

**CONSTITUTION OF INDIA, PROFESSIONAL ETHICS & HUMAN RIGHTS****SYLLABUS****Subject Code: 15CPH18****I A MARKS: 10****No. of lecturing hours/week: 2Hrs****Exam hours: 2 Hrs****Total No. of lecturing hours: 25Hrs****Exam Marks: 40****Module 1****UNIT I**

Introduction to the Constitution of India, The Making of the Constitution and Salient features of the Constitution

**2 Hours****UNIT II**

Preamble to the Indian Constitution Fundamental Rights &amp; its limitations

**3 Hours****Module 2****UNIT III**

Directive Principles of State Policy &amp; Relevance of Directive Principles State Policy Fundamental Duties

**3 Hours****UNIT IV**

Union Executives – President, Prime Minister Parliament Supreme Court of India

**3 Hours****Module 3****UNIT V**

State Executives – Governor Chief Minister, State Legislature High Court of State

**2 Hours****UNIT VI**Electoral Process in India, Amendment Procedures, 42<sup>nd</sup>, 44<sup>th</sup>, 74<sup>th</sup>, 76<sup>th</sup>, 86<sup>th</sup> & 91<sup>st</sup> Amendments**3 Hours****Module 4****UNIT VII**Special Provision for SC & ST Special Provision for Women, Children & Backward Classes  
Emergency Provisions, Human Rights –Meaning and Definitions, Legislation Specific Themes in  
Human Rights- Working of National Human Rights Commission in India**3 Hours****UNIT VIII**

Powers and functions of Municipalities, Panchyats and Co - Operative Societies

**2 Hours****Module 5****UNIT IX**

Scope &amp; Aims of Engineering Ethics, Responsibility of Engineers Impediments to Responsibility.

**2 Hours****UNIT X**

Risks, Safety and liability of Engineers, Honesty, Integrity &amp; Reliability in Engineering

**3 Hours****Course objectives:**

1. To provide basic information about Indian constitution.
2. To identify individual role and ethical responsibility towards society.
3. To understand human rights and its implications

**Course outcomes:**

After study of the course, the students are able to

- Have general knowledge and legal literacy and thereby to take up competitive examinations
- Understand state and central policies, fundamental duties
- Understand Electoral Process, special provisions
- Understand powers and functions of Municipalities, Panchayats and Co-operative Societies.
- Understand Engineering ethics and responsibilities of Engineers.
- Have awareness about basic human rights in India

**Text Book**

- Durga Das Basu ‘Introduction to the Constitution of India’ (Students Edn.) Prentice Hall EEE – 2001
- ‘Engineering Ethics’ by Charles E Haries, Michael. S Pritchard and Michael J Robins Thompson Asia, 2003
- Constitution of India & Professional Ethics by Raman & Yaji

**Reference Books**

- ‘An Introduction to the Constitution of India’ by M V Pylee, Vikas Publishing. 2002
- Engineering Ethics \_ by M Govindarajan, S Natarajan, V S Senthail Kumar, Prentice Hall of India Pvt Ltd. New Delhi, 2004
- Brij Kishore Sharma, “**Introduction to the Constitution of India**”, PHI Learning Pvt. Ltd., New Delhi, 2011.
- Latest Publications of Indian Institute of Human Rights, New Delhi.

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## Module 1

### UNIT I

#### Introduction

The constitution was passed by the Constituent Assembly on 26 Nov 1949 and is fully applicable since 26 Jan 1950. Thanks to the help of Prof. K.B. Agrawal, the ICL-Edition of the Constitution now incorporates all amendments until and including the 78th amendment (1995) [30 Aug 1995]; there are no newer amendments until Dec 1996. Amendments after Dec 1996 have not yet been included.

India is a federal democratic republic of 25 states and seven Union Territories. Each state is administered by a Governor appointed by the President while each Union Territory is administered by the President through a Minister. The bicameral parliament is composed of the Council of States, Rajya Sabha, and the House of the People, Lok Sabha. The Council of States will consist of 250 members out of which the President of India will nominate 12 persons having special knowledge or practical experience in respect of literature, art, science and social service. The remaining 238 seats are to be filled in by the persons to be elected by the legislative assemblies of their respective states in staggered re-elections of one-third every second year. The House of People is composed of 550 members, i.e., 530 members from the States and 20 members from the Union Territories.

The states of Bihar, Jammu and Kashmir, Karnataka, Maharashtra, and Uttar Pradesh have bicameral legislatures while the other 20 states have unicameral legislatures. Upper houses (Legislative Councils) are re-elected to one-third of their members every two years. Legislative Assemblies are chosen by direct election.

There are some extraordinary features of the Indian system of government. For example, the Constitution encourages the states to introduce the prohibition. The states of Andhra Pradesh, Manipur, and Haryana have already banned the production, possession, and consumption of alcohol.

#### Commencement:

The provisions relating to Citizenship, elections, provisional Parliament, temporary and transitional positions were given immediate effect on The 26<sup>th</sup> Nov.1949. While the rest of the Constitution came into force on the **26<sup>th</sup> Jan. 1950**. And this date is referred to in the Constitution as The **Date of its Commencement**.

#### Making of The Constitution

The Constituent Assembly which had been elected for undivided India and held its first sitting on 9<sup>th</sup> Dec.1946, re-assembled on the 14<sup>th</sup> August 1947, as The Sovereign Constituent Assembly for the dominion of India. In regard to its composition the members were elected by indirect election by the members of The Provisional Legislative Assemblies (lower house only). According to the schemes recommended by the Cabinet the essentials of the Schemes were as follows: -

1. Each Province and each Indian State or group of States were allotted the total no. of seats proportional to their respective population roughly in the ratio of 1:1000000. As a result The Provinces were to elect 292 members while the Indian States were allotted a minimum of 93 seats.
2. The seats in each Province were distributed among the three main communities, Muslims, Sikh and general, in proportion to their respective populations.
3. Members of each community in the Provisional Legislative Assembly elected their own representatives by the method of proportional representations with single transferable vote.
4. The method of selection in the case of representatives of Indian States was to be determined by consultation.

Unfortunately as a result of a partition under the plan of June 3, 1947. The territories, which fell under Pakistan and those members who were part of The Constituent Assembly, ceased to be members of the Constituent Assembly, which re-assembled on the 31<sup>st</sup> Oct.1947. The members of the house was reduced to 299 of these 284 was actually present on the 26<sup>th</sup> Nov. 1949 and appended their signature to the Constitution as finally passed.

Historical retrospect Events Prior to the Framing of the Constitutions Battle of Plassey 1757. Battle of Buxar 1764. After these two battles the East India Co Became the rulers.

Mile stones in the Development of Constitution:

**1. Mile stones in the Development of Constitution**

The Regulating Act 1773. The Charter Act 1793. The Charter Act 1813. The charter Act 1833. The charter Act 1853.

**2. British Paramountcy End of company rule:**

British Paramountcy End of company rule The First war of independence 1857. The Govt. of India Act 1858. The Indian Councils Act 1861. Formation of Indian National Congress in 1885. The Indian Councils Act 1892. The split of Congress and demand for swaraj ( self - Rule)

**3. Congress in Extremist phase:**

Congress in Extremist phase The Govt. of India Act 1909. The Govt. of India Act 1919. Jallian wallah Bagh tragedy 1919.

**4. Advent of Gandhiji:**

Advent of Gandhiji Non Co-operation Movement 1920. Simon Commission 1927. Nehru Report 1928. Civil disobedience 1930.

**5. Govt. of India Act 1935 Back bone of our Present Constitution:**

Govt. of India Act 1935 Back bone of our Present Constitution Federation and provincial autonomy. Dyarchy at the centre. A bicameral Central legislature created. Distribution of powers between centre and provinces.

**6. Demand for a constituent assembly :**

Demand for a constituent assembly The Act of 1935 failed to satisfy the Indian aspirations. In 1938, Pandit Nehru formulated the demand for constituent assembly.

**7. Cripps Mission Acceptance of demand:**

Cripps Mission Acceptance of demand Cripps mission came in 1942 and recognised the demand that. a constitution to be framed by an elected constituent assembly. India to be given a dominion status. Cripps proposal were rejected Gandhiji started Quit India Movement in 1942.

**8. Cabinet Mission 1946 formation of Constituent assembly:**

Cabinet Mission 1946 formation of Constituent assembly The cabinet mission provided for an indirectly elected Constituent assembly. The assembly consisted of total 389 members. 292 to be elected from provinces. 93 to be nominated from princely states. 4 to be nominated from chief comm. Areas.

**9. Joint Constitution assembly for India & Pakistan.:**

Joint Constitution assembly for India & Pakistan. The first meeting of the consembly was held on Dec. 9, 1946. But it was boycotted by Muslim league. Muslim league demanded a separate assembly for Pakistan.

**10. Mountbatten plan Indian independence Act 1947.:**

Mountbatten plan Indian independence Act 1947. On 26 th July 1947 Governor General Lord Mountbatten announced the setting up of a separate constituent Assembly for Pakistan.

**11. Constituent assembly of India:**

Constituent assembly of India On 14 th August 1947 the Sovereign con-semblly for India reassembled. Dr Rajinder Prasad was elected its President. Seven member drafting committee formed. Dr. B.R. Ambedkar acted as chairman of drafting committee.

**12. Drafting of Constitution. :**

It took 2 years, 11 months, and 18 days in framing the Constitution. The Constitution was enacted and adopted on 26 th November 1949. Some of the provisions relating to citizenship, elections, provisional parliament etc came into force on the same day. Remaining provisions came into force on 26 th January 1950.

The Constitution of India has some distinct and unique features as compared to other constitutions to the world. As Dr. B.R. Ambedkar, the Chairman of the Drafting Committee puts it, the framers had tried to accumulate and accommodate the best features of other constitutions, keeping in view the peculiar problems and needs of our country.

**Salient features of the Constitution of India.**

The following are the salient features of the Constitution of India.

### 1. Longest written constitution

Indian Constitution can be called the largest written constitution in the world because of its contents. In its original form, it consisted of 395 Articles and 8 Schedules to which additions have been made through subsequent amendments. At present it contains 395 Articles and 12 Schedules, and more than 80 amendments. There are various factors responsible for the long size of the constitution. One major factor was that the framers of the constitution borrowed provisions from several sources and several other constitutions of the world.

They have followed and reproduced the Government of India Act 1935 in providing matters of administrative detail. Secondly, it was necessary to make provisions for peculiar problems of India like scheduled castes, Scheduled Tribes and backward regions. Thirdly, provisions were made for elaborate centre-state relations in all aspects of their administrative and other activities. Fourthly, the size of the constitution became bulky, as provisions regarding the state administration were also included. Further, a detail list of individual rights, directive principles of state policy and the details of administration procedure were laid down to make the Constitution clear and unambiguous for the ordinary citizen. Thus, the Constitution of India became an exhaustive and lengthy one.

### (2) Partly Rigid and Partly Flexible

The Constitution of India is neither purely rigid nor purely flexible. There is a harmonious blend of rigidity and flexibility. Some parts of the Constitution can be amended by the ordinary law-making process by Parliament. Certain provisions can be amended, only when a Bill for that purpose is passed in each house of Parliament by a majority of the total membership of that house and, by a majority of not less than two-thirds of the members of that house present and voting. Then there are certain other provisions which can be amended by the second method described above and are ratified by the legislatures of not less than one-half of the states before being presented to the President for his assent. It must also be noted that the power to initiate bills for amendment lies in Parliament alone, and not in the state legislatures.

### 3) A Democratic Republic

India is a democratic republic. It means that sovereignty rests with the people of India. They govern themselves through their representatives elected on the basis of universal adult franchise. The President of India, the highest official of the state is elected for a fixed term. Although, India is a sovereign republic, yet it continues to be a member of the Commonwealth of Nations with the British Monarch as its head. Her membership of the Commonwealth does not compromise her position as a sovereign republic. The commonwealth is an association of free and independent nations. The British Monarch is only a symbolic head of that association.

### 4) Parliamentary System of Government

India has adopted the Parliamentary system as found in Britain. In this system, the executive is responsible to the legislature, and remains in power only as long as it enjoys the confidence of the legislature. The president of India, who remains in office for five years is the nominal, titular or constitutional head. The Union Council of Ministers with the Prime Minister as its head is drawn from the legislature. It is collectively responsible to the House of People (Lok Sabha), and has to resign as soon as it loses the confidence of that house. The President, the nominal executive shall exercise his powers according to the advice of the Union Council of Ministers, the real executive. In the states also, the government is Parliamentary in nature.

### 5) A Federation

Article 1 of the Constitution of India says: - "India, that is Bharat shall be a Union of States." Though the word 'Federation' is not used, the government is federal. A state is federal when (a) there are two sets of governments and there is distribution of powers between the two, (b) there is a written constitution, which is the supreme law of the land and (c) there is an independent judiciary to interpret the constitution and settle disputes between the centre and the states. All these features are present in India. There are two sets of government, one at the centre, the other at state level and the distribution of powers between them is quite detailed in our Constitution. The Constitution of India is written and the supreme law of the land. At the apex of single integrated judicial system, stands the Supreme Court which is independent from the control of the executive and the legislature.

### 6) Fundamental Rights

"A state is known by the rights it maintains", remarked Prof. H.J. Laski. The constitution of India affirms the basic principle that every individual is entitled to enjoy certain basic rights and part III of the Constitution deals with those rights which are known as fundamental rights. Originally there were seven categories of rights, but now they are six in number. They are (i) Right to equality, (ii) Right to freedom, (iii) Right against exploitation, (iv) Right to freedom of Religion, v) Cultural and Educational rights and vi) Right to constitutional remedies. Right to property (Article-31) originally a fundamental right has been omitted by the 44th Amendment Act. 1978. It is now a legal right.

### 7) Directive Principles of State Policy



A novel feature of the Constitution is that it contains a chapter in the Directive Principles of State Policy. These principles are in the nature of directives to the government to implement them for establishing social and economic democracy in the country.

It embodies important principles like adequate means to livelihood, equal pay for both men and women, distribution of wealth so as to subserve the common good, free and compulsory primary education, right to work, public assistance in case of old age, unemployment, sickness and disablement, the organisation of village Panchayats, special care to the economically backward sections of the people etc. Most of these principles could help in making India welfare state. Though not justiciable. These principles have been stated as; "fundamental in the governance of the country".

### **8) Fundamental Duties**

A new part IV (A) after the Directive Principles of State Policy was incorporated in the constitution by the 42nd Amendment, 1976 for fundamental duties. These duties are:

- i) To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
- ii) To cherish and follow the noble ideals, which inspired our national struggle for freedom;
- iii) To uphold and protect the sovereignty, unity and integrity of India;
- iv) To defend the country and render national service when called upon to do so;
- v) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic, regional or sectional diversities, to renounce practices derogatory to the dignity of woman;
- vi) to value and preserve the rich heritage of our composite culture;
- vii) to protect and improve the natural environments including forests, lakes, rivers and wild life and to have compassion for living creatures;
- viii) to develop scientific temper, humanism and the spirit of inquiry and reform;
- ix) to safeguard public property and to abjure violence;
- x) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of Endeavour and achievement.

The purpose of incorporating these duties in the Constitution is just to remind the people that while enjoying their right as citizens, should also perform their duties for rights and duties are correlative.

### **9) Secular State**

A secular state is neither religious nor irreligious, or anti-religious. Rather it is quite neutral in matters of religion. India being a land of many religions, the founding fathers of the Constitution thought it proper to make it a secular state. India is a secular state, because it makes no discrimination between individuals on the basis of religion. Neither it encourages nor discourages any religion. On the contrary, right to freedom of religion is ensured in the Constitution and people belonging to any religious group have the right to profess, practice or propagate any religion they like.

### **10) An Independent Judiciary**

The judiciary occupies an important place in our Constitution and it is also made independent of the legislature and the executive. The Supreme Court of India stands at the apex of single integrated judicial system. It acts as protector of fundamental rights of Indian citizens and guardian of the Constitution. If any law passed by the legislature or action taken by the executive contravenes the provisions of the Constitution, they can be declared as null and void by the Supreme Court. Thus, it has the power of judicial review. But judicial review in India constitutes a middle path between the American judicial supremacy in one hand and British Parliamentary supremacy in the other.

### **11) Single Citizenship**

The Constitution of India recognises only single citizenship. In the United States, there is provision of dual citizenship. In India, we are citizens of India only, not of the respective states to which we belong. This provision would help in promoting unity and integrity of the nation.

## UNIT II

### PREAMBLE TO THE CONSTITUTION OF INDIA & FUNDAMENTAL RIGHTS

#### PARTS OF THE CONSTITUTION

The Constitution of India covers a total of 395 Articles in 22 parts. The parts of the Indian Constitution are mentioned below:

- Part I - The Union and its Territory
- Part II - Citizenship
- Part III - Fundamental Rights
- Part IV - Directive Principles of State Policy
- Part IVA - Fundamental Duties
- Part V - The Union
- Part VI - The States
- Part VII - The States in Part B of the First Schedule
- Part VIII - The Union Territories
- Part IX - Panchayats
- Part IXA - Municipalities
- Part X - The Scheduled and Tribal Areas
- Part XI - Relations Between The Union and The States
- Part XII - Finance, Property, Contracts and Suits
- Part XIII - Trade, Commerce and Intercourse within The Territory of India
- Part XIV - Services Under The Union and The States
- Part XIVA - Tribunals
- Part XV- Elections
- Part XVI - Special Provisions Relating to Certain Classes
- Part XVII - Official Language
- Part XVIII - Emergency Provisions
- Part XIX - Miscellaneous
- Part XX - Amendment of the Constitution
- Part XXI - Temporary, Transitional and Special Provisions
- Part XXII - Short Title, Commencement, Authoritative Text in Hindi and Repeals

#### SCHEDULES TO INDIAN CONSTITUTION

Schedules to the Constitution of India can be added through the amendments to it. There are twelve schedules to Constitution of India, which are effective at present, are given below:

- **First Schedule**: This schedule is about the States and Union Territories of India.
- **Second Schedule**: In this Schedule, provisions made to the President and the Governors of States, Speaker and the Deputy Speaker of the House of the People, the Chairman and the Deputy Chairman of the Council of States, the Speaker and the Deputy Speaker of the Legislative Assembly, the Chairman and the Deputy Chairman of the Legislative Council of a State, the Judges of the Supreme Court and of the High Courts and the Comptroller and Auditor-General of India
- **Third Schedule**: Forms of Oaths or Affirmations are mentioned in this Schedule.
- **Fourth Schedule**: This Schedule specifies the allocation of seats in the Council of States.
- **Fifth Schedule**: Provisions as to the Administration and Control of Scheduled Areas and Scheduled Tribes are mentioned in this Schedule. The amendment of the schedule is also included in the Part D of the Schedule.
- **Sixth Schedule**: This Schedule deals with the provisions as to the Administration of Tribal Areas in the States of Assam, Meghalaya, Tripura and Mizoram.
- **Seventh Schedule**: The List I or the Union List, List II or the State List and List III or the Concurrent List are included in this Schedule.
- **Eighth Schedule**: The 22 languages selected as the official languages of India are mentioned in this Schedule.
- **Ninth Schedule**: Validation of certain Acts and Regulations is dealt with in this Schedule



- **Tenth Schedule**: Provisions as to disqualification on ground of defection for the Members of Parliament and Members of the State Legislatures are mentioned in this Schedule.
- **Eleventh Schedule**: This Schedule talks about the powers, authority and responsibilities of Panchayats
- **Twelfth Schedule**: Powers, authority and responsibilities of Municipalities are defined in this Schedule.

## **PREAMBLE**

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC 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 Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

## **FUNDAMENTAL RIGHTS:**

The Fundamental Rights are defined as the basic human rights of all citizens. These rights, defined in Part III of the Constitution, apply irrespective of race, place of birth, religion, caste, creed or gender. They are enforceable by the courts, subject to specific restrictions.

### **Six Fundamental Rights**

- Right to Equality
- Right to Particular freedoms
- Right against Exploitation
- Right to freedom of religion
- Cultural and educational rights
- Right to Constitutional remedies

### **Right to Equality**

**14. Equality before law.**—The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

**15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.**—

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them,

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

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

**16. Equality of opportunity in matters of public employment.**—

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

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence

or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.

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

**18. Abolition of titles.**—(1) No title, not being a military or academic distinction, shall be conferred by the State.

(2) No citizen of India shall accept any title from any foreign State.

(3) No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State.

(4) No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, or office of any kind from or under any foreign State.

### **Right to Freedom**

#### **19. Protection of certain rights regarding freedom of speech, etc.—**

(1) All citizens shall have the right—

- (a) to freedom of speech and expression;
- (b) to assemble peaceably and without arms;
- (c) to form associations or unions;
- (d) to move freely throughout the territory of India;
- (e) to reside and settle in any part of the territory of India; and
- (g) to practice any profession, or to carry on any occupation, trade or business.

(2) Nothing in sub-clause (a) of clause (1) 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 by the said sub-clause 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.

(3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

**20. Protection in respect of conviction for offences.—**

No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

(1) No person shall be prosecuted and punished for the same offence more than once.

(3) No person accused of any offence shall be compelled to be a witness against himself.

**21. Protection of life and personal liberty.**—No person shall be deprived of his life or personal liberty except according to procedure established by law.

#### **22. Protection against arrest and detention in certain cases. —**

(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

### **Right against Exploitation**

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

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

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

### **Right to Freedom of Religion**

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

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

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

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

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

to establish and maintain institutions for religious and charitable purposes; to manage its own affairs in matters of religion; to own and acquire movable and immovable property; and (d) to administer such property in accordance with law.

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

**28. Freedom as to attendance at religious instruction or religious worship in certain educational institutions.**—

(1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.

(2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

(3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

### **Cultural and Educational Rights**

**29. Protection of interests of minorities.**—

(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

**30. Right of minorities to establish and administer educational institutions.** —

(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

**31A. Saving of laws providing for acquisition of estates, etc.—**

(1) Notwithstanding anything contained in article 13, no law providing for—

(a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or

(b) The taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or

(c) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or

(d) the extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, directors or managers of corporations, or of any voting rights of shareholders

**Right to Constitutional Remedies**

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

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed

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

(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

**33. Power of Parliament to modify the rights conferred by this Part in their application to Forces, etc.—**Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to,—

(a) the members of the Armed Forces; or

(b) the members of the Forces charged with the maintenance of public order; or

(c) persons employed in any bureau or other organisation established by the State for purposes of intelligence or counter intelligence; or

(d) persons employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organisation referred to in clauses (a) to

(c),

be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them

**34. Restriction on rights conferred by this Part while martial law is in force in any area.—**

Notwithstanding anything in the foregoing provisions of this Part, Parliament may by law indemnify any person in the service of the Union or of a State or any other person in respect of any act done by him in connection with the maintenance or restoration of order in any area within the territory of India where martial law was in force or validate any sentence passed, punishment inflicted, forfeiture ordered or other act done under martial law in such area.

**35. Legislation to give effect to the provisions of this Part.—**notwithstanding anything in this Constitution,—Parliament shall have, and the Legislature of a State shall not have, power to make laws.

## Module 2

### UNIT III

#### DIRECTIVE PRINCIPLES OF STATE POLICY

The **Directive Principles of State Policy** are guidelines to the central and state governments of India, to be kept in mind while framing laws and policies. These provisions, contained in Part IV of the Constitution of India, are not enforceable by any court, but the principles laid down therein are considered fundamental in the governance of the country.

The principles have been inspired by the Directive Principles given in the Constitution of Ireland and also by the principles of Gandhism; and relate to social justice, economic welfare, foreign policy, and legal and administrative matters.

The idea of such policies "can be traced to the Declaration of the Rights of Man proclaimed Revolutionary France and the Declaration of Independence by the American Colonies||. The Indian constitution was also influenced by the United Nations Universal Declaration of Human Rights.

DPSPs aim to create social and economic conditions under which the citizens can lead a good life. They also aim to establish social and economic democracy through a welfare state. They act as a check on the government.

#### TYPES OF DIRECTIVE PRINCIPLES OF STATE POLICY

- Socialistic Principles
- Gandhian Principles
- Liberal Principles
- General / Miscellaneous Principles

#### 38. State to secure a social order for the promotion of welfare of the people.—

(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

#### 39. Certain principles of policy to be followed by the State.—

The State shall, in particular, direct its policy towards securing—

- (a) that the citizens, men and women equally, have the right to an adequate means of livelihood;
- (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
- (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
- (d) that there is equal pay for equal work for both men and women;
- (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;
- (f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

#### 39A. Equal justice and free legal aid.—

The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.



**40. Organization of village panchayats.—**

The State shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

**41. Right to work, to education and to public assistance in certain cases.—**

The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

**42. Provision for just and humane conditions of work and maternity relief.—**

The State shall make provision for securing just and humane conditions of work and for maternity relief.

**43. Living wage, etc., for workers.—**

The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

**43A. Participation of workers in management of industries.—**

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.

**44. Uniform civil code for the citizens.—**

The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.

**45. Provision for free and compulsory education for children.—**

The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

**46. Promotion of 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.

**47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health.—**

The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavor to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

**48. Organization of agriculture and animal husbandry.—**

The State shall endeavor to organize agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle.

**48A. Protection and improvement of environment and safeguarding of forests and**



**wild life.—**

The State shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country.

**49. Protection of monuments and places and objects of national importance.—**

It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, declared by or under law made by Parliament to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be.

**50. Separation of judiciary from executive.—**

The State shall take steps to separate the judiciary from the executive in the public services of the State.

**51. Promotion of international peace and security.—**

The State shall endeavor to—

- (a) promote international peace and security;
- (b) maintain just and honorable relations between nations;
- (c) foster respect for international law and treaty obligations in the dealings of organized peoples with one another; and
- (d) encourage settlement of international disputes by arbitration.

**FUNDAMENTAL DUTIES**

A countervailing factor has been introduced by the 42nd amendment Act of 1976, known as the Fundamental Duties. These duties are mentioned in Art. 51A.

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

- (a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
- (b) to cherish and follow the noble ideals which inspired our national struggle for freedom;
- (c) to uphold and protect the sovereignty, unity and integrity of India;
- (d) to defend the country and render national service when called upon to do so;
- (e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
- (f) to value and preserve the rich heritage of our composite culture;
- (g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
- (h) to develop the scientific temper, humanism and the spirit of inquiry and reform; (i) to safeguard public property and to abjure violence;
- (j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavor and achievement.

The 11th Fundamental Duty, which states that every citizen "*who is a parent or guardian, to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years*" was added by the 86th constitutional amendment in 2002.

## UNIT IV

### UNION EXECUTIVES

#### PRESIDENT

**52. The President of India.**—There shall be a President of India.

**53. Executive power of the Union.**—

(1) The executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinates to him in accordance with this Constitution.

(2) Without prejudice to the generality of the foregoing provision, the supreme command of the Defense Forces of the Union shall be vested in the President and the exercise thereof shall be regulated by law.

(3) Nothing in this article shall—

(a) Be deemed to transfer to the President any functions conferred by any existing law on the Government of any State or other authority; or

(b) Prevent Parliament from conferring by law functions on authorities other than the President.

**54. Election of President.**—

The President shall be elected by the members of an electoral college consisting of—

(a) the elected members of both Houses of Parliament; and

(b) the elected members of the Legislative Assemblies of the States.

**55. Manner of election of President.** —

(1) As far as practicable, there shall be uniformity in the scale of representation of the different States at the election of the President.

(2) For the purpose of securing such uniformity among the States *inter se* as well as parity between the States as a whole and the Union, the number of votes which each elected member of Parliament and of the Legislative Assembly of each State is entitled to cast at such election shall be determined in the following manner:—

(a) every elected member of the Legislative Assembly of a State shall have as many votes as there are multiples of one thousand in the quotient obtained by dividing the population of the State by the total number of the elected members of the Assembly;

(b) if, after taking the said multiples of one thousand, the remainder is not less than five hundred, then the vote of each member referred to in sub-clause (a) shall be further increased by one;

(c) each elected member of either House of Parliament shall have such number of votes as may be obtained by dividing the total number of votes assigned to the members of the Legislative Assemblies of the States under sub-clauses (a) and (b) by the total number of the elected members of both Houses of Parliament, fractions exceeding one-half being counted as one and other fractions being disregarded.

(3) The election of the President shall be held in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot.

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**56. Term of office of President.**—

(1) The President shall hold office for a term of five years from the date on which he enters upon his office:

Provided that—

(a) the President may, by writing under his hand addressed to the Vice-President, resign his office;

(b) the President may, for violation of the Constitution, be removed from office by impeachment in the manner provided in article 61;

(c) the President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

(2) Any resignation addressed to the Vice-President under clause (a) of the proviso to clause (1) shall forthwith be communicated by him to the Speaker of the House of the People.

**57. Eligibility for re-election.**—

A person who holds, or who has held, office as President shall, subject to the other provisions of this Constitution, be eligible for re-election to that office.

**58. Qualifications for election as President.—**

(1) No person shall be eligible for election as President unless he—

(a) is a citizen of India,

(b) has completed the age of thirty-five years, and

(c) is qualified for election as a member of the House of the People.

(2) A person shall not be eligible for election as President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.

**59. Conditions of President's office.—**

(1) The President shall not be a member of either House of Parliament or of a House of the Legislature of any State, and if a member of either House of Parliament or of a House of the Legislature of any State be elected President, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as President.

(2) The President shall not hold any other office of profit.

(3) The President shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.

(4) The emoluments and allowances of the President shall not be diminished during his term of office.

**60. Oath or affirmation by the President.—**

Every President and every person acting as President or discharging the functions of the President shall, before entering upon his office, make and subscribe in the presence of the Chief Justice of India or, in his absence, the senior-most Judge of the Supreme Court available

**61. Procedure for impeachment of the President.—**

(1) When a President is to be impeached for violation of the Constitution, the charge shall be preferred by either House of Parliament.

(2) No such charge shall be preferred unless—

(a) the proposal to prefer such charge is contained in a resolution which has been moved after at least fourteen days' notice in writing signed by not less than one-fourth of the total number of members of the House has been given of their intention to move the resolution, and

(b) such resolution has been passed by a majority of not less than two-thirds of the total membership of the House.

(3) When a charge has been so preferred by either House of Parliament, the other House shall investigate the charge or cause the charge to be investigated and the President shall have the right to appear and to be represented at such investigation.

(4) If as a result of the investigation a resolution is passed by a majority of not less than two-thirds of the total membership of the House by which the charge was investigated or caused to be investigated, declaring that the charge preferred against the President has been sustained, such resolution shall have the effect of removing the President from his office as from the date on which the resolution is so passed.

**62. Time of holding election to fill vacancy in the office of President and the term of office of person elected to fill casual vacancy. —**

(1) An election to fill a vacancy caused by the expiration of the term of office of President shall be completed before the expiration of the term. (2) An election to fill a vacancy in the office of President occurring by reason of his death, resignation or removal, or otherwise shall be held as soon as possible after, and in no case later than six months from, the date of occurrence of the vacancy

**THE VICE-PRESIDENT OF INDIA**

**63. The Vice-President of India.—**

There shall be a Vice-President of India.

**64. The Vice-President to be *ex officio* Chairman of the Council of States.—**

The Vice-President shall be *ex officio* Chairman of the Council of States and shall not hold any other office of profit:

Provided that during any period when the Vice-President acts as President or discharges the functions of the President under article 65, he shall not perform the duties of the office of Chairman of the Council of States and shall not be entitled to any salary or allowance payable to the Chairman of the Council of States under article 97.

**65. The Vice-President to act as President or to discharge his functions during casual vacancies in the office, or during the absence, of President.—**

(1) In the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or removal, or otherwise, the Vice-President shall act as President until the date on which a new President elected in accordance with the provisions of this Chapter to fill such vacancy enters upon his office.

(2) When the President is unable to discharge his functions owing to absence, illness or any other cause, the Vice-President shall discharge his functions until the date on which the President resumes his duties.

(3) The Vice-President shall, during, and in respect of, the period while he is so acting as, or discharging the functions of, President, have all the powers and immunities of the President and be entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.

**66. Election of Vice-President.—**

(1) The Vice-President shall be elected by the members of an electoral college consisting of the members of both Houses of Parliament in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot.

(2) The Vice-President shall not be a member of either House of Parliament or of a House of the Legislature of any State, and if a member of either House of Parliament or of a House of the Legislature of any State be elected Vice-President, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as Vice-President.

(3) No person shall be eligible for election as Vice-President unless he—

(a) is a citizen of India;

(b) has completed the age of thirty-five years; and

(c) is qualified for election as a member of the Council of States.

(4) A person shall not be eligible for election as Vice-President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.

**67. Term of office of Vice-President.—**

The Vice-President shall hold office for a term of five years from the date on which he enters upon his office:

Provided that—

(a) a Vice-President may, by writing under his hand addressed to the President, resign his office;

(b) a Vice-President may be removed from his office by a resolution of the Council of States passed by a majority of all the then members of the Council and agreed to by the House of the People; but no resolution for the purpose of this clause shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution;

(c) a Vice-President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

**68. Time of holding election to fill vacancy in the office of Vice-President and the term of office of person elected to fill casual vacancy.—**

(1) An election to fill a vacancy caused by the expiration of the term of office of Vice-President shall be completed before the expiration of the term.

(2) An election to fill a vacancy in the office of Vice-President occurring by reason of his death, resignation or removal, or otherwise shall be held as soon as possible after the occurrence of the vacancy, and the person elected to fill the vacancy shall, subject to the provisions of article 67, be

entitled to hold office for the full term of five years from the date on which he enters upon his office.

**69. Oath or affirmation by the Vice-President.—**

Every Vice-President shall, before entering upon his office, make and subscribe before the President, or some person appointed in that behalf by him

**70. Discharge of President's functions in other contingencies.—**

Parliament may make such provisions as it thinks fit for the discharge of the functions of the President in any contingency not provided for in this Chapter.

**71. Matters relating to, or connected with, the election of a President or Vice-President.—**

(1) All doubts and disputes arising out of or in connection with the election of a President or Vice-President shall be inquired into and decided by the Supreme Court whose decision shall be final.

(2) If the election of a person as President or Vice-President is declared void by the Supreme Court, acts done by him in the exercise and performance of the powers and duties of the office of President or Vice-President, as the case may be, on or before the date of the decision of the Supreme Court shall not be invalidated by reason of that declaration.

(3) Subject to the provisions of this Constitution, Parliament may by law regulate any matter relating to or connected with the election of a President or Vice-President.

(4) The election of a person as President or Vice-President shall not be called in question on the ground of the existence of any vacancy for whatever reason among the members of the electoral college electing him.

**72. Power of President to grant pardons, etc., and to suspend, remit or commute sentences in certain cases.—**

(1) The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence—

(a) in all cases where the punishment or sentence is by a Court Martial;

(b) in all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends;

(c) in all cases where the sentence is a sentence of death.

**73. Extent of executive power of the Union.—**

(1) Subject to the provisions of this Constitution, the executive power of the Union shall extend—

(a) to the matters with respect to which Parliament has power to make laws; and

(b) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement: Provided that the executive power referred to in sub-clause

(a) shall not, save as expressly provided

in this Constitution or in any law made by Parliament, extend in any State to matters with respect to which the Legislature of the State has also power to make laws. (2) Until otherwise provided by

Parliament, a State and any officer or authority of a State may,

notwithstanding anything in this article, continue to exercise in matters with respect to which Parliament has power to make laws for that State such executive power or functions as the State or officer or authority thereof could exercise immediately before the commencement of this Constitution.

**Council of Ministers**

**74. Council of Ministers to aid and advise President.—**

(1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice:

Provided that the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration.

(2) The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court.

**THE PRIME MINISTER**

The Prime Minister is generally the leader of a party (or coalition of parties) that has a majority in the Lok Sabha (lower house) of the Parliament of India.



The Prime Minister either has to be a current member of one of the houses of Parliament, or be elected within six months of being appointed.

### Powers and functions

- The Prime Minister selects the members of the Council of Ministers who are formally appointed by the President.
- He allocates portfolios among the ministers and he can drop any minister.
- The Prime Minister presides over the meetings of the Council of Ministers. He decides the policies of the government. He coordinates the work of different ministries and solves inter-departmental conflicts.
- The Prime Minister is the Chairperson of the Planning Commission which is a key body in the process of planning.
- The Prime Minister advises the President on all important matters like appointments judges of the High Courts and the Supreme Court, Chief Election Commissioner, Comptroller and Auditor General.
- He also advises the President on the dissolving of the Lok Sabha and the declaration of Emergencies

## PARLIAMENT

### Lok Sabha

The **Lok Sabha** (also titled the **House of the People**, by the Constitution) is the directly elected lower house of the Parliament of India. As of 2009 there have been fifteen Lok Sabhas elected by the people of India. The Constitution limits the Lok Sabha to a maximum of 545 members, including no more than 20 members representing people from the Union Territories, and two members to represent the Anglo-Indian community (if the President feels that that community is not adequately represented). The current size of the Lok Sabha has 545 members including the Speaker and two appointed members, if any.

Each Lok Sabha is formed for a five-year term, after which it is automatically dissolved, unless extended by a *Proclamation of Emergency* which may extend the term in one-year increments. The 15th Lok Sabha was formed in May 2009.

An exercise to redraw Lok Sabha constituencies' boundaries has been carried out by the Delimitation Commission based on the Indian census of 2001. This exercise, which was supposed to be carried out after every census, was suspended in 1976 following a constitutional amendment to avoid adverse effects of the family planning program which was being implemented

### Membership qualifications

Membership of the Lok Sabha requires that the person must be a citizen of India, aged 25 or over, mentally sound, should not be bankrupt and has no criminal procedures against him/her. For reserved seats one should be member of the scheduled castes and/or tribes. Sessions and working hours

On normal business days, the Lok Sabha assembles from 11 a.m. to 1 p.m., and again from 2 p.m. to 6 p.m. The first hour of every sitting is called the *Question Hour*, during which questions posed by members may be assigned to specific government ministries, to be answered at a fixed date in the future.

The Lok Sabha shares legislative power with the Rajya Sabha, except in the area of Money Bills, in which case the Lok Sabha has the ultimate authority. In the case of money bill it is only sent to the rajya sabha for recommendations and in the case of other related issues it is sent with a period of 14 working days. If it is not returned in that span of time it is considered as passed. If conflicting legislation is enacted by the two Houses, a joint sitting is held to resolve the differences. In such a session, the members of the Lok Sabha would generally prevail, since the Lok Sabha includes more than twice as many members as the Rajya Sabha.

Three sessions of Lok Sabha take place in a year:

1. Budget session: February to May.
2. Monsoon session: July to September.
3. Winter session: November to December.

### Rajya Sabha

The **Rajya Sabha** is the upper house of the Parliament of India. Membership is limited to 250



members, 12 of whom are chosen by the President of India for their expertise in specific fields of art, literature, science, and social services. These members are known as nominated members. The remainder of the body is elected by state and territorial legislatures. Terms of office are for six years, with one third of the members retiring every two years.

The Rajya Sabha meets in continuous session and, unlike the lower house of parliament, the Lok Sabha, is not subject to dissolution. The Rajya Sabha shares legislative powers with the Lok Sabha, except in the area of supply, where the Lok Sabha has overriding powers. In the case of conflicting legislation, a joint sitting of the two houses is held. However, since the Lok Sabha has more than twice as many members than the Rajya Sabha, it holds de facto veto power in such joint sessions. Only three joint session have been held. The last one was for the passage of the anti-terror law POTA.

The Vice-President of India (currently, Hamid Ansari) is the ex-officio Chairman of the Rajya Sabha. The Deputy Chairman of the Rajya Sabha, who is elected from amongst its members, takes care of the day-to-day matters of the house in the absence of the Chairman.

The Rajya Sabha held its first sitting on 13 May 1952.

There are 238 indirectly-elected members, who represent the 28 states and 2 Union Territories (Delhi and Puducherry), including the National Capital territory, New Delhi. Seats are allotted in proportion to population.

### **Nominated Members**

Under article 80 of the Constitution, out of the 250 members of the Council of States (Rajya Sabha), 12 are nominated by the President of India from amongst persons who have special knowledge or practical experience in the fields such as literature, science, art or social service.

Since its inception in 1952, 105 members have been nominated so far, for a term of 6-year each, and with an added provision that one-third of the members shall retire every two years

### **Officers of Parliament**

#### **89. The Chairman and Deputy Chairman of the Council of States.—**

(1) The Vice- President of India shall be *ex officio* Chairman of the Council of States

(2) The Council of States shall, as soon as may be, choose a member of the Council to be Deputy Chairman thereof and, so often as the office of Deputy Chairman becomes vacant, the Council shall choose another member to be Deputy Chairman thereof.

#### **90. Vacation and resignation of, and removal from, the office of Deputy Chairman.—**

A member holding office as Deputy Chairman of the Council of States—

(a) shall vacate his office if he ceases to be a member of the Council;

(b) may at any time, by writing under his hand addressed to the Chairman, resign his office; and

(c) may be removed from his office by a resolution of the Council passed by a majority of all the then members of the Council:

Provided that no resolution for the purpose of clause (c) shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution.

#### **91. Power of the Deputy Chairman or other person to perform the duties of the office of, or to act as, Chairman.—**

(1) While the office of Chairman is vacant, or during any period when the Vice-President is acting as, or discharging the functions of, President, the duties of the office shall be performed by the Deputy Chairman, or, if the office of Deputy Chairman is also vacant, by such member of the Council of States as the President may appoint for the purpose.

(2) During the absence of the Chairman from any sitting of the Council of States the Deputy Chairman, or, if he is also absent, such person as may be determined by the rules of procedure of the Council, or, if no such person is present, such other person as may be determined by the Council, shall act as Chairman.

#### **92. The Chairman or the Deputy Chairman not to preside while a resolution for his removal from office is under consideration.—**

(1) At any sitting of the Council of States, while any resolution for the removal of the Vice-President from his office is under consideration, the Chairman, or while any resolution for the removal of the Deputy Chairman from his office is under consideration, the Deputy Chairman, shall not, though he is present, preside, and the provisions of clause (2) of article 91 shall apply in relation to every such sitting as they apply in relation to a sitting from which the Chairman, or, as the case may be, the Deputy Chairman, is absent.

(2) The Chairman shall have the right to speak in, and otherwise to take part in the proceedings of, the Council of States while any resolution for the removal of the Vice-President from his office is under consideration in the Council, but, notwithstanding anything in article 100, shall not be entitled to vote at all on such resolution or on any other matter during such proceedings.

### **93. The Speaker and Deputy Speaker of the House of the People.—**

The House of the People shall, as soon as may be, choose two members of the House to be respectively Speaker and Deputy Speaker thereof and, so often as the office of Speaker or Deputy Speaker becomes vacant, the House shall choose another member to be Speaker or Deputy Speaker, as the case may be.

### **94. Vacation and resignation of, and removal from, the offices of Speaker and Deputy Speaker.—**

A member holding office as Speaker or Deputy Speaker of the House of the People—

(a) shall vacate his office if he ceases to be a member of the House of the People;

(b) may at any time, by writing under his hand addressed, if such member is the Speaker, to the Deputy Speaker, and if such member is the Deputy Speaker, to the Speaker, resign his office; and

(c) may be removed from his office by a resolution of the House of the People passed by a majority of all the then members of the House:

Provided that no resolution for the purpose of clause (c) shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution:

Provided further that, whenever the House of the People is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the House of the People after the dissolution.

### **95. Power of the Deputy Speaker or other person to perform the duties of the office of, or to act as, Speaker.—**

(1) While the office of Speaker is vacant, the duties of the office shall be performed by the Deputy Speaker or, if the office of Deputy Speaker is also vacant, by such member of the House of the People as the President may appoint for the purpose.

(2) During the absence of the Speaker from any sitting of the House of the People the Deputy Speaker or, if he is also absent, such person as may be determined by the rules of procedure of the House, or, if no such person is present, such other person as may be determined by the House, shall act as Speaker.

### **96. The Speaker or the Deputy Speaker not to preside while a resolution for his removal from office is under consideration.—**

(1) At any sitting of the House of the People, while any resolution for the removal of the Speaker from his office is under consideration, the Speaker, or while any resolution for the removal of the Deputy Speaker from his office is under consideration, the Deputy Speaker, shall not, though he is present, preside, and the provisions of clause (2) of article 95 shall apply in relation to every such sitting as they apply in relation to a sitting from which the Speaker, or, as the case may be, the Deputy Speaker, is absent.

(2) The Speaker shall have the right to speak in, and otherwise to take part in the proceedings of, the House of the People while any resolution for his removal from office is under consideration in the House and shall, notwithstanding anything in article 100, be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of an equality of votes.

### **97. Salaries and allowances of the Chairman and Deputy Chairman and the Speaker and Deputy Speaker.—**

There shall be paid to the Chairman and the Deputy Chairman of the Council of States, and to the Speaker and the Deputy Speaker of the House of the People, such salaries and allowances as may be respectively fixed by Parliament by law and, until provision in that behalf is so made, such salaries and allowances as are specified in the Second Schedule.

#### **98. Secretariat of Parliament.—**

(1) Each House of Parliament shall have a separate secretarial staff:

Provided that nothing in this clause shall be construed as preventing the creation of posts common to both Houses of Parliament.

(2) Parliament may by law regulate the recruitment, and the conditions of service of persons appointed, to the secretarial staff of either House of Parliament.

(3) Until provision is made by Parliament under clause (2), the President may, after consultation with the Speaker of the House of the People or the Chairman of the Council of States, as the case may be, make rules regulating the recruitment, and the conditions of service of persons appointed, to the secretarial staff of the House of the People or the Council of States, and any rules so made shall have effect subject to the provisions of any law made under the said clause.

### **THE UNION JUDICIARY**

#### **124. Establishment and constitution of Supreme Court.—**

(1) There shall be a Supreme Court of India consisting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than 25 other Judges.

(2) Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty-five years:

Provided that in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted: Provided further that—

(a) a Judge may, by writing under his hand addressed to the President, resign his office;

(b) a Judge may be removed from his office in the manner provided in clause (4).

(2A) The age of a Judge of the Supreme Court shall be determined by such authority and in such manner as Parliament may by law provide.

(3) A person shall not be qualified for appointment as a Judge of the Supreme Court unless he is a citizen of India and—

(a) has been for at least five years a Judge of a High Court or of two or more such Courts in succession; or

(b) has been for at least ten years an advocate of a High Court or of two or more such Courts in succession; or

(c) is, in the opinion of the President, a distinguished jurist.

(4) A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehavior or incapacity.

(5) Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehavior or incapacity of a Judge under clause (4).

Every person appointed to be a Judge of the Supreme Court shall, before he enters upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

(6) No person who has held office as a Judge of the Supreme Court shall plead or act in any court or before any authority within the territory of India.

#### **126. Appointment of acting Chief Justice.—**

When the office of Chief Justice of India is vacant or when the Chief Justice is, by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such one of the other Judges of the Court as the President may appoint for the purpose.

#### **127. Appointment of *ad hoc* Judges.—**

(1) If at any time there should not be a quorum of the Judges of the Supreme Court available to hold or continue any session of the Court, the Chief Justice of India may, with the previous consent of the President and after consultation with the Chief Justice of the High Court concerned, request in writing

the attendance at the sittings of the Court, as an *ad hoc* Judge, for such period as may be necessary, of a Judge of a High Court duly qualified for appointment as a Judge of the Supreme Court to be designated by the Chief Justice of India.

(2) It shall be the duty of the Judge who has been so designated, in priority to other duties of his office, to attend the sittings of the Supreme Court at the time and for the period for which his attendance is required, and while so attending he shall have all the jurisdiction, powers and privileges, and shall discharge the duties, of a Judge of the Supreme Court.

#### **128. Attendance of retired Judges at sittings of the Supreme Court.—**

Notwithstanding anything in this Chapter, the Chief Justice of India may at any time, with the previous consent of the President, request any person who has held the office of a Judge of the Supreme Court or of the Federal Court or who has held the office of a Judge of a High Court and is duly qualified for appointment as a Judge of the Supreme Court to sit and act as a Judge of the Supreme Court, and every such person so requested shall, while so sitting and acting, be entitled to such allowances as the President may by order determine and have all the jurisdiction, powers and privileges of, but shall not otherwise be deemed to be, a Judge of that Court:

Provided that nothing in this article shall be deemed to require any such person as aforesaid to sit and act as a Judge of that Court unless he consents so to do.

#### **129. Supreme Court to be a court of record.—**

The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

#### **130. Seat of Supreme Court.—**

The Supreme Court shall sit in Delhi or in such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time, appoint.

#### **131. Original jurisdiction of the Supreme Court.—**

Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute—

(a) between the Government of India and one or more States; or

(b) between the Government of India and any State or States on one side and one or more other States on the other; or

(c) between two or more States,

if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends: Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagement, *sanad* or other similar instrument which, having been entered into or executed before the commencement of this Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute.

#### **132. Appellate jurisdiction of Supreme Court in appeals from High Courts in certain cases.—**

(1) An appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court in the territory of India, whether in a civil, criminal or other proceeding, if the High Court certifies under article 134A that the case involves a substantial question of law as to the interpretation of this Constitution.

(2) Where such a certificate is given, any party in the case may appeal to the Supreme Court on the ground that any such question as aforesaid has been wrongly decided.

#### **133. Appellate jurisdiction of Supreme Court in appeals from High Courts in regard to civil matters.—**

(1) An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies under article 134A—

(a) that the case involves a substantial question of law of general importance; and

(b) that in the opinion of the High Court the said question needs to be decided by the Supreme Court.

(2) Notwithstanding anything in article 132, any party appealing to the Supreme Court under clause (1) may urge as one of the grounds in such appeal that a substantial question of law as to the interpretation of this Constitution has been wrongly decided.

(3) Notwithstanding anything in this article, no appeal shall, unless Parliament by law otherwise provides, lie to the Supreme Court from the judgment, decree or final order of one Judge of a High Court.



**134. Appellate jurisdiction of Supreme Court in regard to criminal matters.—**

(1) An appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court—

- (a) has on appeal reversed an order of acquittal of an accused person and sentenced him to death; or
- (b) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or
- (c) certifies under article 134A that the case is a fit one for appeal to the Supreme Court:

Provided that an appeal under sub-clause (c) shall lie subject to such provisions as may be made in that behalf under clause (1) of article 145 and to such conditions as the High Court may establish or require.

(2) Parliament may by law confer on the Supreme Court any further powers to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India subject to such conditions and limitations as may be specified in such law.

**136. Special leave to appeal by the Supreme Court.—**

(1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.

(2) Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.

**137. Review of judgments or orders by the Supreme Court.—**

Subject to the provisions of any law made by Parliament or any rules made under article 145, the Supreme Court shall have power to review any judgment pronounced or order made by it.

**138. Enlargement of the jurisdiction of the Supreme Court.—**

(1) The Supreme Court shall have such further jurisdiction and powers with respect to any of the matters in the Union List as Parliament may by law confer.

(2) The Supreme Court shall have such further jurisdiction and powers with respect to any matter as the Government of India and the Government of any State may by special agreement confer, if Parliament by law provides for the exercise of such jurisdiction and powers by the Supreme Court.

**139. Conferment on the Supreme Court of powers to issue certain writs.—**

Parliament may by law confer on the Supreme Court power to issue directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any of them, for any purposes other than those mentioned in clause (2) of article 32.

**139A. Transfer of certain cases.—**

(1) Where cases involving the same or substantially the same questions of law are pending before the Supreme Court and one or more High Courts or before two or more High Courts and the Supreme Court is satisfied on its own motion or on an application made by the Attorney-General of India or by a party to any such case that such questions are substantial questions of general importance, the Supreme Court may withdraw the case or cases pending before the High Court or the High Courts and dispose of all the cases itself:

Provided that the Supreme Court may after determining the said questions of law return any case so withdrawn together with a copy of its judgment on such questions to the High Court from which the case has been withdrawn, and the High Court shall on receipt thereof, proceed to dispose of the case in conformity with such judgment.

(2) The Supreme Court may, if it deems it expedient so to do for the ends of justice, transfer any case, appeal or other proceedings pending before any High Court to any other High Court.

**141. Law declared by Supreme Court to be binding on all courts.—**

The law declared by the Supreme Court shall be binding on all courts within the territory of India.

**143. Power of President to consult Supreme Court.—**

(1) If at any time it appears to the President that a question of law or fact has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to that Court for consideration and the Court

may, after such hearing as it thinks fit, report to the President its opinion thereon.

(2) The President may, notwithstanding anything in the proviso to article 131, refer a dispute of the kind mentioned in the said proviso to the Supreme Court for opinion and the Supreme Court shall, after such hearing as it thinks fit, report to the President its opinion thereon.

**145. Rules of Court, etc.—**

(1) Subject to the provisions of any law made by Parliament, the Supreme Court may from time to time, with the approval of the President, make rules for regulating generally the practice and procedure of the Court including—

(a) rules as to the persons practising before the Court;

(b) rules as to the procedure for hearing appeals and other matters pertaining to appeals including the time within which appeals to the Court are to be entered;

(c) rules as to the proceedings in the Court for the enforcement of any of the rights conferred by Part III;

**147. Interpretation.—**

In this Chapter and in Chapter V of Part VI, references to any substantial question of law as to the interpretation of this Constitution shall be construed as including references to any substantial question of law as to the interpretation of the Government of India Act, 1935 (including any enactment amending or supplementing that Act), or of any Order in Council or order made there under, or of the Indian Independence Act, 1947, or of any order made there under



**Module 3****UNIT IV****STATE EXECUTIVES****THE GOVERNOR****153. Governors of States.—**

There shall be a Governor for each State:

Provided that nothing in this article shall prevent the appointment of the same person as Governor for two or more States.

**154. Executive power of State.—**

(1) The executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.

(2) Nothing in this article shall—

(a) be deemed to transfer to the Governor any functions conferred by any existing law on any other authority; or

(b) prevent Parliament or the Legislature of the State from conferring by law functions on any authority subordinate to the Governor.

**155. Appointment of Governor.—**

The Governor of a State shall be appointed by the President by warrant under his hand and seal.

**156. Term of office of Governor.—**

(1) The Governor shall hold office during the pleasure of the President.

(2) The Governor may, by writing under his hand addressed to the President, resign his office.

(3) Subject to the foregoing provisions of this article, a Governor shall hold office for a term of five years from the date on which he enters upon his office:

Provided that a Governor shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

**157. Qualifications for appointment as Governor.—**

No person shall be eligible for appointment as Governor unless he is a citizen of India and has completed the age of thirty-five years.

**158. Conditions of Governor's office.—**

(1) The Governor shall not be a member of either House of Parliament or of a House of the Legislature of any State specified in the First Schedule, and if a member of either House of Parliament or of a House of the Legislature of any such State be appointed Governor, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as Governor.

(2) The Governor shall not hold any other office of profit.

(3) The Governor shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.

(3A) Where the same person is appointed as Governor of two or more States, the emoluments and allowances payable to the Governor shall be allocated among the States in such proportion as the President may by order determine.

(4) The emoluments and allowances of the Governor shall not be diminished during his term of office.

**159. Oath or affirmation by the Governor.—**

Every Governor and every person discharging the functions of the Governor shall, before entering upon his office, make and subscribe in the presence of the Chief Justice of the High Court exercising jurisdiction in relation to the State, or, in his absence, the senior most Judge of that Court available

**160. Discharge of the functions of the Governor in certain contingencies.—**

The President may make such provision as he thinks fit for the discharge of the functions of the Governor of a State in any contingency not provided for in this Chapter.

**161. Power of Governor to grant pardons, etc., and to suspend, remit or commute sentences in certain cases.—**

The Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends.

**162. Extent of executive power of State.—**

Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws:

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof.

**CHIEF MINISTER & COUNCIL OF MINISTERS**

**163. Council of Ministers to aid and advise Governor.—**

(1) There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.

(2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.

(3) The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any court.

**164. Other provisions as to Ministers.—**

(1) The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister, and the Ministers shall hold office during the pleasure of the Governor:

Provided that in the States of Bihar, Madhya Pradesh and Orissa, there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work.

(1A) The total number of Ministers, including the Chief Minister, in the Council of Ministers in a State shall not exceed fifteen per cent. of the total number of members of the Legislative Assembly of that State:

(2) Provided that the number of Ministers, including the Chief Minister in a State shall not be less than twelve:

(3) A Minister who for any period of six consecutive months is not a member of the Legislature of the State shall at the expiration of that period cease to be a Minister.

(4) The salaries and allowances of Ministers shall be such as the Legislature of the State may from time to time by law determine and, until the Legislature of the State so determines, shall be as specified in the Second Schedule.

**STATE LEGISLATURE**

**168. Constitution of Legislatures in States.—**

(1) For every State there shall be a Legislature which shall consist of the Governor, and—

(a) in the States of Bihar, Maharashtra, Karnataka and Uttar Pradesh, two Houses;

(b) in other States, one House.

(2) Where there are two Houses of the Legislature of a State, one shall be known as the Legislative Council and the other as the Legislative Assembly, and where there is only one House, it shall be known as the Legislative Assembly.

**Legislative Assembly**

The **Vidhan Sabha** also known as **Legislative Assembly** is the lower house of state legislature in

India. Members of the Vidhan Sabha are direct representatives of the people of the particular state as they are directly elected by an electorate consisting of all adult citizens of that state. Its maximum size as outlined in the Constitution of India is not more than 500 members and not less than 60. However, it can be less than 60 by an Act of Parliament like in the states of Goa, Sikkim and Mizoram. The Governor can appoint 1 member to represent the Anglo-Indian community if he or she finds that community to not be adequately represented in the House.

Each Vidhan Sabha is formed for a five year term after which all seats are up for election. During a State of Emergency, its term may be extended past five years or it may be dissolved. It can also be dissolved if a motion of no confidence is passed within it against the majority party or coalition.

### Qualifications

To become a member of the Vidhan Sabha, a person must be a citizen of India, not less than 25 years of age. He should be mentally sound and should not be bankrupt. He should also state an affidavit that there are no criminal procedures against him.

The members of the Vidhan Sabha elect a Speaker of Vidhan Sabha who is responsible for the conduct of business of the body, and also a Deputy Speaker to preside during the Speaker's absence. The Speaker acts as a neutral judge and manages all debates and discussions in the house. Usually he is a member of the stronger political party

The Vidhan Sabha holds equal legislative power with the upper house of state legislature, the Vidhan Parishad, except in the area of money bills in which case the Vidhan Sabha has the ultimate authority. If conflicting legislation is enacted by the two Houses, a joint sitting is held to resolve the differences. In such a session, the members of the Vidhan Sabha would generally prevail, since the Vidhan Sabha includes more than twice as many members as the Vidhan Parishad.

### Powers & Functions

A motion of no confidence against the government in the state can only be introduced in the Vidhan Sabha. If it is passed by a majority vote, then the Chief Minister and his Council of Ministers must collectively resign.

A money bill can only be introduced in Vidhan Sabha. After it is passed in the Vidhan Sabha, it is sent to the Vidhan Parishad, where it can be kept for a maximum time of 14 days. Unless the Vidhan Parishad rejects it or 14 days lapse or the suggestions made by the Vidhan Parishad are not acceptable to the Vidhan Sabha, the bill is considered passed. The budget of state is also presented in the Vidhan Sabha by the Finance Minister of the state in the name of the Governor of that state.

In matters related to ordinary bills, after it is passed by the originating house (that is either Vidhan Sabha or Vidhan Parishad) it is sent to the other house, where it can be kept for a maximum period of 6 months time. If the other house rejects the bill or 6 months pass or the suggestions made by the other house is not acceptable to the originating house, it results in a situation of deadlock. This is resolved by the Governor by calling a joint session of both houses which is presided over by the speaker of the Vidhan Sabha and decided by a simple majority. Since the Vidhan Sabha has greater numerical strength, it is in a position of advantage unless fractured by many different parties

### Legislative Council

The **Vidhan Parishad** also known as **Legislative Council** forms a part of the state legislatures of India. In 6 of India's 28 states (Uttar Pradesh, Bihar, Karnataka, Maharashtra, Jammu and Kashmir and Andhra Pradesh), the Legislative Council serves as the upper house of a bicameral legislature. It is a house indirectly elected by the people. It is also a permanent house because it cannot be dissolved. Also, only one-third of its members run for election every 2 years. Every MLC (Member of Legislative Council) serves for a term of 6 years.

### Qualifications

- To become an MLC, a person must be a citizen of India, not under 30 years of age.
- He should be mentally sound and should not be bankrupt.
- His name should be on the voter's list of the state from where he is contesting the elections.

### Membership

The size of the Vidhan Parishad cannot be more than one-third the membership of the Vidhan Sabha, the Legislative Assembly (lower house) of that state.

But its size cannot be less than 40 except in Jammu and Kashmir where there are 36 by an Act of Parliament.

One-sixth of its membership is nominated by the Governor from among persons who have excelled in science, arts, social service and other activities.

Another one-third is elected by the local government bodies and one-twelfth by teachers of secondary schools, colleges and universities.

## **THE HIGH COURTS IN THE STATES**

### **214. High Courts for States.—**

There shall be a High Court for each State.

### **215. High Courts to be courts of record.—**

Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

### **216. Constitution of High Courts.—**

Every High Court shall consist of a Chief Justice and such other Judges as the President may from time to time deem it necessary to appoint.

### **217. Appointment and conditions of the office of a Judge of a High Court—**

(1) Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State, and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court, and shall hold office, in the case of an additional or acting Judge, as provided in article 224, and in any other case, until he attains the age of sixty-two years: Provided that—

(a) a Judge may, by writing under his hand addressed to the President, resign his office;

(b) a Judge may be removed from his office by the President in the manner provided in clause (4) of article 124 for the removal of a Judge of the Supreme Court;

(c) (c) the office of a Judge shall be vacated by his being appointed by the President to be a Judge of the Supreme Court or by his being transferred by the President to any other High Court within the territory of India.

(2) A person shall not be qualified for appointment as a Judge of a High Court unless he is a citizen of India and—

(a) has for at least ten years held a judicial office in the territory of India; or

(b) has for at least ten years been an advocate of a High Court or of two or more such Courts in succession.

### **219. Oath or affirmation by Judges of High Courts.—**

Every person appointed to be a Judge of a High Court shall, before he enters upon his office, make and subscribe before the Governor of the State, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

### **220. Restriction on practice after being a permanent Judge.—**

No person who, after the commencement of this Constitution, has held office as a permanent Judge of a High Court shall plead or act in any court or before any authority in India except the Supreme Court and the other High Courts.

### **222. Transfer of a Judge from one High Court to another.—**

(1) The President may, after consultation with the Chief Justice of India, transfer a Judge from one High Court to any other High Court.

(2) When a Judge has been or is so transferred, he shall, during the period he serves, after the commencement of the Constitution (Fifteenth Amendment) Act, 1963, as a Judge of the other High Court, be entitled to receive in addition to his salary such compensatory allowance as may be determined by Parliament by law and, until so determined, such compensatory allowance as the President may by order fix.

### **223. Appointment of acting Chief Justice.—**

When the office of Chief Justice of a High Court is vacant or when any such Chief Justice is, by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such one of the other Judges of the Court as the President may appoint for the purpose.

#### **224. Appointment of additional and acting Judges.—**

(1) If by reason of any temporary increase in the business of a High Court or by reason of arrears of work therein, it appears to the President that the number of the Judges of that Court should be for the time being increased, the President may appoint duly qualified persons to be additional Judges of the Court for such period not exceeding two years as he may specify.

(2) When any Judge of a High Court other than the Chief Justice is by reason of absence or for any other reason unable to perform the duties of his office or is appointed to act temporarily as Chief Justice, the President may appoint a duly qualified person to act as a Judge of that Court until the permanent Judge has resumed his duties.

(3) No person appointed as an additional or acting Judge of a High Court shall hold office after attaining the age of sixty-two years.

#### **225. Jurisdiction of existing High Courts.—**

Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution: Provided that any restriction to which the exercise of original jurisdiction by any of the High Courts with respect to any matter concerning the revenue or concerning any act ordered or done in the

collection thereof was subject immediately before the commencement of this Constitution shall no longer apply to the exercise of such jurisdiction.

#### **226. Power of High Courts to issue certain writs.—**

(1) Notwithstanding anything in article 32 every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without—

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard,  
makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.

(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32.

#### **227. Power of superintendence over all courts by the High Court.—**

(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provision, the High Court may—

(a) call for returns from such courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of



such courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein:

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces.

#### **228. Transfer of certain cases to High Court.—**

If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the case, it shall withdraw the case and may—

(a) either dispose of the case itself, or

(b) determine the said question of law and return the case to the court from which the case has been so withdrawn together with a copy of its judgment on such question, and the said court shall on receipt thereof proceed to dispose of the case in conformity with such judgment.

#### **229. Officers and servants and the expenses of High Courts.—**

(1) Appointments of officers and servants of a High Court shall be made by the Chief Justice of the Court or such other Judge or officer of the Court as he may direct:

Provided that the Governor of the State may by rule require that in such cases as may be specified in the rule no person not already attached to the Court shall be appointed to any office connected with the Court save after consultation with the State Public Service Commission.

(2) Subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court or by some other Judge or officer of the Court authorised by the Chief Justice to make rules for the purpose:

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State.

(3) The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court, shall be charged upon the Consolidated Fund of the State, and any fees or other moneys taken by the Court shall form part of that Fund.

#### **230. Extension of jurisdiction of High Courts to Union territories.—**

(1) Parliament may by law extend the jurisdiction of a High Court to, or exclude the jurisdiction of a High Court from, any Union territory.

(2) Where the High Court of a State exercises jurisdiction in relation to a Union territory,—

(a) nothing in this Constitution shall be construed as empowering the Legislature of the State to increase, restrict or abolish that jurisdiction; and

(b) the reference in article 227 to the Governor shall, in relation to any rules, forms or tables for subordinate courts in that territory, be construed as a reference to the President.

#### **231. Establishment of a common High Court for two or more States.—**

(1) Notwithstanding anything contained in the preceding provisions of this Chapter, Parliament may by law establish a common High Court for two or more States or for two or more States and a Union territory.



## UNIT VI

### Electoral Process in India

#### ELECTORAL PROCESS

According to the constitution, parliament has enacted the

- Representation of People's Acts 1950 & 1951 to prescribe the mode of election
- Delimitation Commission Acts 1962 & 1972 for the delimitation of constituencies for the election

- Delimitation of constituencies:

- done by the Delimitation commission appointed by the President after every census.
- demarcates the constituencies as general or reserved according to the population.
- decision is final & cannot be challenged by any court

- Notification of Election:

- election notification issued by President of India for the election of loksabha
- election notification issued by Governor of state for the election of legislative assembly

- Notification by the election Commission regarding Nomination & Withdrawal:

- announces the dates for the filing of nomination & withdrawal.

Filing of Nomination Papers by the intending Candidates:

- Candidates have to file their nomination papers.
- Candidates belonging to political parties should submit 'B' form issued by their party.
- election deposit for loksabha is Rs10000.
- election deposit for legislative assembly is Rs 5000.

- candidates belonging to SC & ST, election deposit for loksabha is Rs 5000 & election deposit for legislative assembly is Rs 2500.

- election deposit will be returned if the candidate secures more than 1/6th of the total votes polled in his constituency.

- Verification & Acceptance or rejection of the Nomination Papers:

- Election Commission verifies the nomination papers & accepts, which are in order & rejects which are not in order.
- announces the names of the candidates

- Election Campaign:

- period of election campaign is 14 days.
- campaign should be stopped before 36 hours from the date of election.

- Polling Process:

- takes place on the fixed date & fixed place.
- voting machines are used to vote

- Counting & Announcement of election

- Election commission announces the names of the successful candidates
- Certificate will be issued to confirm.
- Article 324 of the constitution for the establishment of Election Commission in India
- Controls over the elections of the President, Vice President, loksabha & legislative assembly.
- An independent body like Supreme Court of India.
- Performs its functions freely without the influence & interference of political parties & executives.
- Election Commission of India consist of the Chief Election Commissioner & other two Election Commissioners.
- The President may increase the number of Election Commissioners.
- President in consultation of Election Commission, appoints the Regional Commissioners for each state.
- The terms of office of the Election Commissioners are determined under an act of the Parliament, which came in to force on 25th Jan 1991.
- Holds the office for a term of 6 years.
- Retirement age of the Election Commissioners is 65 years.
- Preparation of electoral rolls
- Revision of electoral rolls

- Allotment of seats
- Conduct of elections
- Granting of recognition to political parties
- Allotment of symbols
- Ensuring fair & free elections

## AMENDMENT

**Definition:** a statement that is added to or revises or improves a proposal or document (a bill or constitution etc.) The procedure is laid out in Part XX, Article 368 of the constitution.

Despite these rules there have been over ninety amendments to the constitution since it was enacted in 1950. The Indian Supreme Court has ruled, controversially, that not every constitutional amendment is permissible. An amendment must respect the "basic structure" of the constitution, which is immutable.

Amendments of the Indian Constitution have been done for the purpose of variation, addition or cancellation of any provision made in the constitution. Since the enactment of the Constitution of India on 26 November 1949, there have been 94 amendments made to it till 2006. Numbers of Bills are introduced before Lok Sabha and Rajya Sabha for further improving the Constitution. Parliament has been bestowed with the constituent power, using which changes in the Indian Constitution can be made. However, the basic structure of the Indian Constitution cannot be changed under any circumstances. In case any amendment violates the basic structure of constitution, it should be revised and changed.

### Constitutional Provision for Amendment of the Indian Constitution

Part XX of the Constitution of India deals with the Amendment of the Constitution. The Article 368 specifies the power of Parliament to amend the constitution and the procedure of it. It is also mentioned in the Article that there will be no limitation on the constituent power of the Parliament for amending it by adding, removing or improving the provisions made in it.

### Procedure of the Amendments of the Indian Constitution

The method of an amendment to the constitution is considered to be a highly complicated procedure. Amendment can be made by various methods, which have been modeled based on the South African Constitution. The initial step of an amendment of the constitution is the introduction of Bills regarding it in any one of the houses of the Parliament. The Bills can be passed by simple majority of the Parliament. Before sending the Bills for President's assent, there can be a voting among the members of Parliament present. If majority of them votes in favor of the amendments, it is accepted. An amendment can also be finalized if two-thirds of the members of Parliament present vote in its favor. However, the number of voters should be more than half of the total number of members of the house. This method is known as 'special majority of the Parliament'. In some cases, Bills for amendments to the Indian Constitution, finalized in this method, may also require the ratification of the Legislatures of at least half of the Indian States.

### Constitution (42<sup>nd</sup> Amendment) Act, 1972:

- Firstly, it changed the characterization of India to —sovereign, socialist secular democratic republic|| from —sovereign democratic republic.||
- Secondly, the words ‘\_unity of the nation’ was changed to ‘\_unity and integrity of the nation’.
- 42nd Constitutional Amendment froze the readjustment in constituencies for election to Lok Sabha, and State Legislative Assemblies, after every census held after an interval of ten years at the point of 1971 census till the holding of the first census after the year 2000.
- The fixation of the number of seats for the Schedule Constitutional Amendments and the Schedule tribes in Lok Sabha and State Legislative Assemblies was also frozen
- The quorum in a House of Parliament or a State Legislature was left to be fixed by the rules of each house.
- It extended the term of Lok Sabha and State Legislative Assemblies from five to six years. A person holding an ‘\_office of profit’ is disqualified from the membership of parliament or a State Legislature and have courts power to declare what was an office of profit was ceased. Similarly, disqualification Constitutional Amendment of the members of the State Legislature

was to be decided by the President in consultation with the Election Commission as in Constitutional Amendments of Parliament, till then the power vested in the Governor.

42nd Constitutional Amendment amended Art. 74 and explicitly laid that the President shall act in accordance with the advice of the Council of Ministers. But no such provision was made by 42nd constitutional amendment as regards the State Governors. Thus the Governor has certain discretionary functions to discharge in respect of which he is not bound by ministerial advice

Art.352 was amended to authorize the President to vary proclamation of emergency but earlier he could not. For this some necessary changes were made in Article 353, 358 and 359.

Earlier the proclamation of emergency under Art.356 needed parliamentary approval to operate at the end of every six years but now this period was extended to one year. Amendment of Article 357 ensured that laws made for a State when it was under Art.356 emergency was not to come to an end automatically Constitutional Amendment after the expiry of the emergency but would continue in operation until the State Legislature made changes.

42nd Constitutional Amendment added few more Directive Principles, viz Art.39A, Art.43A, Art. 48A.

Art. 31C was amended to give primacy to all Directive Principles over the Fundamental Rights irrespective of their being inconsistent with any of the rights conferred by Article 14, 19 or 31.

#### **Constitution (44th Amendment) Act, 1978:**

This Amendment brought a lot of changes in many Articles. The preventive detention for a period of more than two months can be ordered only on the recommendations of an Advisory Board. The right to property was omitted as a fundamental right and made as a legal right. But minorities will have rights to establish or run their educational institutions as before.

#### **Constitution (74th Amendment) Act,1992:**

To ensure effective functioning of the Urban Local Bodies, a new part IX-A relating to the Municipalities, i.e., Nagar Panchayats for areas in transition from a rural area to Urban area, Municipal Councils for smaller Urban areas and Municipal Corporations for larger urban areas.

#### **Constitution (76th Amendment) Act, 1994:**

This amendment places the Tamil Nadu Bill of Reservation within the preview of the Ninth Schedule to the Constitution. The government of Tamil Nadu reserve 18% to Scheduled Castes, 1% to Scheduled Tribes and 50% to Other Backward Castes (total 69%) in education institutions and public employments.

#### **Constitution (86th Amendment) Act, 2002:**

1. This Act may be called the Constitution (Eighty-sixth Amendment) Act, 2002.

2. Insertion of new article 21A.- After article 21 of the Constitution, the following article shall be inserted, namely:-

Right to education.-

"21A. The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine."

3. Provision for early childhood care and education to children below the age of six years.

"45. The State shall endeavor to provide early childhood care and education for all children until they complete the age of six years."

4. Amendment of article 51A.- In article 51A of the Constitution, after clause (J), the following clause shall be added, namely:-

"(k) who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years."

**Constitution (91<sup>st</sup> Amendment) Act, 2003**

1. This Act may be called the Constitution (Ninety-first Amendment) Act, 2003. In article 75 of the Constitution, after clause (1), the following clauses shall be inserted, namely:—(1A) The total number of Ministers, including the Prime Minister, in the Council of Ministers shall not exceed fifteen per cent. Of the total number of members of the House of the People.

(1B) A member of either House of Parliament belonging to any political party who is disqualified for being a member of that House under paragraph 2 of the Tenth Schedule shall also be disqualified to be appointed as a Minister under clause (1) In article 164 of the Constitution, after clause (1), the following clauses shall be inserted, namely:--

—(1A) The total number of Ministers, including the Chief Minister, in the Council of Ministers in a State shall not exceed fifteen per cent. of the total number of members of the Legislative Assembly of that State: Provided that the number of Ministers, including Chief Minister in a State shall not be less than twelve: Provided further that where the total number of Ministers including the Chief Minister in the Council of Ministers in any State at the commencement of the Constitution (Ninety-first Amendment) Act, 2003 exceeds the said fifteen per cent. or the number specified in the first proviso, as the case may be, then, the total number of Ministers in that State shall be brought in conformity with the provisions of this clause within six months from such date as the President may by public notification appoint.

After article 361A of the Constitution, the following article shall be inserted, namely:-- 361B. A member of a House belonging to any political party who is disqualified for being a member of the House under paragraph 2 of the Tenth Schedule shall also be disqualified to hold any remunerative political post for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or till the date on which he contests an election to a House and is declared elected, whichever is earlier.

In the Tenth Schedule to the Constitution,--

(a) In paragraph 1, in clause (b), the words and figure —paragraph 3 or, as the case may be,|| shall be omitted;

(b) In paragraph 2, in sub-paragraph (1), for the words and figures —paragraphs 3, 4 and 5||, the words and figures —paragraphs 4 and 5|| shall be substituted;

## Module 4

### UNIT VII

#### SPECIAL PROVISIONS

The preamble to the constitution declares that India is a sovereign, Socialist, Secular & Democratic Republic that secures to all its citizens. Justice- Social Economic & Political.

All these words written in capitals have their own significance. A democratic system stands on the foundations of equality and liberty. Indian constitution guarantees essential boons of Justice, Liberty, Equality; Secularism & Socialism under Part-III containing Fundamental Rights and the Ideals of Social and Economic Democracy has contained in Part IV having Directive Principle of State Policy.

Fundamental Rights were deemed essential to protect the rights and the liberties of the people against the encroachment of the power delegated to them to the government.

They are limitation upon all powers of the government and they are essential for the preservation of public and private rights.

#### I. WOMEN AND CHILDREN

#### II. BACKWARD CLASSES

#### SPECIAL PROVISIONS UNDER THE CONSTITUTION FOR WOMEN AND CHILDREN

The framers of the Indian constitution best owed sufficient thought on the position of women & Children in the social order. This is evident from the provision of the constitution, which have not only ensured equality between men and women but also provided specifically certain safeguards in favour of women & children. Equality of status & of opportunity is a concomitant to the principle of social justice. Women & children require special treatment on account of their nature. The reason is that 'Women' Physical structure & performance of material functions requires special care.

#### ARTICLE 14:

—The State shall not deny to any Person **EQUALITY BEFORE THE LAW OR EQUAL PROTECTION LAWS** within the territory of India."

This provision aims at establishing Equality of status in the preamble and guarantees to all persons, including women and children, The right to equality in law. Article 14 is general provision & has to be read subject to the other provisions within the part-III on Fundamental rights. Hence, any law making provision for women and children under Article 15 (3) cannot be challenged on the ground of contravention of Article 14. The special provisions made under these provisions must be within reasonable limits.

#### ARTICLE 15 :

The state shall not discriminate against any citizen on grounds only of religion, race, Caste, Sex, Place of birth or any of them.

No Citizen shall, on grounds only of religion, race, caste, sex place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to –

Access to shops, public restaurants, hotels & place of public entertainment; or

The use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partially out of state funds or dedicated to the use of the general public.

Nothing in this Article shall prevent the state from making any special provisions for women and children.

#### SPECIAL PROVISIONS FOR WOMEN:

Article 15(3) has enabled the state to make special provisions under: -

**Section: 354 Indian Penal Code (IPC)** : Assaulting or using force to a woman with intent to outrage her modesty; imprisonment for 2 years or with fine or with both.

**Section 497 IPC:** Which only punishes man in cases of Adultery & Exempts the women from punishment even though she may be equally guilty as an abettor. This provision is also applicable for



children.

**Section 497 (1) Criminal Procedure Code:** Making special treatment for women and children in matter of granting Bail.

**Section 494 IPC:** This makes Bigamy a punishable offence.

**The Hindu Marriage Act of 1955** has made Bigamy punishable offence & Given greater strength to monogamy

Reservation of seats in local body.

**The Hindu Succession Act, 1956** made for reaching changes in the law improved the position of women & treated women on par with men in case of property succession.

Separate educational institutions exclusively for women.

Reservation of a seats or places for women in public conveyances & places of public resort.

**The Factories Act, 1948** provides separate facilities & treatment for women.

**Maternity Benefit Act, 1961** provides free medical treatment & maternity leave for women.

The State is competent under **Article 15(3) 16(1) 16(2) & 16(4)** of the constitution to give preference to women in Government Jobs where they are equally mentions but more suited than men. These constitutional provisions, no doubt ensures equality of opportunity to women. The purpose of Article 15(3) is to improve the status of women, to empower them in a manner that would bring about effective equality between men & women.

The supreme court gave wider interpretation to the phrase —Special Provisions|| under Article 15(3) to include with in ambits not only positive state acts like concessions, preferences, benefits, etc but also reservation of posts or appointment in public service in favor of women. Based on wider interpretation of the Supreme Court Rule 22-A(2) of Andra Pradesh State & subordinate service rules provided to the extent of 30% of the posts to women. Therefore, Based on the above instances of Article 15(3) has been described as ‘\_Protective discriminations’ for women. The framers of the constitution took a pragmatic view. In incorporating Article 15(3) because they expected that this provision might compensate the laws of opportunities suffered by women during the last several centuries. Hence clause (3) of Article 15 of the constitution may be described as a compensatory provision for women. The following are the relevant provisions in respect of women in Directive Principles of State Policy.

**Article 39(a):** Equal Right of men and women to adequate means of livelihood and free legal aid.

**Article 39(d):** Equal pay for equal work for both men and women.

**Article 42:** Directs the state to make provision for securing just human conditions and for maternity relief.

**Article 47:** Duty to raise the stand of living and improvement of health.

### **SPECIAL PROVISIONS FOR CHILDREN:**

Article 15(3) empowers the state to make special provision for children. The constitution makers had known that the India of their vision would not be a reality, if the children of the country are not matured and educated. For this and thief exploitation by different profit makers for their personal gain, the constitution makers incorporated.

Under Part III Fundamentals Rights the following provisions. Article 15(3) empowers the state to make special provisions for children under this clause and it is an exceptions for children under this clause and it is an exception to the rule against discrimination provided by clauses (1) & (2) of Article 15. Special provisions may be made either by legislation or by executive order.

**Article 21-A :** The Constitution (86<sup>th</sup> amendment ) Act, 2002 added this Article 21-A has made education for all children of the age of 6 to 14 years a fundamental right.

For the success of democratic system of Government, education is one of the basic elements. Education gives a person human dignity & develops himself & contributes to the development of the country. The makers of the constitution realising the importance of education have imposed a duty on

the state under Article 45 as one of the directive principle of State policy to provide free & compulsory education to all children between the age of 6 to 14 years. The Supreme Court during 1993 in Unnikrishnan Case declared that right to education for the children of the age 6 to 14 is a fundamental right. Even after this, there was no improvement, but the Government enacted constitution (86<sup>th</sup> Amendment) Act, 2002 which would make education a Fundamental Right.

The question arises as to how this right would be implemented since the population of the country has considerably increased & the number of Children of age from 6 to 14 years are in crores.

**Article 24 :** No Child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

This Article prohibits employment of children below 14 years of age in factories & hazardous employment. It is in the interest of Public health & safety of life of children. Children are assets of the nation.

The following are Indian legislations dealing with prohibition & regulation of child labour.

**The General Legislations are :-**

The Factories Act, 1948.  
 The Plantation workers act, 1951.  
 The Mines Act, 1952.  
 The Merchant & Shipping Act, 1958.  
 The Motor Transport Workers Act, 1961.  
 The Karnataka Shops & Commercial Establishments Act, 1961.  
 The Beedi & Cigar Workers Act, 1966.  
 The Dangerous Machinery Act, 1983.

Further, Part IV Directive Principles of State Policy imposes upon the states the obligation under Article 39(e) to protect health & strength of workers & tender age of children & to ensure that they are not forced by economic necessity to enter avocations unsuited to their age or strength.

**Article 39(f):** The Children are given opportunities & facilities to develop in a healthy manner & in conditions of freedom & dignity & that childhood & youth are protected against exploitation & against moral & material abandonment.

**Fundamental Duty Under Article 51 (K) in Part IV-A:**

The Constitution (86 Amendment) Act 2002 has added a new clause (K) to Article 51-A who provides —who is parent or guardian to provide opportunities for education to his child as the case may be, ward between the age of six & fourteen years.

Some of the employments like cinema production, operation, TV serial production, domestic works, commercial advertisements, activities involved in tourism etc in which employment of child not covered by the existing legislations.

**II CONSTITUTIONAL PROVISIONS FOR BACKWARD CLASSES :**

In the preceding lecture we have analyzed the constitutional provisions for women & children. It is now necessary to know the constitutional provisions for backward classes in Article-14, 15, 16 & 17 & other provisions of the constitution.

**Determination of backward classes:**

The term ‘Backward classes’ has not been defined in the constitution. The preamble to the constitution declares that it secures to all its citizens Justice, Social, Economic & Political. In the light of Distributive Justice Article 14 guarantees Equality before law or equal protection of laws for all. Article 15 prohibits discrimination on various grounds. Article 16 ensures equality in public employment. The ingredient of ‘Socialism’ finds its place in the system of reservation & safeguards that the state may introduce to uplift the weaker sections or backward classes of the society. Now the question arises as to who can be considered as —backward & what criteria should be adopted to determine it. As already mentioned the term —Backward Classes has not been defined in the constitution, but the same term is used in Article 340 which provides the President may by order appoint a commission to investigate the conditions of —Backward Classes within the territory of India. The commission so appointed may in its report suggest, among others, steps that should be taken to improve their conditions. But even here the definition of the term is not furnished. Therefore, the State must have a clear idea as to who actually constitute Backward Classes. It is necessary to know the

criteria or factors which have to be taken into consideration to determine Backward Classes for the effective utilization of reservation benefits depends much upon the clear determination of the said classes of citizens for whose benefit & uplift they have been incorporated into the constitution.

The Scheduled Castes & Scheduled Tribes (SC & ST) being mentioned with the 'Backward Classes' in matters of reservation refers to classes persons other than the members of the Scheduled Castes & Tribes. Article 341 & 342 of the constitution which provides that the President has been expressly authorized to limit the notification to parts or groups of castes within the castes.

It is clear, therefore, that President's order shall specify the list of castes included in this category & any other caste may be included in it if sufficient evidence is produced in its favor. But the presidential notification is not open to judicial scrutiny. A person belonging to Scheduled Caste must be either a Hindu or a Sikh. Thus, the reservation privilege is not available to the Christians, Muslims, Buddhists, Parsis etc.

### **BACKWARD CLASS COMMISSIONS :**

The President of India, acting under Article 340 of the Constitution appointed the following Backward Class commissions.

1. Kaka Saheb Kalelkar commission 1953.
2. Dr. Naganna Gowda committee 1960 (Mysore).
3. Kumara Pillai Commission 1964 (Kerala).
4. Sattanathan commission 1969 (Tamil Nadu).
5. Damodaran Commission 1967 (Kerala).
6. Mandal commission 1978.

### **SPECIAL PROVISIONS FOR ADVANCEMENT OF BACKWARD CLASSES.**

#### **PROTECTIVE DISCRIMINATION :-**

Articles 14 to 16 of the Constitution guarantee the right to equality to every citizen of India. Article 14 embodies the general principles of equality expressed in the preamble. Articles 15 & 16 laid down specific application of the General Rules laid down in Article 14.

**Article 14:** —The State shall not deny to any person equality before the law or equal protection of laws within the territory of India.||

The concept of equality doesn't mean absolute equality among human beings, which is physically not possible to achieve. It is a concept implying absence of any special privilege by reason of birth, creed or the like in favour of any individual & also the equal subject of all individuals & classes to the ordinary law of the land. The Concept Equality before the Law derived from English Rule of Law. Equality before the law means like should be treated alike. Among equals the law should be equal & should be equally administered. The protection of Article 14 extends both citizens & non-citizens & to natural persons as well as legal persons.

#### **ARTICLE 14 PERMITS REASONABLE CLASSIFICATION:**

The classification however must not be arbitrary, artificial or evasive but must be based on some real & substantial distinction bearing a just & reasonable relation to the object sought to be achieved by the legislation.

#### **TEST OF REASONABLE CLASSIFICATION:**

Classification to be reasonable must fulfill the following two conditions:-

The classification must be founded on an intelligible which distinguishes persons or things that are grouped together from others left out of the group.

The differentia must have a rational relation to the object sought to be achieved by the Act.

**ARTICLE 15 :** The guarantee under Article 15 is available to citizens only & not to every person whether Citizen or non-citizen as under Article 14, Article 15(1) direct the State not to discriminate against a citizen on grounds only of religion, race, caste, sex or place of birth or any of them. Article 15(2) prohibits both state & private individual, on the grounds only of religion, race, caste, sex or place of birth or any of them with regard to (a) access to shops, public restaurants, hotels & places public entertainment, or (b) the use of wells, tanks, baths, roads & places of public resort. The object of Art 15(2) is to eradicate the social evils of caste system.

#### **ARTICLE 15 (3) : SPECIAL PROVISIONS FOR WOMEN & CHILDREN :**

Which we have already discussed in the earlier discussion, which is an exception to Article 15(1) & (2).

**RESERVATIONS IN MATTERS OF PUBLIC EMPLOYMENT :****Article 16 :**

There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of any employment or office under the state.

Article 16 is an instance of the application of the general rule of equality before law laid down in Article 14 and of the prohibition of discrimination in Article 15(1) with respect to the opportunity for employment or appointment to any officer under the state.

**Article 16(3)** is an exception to clause (2) of this Article which forbids discrimination on the ground of Residence. This Article empowers parliament to regulate by the law the extent to which it would be permissible for a state to depart from the above principle. It provides that no one will be disqualified on the ground one is not the resident of a particular state.

**Article 16(4)** is the second exception to the general rule embodied in Articles 16(1) & (2). It empowers the State to make special provision for the reservation of appointments of posts in favour of any backward class of citizens. Article 16 (4) applies only if two conditions are satisfied.

**EMERGENCY PROVISIONS**

The President can declare three types of emergencies:

1. National emergency
2. State emergency
3. Financial emergency

**NATIONAL EMERGENCY UNDER ARTICLE 352**

National emergency is caused by war, external aggression or armed rebellion in the whole of India or a part of its territory. Such an emergency was declared in India in 1962 (Indo-China war), 1971 (Indo-Pakistan war), and 1975 (declared by Indira Gandhi to maintain law and order in the country). The President can declare such an emergency only on the basis of a written request by the Council of Ministers headed by the Prime Minister. Such a proclamation must be approved by the Parliament within one month. Such an emergency can be imposed for six months. It can be extended by six months by repeated parliamentary approval.

In such an emergency, Fundamental Rights of Indian citizens can be suspended. The six freedoms under Right to Freedom are automatically suspended. However, the Right to Life and Personal Liberty cannot be suspended according to the original Constitution. It modifies the federal system of government to a unitary one.

In January 1977 however, during the emergency declared controversially by Indira Gandhi, the government decided to suspend even the Right to Life and Personal Liberty by dispensing with Habeas corpus. Chief Justice Hans Raj Khanna defended the Right to Life and asked: "Life is also mentioned in Article 21 and would Government argument extend to it also?". The Attorney General observed: "Even if life was taken away illegally, courts are helpless."

The Parliament can make laws on the 66 subjects of the State List (which contains subjects on which the state governments can make laws). Also, all money bills are referred to the Parliament for its approval. The term of the Lok Sabha can be extended by a period of one year but not more than six months from the date when the emergency has ceased to exist.

**STATE EMERGENCY UNDER ARTICLE 356**

State emergency is declared on failure of constitutional machinery in a state. Nearly every state in India has been under a state of emergency at some point of time or the other. The state of emergency is commonly known as 'President's Rule'

If the President is satisfied, on the basis of the report of the Governor of the concerned state or from other sources that the governance in a state cannot be carried out according to the provisions in

the Constitution, he can declare emergency in the state. Such an emergency must be approved by the Parliament within a period of two months.

It is imposed for six months and can last for a maximum period of three years with repeated parliamentary approval every six months. If the emergency has to be extended for more than three years, it can be done by a constitutional amendment, as has happened in Punjab and Jammu and Kashmir.

During such an emergency, the President can take over the entire work of the executive, and the Governor administers the state in the name of the President. the Legislative Assembly can be dissolved or may remain in suspended animation. The Parliament makes laws on the 66 subjects of the state list (see National emergency for explanation). All money bills have to be referred to the Parliament for approval. In this situation ministers of state legislature are not allowed to perform action in state.

### **FINANCIAL EMERGENCY UNDER ARTICLE 360**

If the President is satisfied that there is an economic situation in which the financial stability or credit of India is threatened, he or she can declare financial emergency. Such an emergency must be approved by the Parliament within two months. It has never been declared. Such a situation had arisen but was avoided by selling off of the gold assets of India

It remains enforced till the President revokes it.

In case of a financial emergency, the President can reduce the salaries of all government officials, including judges of the Supreme Court and High Courts. All money bills passed by the State legislatures are submitted to the President for his approval. He can direct the state to observe certain principles (economy measures) relating to financial matters.

The phrase Emergency period used loosely, when referring to the political history of India, often refers to the third and the most controversial of the three occasions.



UNIT VIII

Municipalities

Municipal Governance in India has been in existence since the year 1687 with the formation of Madras Municipal Corporation and then Calcutta and Bombay Municipal Corporation in 1726. In early part of the nineteenth century almost all towns in India had experienced some form of municipal governance. In 1882 the then Viceroy of India, Lord Ripon's resolution of local self-government laid the democratic forms of municipal governance in India.

In 1919, a Government of India act incorporated the need of the resolution and the powers of democratically elected government were formulated. In 1935 another Government of India act brought local government under the purview of the state or provincial government and specific powers were given.

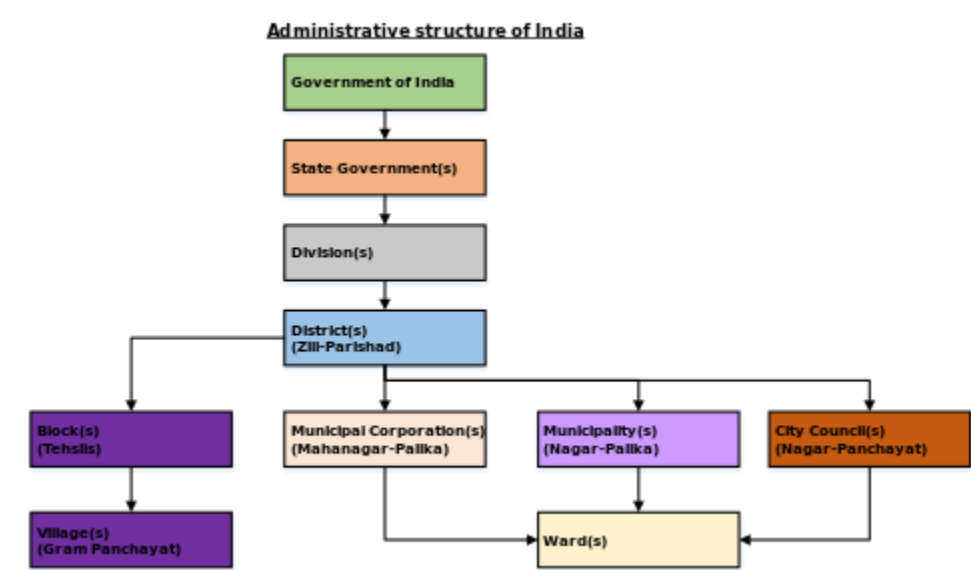
According to Census of India, 1991, there are 3255 Urban Local Bodies (ULB)s in the country; classified into four major categories of

- 1. Municipal Corporation
- 2. Municipalities (*Municipal Council, Municipal Board, Municipal Committee*)
- 3. Town Area Committee
- 4. Notified Area Committee

The municipal corporations and municipalities are fully representative bodies, while the notified area committees and town area committees are either fully or partially nominated bodies.

As per the Indian Constitution, 74th Amendment Act of 1992, the latter two categories of towns are to be designated as municipalities or nagar panchayats with elected bodies.<sup>[1]</sup> Until the amendments in state municipal legislations, which were mostly made in 1994, municipal authorities were organised on an Latin: *ultra vires* (beyond the authority) basis and the state governments were free to extend or control the functional sphere through executive decisions without an amendment to the legislative provisions.

After the 74th Amendment was enacted there are only three categories of urban local bodies:



Administrative structure of India

- Mahanagar Nigam (*Municipal Corporation*)
- Nagar Palika (*Municipality*)
- Nagar Panchayat (*Notified Area Council, City Council*)

This article provides that there be a Nagar Panchayat for transitional areas i.e. an area in transition from rural to urban, a municipality for a smaller urban area and a municipal corporation for a larger urban area.<sup>[2]</sup> Article 243Q of the 74th Amendment requires that municipal areas shall be declared having regard to the population of the area, the density of population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic

importance or such other factors as may be specified by the state government by public notification for this purpose.

Among all urban local governments, municipal corporations enjoy a greater degree of fiscal autonomy and functions although the specific fiscal and functional powers vary across the states, these local governments have larger populations, a more diversified economic base, and deal with the state governments directly. On the other hand, municipalities have less autonomy, smaller jurisdictions and have to deal with the state governments through the Directorate of Municipalities or through the collector of a district. These local bodies are subject to detailed supervisory control and guidance by the state governments.

## **Responsibilities of ULBs**

The municipal bodies of India are vested with a long list of functions delegated to them by the state governments under the municipal legislation. These functions broadly relate to public health, welfare, regulatory functions, public safety, public infrastructure works, and development activities.

Public health includes Water supply, Sewerage and Sanitation, eradication of communicable diseases etc.; welfare includes public facilities such as Education, recreation, etc.; regulatory functions related to prescribing and enforcing Building regulations, encroachments on public land, Birth registration and Death certificate, etc.; public safety includes Fire protection, Street lighting, etc.; public works measures such as construction and maintenance of inner city roads, etc.; and development functions related to Town planning and development of commercial markets. In addition to the legally assigned functions, the sectoral departments of the state government often assign unilaterally, and on an agency basis, various functions such as Family planning, Nutrition and slum improvement, disease and Epidemic control, etc.

The Twelfth Schedule of Constitution (Article 243 w) provides an illustrative list of *eighteen functions*, that may be entrusted to the municipalities.<sup>[1]</sup>

## **Mahanagar Nigam (Municipal Corporation)**

Mahanagar Nigam a.k.a. (*Municipal Corporation*) in India are state government formed departments that works for the development of a Metropolitan city, which has a population of more than 1 Million. The growing population and urbanisation in various cities of India were in need of a local governing body that can work for providing necessary community services like health centres, educational institutes and housing and property tax.

They are formed under the Corporations Act of 1835 of panchayati raj system which mainly deals in providing essential services in every small town as well as village of a district/city. Their elections are held once in five year and the people choose the candidates. The largest corporations are in the five metropolitan cities of India, namely Delhi, Mumbai, Kolkata, Chennai and Bangalore. These cities not only have a large population, but are also the administrative as well as commercial centres of the country.

## **Nagar Palika (Municipality)**

In India, a Nagar Palika or Municipality or Nagar Nigam is an urban local body that administers a city of population 100,000 or more. However, there are exceptions to that, as previously nagar palikas were constituted in urban centers with population over 20,000 so all the urban bodies which were previously classified as Nagar palika were reclassified as Nagar palika even if their population was under 100,000. Under the Panchayati Raj system, it interacts directly with the state government, though it is administratively part of the district it is located in. Generally smaller district cities and bigger towns have a Nagar palika. Nagar palikas are also a form of local self-government, entrusted with some duties and responsibilities, as enshrined and guided upon by the Constitutional (74th Amendment) Act, 1992.

The members of the Nagar palika are elected representatives for a term of five years. The town is divided into wards according to its population, and representatives are elected from each ward. The members elect a president among themselves to preside over and conduct meetings. A chief officer, along with officers like an engineer, sanitary inspector, health officer and education officer who come from the state public service are appointed by the state government to control the administrative affairs of the Nagar Palika.

## **Nagar Panchayat (Notified Area Council)**

A Nagar Panchayat or Notified Area Council or City Council is a form of an urban political unit in India comparable to a municipality. An urban centre with more than 11,000 and less than 25,000 inhabitants is classified as a "Nagar Panchayat".

Each Nagar Panchayat has a committee consisting of a chairman with ward members. Membership consists of a minimum of ten elected ward members and three nominated members. The N.A.C. members of the Nagar Panchayat are elected from the several wards of the Nagar Panchayat on the basis of adult franchise for a term of five years. There are seats reserved for Scheduled Castes, Scheduled Tribes, backward classes and women. The Councillors or Ward Members chosen by direct election from electoral wards in the Nagar Panchayat.

## Panchayats

Panchayati Raj translates literally to ‘**Governance by five individuals**’. The idea is to ensure at the village or grass root level a functioning and vibrant democracy. While the idea of grassroots democracy is not an alien import to our country, in a society where there are sharp inequalities democratic participation is hindered on grounds of gender, caste and class. Furthermore, traditionally there have been caste panchayats in villages. But they have usually represented dominant groups.

Furthermore, they often held conservative views and often have, and continue to take decisions that go against both democratic norms and procedures. When the constitution was being drafted panchayats did not find a mention in it. At this juncture, a number of members expressed their sorrow, anger and disappointment over this issue. At the same time, drawing on his own rural experience Dr. Ambedkar argued that local elites and upper castes were so well entrenched in society that local self-government only meant a continuing exploitation of the downtrodden masses of Indian society. The upper castes would no doubt silence this segment of the population further.

The concept of local government was dear to Mahatma Gandhi too. He envisaged each village as a self-sufficient unit conducting its own affairs and saw gram-swarajya to be an ideal model to be continued after independence.

It was, however, only in 1992 that grassroots democracy or decentralised governance was ushered in by the 73rd Constitutional Amendment. This act provided constitutional status to the Panchayati Raj Institutions (PRIs). It is compulsory now for local self-government bodies in rural and municipal areas to be elected every five years. More importantly, control of local resources is given to the elected local bodies.

The 73rd and 74th amendments to the Constitution ensured the reservation of one third of the total seats for women in all elected offices of local bodies in both the rural and urban areas. Out of this, 17 per cent seats are reserved for women belonging to the scheduled castes and tribes.

This amendment is significant as for the first time it brought women into elected bodies which also bestowed on them decision making powers. One third of the seats in local bodies, gram panchayats, village panchayats, municipalities, city corporations and district boards are reserved for women.

The 1993-94 elections, soon after the 73rd amendment brought in 800,000 women into the political processes in a single election. That was a big step indeed in enfranchising women. A constitutional amendment prescribed a three-tier system of local self-governance (read Box 3.7 on the last page) for the entire country, effective since 1992-93.

## The three tier system of Panchayati Raj Institution

The structure is like a pyramid. At the base of the structure stands the unit of democracy or Gram Sabha. This consists of the entire body of citizens in a village or grama. It is this general body that elects the local government and charges it with specific responsibilities. The Gram Sabhas ideally ought to provide an open forum for discussions and village-level development activities and play a crucial role in ensuring inclusion of the weaker sections in the decision-making processes.

- The 73rd Amendment provided a three-tier system of Panchayati Raj for all states having a population of over twenty lakhs.
- It became mandatory that election to these bodies be conducted every five years.
- It provided reservation of seats for the Scheduled Castes, Scheduled Tribes and thirty three percent seats for women.
- It constituted District Planning Committee to prepare drafts and develop plans for the district as a whole.

## Powers and Responsibilities of Panchayats

According to the Constitution, Panchayats should be given powers and authority to function as institutions of self-government. It, thus, requires all state governments to revitalise local representative institutions. The following powers and responsibility were delegated to the Panchayats:

- to prepare plans and schemes for economic development
- to promote schemes that will enhance social justice
- to levy, collect and appropriate taxes, duties, tolls and fees
- help in the devolution of governmental responsibilities, especially that of finances to local authorities

Social welfare responsibilities of the Panchayats include the maintenance of burning and burial grounds, recording statistics of births and deaths, establishment of child welfare and maternity centres, control of cattle pounds, propagation of family planning and promotion of agricultural activities. The development activities include the construction of roads, public buildings, wells, tanks and schools. They also promote small cottage industries and take care of minor irrigation works. Many government schemes like the Integrated Rural Development Programme (IRDP) and Integrated Child Development Scheme (ICDS) are monitored by members of the panchayat.

The main income of the Panchayats is from tax levied on property, profession, animals, vehicles, cess on land revenue and rentals.

The resources are further increased by the grants received through the Zilla Panchayat. It is also considered compulsory for Panchayat offices to put up boards outside their offices, listing the break up of funds received, and utilisation of the financial aid received.

This exercise was taken up to ensure that people at the grassroot level should have the 'right to information' – opening all functioning to the public eye. People had the right to scrutinise allocation of money. And ask reasons for decisions that were taken for the welfare and development activities of the village.

Nyaya Panchayats have been constituted in some states. They possess the authority to hear some petty, civil and criminal cases. They can impose fines but cannot award a sentence. These village courts have often been successful in bringing about an agreement amongst contending parties. They have been particularly effective in punishing men who harass women for dowry and perpetrate violence against them.

## Panchayati Raj in Tribal Areas

Many tribal areas have had a rich tradition of grassroot democratic functioning. We give an illustrative example from Meghalaya. All the three major ethnic tribal groups, namely, the Khasis, Jaintias and the Garos have their own traditional political institutions that have existed for hundreds of years. These political institutions were fairly well-developed and functioned at various tiers, such as the village level, clan level and state level. For instance, in the traditional political system of the Khasis each clan had its own council known as the 'Durbar Kur' which was presided over by the clan headman. Though there is a long tradition of grassroot political institutions in Meghalaya, a large chunk of tribal areas lie outside the provisions of the 73rd Amendment. This may be because the concerned policy makers did not wish to interfere with the traditional tribal institutions.

However, as sociologist Tiplut Nongbri remarks that tribal institutions in themselves need not necessarily be democratic in its structure and functioning. Commenting on the Bhuria Committee Report that went into this issue Nongbri remarks that while the Committee's concern for the traditional tribal institutions is appreciable, it fails to take stock of the complexity of the situation. For notwithstanding the strong egalitarian ethos that characterised tribal societies the element of stratification is not altogether absent.

Tribal political institutions are not only marked by open intolerance to women but the process of social change has also introduced sharp distortions in the system, making it difficult to identify which is traditional and which is not.

## Co-Operative Society

- A co-operative society is an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly-owned and democratically-controlled enterprise.

- A co-operative society is another means for forming a legal entity to conduct business besides forming a company. It pools together human resources in the spirit of self and mutual help with the object of providing services and support to members.
- The Co-operative Principles under which a co-operative society operates and carries out its business are :-
  1. Voluntary and open membership.
  2. Democratic control, one member one vote.
  3. Autonomy and independence.
  4. Promoting economic activities.
  5. Promoting education and information technology.
  6. Co-operation among co-operatives.
  7. Concern for the social and ecological environment.

### **How is a co-operative society regulated ?**

- The operation of co-operative societies is subject to control so as to prevent fraud and to ensure that every member enjoys equal rights and benefits (equity and equality) in respect of the business of the society. There are restrictions on profit disposal and rules to sustain corporate governance.
- When a co-operative society is dissolved, the remaining surpluses shall be disposed by the Registrar at his discretion for any co-operative purpose.
- The Co-operative Societies Ordinance, Cap 33 enshrines the Co-operative Principles and the Director of Agriculture, Fisheries and Conservation is appointed as the Registrar to register and regulate co-operative societies.
- Other than a registered co-operative society, or unless approved by the Chief Executive, no one shall trade or carry on business under any name or title of which the word 'co-operative' is part.

### **How to form a co-operative society?**

- To set up a preparatory committee, preferably with 5 members, to pool human and other resources together.
- To convene meetings to discuss the organizational structure of the proposed co-operative society (e.g. name, object, common bond of its members, share and business scope).
- To draft co-operative by-laws by referring to the model by-laws obtainable from the Registrar and find suitable premises for the society.
- To recruit members (at least 10 persons, each over 18 in age).

Right from the Registration of a Cooperative Society till the cancellation of its registration, the Registrar acts as friend, philosopher and guide to the cooperatives and ensures that Cooperative Societies function in accordance with the Cooperative Act.

The main functions of the Registrar are as under:

1. Registration of Cooperative Societies;
2. Registration of amendments in the Bye-laws of Cooperative Societies;
3. Amalgamation, Division and re-organization of Cooperative Societies;
4. Ensure timely Election of the Managing Committee in Cooperative Societies;
5. Conduct elections of Managing Committee in primary cooperative banks and federal cooperative societies;
6. Ensure proper investment of funds by Cooperative Societies as per Act and Rules;



7. Conduct audit, order inspection, enquiry and also fixing surcharge on negligent functionaries of cooperative societies;
8. Settle disputes of Cooperative Societies through the process of arbitration.
9. Function as an appellate Court;
10. Enforcement/execution of Orders, Awards and Decrees of various Courts;
11. Order winding up and cancellation of registration of defunct/non-functional societies.
12. Operating Cooperative Education Fund for training, education, propaganda and publicity programme for the development of Cooperative Movement in the NCT of Delhi.
13. To frame/amend Delhi Cooperative Societies Rules, 1973 from time to time.
14. Issue Instructions/directives for the promotion of business of different type of Cooperatives;
15. To approve proposals for enrolment, resignation and cessation of membership in Housing Cooperative; and
16. To frame, execute and monitor various beneficiary schemes approved by the Central /State Govts, including financial assistance to various sectors of Cooperatives.

The powers and functions of a General Body of a Cooperative Society in brief are:-

- To approve the programme of the activations of the society prepared by the Managing Committee for the en-suing year.
- To conduct election if any, of the members of the committee other than nominated members.
- To approve the Audit Report and the Annual Report.
- To decide the manner of disposal of the net profit.
- To deliberate and approve the Annual Budget.
- To decide about the expulsion of members if found indulged in anti-society activities as per provision of byelaws.
- To write off bad debts subject to approval of the Registrar of Cooperative Societies.

## Module 5

### UNIT IX

## PROFESSIONAL ETHICS

### What is Ethics?

The word ethics has been derived from the Greek word 'ethos' which means custom or habit. In this sense, Ethics means the study of customs and habits of man. However as a subject of study, Ethics means the study of what is right and good in human conduct. It is the normative science of conduct of human beings living in society.

Ethics is a normative science as it is concerned with what should be or what ought to be. It studies and defines moral values of human conduct in society. Ethics is popularly defined as the science of the moral evaluation of the voluntary actions of human beings. It prescribes ideal values which should characterize human conduct in society. Its nature is different from natural sciences which involve the study of what is and not what should be.

In other words, Ethics is normative study of what is right and good in human conduct. It is a morality based evaluative science which deals with goodness of voluntary actions in human conduct and the supreme good of life.

**Ethics defines good and bad of human life. It is a normative and theoretical science of good and right in human conduct.**

### What is Applied Ethics?

The need for bringing in Ethics to the realm of actual behavior of human beings in society, has led to the emergence of Applied Ethics. The need to control and eliminate immorality in contemporary human conduct in the society has provided the basis for the birth of Applied Ethics i.e. study and use of values in actual human conduct in society. It serves the objective of relating moral values (good) to the facts and realities of human conduct in all spheres of activities and social relations.

Applied ethics can be defined as a practical form of ethics. It applies morality to real life and draws attention to the ethical needs of contemporary times. In the words of Brand Almond, "Applied ethics is a moralistic and humanistic approach to philosophy".

The following can be described as the key features of Applied Ethics :

1. Applied Ethics places emphasis upon morality based behavior in society.
2. It seeks to end the process of degradation of the values in human behavior in society.
3. It seeks to arrest the present trend in favor of wholesale materialism.
4. It seeks to prepare human beings to fight the evils of corruption, dishonesty, unfaithfulness, poverty, greed, illiteracy, ignorance, crime, violence and lack of healthy work-culture by encouraging the people to follow the values and rules of morality in daily life, particularly in the professional life.
5. Applied Ethics has emerged as an important area of study and action.

Applied Ethics relates to all aspects of human life. Its scope covers several areas, particularly environmental ethics, medical ethics, educational ethics, engineering ethics, business ethics and some others. All these stand included in the broad concept of Professional Ethics.

## ENGINEERING ETHICS

Engineering is a profession like the medical profession, teaching profession, legal profession and others. While professional ethics relates to all professions. Engineering Ethics relates specially to engineering profession. Before studying Engineering Ethics, let us define Professional ethics in a broad way.

### What is Professional Ethics?

Professional Ethics is concerned with one's conduct or behavior in the process of carrying out the professional work. Each profession has its own ethics i.e. its code of conduct which can enable it to

serve the society in a productive and important manner for enriching the profession as a socially useful profession.

In each profession, professionals taking part must be persons with commitment to professional ethics. It should involve commitment to enrich their profession technically, economically and socially. It has been precisely for this reason that the modern curricula of professional institutions include the subject of Professional Ethics. It is in line with this thinking that Engineering Ethics is now deemed to be an important subject of study for engineers.

## **ENGINEERING ETHICS: MEANING AND SCOPE**

Technology allows us to introduce innovations but we often do not take into consideration social, medical, economic, and environmental impacts that these may have on our lives. As a response to this, a new subject i.e. engineering ethics has been emerging. The engineers are to use their knowledge training, abilities and expertise for the benefit of society. The society expects that engineers should oversee and regulate the performance of their own selves and their fellow engineers. Educational and professional practice must coincide with the ethical dimension of engineering.

Engineering Ethics is a field of applied ethics which describes and settles standards for every engineer's obligations towards the public, clients, employers and the profession. It focuses attention upon certain values which each engineer is to follow in his professional

## **AIMS AND OBJECTIVES OF THE STUDY OF ENGINEERING ETHICS FOR ENGINEERING STUDENTS**

We can identify the following aims and objectives of Engineering Ethics which must be understood and embodied by engineering students

1. To understand the meaning of Engineering ethics and three types of enquiries: normative, conceptual and descriptive.
2. To develop basic knowledge of the history of engineering particularly as it relates to the development of professional societies. i
3. To understand the nature of moral problems and issues in engineering so that he or she may be able to develop reasoned responses towards these problems
4. To foster a sense of moral autonomy.
5. To inculcate the basic understanding of utility theories, duty theories, right theories and virtue theories.
6. To inculcate the concept of engineers acting as responsible agents: with a conscientious commitment to live by moral values.
7. To develop a balanced outlook towards the law especially as it relates to engineering profession.
8. To inculcate the concept of safety, risk, benefit and cost as these relate to technology.
9. To develop the ability to differentiate between institutional quality and expert authority.
10. To understand the relationship between conflicts of interests, unionism and white collar crimes regarding professional conduct.
11. To understand the human rights, professional rights and employee rights as elements of moral rights.
12. To understand the concept of responsibility and possible consequences of whistle blowing as well as what is moral permission for the act.
13. To understand ethical conventionalism, descriptive relativism and moral relationship.
14. To be aware of global issues in technology which have strong ethical concerns and consequences.
15. To understand the conflict between the existential pleasures offered by engineering and the responsibilities of engineer's individual conscience.
16. To recognize an engineer's responsibility towards his/her peers, the community and the professional society.

## **AIMS AND OBJECTIVES OF ENGINEERING ETHICS FOR ENGINEERS**

All the persons who hold an engineering degree and are engaged in the engineering profession have to follow their work by keeping in view the following aims and objectives of engineering ethics.

1. To strive for professional excellence while acting as a professional expert in one's field.
2. To disseminate quality technical education and training to the budding technocrats.

3. To pass on the benefits of knowledge, skill and expertise to the society, particularly to the class of engineers.
4. To balance the needs of the profession and the demands of the society as well as the world of industry and technology.
5. To follow moral values and conduct in relations with fellow professionals, other technocrats and the society at large.
6. To remain self-motivated as well as to motivate others.
7. To take pride in one's profession and accept fully the ethical code of conduct relating to one's profession.
8. To develop the profession in such a way as can enable engineers to contribute their best to the society as well as to be capable of leading a happy, prosperous and contented life.
9. To work for securing total quality management, total resource management, and total time management with a view to produce the best outputs for the benefit of the society and the profession at large.
10. To work for helping the society to achieve sustainable development to fight environmental pollution, to develop eco-friendly technologies and to respect the human rights of all.
11. To sum up, it can be said that Engineers have to be sincere, dedicated and disciplined towards the needs of the profession, as well as to the demands and needs of the society without unduly compromising with the quality of their professional life.

## SCOPE OF ENGINEERING ETHICS

The subject of Engineering Ethics covers all the aspects of professional, social, political, moral and economic life of the engineers. It covers the following:

1. Professional life of an engineer as a technocrat.
2. Career life of an engineer in his profession.
3. Office/ factory/work environment in which the engineer works.
4. Industrial and technology advancement needs of society.
5. The social status of engineering profession.
6. The economic security of an engineer during his service tenure as well as in the old age.
7. Work-culture of the concern in which he is working as well as the work-culture fellow employees and clients.

Engineering has several branches and specializations; there cannot be a single uniform system or standard of ethical conduct across the entire profession. Ethical approaches according to the areas of work and are influenced by whether the engineers are independently providing professional services to the clients or to the public or employed in government sector or are working for some private enterprise which makes products for those engineers who work in government sector have to work strictly according to the conduct and service rules and are also expected to be honest with the rules of engineering ethics. Engineers working in this area have to follow uniform standards with all their Jienls, CO officials, subordinates and the support staff. Those who work in industries are also bound by rules of engineering ethics. They have to work in accordance with the policies and standards of conduct as laid down by their employers.

## RESPONSIBILITY OF ENGINEERS

Responsibility is the social force that binds one to his obligations and courses of action or work. It demands action on the part of the person who has the responsibility to carry out a work/function. We always talk of responsibility of the public officials towards the people. Responsibility of teachers for providing education to children, responsibility of parents to inculcate moral values among their children, and the like. In the social context, responsibility means working for the betterment of community, in fact for the humankind as a whole. It calls upon the people to use their talents, skills, expertise and experience for constructive and beneficial purposes rather than in a negative, dangerous and destructive manner. Scientists, engineers doctors, technocrats and professionals have the responsibility to work for promoting the welfare and development of humanity. They are to perform their work-obligations in a beneficial, productive constructive and responsible way.

Engineers shall not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospect, practice or employment of other engineers nor untruthfully criticize other engineers' work. Engineers who believe others are guilty of unethical or illegal practice shall present such information to the proper authority for action.

Every engineer should follow collegiality which is a kind of connectedness grounded in respect for professional expertise and in a commitment to the goals and values of the profession, that is supporting and co-operating with one's colleagues in all ethically correct professional activities.

Engineers should be loyal to the employers, acting to fulfill one's contractual duties to an employer. They should act as their employer's or client's faithful agents or trustees, while complying with the commitment to general public.

Salaried engineers also have obligations to respect their employer's legitimate authority. Engineers must give respect for morally justified authority - without giving chance to insubordination.

Engineers as far as possible should strive for collective bargaining if they work in a union, where unionism and professionalism are compatible. Professionalism holds that the interest of society and the client are paramount. Unions are collective bargaining agents that sometimes place the economic interest of the members ahead of those of the client are paramount.

## RESPONSIBILITY: MEANING

The term 'Responsibility' has several meanings which are used depending on the context, situation and time in which the term is used.

Some of the popular terms which are used to define responsibility are:

**(i) Obligation.** It means the action one is expected to carry out willingly and selfconsciously without being demanded. When one shows his responsibility, it really means that he is fulfilling his obligations. Most obligations are role specific.

**(ii) Accountability or Accountable.** This term means that one has to explain about his conduct, functions and results produced. Each engineer doing a work is accountable for the results/consequences of his work. He can be held accountable and awarded punishment in case of any failure or irresponsible and harmful conduct in respect of his work.

**(iii) Conscientious.** It means to work carefully and correctly with awareness of moral values and standards of goodness. Conscientious people fulfill their obligations carefully and correctly.

**(iv) Praise-worthy or Blame-worthy.** These words are used for describing the success or failure involved in the discharge of a responsibility. Successful discharge of one's responsibility becomes praise-worthy and a failure is held to be blame-worthy failures lead to criticism or even punishment depending upon the gravity of the failure.

**(v) Dereliction.** It means a deliberate attempt to avoid or carelessly undertake the assigned work/job. It can be described as a deliberate failure in performing or discharging a responsibility.

## RESPONSIBILITY: TYPES

### Moral and Legal Responsibility

While analyzing responsibility, we can make distinction between moral responsibility and legal responsibility. The former means responsibility for which a person cannot be indicted and punished for his irresponsible behavior or failure.

Responsibility means that the person can be awarded punishment for his failure or irresponsible or dangerous or harmful action. Each engineer must clearly understand and accept, both his moral and legal responsibility

### Responsibility in respect of Dereliction of Duties.

Dereliction means a deliberate willful irresponsible, careless, inefficient and harmful behavior which causes harm to others. It entails a legal responsibility and is punishable. Responsibility for an inadvertent lapse or failure It means a non-deliberate or accidental or consequential lapse or harm. The professional unwittingly causes a loss or harm.

### Responsibility for reckless behavior/action.

This is the case when a professional causes harm without really aiming at it. However, at the same time, he is conscious of the harm that was likely to result. In the case, the person has a definite moral responsibility and he can also be made legally responsible for his reckless action. In case



engineers make a reckless use of a machine and in the process cause a loss, he can be held legally responsible.

## **DEGREES OF RESPONSIBILITY**

All the engineers or professionals are responsible for their works/jobs/products both morally as well as legally. However, while fixing their responsibility in respect of any specific case, the degree of responsibility as well as the nature of responsibility that is moral or legal or both moral and legal responsibility, have to be determined. The responsibility is determined on the basis of the degree and gravity of lapse or failure.

## **ATTITUDES TOWARDS RESPONSIBILITY**

Each engineer has a responsibility in respect of his work. However, the engineers are governed by several different attitudes towards their responsibilities. Performance of their jobs and duties and responsibilities are governed by their attitudes towards their responsibilities.

### **1. The Minimalist Attitude towards responsibility:**

An engineer with minimalist attitude acts to perform only basic functions and obligations. He does not accept full responsibility. He gives little consideration to the harm that his behavior or actions can cause to the people. At times, he tries to justify his minimalist attitude by putting blame on others or on the system. This is indeed a harmful and negative attitude towards responsibility. It is morally wrong and checks the growth of both the professional and his company or employer.

### **2. Responsible-care attitude.**

Engineers with such an attitude show a higher degree to responsibility than the engineers with minimalist attitude. Such engineers are conscious of the fact as to what harmful effects can be caused by their actions. They, therefore, try to be reasonable and careful in the performance of their work/obligations. They try to avoid harming the public. However, their attitude continues to remain conditioned by the principles of 'Responsible Care, and 'Prevention of Harm.'

### **3. Good-work Attitude.**

This is a positive and healthy attitude towards responsibility. Engineers with this attitude show the highest degree of responsibility. They act in an honest and sincere manner for discharging their responsibilities. They maintain the integrity of their assigned duties for serving their organization, society and humanity. Professional Ethics for engineers is governed by the objective of inculcating such an attitude among all engineers and professionals.

## **IMPEDIMENTS TO RESPONSIBILITY:**

Along with the above discussed responsibility-specific impediments, the Engineers can also face some general impediments. These can be explained as follows

### **1. Self interest:**

When the individuals are discharging their duties they should keep their Company-interest above self-interest. However, at times, they can find it difficult because of an avaricious attitude, professional jealousy, vengeance against boss, egoism etc. This is hindrance demands self-discipline.

### **2. Self-deception:**

When the people stop listening to their conscience, they, in fact, deceive themselves. They superficially try to justify all the mistakes and carry on with life as if nothing wrong has happened. Such self-deception often becomes very big and puts severe limitations on the discharge of responsibilities. It should be always avoided.

### **3. Fears, Distrusts and Threats:**

Fear always hinders the development of mind. Fear may be of losing job or losing social status or fear of punishment or fear of failure or all these fears. A state of fear, distrust and threat always weakens the performance of responsibilities.

### **4. Ignorance:**

Lack of vital and full information is an obvious barrier to responsible action. Ignorance can be due to:

- Lack of receptive attitude.
- Lack of sources of information.
- Lack of perseverance.
- Lack of knowledge of right place to look for information.
- Laziness or postponing attitude.
- Unacceptable Ignorance.

### **5. Egocentricity and Egoism:**

People are held to be egocentric if they possess a parochial outlook. If engineers are unable to realize the significance of broader perspective in the design of a product or service, their sense of responsibility gets weakened. Pritchard has no served, "egocentricity is a special form of ignorance." Egoists opt for a chauvinistic attitude against all arguments. Chauvinists neither accept their defeat nor praise others for their work. They suffer from a superiority complex.

### **7. Microscopic vision:**

One should not concentrate much on such details as can result in a loss of the larger picture. It is good to go in for the details but at the same time, engineers need to raise their eyes from their world of scientific and technical expertise and look around to understand the larger implications of what they are doing.

### **7. Over-confidence:**

Success after success can breed over-confidence and this can lead to inconsistency in discharging responsibilities. Over-confidence can be due to lack of humility, presence of sub-ordinates who indulge in flattery and backbiting, lack of competition, or unchecked power and so on. Over-confidence always affects responsibility in the long run.

### **8. Group behavior:**

Individual behavior is mostly quite different from one's behavior as a member of a group. Man's behavior as a member of one group is also different from his behavior as a member of another group. According to Irving James, there are various factors of group behavior which affect the responsibilities of an individual. These are:

1. Groups work under presumption that these are less affected by failures.
2. Groups believe that bouquets and brickbats are their lot.
3. Groups believe: "either you are with us or you are against us". Non-members of the group are considered as adversaries or enemies.
4. Groups keep on shifting responsibilities in case of failures.
5. Individual morality is different from group morality.
6. Group demands unanimity, even if members are of dissenting opinions.

## UNIT X

### HONESTY

Honesty means the quality of being honest i.e. truthful, fair and straight-forward in conduct and expression. Webster dictionary records: "Honesty is fairness and straight forwardness of conduct and speech." It involves a behavior characterized by integrity, truthfulness, freedom from deceit, fairness in dealing with others, and respect for others\* work and honesty.

Honesty has two forms: Moral Honesty and Conditioned Honesty:

#### 1. Moral Honesty.

It means honesty involving respect for others and their property. It also means commitment to truthfulness, fairness and freedom from deceit as a matter of habit and not due to fear of rules and others.

#### 2. Conditioned Honesty.

It means honesty resulting from recognition of the consequences of being caught while doing a wrong. Conditioned honesty is practiced in society for the value of security. It constitutes a deliberate attempt to prevent the people from adopting wrongful conduct.

Naturally, moral honesty is ideal and conditioned honesty is a necessity. In our behaviors, we must be morally honest and also follow the rules of conditioned honesty. It must also be understood that Honesty does not simply mean staying away from corruption. It means steadfast fidelity to the values of loyalty towards society, and one's organization/company, self-obedience of rules and regulations, self-discipline, confidentiality in work, truthful and trustworthiness in conduct and dedication to one's profession. Honesty is a virtue which has to be cultivated and consistently followed in all walks of life, particularly in the professional life. Cervantes has rightly observed, "Honesty is the best policy. If honesty becomes a sine-quo-non for every profession, it can go a long way in serving and saving the mankind.

### HONESTY OF ENGINEERS

Engineers must always act as honest engineers dedicated to their profession, to the rules of their professional ethics, truthful and trustworthy in conduct, self-disciplined, faithful to their organization/employers, and committed to remain away from corruption, deceit and other malpractices. They should always act on the basis of two key aspects of Honesty i.e.. Truthfulness and Trustworthiness

Honesty: Two Key Dimensions—Truthfulness and Trustworthiness

#### (A) Truthfulness

It means to follow truth in conduct and speech and have a firm faith in the dictum "Truth always wins". Truthful conduct involves sincerity in actions, speech, conduct and all relations. Honesty does not only mean keeping away from dishonesty. Refraining from dishonesty simply represents the negative dimension of Honesty. The following constitute the variables of dishonesty.

- (i) Lying i.e., to tell lies or give misleading and false information with the intention to deceive others.
- (ii) Deception i.e., to deceive others by making others believe that which is not true. The act of deceiving others by feeding false, wrongful and misleading information is deception.
- (iii) Hiding of Information. Hiding of facts and information also falls in the category of deceit and dishonesty. Here the person deliberately holds on to the facts and information which he is expected to pass on to others.
- (iv) Failure to Seek Truth.

Whenever a person fails to seek truth and makes no attempt to find out the truth about any information or case, it is an act of dishonesty. Avoiding truth or even dishonesty does not mean honesty. By avoiding truth, a person becomes party to dishonesty and untruth.

All these variables demote dishonesty. An honest person habitually refrains from dishonesty i.e. from telling lies, deceiving others, hiding of facts and information, and avoidance of truth.

**(B) Trustworthiness**

The second major aspect of honesty is trustworthiness. It means the quality of being good, honest, sincere and enjoying the confidence and trust of others. This quality can be earned through continuous and self-willed commitment to the values of truth, honesty, faithfulness and sincerely in conduct, expressions, decisions and actions. An engineer earns the quality of trustworthiness by consistently following honest and sincere conduct. Likewise, a company or an organization also wins trustworthiness by consistently following the values of truth, honesty, sincerity transparency fairness qualitatively, consistent respect for rules and regulations of the government and respect for social norms and needs.

Trustworthiness means the ability to meet the responsibilities of trust that has been reposed in the engineer. Engineers have to be trustworthy and only then can they hope to get higher, bigger and more responsible assignments in their organizations.

Engineers must accept and follow the value of honesty. They must uphold moral honesty and accept the rules and regulations of conditioned honesty.

**Honesty in Engineering**

- 1) Engineers must always uphold the values of Engineering Ethics.
- 2) They must honestly pursue their profession.
- 3) They should make public statements objectively and in a truthful manner.
- 4) They must always uphold the standards and demands of public safety, health and welfare.
- 5) They must prepare reports honestly and base these on all relevant facts. They should not hide any information which can later on cause public harm.
- 6) They must refrain from deception and should not testify wrongful facts and information.
- 7) They must never falsify their qualifications and areas of competence.
- 8) They should not accept or offer any award or contract by fraudulent or underhand means.
- 9) Whenever an engineer feels that the project being handled by him is not going to be successful, he must intimate about it to his clients/employers.
- 10) During the course of their service with an organization, engineers should not accept any other employment or consultancy without the knowledge and permission of their employers. They should never accept any outside assignment or employment as can be detrimental to their regular work/employment.
- 11) Engineers should refrain from attracting engineers from other organizations by false or misleading pretences.
- 12) Engineers should never try to promote their personal interests at the expense of the interests of their organization.
- 13) Engineers should never compromise with the dignity and integrity of their profession.
- 14) Engineers should come forward to report any unethical means being used by fellow workers or engineers.
- 15) Honesty demands that engineers should respect the proprietary interests of others.
- 16) Engineers should not duplicate or steal designs of other engineers without due permissions and without in any way violating patents, intellectual property rights and code of professional ethics. Plagiarism has to be kept aside from one's conduct.
- 17) Engineers should not have any relation with any organization/corporation or partnership engaged in unethical practices. They should not shield an act being used as a cloak for unethical acts.
- 18) Engineers should not try to mar the prospects of promotion of other engineers by adopting false and unethical means.
- They must honestly and objectively analyze and evaluate the work of other engineers and workers.
- 19) Engineers must accept and follow the principles of truthfulness and trustworthiness. They must consistently follow honesty, sincerity and integrity in their conduct and work which can earn them trust and confidence of others.
- 20) Engineers must not accept gifts and favors from persons who can later on try to misuse their contacts or relations with them.
- 21) It must be recognized that honesty does not simply mean remaining away from dishonesty. It means positive actions and decisions based on truth, fairness, sincerity and faithfulness.
- 22) Engineers should try to adopt these guidelines as a self-imposed code of conduct. They must also consistently work with full respect to all rules and regulations. They should never hesitate to bring to light loopholes, needs for reforms and suitable remedies.

**INTEGRITY**

The word Integrity has been derived from the Latin word 'integrates' which means whole or

intact. In this way Integrity can be defined as faithful and honest wholesome conduct and dealings. Oxford Learners Dictionary records: "Integrity means, the quality of being honest and having strong moral principles. Professional Integrity means to behave with integrity as a whole and not divided." The terms which are used to describe 'integrity' is truthfulness, honesty, soundness, wholesomeness, probity, unadulterated and undivided slate. A person with integrity is responsible and truthful in behavior and is regarded as a trustworthy person. Such a person habitually acts with honesty, truthfulness, faithfulness, soundness, fairness even when he is not watched by others.

## **INTEGRITY IN ENGINEERING**

Engineers with professional integrity act with honesty, sincerely, faithfulness, fairness,

### **Integrity of Engineers involved in Research and Design Work**

While engaged in R & D work, Engineers must remain honest and faithful. They must conduct their research sincerely and put in hard and sincere efforts for producing valid results through experimentation.

They are not to get involved in the following unethical and illegal acts.

#### **(i) Trimming.**

Trimming means modifying, tailoring and playing with facts to uphold desired results and not the objective and true results. Trimming involves dishonesty in presenting the results of experimentation.

#### **(ii) Cooking.**

Cooking means being selective in retaining and discarding data as per one's requirement for supporting a particular theory or hypothesis. Engineers with integrity do not cook facts/data.

**(iii) Plagiarism.** It means stealing of ideas or reports of others and presenting these as one's own. Plagiarism is morally and legally wrong. Integrity stands for absence of plagiarism of every kind.

#### **(iv) Unreal Authorship.**

Some times reports and findings of research and experimentations are presented as the work of several researchers/authors. In reality, it is a work of one or two persons and others are unreal authors. Engineers with integrity do not get involved in such an unethical exercise. Engineers with integrity always remain away from all these malpractices.

### **Integrity of Engineers in the Use of Intellectual Property**

Properties and credits which are the products of mental labor come under the heading intellectual property. This is well documented and protected in several ways with the help of patents, copyrights, trademarks, trade secrets and some others.

Protection of ideas is known as patent and protection of expression of ideas is known as copyright. Trade-mark is used as a protection where a product or a word or symbol or device is used in trade.

## **RELIABILITY**

Reliability is a quality of being dependable, trustworthy and authentic. When an engineer earns recognition as a dependable and reliable professional he comes to have the quality of reliability.

Reliability is neither a tangible thing nor a gift that can be passed on by any person to another. Each engineer has to earn it by earning a clean track record of consistent hard work, knowledge, expertise, competence, sincerity, ability to handle challenging tasks and responsibilities, and ability to deliver good results. To get recognition as a reliable engineer/person takes months of consistent hard work and efficient performance.

The ability of the engineers to earn reliability depends on several factors.

1. Knowledge of the area of work/expertise.
2. Application-oriented knowledge cum ability and willingness to apply knowledge and skills.
3. Consistent and disciplined hard work.



4. Consistently maintained good track records.
5. Respect for engineering ethics.
6. Willingness to accept and handle challenges and challenging situations.
7. A knack for innovation and enterprise.
8. Commitment to the values of honesty, integrity, sincerity and hard work.
9. Willingness and ability to handle conflict of interests.
10. Ability to keep aside professional jealousies and rivalries.
11. Competitiveness based on the principles of equality, fairness and healthy competition.
12. Willingness and ability to learn more and more, and to remain aware of all new developments in the area of competence.

All these factors or commitments can help an engineer to earn the quality of being reliable. Like respect, reliability can be commanded and not demanded. It can be earned gradually by consistently producing a good performance record over a period of time. Each engineer gains some reliability by joining an organization enjoying reliability in the market. However, he has to work for his organization and along with it to work for strengthened the reliability of his organization.

## **RISK**

Almost everything involves some risk. In contemporary times, new technologies, new gadgets, chemicals, processes and products have been virtually flooding the markets and the homes of the people. These are also accompanied by several possible risks, side effects and after effects. The development of science and technology has been also bringing to light the hazards of some of the old products, processes, chemicals and services which were initially considered to be safe and risk free. Risk Management has come to be a major responsibility of the scientists, engineers and technocrats. Engineers are responsible for ensuring the safety of the products being designed, manufactured and marketed. They have to provide full information about the possible risks that can result from the use of various products as well as the nature and number of precautions that should be taken for avoiding or minimizing the scope of risks.

Risk can be defined as a possibility that something bad, harmful and dangerous (deleterious) might happen. It involves a possibility of suffering harm or loss in the processes of using or undertaking a project/product/process or service.

## **RISK CALCULATION**

### **Factors determining the Nature and Gravity of Risk.**

While calculating risk or risks involved in the use of any product or process or service, several major factors have to be taken into consideration. In respect of the following factors the probability and magnitude of risk have to be taken into account.

1. Human Health loss or Health Hazards.
2. Dangers to public safety and welfare.
3. Financial loss
4. Environmental Pollution
5. Time Loss
6. Efforts and Efficiency loss
7. Loss of Reputation and Credibility.
8. Loss of Public Confidence.
9. Impact on social, economic, cultural life, and the psychology of users.
10. Moral Considerations

All these variables have to be taken into account while assessing the probability, nature and magnitude of risk.

### **Factors which can increase the Chances of Risk**

Several factors can increase the chances and levels of risks. These are:

- (i) Faulty Design and Process
- (ii) Faulty Products
- (iii) Hasty production and mass production

- (iv) Carelessness towards Quality Control
- (v) Faulty Operating Procedures,
- (vi) Lack of clear instructions for the users
- (vii) Lack of Expertise on the part of the producer of goods
- (viii) Inadequately trained manpower
- (ix) Tardy user trials.
- (x) Inability to handle technical problems

All these factors play a role in determining the chances and levels of risk. Most of these factors can be taken care of by developing and using new and useful technologies. The guiding principle has to be; Technology can be developed and used for solving technological problems and reducing the chances of lapses and errors in manufacturing of products and creation of processes and systems. Use of CNC machines and systems as well as development of suitable computer software/IT solutions can enable the engineers to reduce the chances of risk by making their designs/machines and production more and more efficient, useful and risk free.

## **TYPES OF RISKS**

While analyzing possible risks, engineers should also keep in mind the types of risks. Study of types of risks can enable them to define better the nature and gravity of risks involved in the use of a design, product or process.

### **1. Voluntary and Non-voluntary or Involuntary Risks.**

Some of the risks are voluntary as the people are willing to take knowingly that these can use some problems. However, they prefer to give weightage to the benefits in comparison with risks. Nonvoluntary or Involuntary risks are taken by the people unknowingly. People always react against involuntary risks which become known to them after the use of the product/process. This makes it necessary for the engineers to tell to the public in advance, the possible risks as well as the precautions against such risks.

### **2 Short-term Risks and Long Term Risks.**

When the adverse or negative consequences of any risk are for a short term, the people tend to tolerate it. They, however, do not easily reconcile with risks which last for longer durations. In this category, we can also include delayed risks and immediate risks.

### **3. Risks with Low Probability and Risks with High Probability.**

When risks have a lower probability the people accept these. They always try to avoid products with high risk probability.

### **4. Risk with reversible effects and Risks with irreversible effects.**

The risks, whose effects can get reversed after some time, preferably after a short duration, are reversible risks. Irreversible risks are those which last for a longer duration and are irreversible. People always dislike and prefer to avoid irreversible risks. However, they even accept such risks when these are mild or their gravity is low.

### **6. Threshold Risks.**

There are some risks which emerge only after crossing of the threshold limit. Such risks emerge when the user recklessly over uses the product. A car or a motor bike becomes a risk when it is driven recklessly or speed limits are crossed.

### **7. Job-related Risks.**

Certain jobs/works always involve some risks. The engineers must have knowledge of risks involved in their work, particularly when they are involved in the use of heavy machinery, electrical appliances, nuclear reactors, high altitude constructions and the like. Engineers must take all safety precautions against all possible job-related risks. They should also have knowledge and training in meeting emergencies, industrial accidents, breakdowns and some others.

While describing the possible risks involved in the use of a product or process, the Engineers must specify the type of risk involved and possible precautions against these.

By providing information about all possible risks, their nature, gravity and the essential precautions for eliminating or reducing the chances of risks or damage control, the engineers can increase the acceptability of the products. Engineers must define the probability rate, possible adverse consequences, gravity of consequences and possible remedies/precautions

## **SAFETY**

The concept of safety does not admit a standard definition and explanation because different people have different views on safety. It is indeed a subjective concept. It is dependent upon the sense of safety and security of each person, the situation in which safety is demanded or defined, and the perceptions of the people regarding the nature of safety they want. Something can be safe for some persons while others can hold it to be unsafe or less safe. Safety in peace time is different from safety in an emergency or war. In times of economic recession, the people give top importance to job safety.

However, despite the difficulties involved in the process of defining safety, we can safely say that safety means absence of risks or presence of lesser or minimum risks. Further, even when some acceptable risks are there, people consider the product/process or situation safe.

Theoretically we can say that safety stands for absence of risks. Since all risks cannot be totally eliminated, we can pragmatically say that safety means the presence of less risks or the presence of acceptable risks along with several benefits. William Lawrence has rightly observed, "a thing is safe if its risks are judged to be acceptable."

Further, in view of the government, safety means public safety which holds that a thing is safe if its risks are fully known and which are accepted by all reasonable persons as reasonable and acceptable risks when judged upon standards of settled value principles.

Safety can also be conceptualized as freedom from pollution, unacceptable risks, harmful and unsafe products and processes, and absence of unacceptable risks. It must also be stated that safety stands for freedom from unsafe levels of risks. In our daily routine, we always think of safety in terms of degrees as things are held to be highly safe, others less safe or least safe.

## **Responsibility of Engineers for Safety of Design, Products, Public, Workers and Industry**

1. While designing a product, the engineers must comply with all public laws and policies.
2. They must follow all legal standards in respect of the designs being developed.
3. They should be technically sound and have full knowledge of engineering standards.
4. Engineers must try to create more and more safe designs and products.
5. Since safety means safety with some acceptable risks, engineers must ensure that risks should be kept minimum and acceptable to the public.
6. In order to make their design/product safe, they must foresee the potential possible misuse of their design/product and try to eliminate, at least minimise the chances of misuse.
7. They must make public all possible risks involved in their designs.
8. They must make their design and products eco-friendly.
9. They must always be ready for accepting improvements in their designs. In fact they should continuously try to improve their designs with a view to make them more and more safe for the public and all users.

## **LIABILITY**

Liability means the state of being legally responsible for any damage or harm or suffering caused by any wrongful action on the part of a company or a person. It also means the state of being bound by law and equity. A person or a company becomes liable for action under law in case its product or service causes any direct or even indirect or incidental harm to any person or persons. In such a case the personnel or company which is held responsible for the damage or harm becomes liable to pay damages or compensation to the aggrieved person or persons. Failure to do this can even lead to the imprisonment of concerned persons or the owners of the company. The case of Uphaar Cinema fire is an example. The Union Carbide company was held responsible for causing loss of life and sufferings to the victims of Bhopal Gas tragedy.

Professionals are also bound by law. They are liable for any damage or suffering caused by their designs/products/processes. In case they expose other persons to unacceptable risks and harms, they are responsible under law and are liable for legal action against their company and also ultimately against them. While designing or manufacturing their products, engineers must not compromise with safety standards. They should not do anything that can cause big and unacceptable risk to public

safety, health and welfare. They can face legal action for ignoring safety of the public.

In contemporary times, consumer protection movement has been becoming more and stronger. The consumers can sue the companies for hiding some facts or costs or risks or weaknesses of their products. Consumer courts have been established in all cities of India. This has increased the scope of liability of any company for paying damages to the aggrieved customers/consumers. In such cases, the companies can internally hold their engineers responsible for the losses suffered.

Likewise, the companies and the professional have the responsibility to follow all laws made for the protection of environment. They have to adhere to laws against child labor, the laws for protecting the safety as well as for keeping the work-conditions healthy. The companies are liable for legal action on account of any violation of these laws.

Professionals/engineers engaged in private business or practice are directly responsible for any damage to public safety, public health and public welfare.

At times, for reducing costs, a company can ask its engineers and other professionals to lower the quality of the product or to lessen the safety devices and features. Before accepting the decisions and wishes of the company, the engineers must weigh the consequences of increased risk. They should not unduly compromise with the demands of their profession and try to secure a balance beholden the view/decision of the company and the norms of their professional ethics.

In order to meet any unforeseen consequence in the form of any damage or loss to the public or consumers, the companies should try to secure an insurance cover. However, while providing an insurance cover, the insurance company must ensure the quality of the products being insured, the track record of the company and the measures taken by the company in the interest of providing safety and reducing of the risks.

All the companies and their owners or directors are liable for legal action for all frauds, industrial accidents, exposing the clients to unacceptable and hidden risks, criminal activities and violations of environmental laws and safety standards.

The norms of Engineering Ethics calls upon all engineers to continuously keep in view their and their company's liability under the laws of the state. All professionals are bound by law and are liable for legal, action for causing any damage or loss to public safety, health and welfare.