 Essay Type Questions

1. What do you understand by nationalization of sick industrial undertakings? Present your thoughts on their nationalization and closure.

2. Critically analyze the policies of Indian government in relation to nationalization of sick industrial undertakings.

3. Elaborate the liberal policies of nationalization of sick industrial undertakings.
Unit Construction

3.1 Introduction

3.2 Objectives

3.3 Essential Commodities Act – A Historical Perspective
   3.3.1 Under the Essential Commodities Act 1955, the meaning of ‘Essential Commodities’ is inherent
   3.3.2 These are included in Essential Commodities while These are not included in Essential Commodities
   3.3.3 Officials taking cognizance of Essential Commodities Act related crimes and Prosecution

3.4 Utility and Non-Utility of Essential Commodities Act
   3.4.1 Signals of Development
   3.4.2 Social Mishap

3.5 Summary

3.6 Books for Reference

3.7 Reference/ Useful Material

3.8 Essay Type Questions
3.1 Introduction

India is a democratic country and is considered an agrarian country since 70% of its population resides in villages and is involved in agriculture. After independence, industrialization and urbanisation forced the people to migrate. When people migrated from villages to towns, the towns were faced with the problems of dwelling and food for the increased population. The government took notice of the problem five years after the constitution was formulated.

Deregulation Policies

The main objective in front of the government while making the deregulation policies was to face the challenge of providing essential commodities to people dwelling in urban areas. If the government succeeded in doing so that would point towards development but a failure to do so would be taken as social mishap – these were the issues the government was face-to-face with. For achieving the desired result the government passed the Essential Commodities Act 1955. The act aimed at providing quality essential commodities to people. In the Para 369 of the Indian constitution, the parliament has been empowered towards production and distribution of essential commodities. The parliament had to make legislations regarding production, supply and distribution of these. The Essential Commodities Act 1955 (Act No. 10) was passed and applied all over the country from 1st April 1955. The Essential Commodities Amendment Act 2003 (Am.37) and The Essential Commodities Amendment Act 2006 were successively passed. The Essential Commodities (Special Provisions) Act, 1981 was also passed to make certain special provisions by way of amendments to the Essential Commodities Act, 1955, for a temporary period for dealing more effectively with persons indulging in hoarding and blackmarketing of, and profiteering in, essential commodities and with the evil of vicious inflationary prices and for matters connected therewith or incidental thereto. As a consequence thereof, the State of U.P. passed the U.P. Scheduled Commodities Distribution Order 2004.

3.2 Objectives

The main objective of the Essential Commodities Act was to provide quality essential commodities to all citizens of India. Their is provision of temporary power to Parliament to make laws with respect to certain matters in the State List according to para 369 of Indian constitution. It is an Act to provide, in the interests of the general public, for the control of
the production, supply and distribution of, and trade and commerce in, certain commodities. “Essential commodity” means any of the following classes of commodities: 1. Coal, textiles, iron, steel and paper etc. would be products of state controlled industries. 2. Edibles and fodder etc. would not be products of such industries. As is expected in public interest the same constitutional powers should be granted to the central government after January 26, 1955 as are mentioned in Para 369 of the constitution. The bill making the necessary amendments in the Entry 33 of Seventh List of the constitution was passed in both houses of the Parliament last year. This amendment has now become law owing to its gaining requisite support from state governments. It has the power to regulate the production, quality, distribution and other aspects of essential commodities. When the law for control of all essential commodities mentioned in Entry 33 was pending for long, the state governments practised open legalities to work towards that objective. The main objective of the Essential Commodities (Special Provisions) Act, 1981 and U.P. Scheduled Commodities Distribution Order 2004 was to ensure storage and distribution of essential commodities at fair prices. Now the government of India should ensure proper execution of duties regarding consumer cases, food and public distribution system so that the supply of essential goods is guaranteed at fair prices and hoarding and blackmarketing of, and profiteering be necessary. Thus the Act seeks to control those who intend to sell essential commodities at higher prices.

3.3 Essential Commodities Act – A Historical Perspective

When we look at the short history of Essential Commodities Act, we can say with certainty yjay India has acquired the status of a stron economic country because it is on the way to growth and prosperity in all sectors – social, economic and political. India holds a strong status worldwide. Before the Act was brought, India’s economic growth was negligible because our foodgrain production was so low that people died of malnutrition and famines. But India went on the path of prosperity and modernization made India a powerful agrarian economy especially. While on the one hand increased foodgrain production strengthened Indian economy, corruption, hoarding and profiteering turned up as major problems. To curb these manaces the parliament passed successive Acts such as Essential Commodities Act 1955, Essential Commodities (Special Provisions) Act, 1981 and U.P. Scheduled Commodities Distribution Order 2004.
The present format of the Act on the one hand points at national development through – (i) Urbanization – imbalance between villages and towns (ii) Population explosion (iii) Check on pollution (iv) Increased number of dwellings and check over irregularities, marketization (v) Check on corruption (vi) Ultra-consumerism (vii) Growth in Agri products (viii) mechanization (ix) Use of Fertilizers (x) Import-Export (xi) Self reliance in foodgrain production. On the other hand the following factors point at social mishaps – (i) Food adulteration (ii) False and expensive medical prescriptions (iii) corruption in police (iv) hoarding (v) Distribution of unrefined foodgrains (vi) Uncontrolled Pricing system of the market (vii) blackmarketing (viii) Compromise on the quality of medicines. The government though aims at building a state that works for public welfare through these acts.

3.3.1 Under the Essential Commodities Act 1955, the meaning of ‘Essential Commodities’ is inherent

The meaning of ‘Essential Commodities’ in the Act is inherent in the control of the production, supply and distribution of, and trade and commerce in, certain commodities for the common public. To make the meaning clearer it refers to such processes as mentioned in Entry 33 of List 7 of Indian constitution that ensure production, supply and distribution of, and trade and commerce in, certain commodities mainly (i) Wheat (ii) Rice (iii) Lentils (iv) sugar (v) Edible Oil (vi) Kerosine Oil (vii) Soft Coke and Controller cloths.

Definition –
‘Essential Commodities’ refers to –
The following come under The Essential Commodities (Amendment) Act, 2006 –
(a) "Essential commodity" means any of the following classes of commodities:—
(i) Cattle fodder, including oilcakes and other concentrates;
(ii) Coal, including coke and other derivatives;
(iii) Component parts and accessories of automobiles;
(iv) Cotton and woollen textiles;
(iva) 3[ drugs. Explanation.-- In this sub-clause," drug" has the meaning assigned to it in clause (b) of section 3 of the Drugs and Cosmetics Act, 1940 :]
(v) Foodstuffs, including edible oilseeds and oils;
(vi) Iron and steel, including manufactured products of iron and steel;
(vii) Paper, including newsprint, paperboard and straw board;
(viii) petroleum and petroleum products;
(ix) raw cotton, whether ginned or unginned, and cotton seed;
(x) raw jute;
(xi) any other class of commodity which the Central Government may, by
notified order, declare to be an essential commodity for the purposes of
this Act, being a commodity with respect to which Parliament has
Extended to and brought into force through power to make laws by virtue
of entry 33 in List III in the Seventh Schedule to the Constitution.

**Decision** –

(i) Foodstuff refers to the finished product. It also includes raw
material that expects to be reprocessed. (K. Janardhan Pillai v/s

(ii) What human beings consume is styled as food and what
animals consume is described as animal feed. This distinction
has to be borne in mind. (Welcome Hotel vs state of A.P.)

(iii) Therefore, a seed of foodstuffs is an item which has direct
bearing with the production of the foodstuffs and consequently it
is competent for the Parliament as well as States to make laws
in relation to seeds of foodstuffs. Surely seeds of food-crops
and seeds of fruits and vegetables relate to foodstuffs. (Raghu
Seeds & Farms And Others vs Union Of India And Others on 28
October, 1993)

**List of development in List 7 of the constitution** –
Any organization of industries controlled by the state would import the
following in public interest – (1) Foodstuff that incorporates edible oil or
oilseeds (2) cattle fodder, including oilcakes and other concentrates etc (3)
raw cotton, whether ginned or unginned, and cotton seed (4) raw jute.
The following are not included in essential commodities – (1) Cotton
clothes - under The Essential Commodities (Amendment) Act, 2006 (2)
Tea – tea is not foodstuff. It doesn’t nourish or increase the capacity of the
body.

**3.3.3 Officials taking cognizance of Essential Commodities Act
related crimes and Prosecution**

An order made under the Act may confer powers and impose duties upon
the Central Government or the State Government or Officers and
authorities of the Central Government or State Government and may
contain directions to any State Government or to Officers and authorities
thereof as to the exercise of any such powers or the discharge of any such
duties. "Collector" includes an Additional Collector and such other officer,
not below the rank of Sub- Divisional Officer, as may be authorised by the Collector to perform the functions and exercise the powers of the Collector under this Act. If any person contravenes any order made under section 3, he shall be punishable, - (i) in the case of an order made with reference to clause (h) or clause (i) of sub- section (2) of that section, with imprisonment for a term which may extend to one year and shall also be liable to fine, and (ii) in the case of any other order, with imprisonment for a term which shall not be less than three months but which may extend to seven years and shall also be liable to fine.

**Offences triable by Special Courts (Section 12-1)**

The State Government may, for the purpose of providing speedy trial of the offences under this Act by notification in the Official Gazette constitute as many Special Courts as may be necessary for such area or areas as may be specified in the notification. A Special Court shall consist of a single judge who shall be appointed by the High Court upon a request made by the State Government. Explanation.-- In this sub- section the word" appoint" shall have the meaning given to it in the Explanation to section 9 of the Code.

(a) He is qualified for appointment as a judge of a High Court, or
(b) He has for a period of not less than one year been a Sessions Judge or an Additional Sessions Judge.

Notwithstanding anything contained in the Code all offences under this Act shall be triable only by the Special Court constituted for the area in which the offence has been committed. Where a person accused of or suspected of the commission of an offence under this Act is forwarded to a Magistrate under sub- section (2) or sub- section (2A) of section 167 of this Code, such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days. The Special Court may, subject to the provisions of clause (d) of this sub- section exercise, in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code in relation to an accused person in such case who has been forwarded to him under that section. If the punishment is inappropriate there is provision of appeal and revision.

**Appeal and revision**

1. The High Court may exercise, so far as may be applicable, all the powers conferred on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Sessions trying cases within the local limits of the jurisdiction of the High Court.
2. Application of Code to proceedings before a Special Court - Save as otherwise provided in this Act, the provisions of the Code (including the provisions as to bail and bonds) shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special court shall be deemed to be a Court of Sessions and the person conducting a prosecution before a Special Court, shall be deemed to be a Public Prosecutor.

**Injunction by Civil Court**

No civil court shall grant an injunction or make any order for any other relief against the Central Government or any State Government or a public officer in respect of any act done or purporting to be done by such Government, or such officer in his official capacity, under this Act or any order made thereunder, until after notice of the application for such injunction or other relief has been given to such Government or officer.

**Presumption as to orders**

Where an order purports to have been made and signed by an authority in exercise of any power conferred by or under this Act, a Court shall presume that such order was so made by that authority within the meaning of the Indian Evidence Act, 1872.

### 3.4 Utility and Non-Utility of Essential Commodities Act

The Utility and non-Utility of Essential Commodities Act can be understood by keenly going through the Act. We would notice two things - (1) If we look positively, the Act signals at development (2) If we look into the matter from a factual point of view we notice the negative dimensions of the Act.

#### 3.4.1 Signals of Development

The signals of development reflected in the Essential Commodities Act underline the applicability of the Act. The Parliament was successful in achieving the objectives that it sought to by passing this Act.

1. Population Explosion: Utility of essential commodities – In India, the central government is responsible for the supply and distribution of quality essential commodities at equal prices to the increasing population of the country. It is the government's duty to ensure that these essential commodities should not be of lesser quality. Maintenance of the nutritiousness of these commodities is also a
must for the growing population because only a healthy public can build a healthy nation. The objective of the Act is to ensure that the quality of all essential commodities especially edibles should be first inspected in laboratories before they are sent for distribution to the public. It is only then that there would be some utility attached to the Act. This is a signal of development.

2. Necessity of quality commodities in urbanization – Modernization encouraged urbanization and migration of too many people to the towns turned out into a serious problem because food and other essential commodities were to be made available to this increased urban population by the government as part of its duty. Through this Act the government succeeded in doing that.

3. Utility of the Act in reducing environmental pollution – Another objective of the Act was to reduce pollution and constantly nourish the environment. It was thus the government’s duty to ensure the quality of edibles, drinks and petroleum products to achieve this. This Act helped the government reach this goal too.

4. Increased number of dwellings and check over irregularities – For the purpose of making maximum profit out of Modernization and Urbanization, residential buildings were hastily built and several irregularities were committed. The landlords rented out low-quality houses to needy rural migrants at high rents, who had no other choice but to accept living in those abject dwellings. But this Act made provisions that the rents were regularized thus proving its utility in development.

5. Utility of Essential Commodities Act in the present marketized system – The Essential Commodities Act gained full control over the present market system. It was made mandatory that the price of saleable goods was printed and their lists and qualities were propagated through newspapers and TV etc. The market was monitored by the officials of central and state governments who prosecuted anyone violating the rules.

6. Utility of Essential Commodities Act in controlling Corruption – The Act maintained its utility through laws that controlled blackmarketing, hoarding and profiteering so that corruption was kept under check. The officials of central and state governments
were able to fully control the prices of essential commodities so that they were sold at fixed prices.

7. Utility of Essential Commodities Act in curbing Ultra-consumerism - The Act met with total success in curbing and controlling ultra-consumerism because no consumer could wantonly consume commodities in a manner that was against public control. He was only allowed to consume only those commodities that fell under the provisions of the Act. The Act was successful in proving its worth in this matter.

8. Utility of the concept of sustenable development – The fundamental concept of the Essential Commodities Act is that of sustenable development. The central and state governments should make policies to enhance public welfare so that the Act can prove its utility in present circumstances.

9. Strengthening the standards of import-export and distribution of quality foodstuff – It would be the state’s duty to strengthen the standards of import-export in international trade and thus ensuring flawless supply and distribution of quality foodstuff so that no issues regarding import-export rise between nations. A standard should be fixed for import-export so that there are no distribution-related problems in future.

10. Curbing the distribution of unhygienic foodstuff – The Essential Commodities Act makes the state liable to totally curb the distribution of unhygienic foodstuff and to legally prosecute any seller involved in doing so. The state takes action against those who are involved in selling or distributing adulterated foodstuff.

11. Complete control over adulterated commodities and oil - The Essential Commodities (Special Provisions) Act, 1981 and U.P. Scheduled Commodities Distribution Order 2004 were added as amendments to The Essential Commodities Act, 1955 in order to deal with hoarders, blackmarketeers and profiteers thus gaining complete control over adulterated commodities and oil.

3.4.2 Social Mishaps

No Act is complete in itself because it cannot achieve 100% of its objectives. The Essential Commodities Act 1955 was no exception. While
it reached some of its goals it failed in certain areas which are known as social mishaps and add to the non utility of the Act –

1. Adulteration in Foodstuff - One major reason of the failure of the Essential Commodities Act is adulteration in foodstuff. The state’s liberal policies and the inherent greed of the industrialists and capitalists encouraged the evil-intended people to involve in this crime through bribing the related officials. The food adulteration in the present context is a result of a nexus between administration and the industrialists and capitalists. It can therefore be treated as a social mishap.

2. Corruption in police – The corruption in police is especially responsible for adding to the non-utility of the Act. The role of police is treated as vital in administration and it is a popular understanding that the police has all the information related to any crime in any state. But wide-spread corruption has weakened the police thus adding to social mishaps.

3. False and expensive medical prescriptions in hospitals- The Essential Commodities Act has definitely been a failure in medical sector because the carelessness and lethargy of the doctors has brought the hospitals to a pitable condition. The Act aimed at providing quality commodities and public health, but that couldn’t be achieved. Even the pharma companies are producing false medicines and selling them at much higher prices in the markets. This too signifies a social mishap.

4. Hoarding and blackmarketing of essential commodities - The Essential Commodities Act has been unable to exhibit its utility because holding hands with the present administration, the industrialists practice hoarding and blackmarketing of essential commodities. The administration has generally shown more than its willingness to form a nexus with these industrialists and capitalists. This has caused major problems for the general public. The objectives of the Act were dishonoured and another social mishap was born.

5. Profiteering – Profiteering is also a social mishap that came into being because of the aforementioned nexus.
6. Overpricing by sticking labels – The sellers stick overpriced labels to extract more money from the consumers thus affecting the goals of the Act. This too is a social mishap.

7. Nexus between industrialists, politicians and traders – The triangle of industrialists, politicians and traders has definitely hindered the achievement of the objectives of the Act. The sole purpose of this triangle is to earn maximum possible money rather than ensuring clean administration. Thus it is also a social mishap.

8. Constantly rising international oil prices – The constantly rising international oil prices immensely affected the import-export of essential commodities. The traders had to pay more freight and demanded higher selling prices for the essential commodities. This resulted in regular strikes and there would be shortage of stuff in the market. Ultimately the prices of these essential commodities would soar higher and higher.

3.5 Summary

Legislation of essential commodities. Signals of development and social mishap. This Act exhibits its utility in the consumption of essential commodities. When the act was brought after five years of independence, its main objective was to ensure the distribution of essential commodities by the state and to curb and control hoarding, blackmarketing and profiteering of commodities. The higher goal was to achieve its social target and to somehow curb and control social mishaps.

3.6 Books for Reference

1. श्रम एवं औद्योगिक किरदार—सूर्य नारायण मिश्र
2. श्रमिक सचिव—ज्ञानेन्द्र सिंह
3. औद्योगिक समाजशास्त्र—डॉ सुनील गोयल एवं संगीता गोयल
4. औद्योगिक मनोविज्ञान के मूल तत्त्व—प्रोफ. सारस्वत प्रसाद चौधरी
5. Industrial Jurisprudence – Mahesh Chandra

3.7 Reference/ Useful Material

1. A Study of Industrial Law – G. M. Kothari
2. Industrial Relations – V. V. Giri
3. Labour Problems in Indian Industry – V. V. Giri
3.8 Essay Type Questions

1. Explain what the Essential Commodities Act is.
2. Furnish a historical background to Essential Commodities Act.
3. What are the powers granted to the official taking cognizance in offences related to Essential Commodities Act? Explain.
Unit Construction

1.1 Introduction

1.2 Objectives

1.3 Definition and meaning of Large-scale destruction and Environment Degradation, Types of Environment Degradation
   1.3.1 Terrible consequences of international environmental problem incorporated in Large-scale destruction
   1.3.2 Causes of Environment Degradation

1.4 Legal Responsibility of Environment Protection
   1.4.1 Remedies for Environment Protection
      1.4.1.1 Remedies against Environment Pollution
   1.4.2 Legal Process for Remedies against Environment Pollution

1.5 Summaries

1.6 Important Terminology

1.7 Answers to Practice Questions

1.8 Books for Reference

1.9 Reference/Useful Material

1.10 Essay Type Questions
1.1 Introduction

Protection and improvement of environment is the biggest problem that the nations are facing at present. Protection and improvement of environment is the duty of state and its citizens. In a developing nation like India environmental pollution is a root cause behind poverty while it becomes a factor of prosperity for developed nations. India has no other option than industrial development to eradicate poverty. Keeping in mind the various problems in India the judiciary had to incorporate all demands of protecting natural resources while looking at economic development. It was necessary to do so. The increasing environmental pollution, falling general health and various deseases were affecting the development of the nation. The Bhopal gas tragedy of 2 October 1984, the Oleum gas case of Shriram Foods etc. traumatized people widely because many people were killed without any fault of theirs. For the purpose of ensuring that these events were not repeated the Public Liability Insurance Act 1991 and national Environment Act 1995 were passed. The Public Liability Insurance Act 1991 provides for public liability insurance for the purpose of providing immediate relief to the persons affected by accident occurring while handling any hazardous substance and for matters connected therewith or incidental thereto. The quality of life goes down because of environmental degradation. The Cycle of life undergoes a change and the stream of development takes a reverse path and human is endangered. Environment is the greatest boon of nature on the earth. But whenever it is in crisis, widespread damage is caused and the very existence of human beings faces a question of its survival. Human race itself is responsible for this scenario. Uncontrolled development, loss of Ozone layer, global warming, greenhouse effect, acid rain, crisis caused by atomic material and naval pollution are some of the factors responsible for this situation. Humans are supposed to protect environment through legal and moral means.

1.2 Objective

A healthy and clean environment symbolizes development while polluted environment means destruction of life. Environmental pollution is a product of devopment and modern times. Growth of agriculture and fire gave rise to Environmental pollution. The success of humans lies in the protection of Environmental. Man is the most active factor behind Environmental pollution because his uncontrolled development-aimed
activities negatively affect the structure of whole biosphere and ecology. The main such factors are –

1. Pollution – Physical pollution, Social pollution
2. Natural calamities – hurricanes, typhoons, volcanoes, earthquakes, floods, famines etc.

To save the world from destruction, all the nations would have to collectively think about the future of the environment. Several legal steps would have to be taken for this purpose.

1.3 Definition and meaning of Large-scale destruction and Environment Degradation, Types of Environment Degradation

There is an amazing coordination and balance in nature which is known as the success and unification of environment. The inter-dependence of organic and non-organic factors helps maintaining environmental balance. The uncontrolled human activities are affecting the whole structure of biosphere, natural resources and the ecology of the earth. The environmental crisis and resultant environmental imbalance is rooted in two factors - 1. Population explosion and 2. Energy. Nature nourishes all living organisms and is capable of fulfilling human needs but it cannot tend to human greed.

**Meaning**
Environment Degradation implies the degradation of one or several components of the physical environment of a state, country or region. The quality of life goes down because of environmental degradation. The cycle of life undergoes a change and the stream of development takes a reverse path and human is endangered. As a result the human habitat faces failure and human existence is endangered. This state is called Environment Degradation.

**Definition**
According to mahatma Gandhi – “The earth provides enough to satisfy every man's need but not every man's greed.” According to Karl marx – “Environment Degradation takes place only when nature is dealt with like an enemy.” He explained Environment Degradation in the following way –

<table>
<thead>
<tr>
<th>Effect on Environment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Increasing pressure on environment</td>
</tr>
<tr>
<td>(Increased land use)</td>
</tr>
<tr>
<td>Environment Degradation</td>
</tr>
<tr>
<td>Loss of Ecology</td>
</tr>
</tbody>
</table>
Ecological Imbalance

D.K. Srivastava – “When there is adverse effect on living beings of the biosphere in physical environment, these changes brought by humans to physical environment are collectively called Environment Degradation.

The destruction caused by human intervention in Environmental balance –

The crises in Environmental balance are cause both by natural and human activities. Human interference affects the Environmental balance in a bigger manner causing widespread destruction, which is as follows-

Environmental Imbalance

Environmental pollution, Environmental vacuum, Natural calamities ecological degradation and air, water, soil and organic pollution.

Environmental Imbalance

↓

Environmental Pollution

↓

Natural calamities

↓

Environmental Vacuum

↓

Air

↓

Water

↓

Soil

↓

Cultural Pollution

↓

Organic

↓

Non Organic

↓

Natural Ecology

↓

Man-made System

The above diagram shows environmental imbalance which transforms into widespread destruction. Environmental Degradation is a synonym of Environmental pollution because both represent a loss of Environmental quality. It causes natural calamities such as hurricanes, typhoons, volcanoes, earthquakes, floods, famines etc.

Types of Environmental Degradation - Environmental Degradation can be classified into the following two groups according to the extent of the loss of Environmental quality-

(1) Extreme calamities and natural rage

(2) Pollution

(1) There are three types of Environmental Degradation in accordance to the factors causing Extreme calamities and natural rage -

i. Natural Calamities - Those caused by natural factors including tornados, hurricanes, typhoons, volcanoes, earthquakes, floods and famines etc. Other calamities are caused by inherent natural forces and their effects are visible on the surface of the earth and include volcanic explosion and landslides etc. The calamities caused by the biosphere affect the organic and non
organic components like emission of electricity in the biosphere, forest fires etc. The physical calamities caused by humans are caused by human activities like lighting intentional fires in forests and large scale digging. The chemical and atomic calamities also add to it. The organic calamities caused by humans include use of organic weapons in war.

ii. Pollution caused by Human Activities – Humans are responsible for two types of pollution – (a) Downfall in the quality of organic and non-organic components in the environment is called physical pollution for example – soil pollution, pollution in seawater, pollution in rivers and lakes, shortage of ozone layer, carbon dioxide and loss of air-quality. (b) Social Pollution - Social Pollution is caused by physical and social factors like population explosion. Economic pollution is caused by poverty. Other examples of social pollution include racial and religious riots, thefts etc.

1.3.1 terrible consequences of international environmental problem incorporated in Large-scale destruction

Trade is the main factor behind global environmental problems and the consequent loss of ozone layer, global warming and acid rain would bring about widespread destruction which would affect the whole earth and the very human existence would be in danger. This can be checked through appropriate measures. Here are some necessary facts – 1. Ill effects of depletion of ozone layer and necessary means for its protection - Ozone is a blue coloured gas with pungent smell. It is the transformed version of Oxygen – the Chemical formula of these are O3 and O2. When sunlight falls on the Oxygen of the environment, the Oxygen turns into Ozone. Gradual transmission of electricity also produces Ozone. The protective layer of Ozone is called the “Ozone Umbrella”. Ozone is found in two layers called Troposphere and Stratosphere. These are found at a vertical distance of 12 to 50 kilometers from the surface of the earth. 90% of the ozone is found in the Stratosphere while the rest is in Troposphere. The ozone present in these two is generally called the ozone layer. The ozone molecules break up into oxygen atoms and molecules because of the ultra violet emission. These oxygen atoms and molecules absorb energy and recreate ozone atoms and molecules. Thus the ozone layer keeps its balance but use of chemicals especially chloro-floro carbons has caused depletion of this capacity of the ozone layer. There are many reasons behind the depletion of ozone layer – 1. Human factors 2. Natural factors
3. Chemical factors 4. Volcanic explosions etc. This depletion would cause – 1. Skin cancer 2. Damage to eyes 3. Loss of physical health 4. Downfall in agricultural output and depletion of forests. Several steps are being taken in order to protect the ozone layer internationally. Some important ones include –

   1. The Vienna Convention for the Protection of the Ozone Layer 1985
   2. Helsinki Declaration on the protection of the ozone layer 1989

Thus public participation is necessary for the protection of the ozone layer.

Global warming, greenhouse effect and global protective measures –

The depletion of ozone layer has caused global warming. Global warming changes the cycle of seasons. The greenhouse effect is supposed to be responsible for changing weather. The greenhouse gases include Carbon dioxide, Methane, Nitrous Oxide, Sulphur Dioxide and Chloro-floro carbons. The greenhouse effect creates a thick blanket around the earth that protects all the solar heat from getting away from the earth resulting in a constant rise in global temperature. The greenhouse effect is caused by excess of these gases threatening the greenery of forests and agriculture and general life. The weather changes and global temperature rises resulting in famines, floods and melting of glaciers. The glacial melting raises the sea-level that threatens the existence of many countries.

Ill effects of Global warming and Greenhouse Effect

   1. Change in climate
   2. Rise in sea-level

The rise in sea-level would cause havoc in coastal areas of India. Excessive and untimely rains would become the order of the day and there would be a shortage of sources and resources of energy. The change in climate would cause bacteria-related diseases. This would bring about widespread destruction.

International Measures for checking global warming – Several international measures have been taken including –

1. Convention on Climate Change 1992
2. Kyoto Sammelan
3. The Hague Convention 2000
4. Bali Convention (Cop. 13) 2007

Terrible Effects of Acid Rain and Global Measures

The problem of Acid Rain is growing in proportion. The emissions of carriers of environmental pollution are the gases Sulphur, Nitrogen Oxide and hydrocarbons etc. They fall onto the surface of earth in the form of dry particles, rain, snow, fog and dew. The sulphur oxide emitted from the factories, vehicles and oil refineries
dissolves into air and turns into sulphuric acid. It further dissoles with water and falls on earth, depleting organic and non-organic components. This process has been named Acid Rain. The normal PH of rain is 5 but the dissolved sulphuric acid reduces it. When the Ph of water gets to less than 4, it acquires acidity and proves fatal to both organic and non-organic components. The ill effects of acid rain are as follows –

1. Acid rain increases water pollution and destroys the living organisms therein.
2. Acid rain increases the acidity of soil
3. Acid rain adversely affects the harvest on massive scale
4. Acid rain also adversely affects forests
5. Acid rain causes houses crumble

The problem of Acid rain has been faced on a big scale in Italy and USA. The following global steps were taken for this problem –

1. Montreal Protocol, 1985
2. USA and Canada signed an accord to minimize Acid rain

Global Measures for reducing nuclear threats – Nuclear reactors are highly dangerous. Nuclear mishaps gravely affect the environment. Radioactive elements cause cancer and other diseases. The consequences of the Hiroshima and Nagasaki atom bombs had put question marks on human existence. It has to be ensured that such things are not repeated. The effects of Chernobyl disaster were felt even in India. 2000 people lost their lives. An American official claimed that between 6000 to 8000 people were killed in Ukraine. A global commission was set up to ensure “general future” aimed at nuclear security and disarmament.

Here is a list of global measures to that effect –

1. Space Treaty 1966
2. Nuclear test ban treaty 1996
3. African nuclear free zone treaty
4. The Strategic Arms Limitation Talks (SALT II) 1973
5. The Strategic Arms Limitation Talks (SALT III) 1997

The question to be considered here is that of providing justice to people affected by nuclear accidents. There are certain international treaties on this issue mainly–1.1963 Vienna Convention on Civil Liability for Nuclear Damage 2. Brussels Convention on the Liability of Operators of Nuclear Ships 1961-1962. International regulation for hazardous waste, naval pollution and protective measures – poisonous and hazardous wastes and their long-term threats have created global environmental problems. An example of the global dimension of environmental law is naval pollution. This also signifies a massive calamity. To check this, a provision of civil liability for oil pollution was made in the International
Convention of 1969. The Convention on naval law is an important
document that would help checking naval pollution.

1.3.2 Causes of Environment Degradation

Environment Degradation is a product of modernity for which the activities
of human society are mostly responsible. Development and destruction
are two facets of human efforts. The uncontrolled human activity is giving
rise to swift environmental deterioration. Seeing the horrible environmental
downfall, R. S. Dosman aptly said that man is like a monkey holding a
grenade, who doesn’t know what he holds. No one knows when he would
pull the pin and bring complete destruction to the world. Causes of
Environment Degradation are manifold –

1. Exponential rise in population- the rise in population is directly
affecting the natural resources. The growing population is behaving
negatively towards nature resulting in Environment Degradation. In
developing countries, rising population and lack of resources give
rise to poverty, illiteracy and dissatisfaction. This also results in
Environment Degradation. Poverty is the biggest factor behind
Environment Degradation. Rise in population causes ecological
imbalance thus creating an imbalance in natural resources.
Consequently it gives rise to air, water, soil and noise pollution on
the one hand while calamities like floods, famines etc also cause
Environment Degradation.

2. The race of industrial development and misuse of natural resources
– industrialization and heavy mechaneries directly affect the
natural resources. Although economic growth and social
development increased industrial development, the industrial waste
adversely affected the environment.

3. Urbanization – Industrialization was instrumental in swift
urbanization, which in turn adversely affected the environment.
There was unprecedented construction of houses, roads, streets,
factories and toilets. The number of vehicles also increased. As a
result pollution increased and fatal diseases came into being. The
number of people suffering from TB, cancer, lung and stomach
diseases increased in the industrial areas. The high number of
AIDS patients in slums is also a result of urbanization.

4. Development of Technology and Scientific Technique – The
Development of Technology and Scientific Technique has also made
the environmental crises graver. Increasing dependence upon
technology in the agricultural sector has caused in gradually
receding fertility of the soil. Noise pollution and water pollution are
on a rise in industries while nuclear energy and technical growth is causing radioactivity. Use of chemical weapons is poisoning the environment. The use of science and technology not only adversely affects the surface ecology but also does the same to space. Rocket technology destroys the ozone layer which protects us from ultraviolet radiations. Development of Technology and Scientific Technique created fatal reactors which resulted in Bhopal Gas Tragedy 1994, Chernobyl Nuclear Disaster 1986 and the atom bombs of Japan.

5. Use of excessive energy – The sources of energy namely Coal, petroleum and LPG pollute the environment through the emission of poisonous gases. They have paralyzed the environmental balance. Use of firewood has also deepened environmental crisis which is reflected in untimely rains and cold weather. Human life is adversely affected because of these factors.

6. Unplanned Development – in this era of development, unplanned urbanization has destroyed the environmental balance and put the environment in danger. The multipurpose unplanned development of river valley projects has also created similar threats. For instance the Tehri Dam Project not only created a threat of earthquakes but also resulted in the displacement of 32000 people.

7. Unlimited mining – The earth not only produces various things on its surface, it also possesses ores and jewels under its surface. Iron, Mangnese, Oil, Petroleum and Coal are mined from it. Mining directly and indirectly affects human health, agriculture, plants and soil fertility. Landslides result because of mines and the several environmental problems arise as a result.

8. Increase in the number of vehicles – Transportation caused swift industrialization. All kinds of vehicles including scooters, motorcycles, autoricshaws, cars, trucks, rails and ships pollute the environment. The lead emitted by them has caused many diseases. The smoke emitted by airplanes badly damage the upper environment by depleting the ozone layer.


1.4 Legal Responsibility of Environment Protection

(a) Total liability in the matter of hazardous material – The protection of environment is not only a concern of India but is a global one. Many
tragedies have occurred because of emission of hazardous material from industries. The Bhopal Gas tragedy of 1984 witnessed the death of 2000 people because of the emission of poisonous gas. More than 100000 people lost their eyesight. The emission of the poisonous gas Oleum in Shriram Foods Plant, Delhi forced the government to make laws that proper compensation must be legally provided to the victims of such incidents. In the M.C. Mehta vs Union Of India case 1986, the court decided that the government would not bear any responsibility for the damages caused by hazardous industries. The principle of strict liability under the rule in Rylands v. Fletcher case is an exception but the industries dealing in hazardous materials do create dangers for people living in their neighbourhoods, whether proper care is taken or not. Therefore the industry would be liable for providing compensation to the victims. In the Charan Lal Sahu vs Union Of India case AIR SC 1990 the Supreme Court decided that the victims of accidents caused by hazardous industries would be liable to compensation. The court made three suggestions – (i) Quick compensation for human health, property and environment. (ii) Setting up of a Special Forum – Early settlement of industrial matters and establishment of environment authority. (iii) Provision of special compensation. The Public Liability Insurance Act, 1991 is the first legal endeavour which gave the matter a constitutional ground. The Environment Protection Act 1986 is another such effort.

(b) A duty of the Court in protection of environment and sustainable development – The right to live with dignity incorporates a right to clean and healthy environment. The problem with development and environment in a developing country like India is that poverty is a big polluter. Within the environmental law of the country, control and management of environment is the responsibility of central and state governments and authorities setup by them. The environmental policies were created as forms of international commitment which state that if the central and state governments fail to protect the environment or violate it, the court would sentence them. The court would play its role in protection of environment and sustainable development through – (i) constitutionalizing rights of the court in government policies (ii) unconstitutionlalizing rights of the court in government policies (iii) coordinative viewpoint for sustainable development (iv) extending the section 21 of the Indian Constitution and incorporate measures for environmental remedies (v) legal activity and creativity.
Case 1 - Maneka Gandhi vs Union Of India, 1978 – In the area of environmental protection the state would act towards making the policy guidelines and fundamental rights economic.

Case 2 – S. Jagannath vs Union Of India

Case 3 – In the case relating pollution in Ganga and other similar ones, the court gave several innovative decisions.

(c) International Efforts and Legal Duties in protection of Global Environment – Carelessness towards global environmental development gave rise to the just concept of Sustainable Environmental Development. Industrialization and economy fatally affected the environment. Water, air and soil and other factors that sustain life were all polluted. The biggest source of pollution is poverty. India’s Ex-Prime Minister Late Indira Gandhi had said in the Stockholm Summit in 1972 that although the developed countries consider development as being the root cause of environmental damage but for we Indians development is a primary means of improving the living environment, providing food, shelter and clean water, turning the deserts green and mountains liveable. Sustainable Development aims at establishing coordination between Environment and development. It is necessary to act for all countries to – (i) Make efforts for solving the problem of global technological development and providing legal provisions for the same. (ii) Remedial measures for cross-border pollution (iii) Environment protection and improvement in accordance with concepts laid down by the U.N.O. (iv) Global cooperation for Environmental protection and legalization (v) Global efforts for solving the problems arising from acid rain and industrialization. (vi) Global efforts for solving the problems arising from global warming and greenhouse effect. (vii) Efforts to check naval pollution (viii) protection from damage to environment caused by human activity.

(d) Legal Duties for Legal Activism, Action Plan and Protection of biodiversity - Legal Activism is not inert but aims at action. It aims at solving the matter according to the social picture. The concept of justice has not been limited to individuals but it has been extended to social and economic sectors. While on the one hand Acts and policies have been formulated for protecting the environment, on the other the judiciary exhibited legal activism through innovative decisions. In the Om Gowing Singh vs Shanti Swaroop case the Supreme Court banned the operation of a bakery.
1.4.2 Legal Process for Remedies against Environment Pollution

Environmental pollution is gradually turning multi dimensional. It does not only cause damage to individuals and groups but also puts the ecology in danger. Legal Remedies against Environment Pollution were already there but their form was not effective enough. There were many laws in existence – Common Environmental Law, Enacted Law, Statutory Law, Legal Control law etc. Through environmental laws, administrative agencies have been set up for regulation and control of environmental pollution. Civil remedies were provided for this purpose including - (1) Tort related action against polluter (2) Writs against agencies (3) Civil disputes. If the nuisance is public, criminal action would be taken. The following are the remedies against environmental pollution –

1. Remedies against environmental pollution – these include – (i) Remedy through law of torts - alleviation, damage, injunction, nuisance, ignorance, trespassing (ii) Statutory remedy – criminal charges, sentence, injunction etc. (iii) legal remedy – Mandamus, ban, Certiorari and compensation (iv) Other remedies – criminal charges, compensation, punishment etc.

a. Remedy through law of torts – there is provision for remedy in India under the law of torts. It would remain so until it is constitutionally revised or changed. It is based on the concepts of justice, equity and inner purity. The law of torts is accepted in the courts of India and is applicable. There are two modes of remedy in this – (i) Damage (ii) Injunction. There are many kinds of nuisances in the law of torts including remedy for ignorance, remedy for trespass, remedy for strict responsibility and remedy for total responsibility. There is civil remedy for these torts. It is necessary that a tort is committed and damage is caused to others. There are two types of nuisance – (i) private and (ii) public. Public nuisance means unrightfully interfering in the collective rights of general public. It is both a tort and crime. There are two remedies for this – (i) criminal charge (ii) criminal or civil action against public nuisance.

Private Nuisance – It means unrightfully interfering in the health, property or welfare of other person or persons. The concept of “Sie utere tuo ut atienum non laeds” (means that one must use his property so as not to injure the lawful rights of another.) is applicable. The victim in the case of environmental damage can claim compensation under law of
torts. A case can be filed for injunction or both can be done. Injunction is a legal process through which a journalist is asked to do or not to do a specific act. There are temporary and permanent injunctions. Case 1 – M. C. Mehta vs Republic of India. Case 2 – Rylands vs Fletcher. Case 3 – Union carbide Corporation vs Republic of India.

**Statutory Remedies –**
The Indian Penal code and criminal Penal Code have provided for remedied in matters of environmental pollution. These are as follows – it is provided in the sections 268-290 of Indian Penal Code and section 133 of Criminal Penal code that if committing public nuisance violates the above sections, the state is liable to compensate the victims. It relates to matters of noise, smell and unhealthy circumstances. It is provided in section 268 of the Indian penal Code that a person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right. A common nuisance is not excused on the ground that it causes some convenience or advantage. Sections between 263 to 271 of the Indian penal Code deal with nuisances that might cause spread of diseases, the section 277 deals with water pollution and so on and so forth. The district magistrate, subdivisional magistrate and police officials would be responsible to carry out actions in such cases. The section 133 deals with settling matters related to sluices and water-ways. Related acts include The Water (Prevention & Control of Pollution) Act, 1974, the Air (Prevention & Control of Pollution) Act, 1981 and Environment Protection Act, 1986 etc. Remedies under the Constitution – environmental remedies are provided in the sections 48 (A), 51 (G) and Para 21 of the Indian constitution. It is a characteristic of the Indian constitution that it bounds the state and citizens by duties. According to section 48(A) it is the state’s duty to protect and improve the environment and conserve forests and wildlife. According to Section 51 (G) it would be the the duty of every citizen to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures. The section 21 provides that the state would not deprive anyone of the right to live and physical freedom. The right to physical freedom provides among others a right to clean and healthy environment and water. Thus the courts have a constitutional right for such cases.
1.4.2 Legal Process for Remedies against Environment Pollution

The domain of pollution related damage has become broader because of industrialization. Efforts are being made to provide equal justice to weaker sections through cases of public interest.

1. Citizen cases (C.P.C. section 91) – With the consent of the advocate general any person can file a case of common nuisance to check pollution.
   Citizen cases under Environment Protection Act 1986
2. Representative or collective cases (C.P.C. O.I.R. -8)
3. Public Interest Cases – These cases are legal weapons through which social justice can be delivered to the poor. The people have a right to social justice.
4. Effort to provide remedy for environmental pollution through correspondence cases

Case 1 – Vellore Citizens Welfare Forum vs Republic of India
Case 2 – Ratlam Municipal vs Bardhi Chand
Case 3 – S.P. Gupta vs Republic of India

1.5 Summary

Right to clean and healthy environment has become an integral part of the fundamental rights of citizens. Maintaining a coordination between development and environment is an ongoing process. Development should not be done at such a speed that nothing is left for the future generations. Generally it is believed that environment is the problem of developed nations rather than that of developing ones. While India is a developing nation, it faces development as the biggest problem. It is also true that poverty is the biggest polluter. Industrialization and hazardous industries are causing major environmental problems. It is therefor mandatory that a balance should be made between industrial growth and environment protection. The state should punish those who disturb this balance. If the state fails to do so, the courts would punish it.

1.6 Important Terminology

1. Global warming – Excessive terrestrial heat
2. Hazardous matter – Dangerous matter
3. Innovation – New beginnings
1.7 Practice Questions

1. Explain in brief the meaning and definition of environmental degradation.
2. Explain the types of environmental degradation.
3. How is environmental degradation responsible of big-scale calamities?

1.8 Books for Reference

1. पर्यावरण एवं पर्यावरणीय संक्षण विधि की रूपरेखा डॉ. अनिरुद्ध प्रसाद
2. पर्यावरण विधि—डॉ. जय जय राम उपाध्याय
3. पर्यावरण विधि—डॉ. सीता प्रीति सिंह

1.9 Reference/ Useful Material

1. World Religion and Environment – Dr. O.P. Dwivedi
2. Right to Livelihood and Environmental protection – Dr. A. N. Chakraborty
3. पारिस्थितिकीय विकास एवं पर्यावरण सूर्योदय–पीएस नेगी

1.10 Essay Type Questions

1. Explain the factors responsible for environmental degradation.
2. Elaborate the terrible results international environmental problems involved in big-scale calamities.
3. Clarify legal duties and legal remedies in protection of environment.
Block-3 Problems of Control and Accountability
Unit-2—Public Liability Insurance: adequacy-Issues in zoning and location of Industrial units.

Unit Structure

2.1 Introduction

2.2 Objectives
  2.2.1 Applicability of Public Liability Insurance Act 1991,
      Definition of Accident, Handling and hazardous substance
  2.2.2 Laws of no fault liability in Public Liability Insurance Act
      – Reasonability

2.3. Responsibility of the owner to provide compensation
  2.3.1 Penalties

2.4 Regionalization and establishment of industrial units Under Public Liability Insurance Act
  2.4.1 Reason for Regionalization of industrial units
  2.4.2 Issues in establishment of industrial units

2.5 Summary

2.6 Important Terminology

2.7 Answers to Practice Questions

2.8 Books for Reference

2.9 Reference/ Useful Material

2.10 Essay Type Questions
2.1 Introduction

The Public Liability Insurance Act 1991 is an important and effective jurisdiction in the direction of compensatory justice. This Act provides for quick compensation in the event of accidents occurring because of hazardous substances. It gives constitutional validity to the concept of no fault liability. Here the claimant doesn’t necessarily have to prove the fault of the owner or the tortfeasor. This Act was created to ensure – (i) Similar incidents don’t happen in future (ii) Industrial units are set up in areas of no-population and (iii) Coordination between development and environment.

2.2 Objectives

The prime objective of the Public Liability Insurance Act 1991 is to provide for public liability insurance for the purpose of providing immediate relief to the persons affected by accident occurring while handling any hazardous substance and for matters connected therewith or incidental thereto and to set up a national authority to ensure the same. It is to make sure that massive calamities don’t occur due to leakage or explosion of hazardous substances. No one can forget the Bhopal Gas Tragedy of 1984 that took away 2000 lives and left more than 2 lakh people blind. The Bhopal tragedy was still recent when a similar incident took place in 1985 in Shriram Fertilizers plant in 1985. This Act was soon formulated to ensure providing immediate relief to the persons affected by accident occurring while handling any hazardous substance during such accidents. Other main objective of the Act is to provide effective compensation to the victims.

2.2.1 Applicability of Public Liability Insurance Act 1991, Definition of Accident, Handling and hazardous substance

The Public Liability Insurance Act 1991 is the first effective legal effort towards control and prevention of accidents occurring while handling any hazardous substances. It gives constitutional validity to the concept of no fault liability. Insurance against third party risk is another of its characteristics. It is a short and effective Act and includes in its definition – duties of insurer, compensation for the victims, application for compensation, cognizance of crime etc.
The Public Liability Insurance Act 1991 is an important and effective jurisdiction in the direction of compensatory justice. It provides for quick compensation in the event of accidents occurring because of hazardous substances. It gives constitutional validity to the concept of no fault liability. Here the claimant doesn’t necessarily have to prove the fault of the owner or the tortfeasor. Generally the owner doesn’t pay any attention to the claims of compensation and emphasizes on the proofs of faults of claimant. To provide quick compensation to the victim, this Act makes the owner responsible to do so even if the claimant is at fault. The owner of hazardous substances is liable to provide compensation to the victim whether there was any or no fault on behalf of the claimant. The Act provides that for fatal accidents the relief will be Rs. 25,000 per person in addition to reimbursement of medical expenses if any, incurred on the victim up to a maximum of Rs. 12,500 and up to Rs. 6,000 depending on the actual damage, for any damage to private property. The Act provides to establish a fund to be known as the Environment Relief Fund. Every owner shall have to mandatorily get an insurance policy and contribute towards the Environment Relief Fund.

The Environment Relief Fund provides treatment to the accident-victims. Under the Public Liability Insurance Act 1991 the Collector is deemed to be a Civil Court for all the purposes. In case of any mishap the collector is responsible to verify the accident, invite applications for compensation and provide it to the victims.

**Definition –**

In Section 2 of the Public Liability Insurance Act 1991, some important terms have been defined as follows – “Accident” means an accident involving a fortuitous, sudden or unintentional occurrence while handling any hazardous substance resulting in continuous, intermittent or repeated exposure to death, of or injury to, any person or damage to any property but does not include an accident by reason only of war or radio-activity. A main feature of the Public Liability Insurance Act 1991 is that it incorporates the damage incurred to property and environment and these factors have not been left for legal consideration as was the case with Workmen’s Compensation Act, 1923.

**Important factors of accident –**
1. "Accident" means an accident involving a fortuitous, sudden or unintentional occurrence. Such an incident cannot be foreseen. It is necessary that such an incident takes place abnormally. It could even be 'Act of God' that is beyond any preventive effort taken by humans.

2. The handling of hazardous substance must be the cause of accident.

3. The accident should be resulting in continuous, intermittent or repeated exposure to death, of or injury to, any person or damage to any property but does not include an accident by reason only of war or radio-activity

2.2.2 Laws of no fault liability in Public Liability Insurance Act – Reasonability

The 1980’s saw massive tragedies occurring in India because of leakage or explosion of hazardous substances including Bhopal Gas Tragedy of 1984 and Shriram Fertilizers Plant Tragedy in 1985. People lost their lives for no fault of theirs. The government issued quick orders to ensure that such events were not repeated in future. A case was filed by senior advocate M. C. Mehta through which the attention of the Supreme Court was brought to the dangers caused by plants dealing in hazardous substances. This case was brought forth as M.C. Mehta vs Union Of India in which the state’s responsibility in the leakage of Oleum gas was emphasized and the concept of total responsibility was put up. About 100 years back it was agreed upon as strict liability in the Rylands vs Fletcher case. If a person brings a hazardous substance to his own land and despite all precautions if the substance causes damage to the health and security of the neighbourhood, the person would be responsible for the damage. This concept is known as the concept of no fault liability.

Charan Lal Sahoo vs Union of India S.C.

The M.C. Mehta vs Union of India case decided that on the basis of the concept of no fault liability the defendant would be responsible to pay compensation. The industries using hazardous substances should be mandatorily insured. The court made three recommendations –
1. Provision for applying the concept of no fault liability in matters of hazardous industries.

2. Mandatory insurance for all hazards.

3. Setting up of special forums for ensuring quick compensation of claims.

The parliament consented to the above recommendations and gave a positive structure to the concept of no fault liability and setting up of special forums and passed the Environment Act 1985. The main objectives of this Act were to apply the concept of no fault liability and provision of quick compensation for damage caused to human health, property and environment. The section 3 of Public Liability Insurance Act provides that - Where death or injury to any person (other than a workman) or damage to any property has resulted from an accident, the owner shall be liable to give such relief as is specified in Schedule for such death, injury or damage. In Section 3(8) of the Act the concept of no fault liability has been propounded. Here the owner has been held responsible to provide compensation for death and damage to a fixed limit. These limits are as follows –

(i) Reimbursement of medical expenses incurred up to a maximum of Rs. 12,500 in each case.

(ii) For fatal accidents the relief will be Rs. 25,000 per person in addition to reimbursement of medical expenses if any, incurred on the victim up to a maximum of Rs. 12,500.

(iii) For permanent total or permanent partial disability or other injury or sickness, the relief will be (a) reimbursement of medical expenses incurred, if any, up to a maximum of Rs. 12,500 in each case and (b) cash relief on the basis of percentage of disablement as certified by an authorised physician. The relief for total permanent disability will be Rs. 25,000.

(iv) For loss of wages due to temporary partial disability which reduces the earning capacity of the victim, there will be a fixed monthly relief not exceeding Rs. 1,000 per month up to a maximum of 3 months: provided
the victim has been hospitalised for a period of exceeding 3 days and is above 16 years of age.

(v) Up to Rs. 6,000 depending on the actual damage, for any damage to private property. The Section 3(2) states - In any claim for relief under the claimant shall not be required to plead and establish that the death, injury or damage in respect of which the claim has been made was due to any wrongful act, neglect or default of any person. This is known as enforcement of the concept of no fault liability.

**Handling [Section 2(C)]**

"Handling", in relation to any hazardous substance, means the manufacture, processing, treatment, package, storage, transportation by vehicle, use, collection, destruction, conversion, offering for sale, transfer or the like of such hazardous substance.

**Hazardous Substance [Section 2(C)]**

"Hazardous substance" means any substance or preparation which is defined as hazardous substance under the Environment (Protection) Act, 1986 (29 of 1986), and exceeding such quantity as may be specified, by notification, by the Central Government. The Section 2(5) of the Environment protection Act 1986 defines "Hazardous substance" as follows – "Hazardous substance" means any substance or preparation which, by reason of its chemical or physico-chemical properties or handling, is liable to cause harm to human beings, other living creatures, plant, micro-organism, property or the environment; "Hazardous substance" also means possessing excessive quantity of such substance i.e. more than prescribed under this Act.

### 2.3.1 Responsibility of the owner to provide compensation

Section 4 of the Public Liability Insurance Act 1991 makes the owner responsible for insurance policy – “Every owner shall take out, before he starts handling any hazardous substance, one or more insurance policies providing for contracts of insurance thereby he is insured against liability to give relief. Provided that ally owner handling any hazardous substance immediately before the
commencement of this Act shall take out such insurance policy or policies as soon as may be and in any case within a period of one year from such commencement.

**Section 5 of the Public Liability Insurance Act 1991 says –**

“Whenever it comes to the notice of the Collector that an accident has occurred at any place within his jurisdiction, he shall verify the occurrence of such accident and cause publicity to be given in such manner as he deems fit for inviting applications.”

**Section 6 of the Public Liability Insurance Act 1991 says –**

“An application for claim or relief may be made-

a) By the person who has sustained the injury;

(b) By the owner of the property to which the damage has been caused;

(c) Where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) By any agent duly authorised by such person or owner of such property or all or any of the legal representatives of the deceased, as the case may be: Provided that where all the legal representatives of the deceased have not joined in any such application for relief, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined shall be impleaded as respondents to the application.

(2) Every application under sub-section (1) shall be made to the Collector and shall be in such form, contain such particulars and shall be accompanied by such documents as may be prescribed.

(3) No application for relief shall be entertained unless it is made within five years of the occurrence of the accident.”

**Section 7 –**

(1) On receipt of an application, the Collector shall after giving notice of the application to the owner and after giving the parties an opportunity of
being heard, hold an inquiry into the claim or, each of the claims, and may make an award determining the amount of relief which appears to him to be just and specifying the person or persons to whom such amount of relief shall be paid.

(2) The Collector shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case within a period of fifteen days from the date of the award.

Section 7(A) –

"The Central Government may, by notification in the official Gazette, establish a fund to be known as the Environment Relief Fund. The Relief Fund shall be utilised for paying, in accordance with the provisions of this Act and the scheme, relief under the award made by the Collector. The Central Government may, by notification in the Official Gazette, make a scheme specifying the authority in which the relief fund shall vest, the manner in which the Fund shall be administered the form and the manner in which money shall be drawn from the Relief Fund and for all other matters connected with or incidental to the administration of the Relief Fund and the payment of relief therefrom.

The Central government would have the following powers –

1. Power to get information (Section 9)
2. Power to enter and investigate (Section 10)
3. Power of contravention (Section 11)
4. Power to issue directions (Section 12)

2.3.2 Penalties

The Public Liability Insurance Act 1991 provides for penalties in cases of violation of the Act –

1. Whoever contravenes any of the or fails to comply with any directions he shall be punishable imprisonment for a term which shall not be less than one year and six months but which may extend to six years, or with fine which shall not be less than one lakh rupees, or with both
2. If any owner fails to comply with direction or fails to comply with orders issued or obstructs any person in discharge of his functions, he shall be punishable with imprisonment which may extend to three months, or with fine which may extend to ten thousand rupees, or with both.

Where any offence under this Act has been committed by a company, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Where an offence under this Act has been committed by any Department of Government, the Head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this section shall render such Head of the Department liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. No court shall take cognizance of any offence under this Act except on a complaint made by-

(a) The Central Government or any authority or officer authorised in this behalf by that Government; or

(b) Any person who has given notice of not less than sixty days in the manner prescribed, of the alleged offence and of his intention to make a complaint, to the Central Government or the authority or officer authorised as aforesaid. No suit, prosecution or other legal proceeding shall lie against the Government or the person, officer, authority or other agency in respect of anything which is done or intended to be done in good faith in pursuance of this Act or the rules made or orders or directions issued thereunder.

2.4 Regionalization and establishment of industrial units under Public Liability Insurance Act

In the M. C. Mehta case the court directed the government for swift regionalization and establishment of industrial units under Public Liability Insurance Act and set up a National Environment Authority so that
tragedies like Bhopal 1984 and Shriram Foods 1985 are not repeated. It is the duty of the state to ensure to protect the lives and property of its citizens. Two major problems have risen in present scenario – (1) protection from environmental pollution (2) industrial development. Both these problems are counterparts. The developed nations polluted the environment on their way to growth while the growth of developing nations is marred since they have to face both problems. It is the state’s duty to set up the industries in regions that are far away from human settlements and also to utilize and manage its natural resources appropriately. The state should adopt all such measures to ensure that no such tragedies occur again. The state has to establish coordination between the two on the route of its development. Development and environment are both vital concerns. Both the state and central governments should try to establish a logical balance between the two.

2.4.1 Reason for Regionalization of industrial units

The following are the reasons for regionalization of industrial units –

1. Geographical Reasons – the main reasons for regionalization of industrial units are geographical. In certain industries the natural emissions are very hazardous and they can only be set up in far flung areas. The required raw material is also found in plenty in these areas. This and the previous factor are the reasons for their regionalization.

2. Transport Reasons - regionalization of industrial units is done on the basis of the availability of transport facilities that are required for transport of raw material, machinery and national and international transportation through import and export for the maximum benefit.

3. Setting up industrial units away from population - Setting up industrial units away from population is important since solid, liquid and gaseous industrial waste is hazardous to human health. It therefore is necessary and advisable that industrial units are set up at locations far away from population.

4. For protection against hazardous industrial substances - hazardous industrial substances cause fatal diseases including some that cannot be treated at all. The workmen and their families should be protected from these so that they lead a healthy life.

5. Facilities of import and export – an important reason for regionalization of industrial units is growing import and export. The state should ensure that the products are made available all over the country at reasonable prices.
6. Availability of deserted areas – This too is an important reason for regionalization of industrial units. The industries should be set up at geographically rich regions that are easy to access with good transport facilities.

If regionalization of industrial units causes individual death or damage to property and environment, the owner is liable to provide compensation under the Public Liability Insurance Act for - (1) death (2) temporary or permanent or partial disability or disease (3) damage to private property (4) damage to employment/ business.

2.4.2 Issues in establishment of industrial units

Here are the main issues in establishment of industrial units –

1. Industries inspire national growth – the chief objective of establishing an industrial unit is industrial growth. More and more industries should be set up because they reflect national prosperity. A nation is built by industries. The Public Liability Insurance Act 1991 would play an important role in providing quick and timely compensation to victims of accidents caused by hazardous industries. The industrial growth in India would on the one hand make the country prosper while on the other it invites major natural disasters caused by environmental degradation. Therefore a balanced coordinated industrial development is mandatory because no country can prosper without industrial growth.

2. Industrial growth generates employment - Industrial growth generates employment in India. Therefore the government should set up industries. The number of industries that were set up in the country was not sufficient when we compare them to the high rise in India’s population. As a result unemployment became rampant. The government should set up more industries and generate employment for literate population in such a way that the country prospers.

3. Industrial growth enhances economic growth - Industrial growth is a symbol of economic growth in India. India is a developing country and faces many problems like appropriation of industries and lack of machinery and skilled labour. These are hindrances on the path to becoming a developed nation. Establishment of industries strengthens the nation’s economy. The industries should be developed in accordance with the Public Liability Insurance Act 1991 – hazardous industrial products invite disasters and give rise
to poverty. It is therefore recommended that the industries should be developed keeping in mind the Public Liability Insurance Act.
4. Setting up of industries enhances international trade policy and cordial relations are built between nations. An import-export policy has been propounded already that makes the country financially strong and prosperous.
5. Analysis of India’s Industrial Policy – nationalization of industries is mandatory for establishing a socialist nation, controlling monopoly and eradicating economic disparity. India’s Industrial Policy aims at the growth of public sector in order to establish a socialist nation. It is required that this policy be regularly analyzed.
6. Social Control and State Intervention - Social Control is a form of State Intervention in the establishment of industries. Private industries and businesses are inspired and forced to work in the direction recommended by the state through this means. The state tries to control the economy through social control. So that individuals, trades and industries are ready to work in accordance with social change.
7. Industries are important to National Planning – India is a developing nation for which industrialization is a must. The public rather than the private sector should be developed more i.e. more and more industries should be nationalized. Some important aspects of setting up industries are as follows –
   a. Shortage of capital - Developing nations face shortage of capital. Keeping in mind this shortage industry should be established so that they could be nationalized.
   b. Speedy Economic Growth – the speed of economic growth is slow in developing nations and to raise it the state should participate more actively and directly by setting up more and more industries.
   c. Shortage of undertakings - Developing nations face shortage of undertakings. The private sector set up only such industries that require lesser capital, involve lesser risk and ensure maximum benefits. A strong economic infrastructure is required for the country’s economic development. These measures require industries that involve higher investments and lesser returns.
   d. Need for coordinated industrial development – coordinated industrial development is necessary for the development of a nation. For example there must be a balance among capital-based industries. A developed public sector is a must for that.
e. Setting up industries helps economic system – It is mandatory for the state to set up industries because they are utilized as the country’s economic resources.

2.5 Summary

The Public Liability Insurance Act 1991 is an important and effective jurisdiction in the direction of compensatory justice. It gives constitutional validity to the concept of no fault liability. This Act provides for quick compensation in the event of accidents occurring because of hazardous substances –

1. The Act is limited to remedies for accidents caused by handling of hazardous substances only. Compensation would be payable in accidents occurring from equally hazardous other substances.
2. The Act exempts Public corporations from adopting insurance policies through state and central governments. Thus this mandatory provision has been unnecessarily limited.
3. In cases of violating insurance guidelines and provisions a minimum penalty of Rs. 1 Lakh has been fixed
4. No penalty has been fixed if the compensation is not given immediately. This is against the concept of no fault liability.
5. The Act only provides benefit for social welfare. It is silent in the matters of protection of water, air, environment and biodiversity.

2.6 Important Terminology

1. Penalties – Punishments
2. Legislation – Formulation of laws
3. Hazardous Substance – Such substances that could damage humans, other living beings, plants, property and environment because of their chemical and physical characteristics.
4. Handling – Dealing

2.7 Practice Questions

2. Does the Public Liability Insurance Act give constitutional validity to the concept of no fault liability? Explain.
3. When is the owner liable to provide compensation (Section 4)? Explain shortly.
2.8 Books for Reference

1. Agrawal, Dr. D. K. – Sustenable Development and Environment
2. Ravi Ravindra – Science and Script, New York

2.9 Reference/ Useful Material

1. Agrawal, Dr. D. K. – Sustenable Development and Environment
2. Ravi Ravindra – Science and Script, New York

2.10 Essay Type Questions

1. Explain the main issue of establishment if industrial units.
2. Elaborate regionalization of industrial units in Public Liability Insurance Act.
3. Clarify the provisions of penalties on the basis of the concept of no fault liability in Public Liability Insurance Act.
Unit Structure

1.1 Introduction
1.2 Objectives
1.3 Need for technology transfer, Increasing foreign collaboration in Indian economy and technology transfer
   1.3.1 Foreign Appropriation Agreements and Actual Inflow in technology transfer
   1.3.2 Parts of various industries of Foreign Appropriation Agreements in technology transfer
   1.3.3 Limit of various ownerships of Foreign Appropriation Agreements in technology transfer
1.4 Analysis of technology transfer policy with foreign cooperation
   1.4.1 Agreed one-time payment for buying technology
   1.4.2 Economic and Technical Collaboration
1.5 Summary
1.6 Important Terminology
1.7 Answers to practice questions
1.8 Reference Books
1.9 Useful study materials
1.10 Essay type questions
1.1 Introduction

A challenge in front of international law poses the question of its development in order to make it compatible with scientific and technological revolution. There is need for reconsideration over the relationship between scientific facts, technical usage and international law for the general welfare of people. As a result of recent revolutionary achievements in the field of information technology, it is necessary that there is proper collaboration between states. Concepts such as sovereignty and nationalism have shaken the very foundations of these achievements. Besides the higher technology is available only to a handful of developed countries, who therefore exert unnecessary pressure upon developing nations. Threats have grown in size in this unipolar world. For instance USA recently pressurized Russia that the latter should not supply rocket engines to India. On 19 July 1993, Russia was forced by the USA to cancel the trade accord signed with India dealing with cryogenic rocket engines and technology. According to a treaty between USA and Russia, the latter would have to stop supplying rocket technology to India though it could supply a few engines. Technology transfer strengthens not one but many nations. It is necessary that appropriate agreements are signed between countries.

1.2 Objectives

The main objective of the agreements for technology transfer is to acquire imported technique which is useful for the needs and resources of the country. Many policy-related declarations were made to liberalize the license system. Corporations for technological cooperation were allowed to operate on the basis of financial criteria like ‘royalty’ and ‘one-time payment’. Technology Policy Act was presented in 1983. The basic objectives of the Technology Policy will be the development of indigenous technology and efficient absorption and adaptation of imported technology appropriate to national priorities and resources. Many policy-related declarations were made to liberalize the license system. Most importantly private sector was allowed to produce telecommunication instruments and several electronic items were exempted from restrictive trade monopoly.
1.3 Need for technology transfer, increasing foreign collaboration in Indian economy and technology transfer

A developing country like India always faced a shortage of capital. Need for capital grew swiftly in order to enhance the speed of development. There weren’t sufficient savings and only foreign capital could compensate for this. This shortage is of two types. One is related to the shortage of internal savings. The other is related to the payment of deficit. The first one depends upon the estimated rate of development and can be compensated partly from foreign loans, technology transfer and subsidy. Foreign currency reserve can help take care of this shortage. Only foreign currency cannot make economic growth possible so it is mandatory that the developed nations should handover technological resources as grants one-sidedly for an unlimited period. Foreign capital can play a vital role in enhancing economic growth and technology transfer of developing nations. But this capital is supposed to be returned with interest. Thus any nation that takes international loans comes under the yoke of high interests. It is for this reason that the future acquisition of foreign loans is indirectly mortgaged. A developing country whose export of technology transfer is dependent on just a few things and whose income elasticity of demand is high cannot dare to take big foreign loans. The policy of acquiring foreign loans and need for technology transfer for a developing nation is dependent on the following factors –

1. The reason and need of technology transfer is related to a nation’s prosperity and therefore it would thus be possible appropriate more than what is possible through domestic savings, because savings are contained in a developing economy.

2. Industries and factories are set up with technology transfer because foreign collaboration is needed for that. It becomes difficult to generate domestic savings for arranging finances to set up very essential projects for economic growth. In the initial stages of development the capital market must improve – temporarily foreign capital and technology transfer are required.

3. Along with foreign capital the country acquires rare technological knowhow, business experience and knowledge. All these play a vital role in economic growth.

Growing Foreign Collaboration in the Technology Transfer:

As the first steps, The National Policy for foreign capital did accept the need of foreign exchange for technology transfer, but decided not to give it too much importance. As a result the foreign capital was directed to keep a maximum equity of 49% while the Indian collaborator kept majority of it.
Besides, foreign collaborators were allowed to enter primary sectors especially those in which India has not been able to achieve desired growth. But our overall policy was prohibitive and selective. As a result 2475 foreign collaborations were allowed between 1950 and 1970. During 1981-90 the number grew to 7436 with an investment of Rs. 1,892 Crore. The government liberalized its policy towards foreign collaborations in the 1980’s. It was done keeping in mind the developing oil-exporter nations especially and a fixed package of exemptions was prepared –

1. The investors from developing oil-exporter nations were allowed up to 40% equity in fixed new ventures without establishing technology relations.
2. The government allowed Non Resident Indians (NRI’s) to invest in fixed new industrial ventures.

Technology Policy Act was presented in 1983. The basic objectives of the Technology Policy will be the development of indigenous technology and efficient absorption and adaptation of imported technology appropriate to national priorities and resources. Many policy-related declarations were made to liberalize the license system –

a. Exemption on licenses for all but 26 industries. Non MRTP and non FERA companies were also exempted
b. Private companies were permitted to produce telecommunication instruments.
c. Foreign companies were allowed to produce electronic parts.
d. The MRTP companies could commercialize their research and development work. They could do so for the state laboratories as well.

Corporations for technological cooperation were allowed to operate on the basis of financial criteria like 'royalty' and 'one-time payment' as a result of which during 1981-90 the number of technical collaborators grew to 7436 with an investment of Rs, 1,274 Crore. A nation-based survey of technical collaborators reveals that USA holds the highest spot with an investment of Rs. 323 Crore. It is the ¼ of total foreign investment. The other following countries are West Germany, Japan, U.K., Italy, France and Switzerland. These countries provided 63% of the investment while the NRI’s contributed Rs. 113 Crore (8.9%). An industry-based survey of foreign collaborators reveals that Electricals and Electronics (including telecommunications) drew 22% of total investment. This sector thus
received highest priority. Total foreign investment in chemical sectors holds the third place. It can thus be stated generally that the primary sector received a total of 70% investment. This means that the national environment for foreign investment was favourable during this time.

### 1.3.1 Foreign Appropriation Agreements and Actual Inflow in Technology Transfer

After the declaration of the Industrial Policy 1991, the inflow of foreign investment has gained speed. The statistics provided by economic survey, India received total $45 billion between 1991-92 and 2001-02, of which $21.7 billion had been contributed by USA as FDI. The remaining $23.7 Billion were received as portfolio investment. It points at the fact that the foreign collaborators were more interested in portfolio investment rather than FDI. Of the $21.7 billion of FDI, 5.8% i.e. $2.5 billion were invested by Non Resident Indians (NRI’s). Thus of the total foreign collaboration, the FDI was only 42.5%.

#### Table 1 – Classwise Foreign Collaboration in Technology Transfer

<table>
<thead>
<tr>
<th>Year</th>
<th>FDI Crore US Dollars</th>
<th>Portfolio Investment Crore US Dollars</th>
<th>Total Crore US Dollars</th>
</tr>
</thead>
<tbody>
<tr>
<td>1991-92</td>
<td>12.9</td>
<td>0.4</td>
<td>13.3</td>
</tr>
<tr>
<td>1992-93</td>
<td>31.9</td>
<td>24.4</td>
<td>55.9</td>
</tr>
<tr>
<td>1993-94</td>
<td>58.6</td>
<td>356.7</td>
<td>415.3</td>
</tr>
<tr>
<td>1994-95</td>
<td>131.4</td>
<td>382.7</td>
<td>513.8</td>
</tr>
<tr>
<td>1995-96</td>
<td>214.4</td>
<td>274.8</td>
<td>189.2</td>
</tr>
<tr>
<td>1996-97</td>
<td>282.1</td>
<td>331.2</td>
<td>613.3</td>
</tr>
<tr>
<td>1999-2000</td>
<td>215.5</td>
<td>302.6</td>
<td>518.8</td>
</tr>
<tr>
<td>2000-2001</td>
<td>233.9</td>
<td>276.0</td>
<td>509.1</td>
</tr>
<tr>
<td>2001-2002</td>
<td>390.4</td>
<td>202.1</td>
<td>592.2</td>
</tr>
<tr>
<td>2009-2010</td>
<td>11.2</td>
<td>22.2</td>
<td>892.0</td>
</tr>
<tr>
<td>2010-2011</td>
<td>15.2</td>
<td>25.8</td>
<td>615.0</td>
</tr>
<tr>
<td>2011-2012</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

As a result of liberalization, foreign collaborators were more interested in portfolio investment. The industrywise permissions of FDI indicate that for the period of 2001-2012, 39% investment was allowed in the primary sectors. Power sector was given top priority with 15.6% while 10.8%, 5.6% and 4.6% went to oil refineries, mining and chemicals respectively. Foreign collaboration is vital for technology transfer.
1.3.2 Parts of various industries of Foreign Appropriation Agreements in technology transfer

From the viewpoint of technology transfer, under FDI the high priority industries such as capital goods, telecommunications and computer software hold a high place with 7.5% portion. Since the data of actual inflow are not available so it is difficult to state whether our aspirations are being transformed into reality or not. It is also possible that several deformities arise on the level of execution. The Industrial Development Research Institute revealed that the industrial machinery was a mere 1.4% of total permissible investment. After the exemption in custom duties on capital goods, the foreign investors would have thought it more beneficial to export machineries to India rather than producing them here. It was also seen that the area of technology transfer was also neglected in this sector. Because of the policy of liberalization of areas reserved for public sector, the exemption from industrial license was the only policy related decision that affected the regional FDI. In August 2008-2011, the FDI in technology transfer was 15.3% of total permissible limit, 13.1% on capital goods and machinery, and 49.1% on infrastructure. The government of India though allowed more than 50% FDI in 2011.

For instance –
Recently, Hindustan Lever took the ownership of several Indian companies (including Brooke Bond, Lipton, Tata Oil Mills and others) and formed an accessory firm called Unilever. Since the investment in accessories is not included in the permissible investments, these statistics don’t actually reflect this firm’s total capacity to affect the Indian market.

Table 2
Parts of various industries of Foreign Appropriation Agreements in technology transfer
(August 2008-2011)

<table>
<thead>
<tr>
<th>Sl.</th>
<th>Industry/ Oil</th>
<th>Number Permitted</th>
<th>Permitted amount In Crore Rs.</th>
<th>Total Appropriation %</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Primary commodities</td>
<td>2459</td>
<td>1,07,576</td>
<td>38.8</td>
</tr>
<tr>
<td>A</td>
<td>Power</td>
<td>353</td>
<td>43,359</td>
<td>15.7</td>
</tr>
<tr>
<td>B</td>
<td>Oil refineries</td>
<td>373</td>
<td>30008</td>
<td>10.8</td>
</tr>
<tr>
<td>C</td>
<td>Chemicals</td>
<td>1713</td>
<td>12734</td>
<td>4.6</td>
</tr>
<tr>
<td>D</td>
<td>Mining and metallurgy</td>
<td>681</td>
<td>15403</td>
<td>5.6</td>
</tr>
<tr>
<td>2</td>
<td>Capital goods</td>
<td>6538</td>
<td>25117</td>
<td>9.0</td>
</tr>
<tr>
<td>A</td>
<td>Transport industry</td>
<td>1172</td>
<td>9456</td>
<td>3.4</td>
</tr>
</tbody>
</table>
1.3.2 Limit of various ownerships of Foreign Appropriation Agreements in technology transfer

The ownerships of Foreign Appropriation Agreements in technology transfer were extended in power and infrastructure sectors. As a result foreign investments grew in size. There would be monopoly of big collaborators in foreign investments and the success of Foreign Appropriations would be measured by the size of the proposals. Under the Foreign exchange Act up to 40% equity ownership was permitted to foreign investors. It acted as a deterrent to foreign firms looking to hold main positions in the industry. After the declaration of the industrial policy of 1991, the limit was extended to 51%. Later in 1997 it was even further extended to 74%. It was made 100% for NRI’s. In case of the industries involving higher technology and export-based ones, the government can allow up to 100% foreign ownership.

There are two types of financial and technical collaborations –
1. Technical permissions, in which payment has to be made for technology.
2. Financial collaborations in which capital has to be invested in an existing or new firm. The Foreign Investment Promotion Board gives permission for the industries worth upto Rs. 600 Crores. For a bigger investment permission has to be acquired from the cabinet ministry. In financial appropriations and actual inflow, USA held the top spot with 20.4% of total permissions. NRI’s hold the second spot while countries that follow are Japan, Germany, UK, Nederlands, South Korea, France and Singapore. The number of technical collaborations was 1083 in 2006 and it fell down to 744 in 2006. A tendency to convert technical collaborations into...
financial collaborations was seen through measures of transference. During 2005-2010 the direct payment for buying technology grew seven-fold and this growth continued in 2011 (Rs. 7198 crore that was Rs. 1980 Crore more than that of 2010).

1.4 Analysis of technology transfer policy with foreign cooperation

The supporters of liberalization who had held the view of allowing maximum foreign collaboration came up with the logic that the days of East India Company were over. The collaboration through multinational corporations and accessory companies was a kind of slavery. When we compare foreign collaboration in countries like China, Brazil and Mexico etc. we realize that India holds a very small share. Technology transfer is possible in India only when the developed multinational corporations make FDI here. Although the critics of this view don't refute these advantages, but the truth remains that there are several aspects of FDI which gravely affect the public welfare and national sovereignty. One would have to seriously consider these aspects. The total FDI for all developing nations was $204.8 billion in 2002 as compared to $51.1 billion in 1991. The Indian share in FDI grew from 0.5% of 1992 to 1.7% in 2001. In comparison the share of China grew from 21.8% to 22.9% (amounting to $46.8 billion. The Indian share was a paltry $3.40 billion in comparison). Despite offering a red carpet for the foreign investors, India could hardly benefit from them.

Table – FDI in Technology Transfer (in $ Crore)

<table>
<thead>
<tr>
<th>Country</th>
<th>2002</th>
<th>2005</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>China</td>
<td>1115.6</td>
<td>3584.6</td>
<td>4684.1</td>
</tr>
<tr>
<td>India</td>
<td>23.3</td>
<td>214.4</td>
<td>340.3</td>
</tr>
<tr>
<td>Indonesia</td>
<td>177.7</td>
<td>434.6</td>
<td>-327.7</td>
</tr>
<tr>
<td>South Korea</td>
<td>72.7</td>
<td>135.7</td>
<td>319.8</td>
</tr>
<tr>
<td>Malaysia</td>
<td>518.3</td>
<td>581.6</td>
<td>55.4</td>
</tr>
<tr>
<td>Philippines</td>
<td>22.3</td>
<td>145.9</td>
<td>179.2</td>
</tr>
<tr>
<td>Thailand</td>
<td>211.4</td>
<td>200.0</td>
<td>375.9</td>
</tr>
<tr>
<td>India’s ratio</td>
<td>0.5</td>
<td>0.9</td>
<td>1.7</td>
</tr>
</tbody>
</table>

1.4.1 Agreed one-time payment for buying technology

<table>
<thead>
<tr>
<th>Year</th>
<th>Rs. in Crore</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001</td>
<td>980</td>
</tr>
<tr>
<td>2002</td>
<td>22281</td>
</tr>
</tbody>
</table>
The technical collaboration fell from 982 to 744 in 2006. A tendency to convert technical collaborations into financial collaborations was seen through measures of transference. During 2005-2010 the direct payment for buying technology grew seven-fold and this growth continued in 2011 (Rs. 7198 crore that was Rs. 1980 Crore more than that of 2010). The portfolio investment in India is a kind of unsettled currency that can migrate at one unfavourable signal from the market. Therefore it would be a mistake to consider portfolio investment as a stable factor for growth.

1.4.2 Economic and Technical Collaboration

Economic and Technical Collaboration is provided in technology transfer in two ways – Technical permissions, in which payment has to be made for technology. And financial collaborations in which capital has to be invested in an existing or new firm. The NRI’s are superior to all other countries and count for 91% of actual inflow. Mauritius comes after this with a 53% ratio. West Germany, Japan, U.K., Italy, France and Switzerland follow in the list. The foreign exchange deficit has risen to Rs. 1600 Crore. Expenditure on foreign trips etc for technology transfer has also risen by Rs. 180 Crore to Rs. 500 Crore. Therefore foreign collaboration has no direct and positive relation with import and export. It is clear that if increase in export is the main aim, the foreign collaboration should be more selective.

1.5 Summary

Agreements can be made for technology transfer in India if technically advanced multinational corporations make bigger FDI’s. Although the critics of this view don’t refute these advantages, but the truth remains that there are several aspects of FDI which gravely affect the public welfare and national sovereignty. One would have to seriously consider these aspects. India’s share in present FDI is 1.7% which might possibly rise to 2% in 2015. Massive inflow of foreign investment would help our foreign reserves grow and empower our own currency. This process strengthens the inflation tendencies of prices. After their entrance in Indian companies through technology transfer, the multinational corporations keep increasing their capital and establish their superiority. Thus gradually
several national companies have been completely taken over by these multinational corporations, thus completely reversing the process of Indianization of corporations which was begun by Jawahar Lal Nehru. The Indian private sector has suffered a setback as a result. This is why the Indian industrialists have complained to the Indian government against its partisan policies through which foreign investment is being invited at the cost of national capital. Recently the multinational corporations have decided to extend their business in India through accessory companies with total ownership. This is currently being done at the cost of existing established and accessory companies. The technology transfer that would be done in this matter would make India a prosperous state with public welfare on its main agenda. The multinational companies have managed to increase their share in the Indian market by offering huge discounts. For doing so they promised that for being granted priority-based allocation in the market they would bring in new capital and state of the art technology. They also promised that the partner Indian companies would be provided all help in the competitive market to ensure their quick growth. This trick of keeping the Indian firms directly away from the market, the multinational companies have caused immense damage to the interest of the nation. The more important fact to be noted here is that the more attractive and lucrative business has been transferred to total ownership and accessory companies. This brought the accessory companies with total ownership and related companies with 51% equity face-to-face resulting in the multinational companies acquiring major shares of the related companies. The minority Indian partners were left powerless to fight against this injustice. The Indian industrialists feel that this new trick is robbery in daylight because the multinational companies intend to make profit on established brand names. The process of the migration of foreign currency would be swift in India therefore the The Securities and Exchange Board of India and the Reserve Bank of India should take preventive measures against these.

It can thus be said that the multinational companies should be allowed capital inflows for technology transfer but not at the cost of nation’s interest. The government should adopt selective policies rather than open ones.

1.6 Important Terminology

1. Permissive Clauses – Agreements permitted by both Indian government and international corporations.
2. Employer – Owner
3. Technology transfer – Handing over of technological knowledge
4. Non Resident Indian (NRI) – An Indian Citizen who stays abroad for employment/ carrying on business or vacation outside India or stays abroad under circumstances indicating an intention for an uncertain duration of stay abroad is a non-resident

1.7 Practice questions

1. What are the objectives of technology transfer in India?
2. What was the need for technology transfer in India?
3. Elaborate the increasing effect of technology transfer in Indian economy?

1.8 Reference Books

1. मनोरमा वार्षिक पत्रिका – 2012
2. मार्गदर्शन अर्थव्यवस्था – संपादित एवं पूरी
3. भारत सरकार आर्थिक समीक्षा – 2010-11
4. मार्गदर्शन अर्थव्यवस्था – आनन्द शुक्ला

1.9 Useful study materials

1. प्रतियोगिता दर्पण आर्थिक समीक्षा
2. पटना वार्षिक 2012
3. पटना सार वार्षिक संकेत 2012

1.10 Essay type questions

1. Evaluate the policies of technology transfer with foreign collaboration.
2. Explain foreign appropriation and actual inflow in technology transfer.
3. Explain the size, distribution and foreign ownership in the permissions for technology transfer.
Unit Construction

2.1 Introduction

2.2 Objectives

2.3 Investment in India, Foreign Aid and Economic growth of India
   2.3.1 Need for foreign capital
   2.3.2 Foreign Investment Policy
   2.3.3 Growing Foreign Aid in Indian Economy

2.4 FDI and investments by NRI’s in foreign countries
   2.4.1 India becoming richer by FDI and investments by NRI’s
   2.4.2 Five year plans of Foreign Aid and the Effect of Foreign Aid on Economic Growth

2.5 Summary

2.6 Important Terminology

2.7 Answers to Practice Questions

2.8 Books for Reference

2.9 Reference/ Useful Material

2.10 Essay Type Questions
2.1 Introduction

India is a developing nation where there is shortage of sufficient capital for economic growth. Foreign capital is required to tackle this shortage. Foreign capital is acquired in the form of subsidized and non subsidized aid and foreign investments. Grants and long term loans on low interest rates are considered subsidized foreign aids, while commercial loans, loans acquired at market rates and savings of NRI's are treated as non subsidized aids. Apart from these different Indian companies make technical agreements with foreign companies or foreign industrialists invest their money in India. This brings developed technology, modern machinery and expert services in the country. The production and productivity of Indian industries rises as a result. Foreign capital has become necessary to completely utilize India's resources. Once the industries are set up like this, the domestic savings are also channelized in their direction. Huge amount of primary investments are required to eradicate poverty and that cannot be generated only through domestic resources. The shortage can be met with foreign help. After independence; foreign capital was not given much importance because Indians were well acquainted with the exploitative tactics of the British. But the proposal for Industrial Policy in 1948 accepted the importance of foreign capital. It was realized that the permanence and management of foreign aided industries should always stay in Indian hands. Foreign experts of technology were invited not only to set up production but also to impart training to technicians. The Indian government promised the foreign industrialists that there would be no discrimination between Indian and foreign capitals. And that they would be provided with ample opportunities for growth and in the event of nationalization of industries, they would be provided sufficient compensation. In 1972, the Indian government gave permission to the foreign companies with total ownership to set up 100% export-oriented units. Thus India encouraged foreign investment in the country but the Janta Party government reversed this policy. It declared that it would end any foreign capital partnership in those industrial sectors wherever Indian capital and expertise were available. Foreign capital would only be invited for higher technology and machines. Foreign capital was banned from consumer items and as a result the government ordered Coca Cola Company and IBM to wind up their business from India. In the Industrial Policy of 1991, the liberal policy of the government permitted foreign investment up to 51% (from the earlier 40%) and upto 100% in Electricity sector. In the 34 high-priority sectors 515 foreign investments were allowed. Indian companies were given conditional
permission for technology transfer with foreign companies. In the Indian equity markets, the current government granted permission to Qualified Foreign Investors (QFI’s) to invest directly. RBI and SEBI issued detailed guidelines on 13 January 2012 in accordance with FEMA, 1999 –

- The government did so to broaden the group of such investors, attract more foreign capital, reducing market instability and strengthening Indian capital market.
- Accordingly, the amended definition for QFI is as follows - QFI shall mean a person who fulfils the following criteria: Resident a country that is a member of Financial Action Task Force (FATF) or a member of a group which is a member of FATF and Resident in a country that is a signatory to IOSCO’s MMOU (Appendix A Signatories) or a signatory of a bilateral MOU with SEBI.

In the current scenario increased foreign investment would remove all hindrances to development.

2.2 Objectives

Indian Planning Policy was based upon maximum development of public sector. The Indian economy had been so much exploited before independence that its revival and re-establishment was a very tedious task. The private sector of the country was neither efficient nor wilful to improve these conditions, therefore development was only possible through public sector. Indian economy had become so weak during the British era that the tendency to invest in productive activities had almost diminished completely. For India’s first Prime Minister Nehru, the public sector was the mortar of growth. It had to seize the commanding heights. But the private sector, he once told the Lok Sabha, “has a very important task to fulfil provided always that it works within the confines laid down and provided always that it does not lead to the creation of monopolies and other evils that the accumulation of wealth gives rise to.” There is scope for both public and private sectors to work together in a developing economy undergoing partition. The public sector should leap forward both absolutely as well as relatively in comparison to the private sector. Indian economy is a mixed economy which adopted the middle path between capitalism and socialism and endeavoured to develop both private and public sectors. In public sector the central government adopted the policy of 71.9% investment, 27.4% in service sector and 0.5% in company sector. The public sector undertakings are considered to be the backbones of economy in India. These undertakings would only
become stronger when foreign investments are there, therefore the FDI and investment by NRI’s would be vital for Indian economy in the current context.

2.3 Investment in India, Foreign Aid and Economic growth of India

The liberal considerations of the Indian government towards foreign investment in India were visible for the first time when the Industrial Policy 1991 was presented in the parliament. The government exceeded the limit of foreign investment in industrial units from 40% to 51%. Provision was made for 100% investment in export-oriented units. 515 foreign investments were automatically permitted in 34 high-priority industries. Foreign investment upto 51% was also permitted in hotel and tourism industry. The condition of bringing modern technique alongwith foreign investment was also exempted. The Indian companies were granted permission to acquire technology on their conditions in order to attract foreign investment. Simultaneously it was provided that the Indian companies did not have to seek the government’s permission to acquire services of foreign experts. The maximum foreign investment in all five-year plans was seen in the seventh plan.

2.3.1 Need for foreign capital

For economic growth, in the global industrial development all the developing nations have to be dependent upon foreign aids to some extent. England is an exception. The extent of this dependence has varied according to the limit of moving national resources, the economic conditions from technological viewpoint and the intentions of the respective governments of the countries. Foreign capital has played an important role in economic growth and industrialization. A developing country like India always faced a shortage of capital. Need for capital grew swiftly in order to enhance the speed of development. There weren’t sufficient savings and only foreign capital could compensate for this. This shortage is of two types. One is related to the shortage of internal savings. The other is related to the payment of deficit. The first one depends upon the estimated rate of development and if there are not enough internal savings, it is called shortage of capital. It becomes necessary to take foreign loans and grants to some extent in order take care of this shortage. Import and export estimations are made on the basis of current growth rate of productivity.
The other is related to the payment of deficit and is met up with through loans and grants. It is not necessary that both types of shortages exist simultaneously because they can be met up with through withdrawals from foreign currency reserves. India is treated as a developing nation that needs foreign investments. Since the foreign capital has to be returned with interest, no country that can manage domestic resources doesn’t want to be dependent upon foreign aid. Thus any nation that takes international loans comes under the yoke of high interests. It is for this reason that the future acquisition of foreign loans is indirectly mortgaged. It becomes mandatory for the developing nations to acquire foreign loans because development is not possible without them. But there are following justifications for this –

a. More investment can be done than is possible within the constraints of national savings. Savings are incorporated in the economies of developing nations, therefore it seems justified that foreign loans are acquired to enhance domestic savings.

b. It becomes difficult to manage domestic savings for arranging investments for the projects of economic growth. In the initial phases of economic development the capital market itself is underdeveloped. When the capital market begins growing in such periods, foreign capital is needed as a temporary resort.

c. Along with foreign capital the country acquires rare technological knowhow, business experience and knowledge. All these play a vital role in economic growth.

### 2.3.2 Foreign Investment Policy

In the Industrial Policy of 1991, it was decided that liberal attitude would be adopted towards foreign investments. As a result the central government permitted upto 51% of equity investment. The central government set up the Foreign Investment Promotion Board so that applications for foreign investments were immediately accepted. In 1992 the following measures were taken to ensure Direct Foreign Investment, Portpolio Investment and investment by NRI’s –

1. Foreign investment would be encouraged in high priority areas up to a limit of 51 per cent equity without previously mandatory conditions.

2. Under certain guidelines the foreign companies can increase their equity upto 51%. The permission was extended to oil, refinery and gas sectors.
3. NRI's and Overseas Corporate Bodies under their ownership were permitted 100% investment in high-priority industries. They would be permitted reversion of their capital and profits. The NRI's were permitted 100% investment in export houses, business houses, sick hospitals, hospitals and tourism industry etc. The NRI's were allowed to unconditionally hold residential property in India without the permission of the RBI.

4. India signed the Multilateral Investment Guarantee Protocol in order to protect the interests of foreign investors.

5. FERA – the Foreign Exchange Regulation Act was liberalized according to which companies with more than 40% foreign investment were considered equivalent to Indian companies with total ownership.

6. The foreign companies were allowed to use trademark in the matter of domestic sales. In 1997 the permissible foreign investment was raised to 74% for companies and 100% for NRI's.

2.3.3 Growing Foreign Aid in Indian Economy

In the initial stages of the five-year plans the importance of foreign capital was realized but not much attention was paid to it. It was decided that the limit of foreign capital would be not more than 49% and that the Indian collaborator would hold majority of shares. Foreign collaborating firms were also given priority. A prohibitive and selective policy was made by the government in the matter of foreign collaboration. As a consequence 2475 foreign collaborations were permitted during 1961-70 amounting to 311.5 million dollars (in 2010-11). After the 1980's the government adopted more liberal towards foreign collaborations especially towards oil-exporting nations. The policy was liberalized in other sectors too –

1. 40% foreign collaboration was permitted in technology transfer
2. NRI’s were allowed to invest in Indian industries
3. Private companies were allowed to operate in manufacturing of telecommunication instruments
4. Foreign companies were allowed to produce electronic goods.

In the decade of 1981-90 USA holds the highest spot with an investment of Rs. 323 Crore. It is the ¼ of total foreign investment. The other following countries are West Germany, Japan, U.K., Italy, France and Switzerland. These countries provided 63% of the investment while the NRI's contributed Rs. 113 Crore (8.9%).
After the declaration of the Industrial Policy 1991, the inflow of foreign investment has gained speed. The statistics provided by economic survey, India received total $311.1 billion in 2010-12, of which the maximum had been contributed by Mauritius. The remaining $67.3 Billion were received as portfolio investment. It points at the fact that the foreign collaborators were more interested in portfolio investment rather than FDI. Of the $21.7 billion of FDI, 5.8% i.e. $2.5 billion were invested by Non Resident Indians (NRI's). Thus of the total foreign collaboration, the FDI was only 42.5%.

**Table – FDI - Applicable actual inflow**

<table>
<thead>
<tr>
<th>Year</th>
<th>Permitted amount (in Crore Rs.)</th>
<th>Actual inflow</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1991</td>
<td>534</td>
<td>351</td>
<td>65.0</td>
</tr>
<tr>
<td>1992</td>
<td>3,888</td>
<td>675</td>
<td>17.5</td>
</tr>
<tr>
<td>1997</td>
<td>28,767</td>
<td>16,868</td>
<td>59.5</td>
</tr>
<tr>
<td>2000</td>
<td>37,037</td>
<td>19,342</td>
<td>52.2</td>
</tr>
<tr>
<td>2001</td>
<td>26,875</td>
<td>19,265</td>
<td>71.7</td>
</tr>
<tr>
<td>2002</td>
<td>11,140</td>
<td>21,286</td>
<td>191.1</td>
</tr>
<tr>
<td>Total</td>
<td>284,812</td>
<td>1,29,838</td>
<td>45.6</td>
</tr>
</tbody>
</table>

The central government had allowed FDI of 39% in primary sector (including mainly 10.8% for oil refineries and 5.61 for iron alloys etc). FDI in telecommunications and computer software was 6.81% and 20% respectively.

**Table - Shares of various industries of Foreign Appropriation Agreements in technology transfer (August 2008-2011)**

<table>
<thead>
<tr>
<th>Sl.</th>
<th>Industry/ Oil</th>
<th>Number Permitted</th>
<th>Permitted amount (in Crore Rs.)</th>
<th>Total Appropriation %</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Primary commodities</td>
<td>2,459</td>
<td>1,07,576</td>
<td>38.8</td>
</tr>
<tr>
<td>A</td>
<td>Power</td>
<td>357</td>
<td>43,359</td>
<td>15.7</td>
</tr>
<tr>
<td>B</td>
<td>Oil refineries</td>
<td>373</td>
<td>30,008</td>
<td>10.8</td>
</tr>
<tr>
<td>C</td>
<td>Chemicals</td>
<td>1,713</td>
<td>12,734</td>
<td>4.6</td>
</tr>
<tr>
<td>D</td>
<td>Mining and metallurgy</td>
<td>681</td>
<td>15,403</td>
<td>5.6</td>
</tr>
<tr>
<td>2</td>
<td>Capital goods</td>
<td>6,538</td>
<td>25,117</td>
<td>9.0</td>
</tr>
<tr>
<td>A</td>
<td>Transport industry</td>
<td>1,172</td>
<td>9,456</td>
<td>3.4</td>
</tr>
<tr>
<td>B</td>
<td>Electric appliances</td>
<td>1,661</td>
<td>5,963</td>
<td>1.2</td>
</tr>
<tr>
<td>C</td>
<td>Electronics</td>
<td>985</td>
<td>32,28</td>
<td>1.2</td>
</tr>
<tr>
<td>D</td>
<td>Others</td>
<td>3,220</td>
<td>6,470</td>
<td>2.3</td>
</tr>
<tr>
<td>3</td>
<td>Goods</td>
<td>6,172</td>
<td>1,02,928</td>
<td>37.1</td>
</tr>
</tbody>
</table>
Under the provisions of FERA the limit for ownership of foreign investment was kept to 40% which was successively raised to 51% and 74% in 1991 and 1997 respectively. It was raised to 100% for NRI’s.

2.4 FDI and investments by NRI’s in foreign countries

USA holds the top place in FDI in India with Rs. 6,528.5 Crore while South Korea is second with Rs. 2243.0 Crore.

Table – FDI between 1991-2000 in India and Actual percentage

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Country</th>
<th>Permissible Total %</th>
<th>Total Actual Inflow</th>
<th>Inflow Percentage</th>
<th>3.15 %</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>USA</td>
<td>50379</td>
<td>20.4</td>
<td>10.9</td>
<td>19.2</td>
</tr>
<tr>
<td>2</td>
<td>Mauritius</td>
<td>29832</td>
<td>11.9</td>
<td>15,596</td>
<td>53.2</td>
</tr>
<tr>
<td>3</td>
<td>UK</td>
<td>16388</td>
<td>6.6</td>
<td>2485</td>
<td>15.2</td>
</tr>
<tr>
<td>4</td>
<td>Japan</td>
<td>9935</td>
<td>4.0</td>
<td>3651</td>
<td>36.7</td>
</tr>
<tr>
<td>5</td>
<td>S.Korea</td>
<td>9731</td>
<td>3.9</td>
<td>2168</td>
<td>22.3</td>
</tr>
<tr>
<td>6</td>
<td>Germany</td>
<td>8497</td>
<td>3.4</td>
<td>2685</td>
<td>31.6</td>
</tr>
<tr>
<td>7</td>
<td>Australia</td>
<td>6617</td>
<td>7.7</td>
<td>290</td>
<td>4.4</td>
</tr>
<tr>
<td>8</td>
<td>Malaysia</td>
<td>5576</td>
<td>2.3</td>
<td>197</td>
<td>3.5</td>
</tr>
<tr>
<td>9</td>
<td>France</td>
<td>5238</td>
<td>2.1</td>
<td>1365</td>
<td>24.1</td>
</tr>
<tr>
<td>10</td>
<td>Nederland</td>
<td>4700</td>
<td>1.9</td>
<td>2898</td>
<td>31.9</td>
</tr>
<tr>
<td>11</td>
<td>Italy</td>
<td>4555</td>
<td>1.8</td>
<td>1507</td>
<td>33.0</td>
</tr>
<tr>
<td>12</td>
<td>Singapore</td>
<td>4483</td>
<td>1.8</td>
<td>1327</td>
<td>29.0</td>
</tr>
<tr>
<td>13</td>
<td>NRI’s</td>
<td>9534</td>
<td>3.9</td>
<td>8656</td>
<td>90.8</td>
</tr>
<tr>
<td>All</td>
<td>246798</td>
<td>100.0</td>
<td>89,297</td>
<td></td>
<td>36.2</td>
</tr>
</tbody>
</table>

The supporters of liberalization who had held the view of allowing maximum foreign collaboration came up with the logic that the days of East India Company were over. The collaboration through multinational corporations and accessory companies was a kind of slavery. When we compare foreign collaboration in countries like China, Brazil and Mexico etc. we realize that India holds a very small share.
Table – India’s share in FDI (1999-2001, in Crore US Dollars)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>China</td>
<td>11,156</td>
<td>3584.9</td>
<td>4684.1</td>
</tr>
<tr>
<td>India</td>
<td>23.3</td>
<td>214.4</td>
<td>340.3</td>
</tr>
<tr>
<td>Indonesia</td>
<td>1777</td>
<td>434.6</td>
<td>327.7</td>
</tr>
<tr>
<td>S. Korea</td>
<td>77.7</td>
<td>135.7</td>
<td>319.8</td>
</tr>
<tr>
<td>Malaysia</td>
<td>518.3</td>
<td>581.6</td>
<td>55.4</td>
</tr>
<tr>
<td>Philippines</td>
<td>22.8</td>
<td>145.9</td>
<td>179.2</td>
</tr>
<tr>
<td>Thailand</td>
<td>211.4</td>
<td>200.0</td>
<td>375.9</td>
</tr>
<tr>
<td>India’s share</td>
<td>0.5</td>
<td>0.9</td>
<td>1.7</td>
</tr>
</tbody>
</table>

**Multinational corporations in India –**

Multinational corporations are companies whose business extends in many countries. They have their headquarters in one country. Their business activities include factories and sales outlets in various countries. Their dominance is visible on the economic activities of the whole world. According to USA 70% of the total global business is controlled by 500 multinational corporations. Besides they hold 30% of the total domestic produce and 80% of total foreign investment. There is a network of multinational corporations in India. India does manage to get necessary capital from foreign countries but the foreign companies themselves manage the capital from other countries. These Multinational corporations don’t bring along capital themselves but generate it from India. In recent years India signed agreements with multinational corporations mainly from USA, Japan, Germany and UK. These agreements are based more upon foreign collaboration for industrial machinery and chemical transport.

**2.4.1 India becoming richer by FDI and investments by NRI’s**

Any external contribution for the process of national growth is termed foreign capital. This capital is of three types –

1. **Subsidized Aid** – this includes grants and low-interest loans. This type of aid is either bilateral or multilateral. These loans have to be generally repaid over a long period of time. In some instances the creditor countries allow loans to be paid back in their own currency.
2. **Non – subsidized Aid** – these include loans taken from foreign nations, organizations and agencies on market interest-rates. These also include investments by NRI’s
3. Foreign Investment – Capital inflow from one nation to other is called Foreign Investment. It is of two types – (a) FDI (b) Portfolio Investment.

FDI is considered the best because it brings along technical knowhow, machines and capital goods etc. In portfolio investment, capital is invested in a company through a secondary market. Before 1991, the Indian government emphasized on taking loans for the purpose of meeting the budget and payment control deficit. But after the economic crisis of 1991 India adopted liberal economic policies to attract more and more FDI and Portfolio Investment. The investors were provided the following facilities – 19 proposals of FDI were accepted through which Rs. 726.88 Crore were to be invested. Among these a 26% share of Global Broadcast News (GBN), a subsidiary of Network 18, amounting to Rs. 500 Crore is worth mentioning. A company from Cyprus was allowed 5% equity worth Rs. 10.61 Crore in Delhi Stock Exchange. The British company Milbro was allowed to extract crude jetropha oil through a subsidiary with an investment of Rs. 200 Crore.

India prospering from the capital of NRI’s –

In the year 2010-11 the total money sent by the NRI’s has grown to roughly 5 billion Dollars. The business of bringing in foreign money is growing at a rate of 15% per annum. In the industrial sector alone, as much as 12 billion dollars came to India from USA in the year 2008-09. According to the latest data provided by the Ministry of Finance the total foreign loan on India at the end of September 2007 was 190.5 Billion Dollars. This increase was mainly because of external commercial debts, increased multilateral loans and NRI deposits.

RBI’s permission for higher investments in foreign countries – The RBI has increased the limit of investments in foreign countries for NRI’s from $1,00,000 to $2,00,000. This investment can be made in foreign share markets etc. Besides, Mutual Funds have also been allowed investments in foreign countries of up to five billion dollars. The RBI has also permitted Indian companies to make investments in foreign countries. Under this provision they are allowed to invest up to 400% of their net worth through automatic route in the 100% shareholding subsidiaries located in foreign countries. Partnership companies registered in India would also benefit from this. The government has also permitted the Indian companies enlisted in foreign share markets to make up to 50% of their net worth as portfolio investment, which was limited to 35% earlier. In order to reduce the burden of increasing foreign exchange debt, the RBI also assisted domestic companies to pay back their costly commercial debts before stipulated time. Now the companies can pay back up to $50 Crore of E.C.B. before time. This limit was $40 Crore earlier.
National Investment Fund –
The Government of India constituted the National Investment Fund (NIF) on 6 October, 2007 into which the three leading mutual fund management companies namely U.T.I., Asset Management S.B.I. Fund Management and L.I.C. Mutual Fund and Asset Management were included as operators. The total capital of Rs. 994.82 Crore gained from Power Grid Corporation of India was handed over to thirty companies. The profit from central public sector undertakings was made part of the fund. This fund would be managed separately from the state fund. The above three companies would manage the investment fund. 75% of the annual income of the Fund will be used to finance selected social sector schemes, which promote education, health and employment. The residual 25% of the annual income of the Fund will be used to meet the capital investment requirements of profitable and revivable CPSEs that yield adequate returns, in order to enlarge their capital base to finance expansion/diversification.

Loan and Aid in Foreign Business – increasing burden of foreign loan.

There has been an increase in foreign business, aid and loans. In the second half of the financial year 2011, the burden of foreign loan was 326.6 Billion Dollars, which showed an increase of 306.4 Billion Dollars (6.6%) compared to march 2011. This increase was due to high interest rate commercial credits and short term loans. The combined effect of these two was in the form of more than 80% of the total increase.

2.4.2 Five year plans of Foreign Aid and the Effect of Foreign Aid on Economic Growth

Foreign aid is acquired in three ways – loans, grants and public law aid. Upto 1979-80, India received 76% of total aid as loan, 11% as grants, 14% as P.L. Aid 480/485. The famines of 1965-66 and 1996-96 forced the government to seek food-aid. During the fourth five-year plan, there was an increase in foodgrain production because of the green revolution, thus making the country self sufficient in foodgrains. During the sixth 5-year plan between 1980-81 to 1984-85, the share of grants remained only 16%, although the average annual aid went up to Rs. 4500 Crore while which was just Rs. 2180 Crore during the sixth 5-year plan. Thus the aid inflow became more than double. An increase has been seen during the ninth 5-year plan too. More than 90% aid was acquired through loans. Thus the country has to suffer the burden of both capital and interest.
Table – foreign Aid in India during the 5-year plans -

<table>
<thead>
<tr>
<th>5-year plan</th>
<th>Loan</th>
<th>Grant</th>
<th>B.L. 480/665</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>6th 5-year plan 1980-81 to 1984-85</td>
<td>9,123 (83.7)</td>
<td>1780 (16.3)</td>
<td>-</td>
<td>10,963</td>
</tr>
<tr>
<td>7th 5-year plan 1985-86 to 1989-90</td>
<td>20,120</td>
<td>2,580</td>
<td>-</td>
<td>28,700</td>
</tr>
<tr>
<td>1990-91</td>
<td>16,860</td>
<td>1853</td>
<td>-</td>
<td>18317</td>
</tr>
<tr>
<td>8th 5-year plan 1992-93 to 1996-97</td>
<td>51,813</td>
<td>4831</td>
<td>-</td>
<td>56648</td>
</tr>
<tr>
<td>9th 5-year plan 1997-98 to 2001-02</td>
<td>66136</td>
<td>5065</td>
<td>100.00</td>
<td>71201</td>
</tr>
</tbody>
</table>

The main help providers were USA, UK, Germany, Japan and Asian Development Bank.

**Effect of Foreign Aid on Economic Growth –**

A reasonable utilization of foreign aid and the efforts of the recipient country and its resources govern the fact as to what extent foreign aid can help in economic growth and production capacity. Foreign aid does generate possibilities of development on a large scale.

Aid received in the form of consumer goods can work as a solution for capital generation in inland resources. Therefore it is worthwhile to remember that foreign aid helps in increasing a country’s productivity.

1. Foreign aid helps enhance the level of investment – the investment rate at the beginning of the first five-year plan was 5% of national income which grew to 25%. With the above growth in investment, India had no choice but to increase foreign capital investment as well, but that was beyond our national resources. The country has been facing a foreign exchange crisis since 1972-73 onwards. Given the shortage of foreign exchange deficit, it seems impossible for the country to come out of the crisis.

2. Utilization of aid for stabilizing food prices and importing raw material – little less than the total received aid was used for stabilizing food prices and importing foodgrains. This has played a vital role in keeping food prices stable and making the country efficient to face famines. A part of the aid was spent in importing raw material and spare parts for industries. This helped India’s production grow in size.

3. Utilization of aid for expanding irrigation and electricity – by helping develop the country’s irrigation facilities, foreign aid has played a key role in the field of agri-production. Same can be said about
modernization of dairy and fishery sector. With foreign aid, the country has made good progress in the electricity sector too.

4. Aid for transport sector, especially railways – 14% alone of the total aid received was utilized for transportation sector out of which 12% was spent on railways. It modernized the railways and during initial phases helped in acquiring new engines, compartments etc.

5. Aid in steel industry – foreign aid helped immensely in increasing production in the steel sector. More than 80% aid received for construction was spent on steel industry. USA and Germany were the biggest contributors.

6. Aid for technological resources – foreign aid has helped the technology sector in threefold ways – (i) Expert services (ii) Training for Indian workmen (iii) New academic researches in the country.

Problems with foreign aid -

1. Political pressure – There are many problems and limitations in India’s receiving foreign aid. The biggest problem arises from our over-dependence upon USA. There have been many instances when the governments had to mould their policies under foreign pressures. For instance USA threatened India of stopping any further aid if it didn’t bring an end to its nuclear researches.

2. Foreign aid and the problem of uncertainty – the problem of uncertainty is a big obstacle in welfare policies. It is necessary that the recipient country should be informed about how much aid it can expect from the donor country. If such information is provided in advance for a period of five years, planning becomes more convenient.

3. Problem of accommodating foreign aid – the third problem that developing countries face is that of accommodating foreign aid. The consumption capacity of a country depends upon several factors. The biggest factor that limits consumption capacity is a country’s capacity to repay current loans in future. Despite keeping this fact in mind, our country hasn’t generated enough export capacity. The situation is getting serious by the day. Such a case is a bane for any developing country.

4. Burden of foreign loans – During the 6\textsuperscript{th} five-year plan the total foreign loan was Rs. 4,809 Crore out of which 60% was paid on reducing the loan and 405 as interest. A dual effort has to be done in present circumstances to reduce the burden of foreign loans. At the time of receiving aid, India should sign agreements with donor nations for accepting lesser interest rates and for adopting more liberal trade policy in order to ensure convenient return of loans.
**Direct investment by QFI’s in Indian equity market –**

In the Indian equity markets, the current government granted permission to Qualified Foreign Investors (QFI’s) to invest directly. RBI and SEBI issued detailed guidelines on 13 January 2012 in accordance with FEMA, 1999. The government did so to broaden the group of such investors, attract more foreign capital, reducing market unstability and strengthening Indian capital market. Accordingly, the amended definition for QFI is as follows - QFI shall mean a person who fulfils the following criteria: Resident in a country that is a member of Financial Action Task Force (FATF) or a member of a group which is a member of FATF and Resident in a country that is a signatory to IOSCO’s MMOU (Appendix A Signatories) or a signatory of a bilateral MOU with SEBI.

**2.5 Summary**

Investment in India and FDI and the investment of NRI’s in foreign countries not only make India economically strong but also help other countries of the world prosper. The process of appropriation is related to increasing international trade, enhancing import-export and exchanging such technologies that would be helpful in global industrial growth. Foreign investment would definitely bring improvement in India’s Industrial Policy and revive sick units. The process of investment in India would inspire competition which in turn would result in more production and more opportunities for employment. India’s industrial sector will become stronger and the country would gain an important place on the global industrial map. Therefore the process of investment is necessary and useful.

**2.6 Important Terminology**

1. Appropriation – Investment
2. Equity – Partial capital
3. Developing nations – Nations that are not fully developed
4. Portfolio Investment – A set of fiscal properties including shares, bonds, UTI certificates etc.

**2.7 Practice Questions**

1. Why did the need for foreign investment arise in India?
2. Write in short the Foreign Investment Policy
3. What is the proposed Direct Investment Policy for Q.F.I.’s in Indian equity markets?

2.8 Books for Reference

1. भारतीय अर्थव्यवस्था – डा० सुदर्शन एवं सुन्दरम
2. पुनिक गाइड प्रयाग
3. पटनाशा क्र
4. भारतीय अर्थव्यवस्था – डा० मिश्रा एवं पूरी

2.9 Reference/ Useful Material

1. ?kVuklkj
2. euksjek

2.10 Essay Type Questions

1. Explain in short Direct Foreign Investment and NRI’s investment in foreign countries.
2. Elaborate the manner of expenditure of foreign capital and NRI capital.
3. Clarify the effects of foreign aid on 5-year plans and economic growth rate.
Unit Structure

3.1 Introduction
3.2 Objective
3.3 Liberalization of insurance sector under Insurance regulatory Authority and Insurance regulatory and Development Act 1999
   3.3.1 Need and rationale of Telecom regulatory Authority 1997
   3.3.2 Rationale of Insurance regulatory and Development Act 1999
   3.3.3 Winding up of Insurance Companies
3.4 New Telecom Policy 2011
   3.4.1 Privatization through nationalization in insurance sector of India
3.5 Books for reference
3.6 Reference/ Useful Material
3.7 Essay Type Questions
3.1 Introduction

India has witnessed unprecedented development in the sectors of telecommunication and liberalization of insurance business. To exert control over these, Telecom regulatory Authority and Insurance Regulatory & Development Authority Act 1999 etc. were set up. Communication revolution started in India through sectors such as computers, robotics, telecommunication, telephone, cable TV and television. The communication technology globalized the world. Communication technology revolutionized daily life, industries, medicine, health, education, science, economy and agriculture in a big way. Through laws, policies, acts and Telecom regulatory Authority, control was exerted in this changing scenario. At the same time insurance business was liberalized through Insurance regulatory and Development Act 1999, thus bringing an end to the monopoly of L.I.C. in the general insurance sector. Insurance Regulatory and Development Authority was set up on the recommendations of Malhotra Committee.

3.2 Objectives

The main objective of the Telecom Regulatory Authority Act 1997 was to exert control and apply the new policies and regulations. It covers telecommunication projects, transmission, products, development and research in the field of telecommunication. It aims to exert control upon the revolutionary changes entering the products such as telephones, mobiles, computers, cellular radios and cinema etc. On the other hand the Insurance Regulatory and Development Authority seeks to protect the interests of insurance policy holders, regularizing and controlling the insurance business, ensuring the development of insurance sector and looking into all related matters thereof. Apart from this Insurance Act 1938, Life Insurance Act 1965 and General Insurance Business (Nationalisation) Act, 1972 were already in existence. Insurance Regulatory & Development Authority Act 1999 was brought into force on 1st July 2000 in whole of India. As a consequence of Insurance Regulatory & Development Authority Act 1999, the monopoly of L.I.C. was brought to an end and private companies were permitted to enter the sector. The above act ensured that all registered insurance companies had to operate within the confines mentioned therei
3.3 Liberalization of insurance sector under Insurance Regulatory Authority and Insurance Regulatory and Development Authority Act 1999

To protect the interests of insurance policy holders and improving the quality of insurance services the government of India passed the Insurance Regulatory and Development Authority Act in 1999. The main reason behind this step was opening the doors for private insurance companies. This was done with following factors in consideration –

1. It would open doors for competition in better consumer services, which in turn would result in better range, quality and price for the consumers.
2. Nationalized insurance industry generated huge business but it could not or very partially reach a major chunk of Indian population. Entry of new players would enhance the speed of life and general insurance.
3. Competition is growing fast among non-insurance economic sector. This involves commercial banks, mutual funds, merchant banks, leasing companies and other non-banking economic organizations. Therefore there seems to be no reason to keep the insurance sector closed.
4. Although workers’ unions and some other people are against opening the insurance sector, majority seems to be in the favour.
5. The present insurance companies are financially strong and have set up strong infrastructures. They also possess extensive professional talent, marketing and expertise. They thus are totally capable of competition.

A COMMITTEE was set up in 1993 under the chairmanship of R.N. Malhotra, former Governor of the Reserve Bank of India, to make recommendations for reforms in the insurance sector. The Malhotra Committee recommended introduction of a concept of “professionalisation” in the insurance sector to make out a strong case for paving the way for foreign capital. In its report submitted in 1994, the committee recommended, among other things, that:

- Private players be included in the insurance sector.
- Foreign companies be allowed to enter the insurance sector, preferably through joint ventures with Indian partners.
- The Insurance Regulatory and Development Authority (IRDA) are constituted as an autonomous body to regulate and develop the insurance sector.
The key objectives of the IRDA would include promotion of competition so as to enhance customer satisfaction through increased consumer choice and lower premiums while ensuring the financial security of the insurance market.

- Brokers representing the customer be brought in as another marketing and distribution channel, a practice prevalent in most developed markets.
- Raise the level of professional standards in risk management and underwriting and speed up settlement of claims.

Following the recommendations, The Insurance Regulatory and Development Authority IRDA was constituted as an autonomous body in 1999 and incorporated as a statutory body in April 2000. With the coming into force of the IRDA Act, 1999, the insurance industry was opened up to the private sector. While recommending liberalization of insurance industry the committee made sure that the process of opening was easy and peaceful so that no one faced unnecessary problems.

**The headings of the Insurance Regulatory and Development Authority Act 1999 are as follows –**

1. Elaboration of title
2. Definition
3. Organization
4. Duties, powers and operations of the authority
5. Powers of central government
6. Setting up of Insurance Advisory Committee

### 3.3.1 Need and rationale of Telecom regulatory Authority 1997

Adopting the policy of liberalization, the Ex-Prime Minister P.V. Narsimharao proposed in 1990 that to make the telecommunication industry more effective a Telecom regulatory Authority be set up, which was consequently done on 20 February 1997. Its prime objective was to allow private players in telecommunication industry with the condition that they also contribute within the framework of the Authority. It also aimed at spreading mobile technology service in telecommunication at a brisk pace. The government passed the telecommunication policy in 1994 in order to encourage foreign and direct domestic investments. A new postal service called Mass-mailing would be started. The government of India has set up a national task force for the development of technology and software.
India has gained new heights and unique place globally in telecommunication sector. Internationally speaking, India ranks third in IT development. The government set up the following institutions in the field of telecommunication –

1. MTNL was set up in 1986 which chiefly deals in telephone, mobile, telex, radio paging, video conferencing and wireless etc.
   BSNL was set up in 2000. World class internet services were offered in India in 1995 with E-Mail facility.

Technology Vision Document 2020 – In 1996, with the aim of transforming India from a developing nation to a developed one, the then Prime Minister H.D. Deve Gowda prepared a document relating to information technology. This document is known as the Technology Vision Document 2020. Technology would enhance India’s economic structure and therefore it can lay the foundation of the country’s future. The Telecom Regulatory Authority 1997 was set up with this objective in mind.

2. New policies of Telecom regulatory Authority of India (TRAI) – TRAI has recommended new ways of generating income and if the government follows these recommendations, it can come out of the financial crisis. TRAI advised some revisions and said that re-auction of old spectrums could generate as much as Rs. 3 Lakh Crore. TRAI also stated that the government should re-auction 800 and 900 MHz spectrums in order to collect appropriate costs. (i) the previous operators owned spectrums of 800 and 900 MHz which were twice faster than the 800 MHz spectrum. TRAI recommended re-auction of 800 and 900 MHz. TRAI believes that through this re-auction the government can generate Rs. 3 Lakh Crore in next four years.

3. Government generated Rs. 67,719 crore from the 3G-auction in 2010, while Rs. 38,000 crore were generated from the 4G WBA-auction.

4. TRAI believes that the time is ripe for the reform of telecommunication sector. TRAI says that it owns sufficient spectrum for these reforms. TRAI also issued a warning that if reforms were not done immediately; the country might have to wait for another 20 years.

5. Telecom operators have already opposed TRAI’s recommendations of re-auction. The operators have already warned to increase call-rates. Some foreign companies have threatened to wind up their
business from India in context of the re-auction of 2G spectrum. In such circumstances it would not be easy for the government to take up re-auctioning of 800 and 900 MHz spectrums.

**Duties of TRAI – provisions have been made for TRAI to perform the following duties –**

1. Developing an environment in the country that favours brisk development of telecommunication services.
2. Enforcing transparency policies in telecommunication services.
3. Guidelines of TRAI should be followed in DTH, tariffs, mobile number portability etc. – For encouraging telecommunications, the DTH and television services have also been incorporated under TRAI. Cost-effective tariff plans and mobile portability should be among the basic facilities provided to the consumers.
4. TRAI should try to globally connect the telecommunication sector – TRAI holds the right to direct all private and public players operating in telecommunication sector to follow its guidelines and to impose penalties in case of their violation. All the nations that are using telecommunication-policies would have to follow the guidelines provided by TRAI.
5. Setting up of Information Technology Park.

### 3.3.2 Rationale of Insurance Regulatory and Development Act 1999

The rationale behind of Insurance regulatory and Development Act 1999 is that a committee was set up in April, 1993 under the chairmanship of R.N. Malhotra, former Governor of the Reserve Bank of India, to make recommendations for reforms in the insurance sector. The Malhotra Committee recommended introduction of a concept of professionalization in the insurance sector to make out a strong case for paving the way for foreign capital and private sector. These recommendations were made because of the following reasons.

1. It would open doors for competition in better consumer services, which in turn would result in better range, quality and price for the consumers.
2. Competition is growing fast among non-insurance economic sector. This involves commercial banks, mutual funds, merchant banks, leasing companies and other non-banking economic organizations.
3. The insurance companies are financially strong and have set up strong infrastructures. They also possess extensive professional talent, marketing and expertise. They thus are totally capable of competition.

Making special recommendations for liberalization of insurance sector the committee said that -

1. The key objectives of the IRDA would include promotion of competition so as to enhance customer satisfaction through increased consumer choice and lower premiums while ensuring the financial security of the insurance market. The responsibility to prepare teams of better trained workmen and marketing officials is inclusive in this.
2. The insurance industry would have to emphasize upon self-control. It would also have to deal strictly with cases of forgery and misdealing. The initiative and image of IRDA would be a help in this.
3. IRDA would have to treat insurance companies of different statuses justly. Policy of selection would prove better here. For this purpose factors such as financial status, experience, expertise, fame and work-culture would have to be kept in mind.

The Insurance Regulatory Authority was set up in 1995. Among its main duties were – protecting the interests of the policy holder, regularizing and promoting the policy provider etc.

Main headings under the Insurance Regulatory and Development Authority Act 1999 –

1. This Act may be called the Insurance Regulatory and Development Authority Act, 1999.
2. It extends to the whole of India.
3. It shall come into force on 1 July 2000.
4. “Authority” means the Insurance Regulatory and Development Authority.
5. “Fund” means the Insurance Regulatory and Development Authority Fund constituted under sub- section (1) of section 16.
6. “Regulations” means the regulations made by the Authority.

Establishment and incorporation of Authority - An Authority shall be setup by the Central government on 1 July 2000 which would be called the
Insurance Regulatory and Development Authority. The Authority shall be a body corporate by the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued. The head office of the Authority shall be at New Delhi. The Authority may establish offices at other places in India.

**Composition of Authority**—The Authority shall consist of the following members, namely:-

1. A Chairperson;
2. Not more than five whole-time members;
3. Not more than four part-time members, to be appointed by the Central Government from amongst persons of ability, integrity and standing who have knowledge or experience in life insurance, general insurance, actuarial science, finance, economics, law, accountancy, administration or any other discipline which would, in the opinion of the Central Government, be useful to the Authority: Provided that the Central Government shall, while appointing the Chairperson and the whole-time members, ensure that at least one person each is a person having knowledge or experience in life insurance, general insurance or actuarial science, respectively.

**Duties, powers and functions of Authority**—Subject to the provisions of this Act and any other law for the time being in force, the Authority shall have the duty to regulate, promote and ensure orderly growth of the insurance business and reinsurance business. (2) Without prejudice to the generality of the provisions contained in sub-section (1), the powers and functions of the Authority shall include,-

(a) Issue to the applicant a certificate of registration, renew, modify, withdraw, suspend or cancel such registration;
(b) Protection of the interests of the policy-holders in matters concerning assigning of policy, nomination by policy-holders, insurable interest, settlement of insurance claim, surrender value of policy and other terms and conditions of contracts of insurance;
(c) Specifying requisite qualifications, code of conduct and practical training for intermediary or insurance intermediaries and agents;
(d) Specifying the code of conduct for surveyors and loss assessors;
(e) Promoting efficiency in the conduct of insurance business;
(f) Promoting and regulating professional organisations connected with the
insurance and re-insurance business;
(g) Levying fees and other charges for carrying out the purposes of this
Act;
(h) Calling for information from, undertaking inspection of, conducting
enquiries and investigations including audit of the insurers, intermediaries,
insurance intermediaries and other organisations connected with the
insurance business;
(i) Control and regulation of the rates, advantages, terms and conditions
that may be offered by insurers in respect of general insurance business
not so controlled and regulated by the Tariff Advisory Committee under
section 64U of the Insurance Act, 1 38 (4 of 1938 );
(j) Specifying the form and manner in which books of account shall be
maintained and statement of accounts shall be rendered by insurers and
other insurance intermediaries;
(k) Regulating investment of funds by insurance companies;
(l) Regulating maintenance of margin of solvency;
(m) Adjudication of disputes between insurers and intermediaries or
insurance intermediaries;
(n) Supervising the functioning of the Tariff Advisory Committee;
(o) Specifying the percentage of premium income of the insurer to finance
schemes for promoting and regulating professional organisations referred
to in clause (f);
(p) Specifying the percentage of life insurance business and general
insurance business to be undertaken by the insurer in the rural or social
sector; and
(q) Exercising such other powers as may be prescribed.

The Insurance Regulatory Authority
The powers of The Insurance Regulatory Authority can be divided into
three headings-

1. **Power of to issue directions.**
2. **Power of to supersede Authority.**
3. **Furnishing of returns, etc., to Central Government.**
4. **Power to make rules.**
5. **Power to make regulations.**
6. **Power to remove difficulties.**

1. Power of Central Government to issue directions.

(a) Without prejudice to the foregoing provisions of this Act, the Authority
shall, in exercise of its powers or the performance of its functions under
this Act, be bound by such directions on question of policy, other than
those relating to technical and administrative matters, as the Central
Government may give in writing to it from time to time: Provided that the
Authority shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

(b) The decision of the Central Government, whether a question is one of policy or not, shall be final.

2. Power of to supersede Authority.

A. If, at any time the Central Government is of the opinion -
(a) That, on account of circumstances beyond the control of the Authority, it is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Act; or
(b) That the Authority has persistently defaulted in complying with any direction given by the Central Government under this Act or in the discharge of the functions or performance of the duties imposed on it by or under the provisions of this Act and as a result of such default the financial position of the Authority or the administration of the Authority has suffered; or
(c) That circumstances exist which render it necessary in the public interest so to do, the Central Government may, by notification and for reasons to be specified therein, supersede the Authority for such period, not exceeding six months, as may be specified in the notification and appoint a person to be the Controller of Insurance under section 2B of the Insurance Act, 1938 (4 of 1938), if not already done: Provided that before issuing any such notification, the Central Government shall give a reasonable opportunity to the Authority to make representations against the proposed supersession and shall consider the representations, if any, of the Authority.

B. Upon the publication of a notification under sub-section (1) superseding the Authority
(a) The Chairperson and other members shall, as from the date of supersession, vacate their offices as such;
(b) All the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Authority shall, until the Authority is reconstituted under sub-section (3), be exercised and discharged by the Controller of Insurance; and
(c) All properties owned or controlled by the Authority shall, until the Authority is reconstituted under sub-section (3), vest in the Central Government.
C. On or before the expiration of the period of supersession specified in the notification issued under sub- section (1), the Central Government shall reconstitute the Authority by a fresh appointment of its Chairperson and other members and in such case any person who had vacated his office under clause (a) of sub- section (2) shall not be deemed to be disqualified for reappointment.

D. The Central Government shall cause a copy of the notification issued under sub- section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest.

3. Furnishing of returns, etc., to Central Government.

   (a) The Authority shall furnish to the Central Government at such time and in such form and manner as may be prescribed, or as the Central Government may direct to furnish such returns, statements a d other particulars in regard to any proposed or existing programme for the promotion and development of the insurance industry as the Central Government may, from time to time, require.

   (b) Without prejudice to the provisions of sub- section (1), the Authority shall, within nine months after the close of each financial year, submit to the Central Government a report giving a true and full development of the insurance business during the previous financial year. account of its activities including the activities for promotion and

   (c) Copies of the reports received under sub- section (2) shall be laid, as soon as may be after they are received, before each House of Parliament.

4. Power to make rules –

   (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

   (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

   (a) The salary and allowances payable to, and other terms and conditions of service of, the members other than part- time members under sub-section (1) of section 7;

   (b) The allowances to be paid to the part- time members under sub-section (2) of section 7;

   (c) Such other powers that may be exercised by the Authority under clause (q) of sub- section (2) of section 14;
(d) The form of annual statement of accounts to be maintained by the Authority under sub-section (1) of section 17;
(e) The form and manner in which and the time within which returns and statements and particulars are to be furnished to the Central Government under sub-section (1) of section 20;
(f) The matters under sub-section (5) of section 25 on which the Insurance Advisory Committee shall advise the Authority;
(g) Any other matter which is required to be, or may be, prescribed, or in respect of which provision is to be or may be made by rules.

5. Power to make regulations –
(1) The Authority may, in consultation with the Insurance Advisory Committee, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act.
(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:-

(a) The time and places of meetings of the Authority and the procedure to be followed at such meetings including the quorum necessary for the transaction of business under sub-section (1) of section 10;
(b) The transaction of business at its meetings under sub-section (4) of section 10;
(c) The terms and other conditions of service of officers and other employees of the Authority under sub-section (2) of section 12;
(d) The powers and functions which may be delegated to committees of the members under sub-section (2) of section 23; and
(e) Any other matter which is required to be, or may be, specified by regulations or in respect of which provision is to be or may be made by regulations.

6. Power to remove difficulties –
(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty: Provided that no order shall be made under this section after the expiry of two years from the appointed day.
(2) Any order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament. Any further action would depend upon the decision of the house. The Act would be put to force without affecting the legality of any legal action taken in the past.
### 3.3.3 Winding up of Insurance Companies

The rules for winding up of Insurance Companies are given between sections 53 and 61 of the Insurance Act, 1938. These are as under –

1. Generally the Court may order the winding up of any insurance company. For voluntary winding up, notwithstanding anything contained in the Indian Companies Act, 1913, an insurance company can not be wound up voluntarily except –
   (a) For the purpose of effecting an amalgamation or a re-construction of the company,
   (b) Or on the ground that by reason of its liabilities it cannot continue its business.

2. The court may order the winding up of any insurance company in accordance with the Company Act 1956.

3. 10% of all shareholders of a company can file a petition for winding up with the permission of the court, given their total capital is minimum 10% of total capital.

4. In addition to the grounds on which such an order may be based, the Court may order the winding up of an insurance company—
   (a) if with the sanction of the Court previously obtained a petition in this behalf is presented by shareholders not less in number than one-tenth of the whole body of shareholders and holding not less than one-tenth of the whole share capital or by not less than fifty policy-holders holding policies of life insurance that have been in force for not less than three years and are of the total value of not less than fifty thousand rupees; or
   (b) If the 2[Controller], who is hereby authorized to do so, applies in this behalf to the Court on any of the following grounds, namely:—
      (i) That the company has failed to deposit or to keep deposited with the Reserve Bank of India the amounts required by section 7 3[ or section 98]
      (ii) That the company having failed to comply with any requirement of this Act has continued such failure 1[ or having contravened any provision of this Act has continued such contravention] for a period of three months after notice of such failure 1[ or contravention] has been conveyed to the company by the 2[ Controller],
      (iii) That it appears from 3[ any returns or statements] furnished under the provisions of this Act or from the results of any investigation made thereunder that the 4[ company is, or is deemed to be, insolvent], or
(iv) That the continuance of the company is prejudicial to the interests of the policy-holders or to public interest generally.

5. There is Scheme for partial winding up of insurance companies in Section 58.

1. If at any time it appears expedient that the affairs of an insurance company in respect of any class of business comprised in the undertaking of the company should be wound up but that any other class of business comprised in the undertaking should continue to be carried on by the company or be transferred to another insurer, a scheme for such purposes may be prepared and submitted for confirmation of the Court in accordance with the provisions of this Act.

2. Any scheme prepared under this section shall provide for the allocation and distribution of the assets and liabilities of the company between any classes of business affected (including the allocation of any surplus assets which may arise on the proposed winding up), for any future rights of every class of policy-holders in respect of their policies and for the manner of winding up any of the affairs of the company which are proposed to be wound up and may contain provisions for altering the memorandum of the company with respect to its objects and such further provisions as may be expedient for giving effect to the scheme.

3. The provisions of this Act relating to the valuation of liabilities of insurers in liquidation and insolvency and to the application of surplus assets of the life insurance fund in liquidation or insolvency shall apply to the winding up of any part of the affairs of a company in accordance with the scheme under this section in like manner as they apply in the winding up of an insurance company, and any scheme under this section may apply with the necessary modifications any of the provisions of the Indian Companies Act, 1913 (7 of 1913), relating to the winding up of companies.

4. An order of the Court confirming a scheme under this section whereby the memorandum of a company is altered with respect to its object shall as respects the alteration have effect as if it were an order confirmed under section 12 of the Indian Companies Act, 1913 (7 of 1913), and the provisions of sections 15 and 16 of that Act shall apply accordingly.

6. The Court has the Power to reduce contracts of insurance at the time of winding up of the company. (Section 61)
3.4 New Telecom Policy 2011

On April 11, 2011 the Central Information and Telecom Minister Mr. Kapil Sibbal presented the format of the New Telecom Policy. Some salient features of this New Telecom Policy 2011 (NTP 2011), which is going to replace the Telecom Policy 1999, are as follows -

- Provision for telecom licence renewal period to be reduced from 20 to 10 years.
- The companies would have to apply 30 months in advance for renewal of telecom licence
- For bringing an end to monopoly in the market, there would be at least six competitive companies including BSNL.
- Allocation of telecom licence would be separate from mobile spectrum and separate fees would be charged for both.
- There would be four types of telecom licences – Integrated licences, Class licences, Authority licences and Broadcast licences.
- Integrated licences would be of two types – national level and service sector level.
- Permission for spectrum-sharing would be given in certain specified circumstances.
- Regular audit would be done of spectrum-usage by any external agency.
- In the coordination of mobile telecommunication, the policy of amalgamation and taking over would be liberalized.
- Consideration upon a new Licence System in place of United Access Service Licence System. Similar Licence Fee would be charged from all.
- Setting up of a committee for preparing National Spectrum Act, under the chairmanship of retired Supreme Court Judge justice Shivraj V. Patil.
- Setting up of a Broadband Committee under the chairmanship of telecom expert Sam Pitroda.
- Plan to launch the National Telecom Policy 2011 by the end of the year 2011.
- The process of estimating the worth of 2G Spectrum was still under process.
3.4.1 Privatization through nationalization in insurance sector of India – emerging aspects

There were 138 private insurance companies in India when the Insurance Act 1938 was passed. This act aimed at exerting strict state control over the companies. By the year 1956 the number of private insurance companies and provident fund committees were in existence. All these companies were nationalized through Indian Life Insurance Act 1956 and L.I.C. of India was given monopoly to operate in the insurance sector. The justification behind this step was a presumption that it would help generate necessary funds for brisk industrial growth of the country.

Apart from life-insurance, the other general insurance sector was in private hands till 1972. There were about 107 private companies at that time, which were nationalized through General Insurance Business Nationalization Act 1972 and they were made direct or indirect parts of LIC and four of its partner companies, namely – National Insurance Company, New India Assurance Company, Oriental Insurance Company and United Insurance Company. Thus the general insurance sector was also nationalized in 1972. Life insurance business had already been nationalized in 1956. Thus the whole insurance business was nationalized and the insurance industry became a source for providing necessary money for the economic growth of the country. The government emphasized the following issues –

1. Acquiring contemporary and reliable information from insurance companies so that levels and policies of insurance could be raised to international standards.

2. Strengthening supervision and regulation of insurance business.

3. Insurance business.

4. Taking policy decisions for insurance business according to the pulse of the market. The economic conditions of the insurance companies had to be strengthened to make them more reliable.

Along with the above steps, with the recommendations of Malhotra Committee, special emphasis was given to consumer services to inculcate public faith. In present times, the private companies have been permitted to operate in the insurance sector with a maximum 26% share in Indian companies. The proposal to extend this limit up to 40% is under consideration.
3.5 Books for reference

1. डा मनोज गुप्ता — बीमा अधिकार
2. डा विवेक सिंह — टेलीकॉम नियमानुसार प्रशिक्षण
3. सुनिक गाइड — डा विश्वेन्द्र सामान्य विज्ञान

3.6 Reference/ Useful Material

1. वेयर एकट
2. विवास मनोरमा
3. इंटरनेट

3.7 Essay Type Questions

1. Explain in brief the powers of the Insurance Regulatory and Development Authority.
2. Does the Insurance Regulatory and Development Authority possess the power to make regulations? Explain.
3. Shortly elaborate the duties of Telecom Regulatory Authority of India (TRAI).