

## Unit 1 - Indian Constitution

### Salient features of Indian Constitution

1. **Indian Constitution:** Lengthy with 12 schedules and 448 articles, influenced by the **Government of India Act 1935**.
2. Establishes a **Sovereign, Socialist, Secular, Democratic Republic**: Preamble principles include Justice, Liberty, Equality, and Fraternity.
3. **Parliamentary System**: Bicameral legislature ensures effective lawmaking and executive accountability.
4. **Blend of Rigidity and Flexibility**: Allows relatively easy amendments while maintaining structural integrity.
5. **Fundamental Rights**: Part III guarantees 6 rights, including equality, freedom, and protection against exploitation.
6. **Directive Principles of State Policy**: Part IV aims for citizens' welfare and a welfare state.
7. **Federation with Centralizing Tendency**: Balances federal and unitary aspects, favoring the center.
8. **Adult Suffrage**: Universal voting rights with specific disqualifications.
9. **Independent Judiciary**: Ensures constitutional enforcement and guards against bias.
10. **Secular State**: Respects all religions equally, allowing religious freedom and preventing religious intrusion into governance.
11. **Single Citizenship**: Unifies citizenship, ensuring equal rights.
12. **Fundamental Duties**: Article 51A outlines citizens' duties to uphold constitutional values.
13. **Judicial Review**: Courts review actions for conformity with the Constitution, providing a check on government powers.

### Preamble to the Constitution of India

- Outlines the core values and principles of the nation.
- It was adopted on November 26, 1949, and came into effect on January 26, 1950.
- It declares India to be a "SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC."
- The Preamble emphasizes justice, liberty, equality, and fraternity for all citizens.
- It signifies the aspirations of the people and serves as an introduction to the Constitution.
- adopted by the Constituent Assembly on November 26, 1949

## Provisions Relating to Citizenship in India- at the Commencement of the Constitution and Later with latest amendments and Modes of Acquisition and Termination of Citizenship of India

Citizenship falls under the exclusive jurisdiction of Parliament, listed in the Union List of the Constitution. Part 2 (Articles 5 to 11) provides details on various categories entitled to citizenship.

- **Article 5:** Citizenship for those born, domiciled, or residing in India, or with Indian-born parents.
- **Article 6:** Citizenship for migrants from pre-Partition Pakistan with Indian lineage.
- **Article 7:** Citizenship for migrants to post-Partition Pakistan who returned to India.
- **Article 8:** Citizenship for people of Indian origin abroad via registration at Indian missions.
- **Article 9:** Loss of Indian citizenship upon acquiring foreign citizenship voluntarily.
- **Article 10:** Continuation of citizenship, subject to parliamentary laws.
- **Article 11:** Empowers Parliament to regulate citizenship.

The **Citizenship Act, 1955** regulates Indian citizenship acquisition → birth, descent, registration, and naturalization.

**Amendments:** Changes in 1986, 2003, 2005, and 2015 alter citizenship criteria.

- **1986 Amendment:** Less inclusive, focuses on residency and descent.
- **2003 Amendment:** Increases stringency, particularly due to concerns about infiltration.
- **Citizenship (Amendment) Bill 2019:** Proposes special conditions for specific religious communities from neighboring countries.
- Controversy ensued over potential citizenship for Bangladeshi Hindu migrants and religious discrimination.

## Scope & Extent of Fundamental Rights-Articles 14-32 with case studies

### 1) Right to Equality:

- **Article 14:** Equality before law (**Air India vs Nargesh Meerza**)
- **Article 15:** Prohibition of discrimination
  1. 15(1) based on religion, race, caste, sex, or place of birth (**DP Joshi vs State of Madhya Bharat**)
  2. 15(2) access to public places
  3. 15(3) special provision for women and children
  4. 15(4) provision for backward classes (**MR Balaji vs State of Mysore**)
  5. 15(5) uplift backward classes on educational institutions (**Mandal Case**)
  6. 15(6) 10% reservation for EWS (economically weaker sections)
- **Article 16:** Equality of opportunity in matters of public employment
  - 16(1) citizens in public sector employment
  - 16(2) prohibits discrimination in employment
  - 16(3) parliament makes laws regarding residence requirements
  - 16(4) permits reservation for backward classes

- NCBC → national commission for backward classes → **Indra Swhney Cases**
- **Article 17**: Abolition of untouchability - **Untouchability Offense Act** - **Asiad Workers**
- **Article 18**: Abolition of titles- **BAlaji Raghavan vs Union of India**

## 2) Right to Freedom:

- **Article 19**: Fundamental Freedoms
  1. 19(1)(a) Freedom of Speech and Expression - **Emmanuel vs State of Kerala**
  2. 19(1)(b) Freedom to Assemble - **Kameshwar Prasad vs State of Bihar**
  3. 19(1)(c) Freedom of Association
  4. 19(1)(d) freedom to move, reside, and settle
  5. 19(1)(e) rights to reside
  6. 19(1)(g) freedom to practice any profession or occupation
  7. 19(6)(ii) State carry on trade, business, or service
- **Article 20**: Protection in respect of conviction for offenses
  1. 20(1) prevents retrospective application for criminal laws for new laws - **Kedar NATH vs State of West Bengal (Ex Post Facto Law)**
  2. 20(2) doctrine of double jeopardy - **Maqbool Hussain vs State of Bombay**
  3. 20(3) self-incrimination - **MP Sharma vs Satish Chandra**
- **Article 21**: Protection of life and personal liberty
  1. Right to live with human dignity - **Maneka Gandhi vs Union of India**
  2. Right against sexual harassment - **Vishaka vs State of Rajasthan**
  3. Right to work - **Sodan Singh vs New Delhi Municipal Committee**
  4. Right to social security and protection of family
  5. Right to health and medical care - **state of punjab vs chawal**
  6. No right ot die - **Gian kaur vs State of Punjab**
  7. Euthansia and Right to Life - **Gian Kaur vs State of Punjab**
  8. Sentence to Death - **Jagmohan vs State of UP**
  9. Right to Pollution-Free water and air
  10. Right to Know
  11. Right to Privacy - **Ks Puttuswamy**
  12. Right against handcuffing
  13. Right against custodial violence
  14. Death by hanging not violative - **Deena vs Union of India**
  15. Right against delayed education - **V.Vaddeswaram vs State of Tamil Nadu**
  16. Procedure established by law - **Murli S vs Union of India**
- **Article 22**: Protection against arrest and detention in certain cases
  1. **Maneka Gandhi** case expanded its scope. And **DK Basu** case introduced arrest guidelines.
  2. Article 22(1) guarantees rights during arrest.
  3. Detention beyond 24 hours needs magistrate approval (Article 22(2)).

4. *Article 22(3) excludes rights for certain detainees.*
5. *Preventive detention laws criticized for misuse.*
6. *Safeguards include mandatory reviews and communication of grounds.*
7. *COFEPOSA Act lacks representation time limit.*
8. *Article 22(6) grants authority discretion, criticized for arbitrariness.*

### 3) Right against Exploitation:

- **Article 23:** Prohibition of traffic in human beings and forced labor - **peoples Union for Democratic Rights vs Union of India**
- **Article 24:** Prohibition of employment of children in factories, etc. - **Bijoe Emmanuel vs State of Kerala**

### 4) Right to Freedom of Religion:

- **Article 25:** Freedom of conscience and free profession, practice, and propagation of religion
- **Article 26:** Freedom to manage religious affairs
- **Article 27:** Freedom as to payment of taxes for religious promotion - **MAdras vs Sri Lakshmindra**
- **Article 28:** Prohibition of Religious Instruction in State-Aided Institutions - **DAV College vs State of Punjab**

### 5) Cultural and Educational Rights:

- **Article 29:** Right to conserve language script, or culture
- **Article 30:** Right of minorities to establish and administer educational institutions - **St. stephens College vs University of Delhi or TMA Pai Foundation case**
- **Article 31A:** Saving of laws providing for acquisition of estates, etc.
- **Article 31B:** Validation of certain Acts and Regulations
- **Article 31C:** Saving of laws giving effect to certain directive principles

### 6) Right to Constitutional Remedies:

- **Article 32:** Remedies for enforcement of rights by the Supreme Court
- 1. **Habeas Corpus:** ensures release from unlawful detention - **Kerala Habeas Corpus case: P. Rajan's death in police custody.**
- 2. **Quo Warranto:** challenges public office legality. **R. v. Sussex Justices, Ex parte McCarthy.**
- 3. **Mandamus:** Commands correct performance of mandatory duties. **State of West Bengal v. Administrator, Howrah Municipality.**
- 4. **Certiorari:** Corrects wrongful jurisdiction exercise. **Province of Bombay v. Khushaldas S. Advani.**
- 5. **Prohibition:** Restrains lower courts from exceeding jurisdiction. **A.K. Gopalan v. State of Madras**

### Case studies:

1. **Air India vs Nargesh Meerza:** Air India was challenged for discriminatory employment practices based on marital status; Supreme Court ruled in favor of Meerza, stating it violated Article 14's equality before the law.
2. **Kameshwar Prasad vs State of Bihar:** Prasad's right to assemble was restricted; Supreme Court affirmed Article 19(1)(b), ensuring the freedom to assemble peacefully.
3. **Kedar Nath vs State of West Bengal:** Kedar Nath faced retrospective application of criminal laws; Supreme Court upheld Article 20(1), prohibiting retrospective application of criminal laws.
4. **Maneka Gandhi vs Union of India:** Maneka Gandhi's right to travel abroad was denied; Supreme Court expanded the scope of Article 21, asserting the right to life and personal liberty.
5. **Vishaka vs State of Rajasthan:** Vishaka faced sexual harassment at work; Supreme Court recognized the right against sexual harassment, setting guidelines for workplaces.
6. **D.K. Basu vs State of West Bengal:** DK Basu challenged custodial violence and lack of arrest guidelines; Supreme Court introduced arrest guidelines under Article 22, ensuring protection against arbitrary arrest and detention.
7. **People's Union for Democratic Rights vs Union of India:** Petitioners challenged human trafficking and forced labor practices; Supreme Court upheld Article 23, prohibiting human trafficking and forced labor.
8. **Bijoe Emmanuel vs State of Kerala:** Emmanuel's children were expelled from school for refusing to sing the national anthem; Supreme Court upheld Article 24, prohibiting the employment of children in hazardous occupations.
9. **St. Stephen's College vs University of Delhi:** St. Stephen's College challenged governmental interference in minority institutions; Supreme Court upheld Article 30, affirming the right of minorities to establish and administer educational institutions.
10. **K.S. Puttaswamy vs Union of India:** Puttaswamy challenged the invasion of privacy through Aadhaar linkage; Supreme Court recognized the right to privacy as intrinsic to Article 21.
11. **Kerala Habeas Corpus case:** P. Rajan died in police custody, prompting a habeas corpus petition; Supreme Court ensured release from unlawful detention, upholding habeas corpus under Article 32.
12. **R. v. Sussex Justices, Ex parte McCarthy:** McCarthy questioned the legality of a public office appointment; Supreme Court validated the use of quo warranto to challenge the legality of public office appointments.

13. **State of West Bengal v. Administrator, Howrah Municipality**: State of West Bengal challenged the administration's failure to perform mandatory duties; Supreme Court issued a mandamus to ensure correct performance of mandatory duties under Article 32.
14. **Province of Bombay v. Khushaldas S. Advani**: Khushaldas challenged a lower court's jurisdiction; Supreme Court issued certiorari to correct the wrongful exercise of jurisdiction under Article 32.
15. **A.K. Gopalan v. State of Madras**: Gopalan challenged the state's jurisdiction over his freedom of movement; Supreme Court issued a prohibition to restrain lower courts from exceeding jurisdiction under Article 32.

### **Right to Information Act, 2005 with Case studies.**

- Grants citizens the right to access information under the control of public authorities.
- Applies to information held by constitutional bodies, laws made by Parliament or state legislatures, appropriate governments, as well as government or non-governmental organizations.

### **Public Information Officers (PIO):**

Every public authority must appoint PIOs to provide information to those requesting it under the Act.

### **Exemptions from Disclosure:**

- Info affect sovereignty, security, integrity, scientific & economic interests of nation
- Info forbidden by court
- Impedes investigation
- Received from foreign govt
- Endangers life
- Trade secrets and IPR
- Involves infringement of copyright
- Fiduciary relationship
- Information received in confidence from a foreign Government;
- Cause breach of privilege of parliament and state legislature

### **Central and State Information Commissions:**

- a. Central Information Commission: Headed by Chief Information Commissioner.
- b. State Information Commission: Headed by State Chief Information Commissioner.

### **Powers of the Commission (Sec. 18):**

- Duty to receive and inquire into complaints regarding:
- Lack of appointment of PIO.
- Refusal of access to information.

- Non-response to information requests within specified time frames.
- Unreasonable fee charges.
- Receipt of incomplete, misleading, or false information.
- Commission has powers similar to a civil court, including summoning persons, compelling evidence, and requisitioning records.

**Appeals (Sec. 19):**

- Two-tier appeal mechanism:
- First appeal to a senior officer in the public authority.
- Second appeal to Central or State Information Commission.
- Burden of proof on PIO to justify denial of information.

**Enforcement Powers:** Information Commission empowered to ensure compliance by public authorities through various measures including providing access to information, appointing PIOs, publishing certain categories of information, and imposing penalties.

**Penalties (Sec. 20):**

- Information Commission can impose penalties for:
- Not accepting information requests.
- Delaying disclosure without reasonable cause.
- Malafide denial or provision of incomplete, incorrect, or misleading information.
- Destruction of requested information.
- Obstructing furnishing of information.

## Unit 2 -Directive Principles of State Policy

### Significance of Directive Principles of State Policy

**Justiciable rights**-Fundamental rights

**Non Justiciable rights**(Not legally forced)-DSP(Directive State Principles)

**Article 37**- State should follow DSP

#### 1. Socialistic Principles:

- **Article 38**: Social, economic, and political justice.
- **Article 39**: Health, wealth distribution, and legal aid.
- **Article 41**: Employment, old age, and sickness benefits.
- **Article 42**: Fair working conditions and maternity relief.
- **Article 43**: Decent living standards and cultural opportunities.

#### 2. Gandhian Principles:

- **Article 40**: Empowers village panchayats.
- **Article 46**: Supports SCs, STs, and weaker sections.
- **Article 47**: Bans intoxicants.
- **Article 48**: Protects cattle.

#### 3. Liberal Intellectual Principles:

- **Article 44**: Advocates for a uniform civil code.
- **Article 45**: Provides education for children up to six.
- **Article 49**: Safeguards monuments and heritage sites.
- **Article 50**: Separates judiciary from the executive.
- **Article 51**: Upholds international laws.

#### DPSP Facts:

- **44th Amendment: Article 38** amended to minimize inequalities.
- **86th Amendment: Article 21A** added right to education, state to provide early childhood care.
- **97th Amendment: Article 37B** for cooperative societies, state to promote their formation and management.
- **Article 37** mandates state to apply DPSP principles in lawmaking.

#### Criticism (LICC):

- Lacks legal force.
- Illogical arrangement.
- Conservative nature.
- Potential for constitutional conflicts.



### Champakam Dorairajan Case (1951)

Supreme Court ruled that in any case of conflict between Fundamental Rights and DPSPs, the provisions of the former would prevail. DPSPs were regarded to run as a subsidiary to Fundamental Rights. SC also ruled that Parliament can amend Fundamental Rights through constitutional amendment act to implement DPSPs.

### Fundamental Duties in the Constitution of India

1. Respect the Constitution, National flag, and Anthem.
2. Uphold ideals of the freedom struggle.
3. Protect India's sovereignty and unity.
4. Serve the nation when needed.
5. Promote harmony and gender dignity.
6. Preserve India's cultural heritage.
7. Conserve the environment and show compassion.
8. Foster scientific temper and humanism.
9. Protect public property and reject violence.
10. Strive for excellence in all pursuits.
11. Ensure education for children aged 6-14. (Added by the 86th Amendment)

### Union Executive- President

#### President:

1. President serves as India's executive head ([Article 52](#)).
2. Qualifications: Indian citizen, aged 35, eligible for Lok Sabha membership ([Article 58](#)).
3. Conditions: Cannot hold other profitable offices, must vacate legislative positions ([Article 59](#)).
4. Privileges: Rent-free accommodation, allowances, Rashtrapati Bhavan as residence.
5. Election: Through electoral college of MPs and MLAs ([Article 54](#)).
6. Disputes resolved by Supreme Court ([Article 71](#)).
7. Oath administered by Chief Justice or senior judge ([Article 60](#)).
8. Term: Five years, extendable ([Article 56](#)).
9. Impeachment process outlined ([Article 61](#)).
10. Privileges and immunity detailed ([Article 361](#)).
11. Executive powers include appointments, military command ([Article 53](#)).
12. Diplomatic roles involve representation and treaty negotiation.
13. Legislative powers: Summoning Parliament, assenting to bills, ordinances ([Articles 55, 123](#)).
14. Financial roles include fund administration and receiving reports ([Article 53](#)).
15. Judicial powers include pardoning and seeking advice from Supreme Court ([Article 72](#)).
16. Emergency powers allow declaration of national, state, or financial emergencies ([Article 352](#)).

**Vice President's Functions (Article 63):**

1. Ex-officio Chairman of Rajya Sabha.
2. Votes in case of ties.
3. Represents Rajya Sabha at ceremonies.
4. Safeguards members' rights.
5. Conducts goodwill missions abroad.
6. Acts as President during absence.
7. Temporarily serves as President in vacancy.
8. Interim period capped at six months.

**State Executive- Governor****Governor**

- President appoints governor for each state.
- Qualifications: Indian citizenship, age 35 or above.
- Consults Chief Minister for state assignment.
- Executive: Appoints officials, acts as President's agent, executes actions.
- Legislative: Sends bills, addresses legislature, appoints presiding officer, consults Election Commission.
- Financial: Oversees budget, administers fund, forms finance commission.
- Judicial: Recommends judges, appoints, posts, and promotes judicial officers.

**7th Constitutional Amendment:**

- Allowed same governor for two states.
- Adjusted Lok Sabha and Legislative Council compositions.
- Facilitated High Court judge practice after retirement.
- Mandated mother tongue instruction at primary level.

**Chief Minister**

- Appointed by governor, usually from party with majority.
- Governor's discretion in case of no majority.
- Head of Council of Ministers: Appoints, controls agenda, demands resignation, reorganizes ministry.
- Aids and Advises Governor: Conveys decisions, provides information on administration.
- Leader of the House: Makes announcements, maintains discipline, appoints whip.

## Parliament & State Legislature

### Parliament:

- 1) **Rajya Sabha (Council of States):** elected by the members of State Legislative Assemblies and Union Territory Legislative Assemblies.
  - Comprises members known as Rajya Sabha members or MPs.
  - Total number of members is fixed at 250, out of which 238 members represent the states and union territories, while 12 members are nominated by the President for their expertise in various fields.
  - The Chairman of the Rajya Sabha, known as the **Vice President** of India, acts as the ex-officio Chairman of the Rajya Sabha.
  - The Vice President presides over the sessions of the Rajya Sabha and ensures orderly conduct of business.
  - In the absence of the Vice President, the *Deputy Chairman*, elected by the members, presides over the sessions.
- 2) **Lok Sabha (House of the People):** directly elected by eligible voters during general elections.
  - Comprises members known as Members of Parliament (MPs).
  - Total number of members can vary, but currently, there are 543 elected members.
  - The **Speaker** of the Lok Sabha is the presiding officer and is elected by the members of the Lok Sabha.
  - The Speaker's role includes maintaining order during debates, deciding on points of order, and ensuring that parliamentary procedures are followed.
  - In the absence of the Speaker, the **Deputy Speaker**, elected by the members, assumes the Speaker's duties.

→ The President of India is an integral part of Parliament and has certain legislative powers.

### State Legislature:

- 1) **Legislative Assembly (Vidhan Sabha):** represents the people of the state and its members are directly elected by eligible voters during state assembly elections.
  - Comprises members known as MLAs (Members of Legislative Assembly).
  - Total number of members varies from state to state based on population and other factors.
  - responsible for making laws and representing the people of the state.
  - The Speaker of the Legislative Assembly, elected by the members, presides over the sessions.
  - The Speaker's role is similar to that of the Speaker of the Lok Sabha, ensuring orderly conduct of business and maintaining decorum during debates.
  - In the absence of the Speaker, the Deputy Speaker, elected by the members, takes on the Speaker's responsibilities.

2) **Legislative Council (Vidhan Parishad)** (where applicable): members are elected by various methods including indirect elections, nominations, and representation of certain interest groups like graduates, teachers, etc.

- Not all states have a Legislative Council; those that do have a bicameral legislature.
- Comprises members known as MLCs (Members of Legislative Council) or MLCAs (Members of Legislative Council of a State).
- revising chamber, reviewing and suggesting amendments to bills passed by the Legislative Assembly.
- The Chairman of the Legislative Council, elected by the members, presides over the sessions.
- The Chairman's role is akin to that of the Speaker in the Legislative Assembly, ensuring the smooth functioning of the house.
- In the absence of the Chairman, the Deputy Chairman, elected by the members, assumes the Chairman's duties.

→ Governor gives assent to bills passed by the Legislative Assembly, after which they become laws.

### **Council of Ministers**

#### **Council of Ministers (Article 74):**

1. Aids and advises the President.
2. Headed by Prime Minister.
3. President acts on their advice.
4. Advice can be reconsidered.
5. President bound by reconsidered advice.
6. Size of Ministries: Capped at 15% of Lok Sabha or state assembly members.
7. Disqualification: Prohibits defection, voting against party. Exception: faction formation after split.
8. Non-member Minister: Appointed by President, ceases office in 6 months, Must get elected to Lok Sabha to continue.
9. Convicted Chief Minister: **B.R. Kapoor v State of Tamil Nadu** ruling disallows convicted appointments.

#### **Dissolution of Parliament:**

- Lok Sabha term: 5 years, can dissolve earlier.
- Dissolution by President on PM's advice or viability issues.
- Collective Cabinet responsibility for government actions.
- Individual ministerial responsibility for ministry actions.

#### **Prime Minister's Appointment and Powers:**

- Appointed by President based on Lok Sabha majority leader.
- Holds significant powers in government functioning.
- Rights, Powers, and Dismissals:

- Advises President on key appointments.
- Chairs various councils and organizations, heads armed forces.
- Minister: Death, resignation, dismissal by President, court directive, loss of eligibility.
- Cabinet: Dissolution by PM or President, automatic dissolution after PM's death.

### Anti-defection law

- Defection in Indian politics undermines stability and democratic principles.
- Multi-party democracy led to defection becoming a significant issue after the 1967 elections.
- The **52nd Constitutional Amendment** in 1985 introduced the Anti-Defection Law to address this.

### Political Defection

- Defection refers to the change of party affiliation by a legislator.
- It signifies disloyalty to both the party and the electorate.
- Rampant defections after the 1967 elections highlighted the need for legal intervention.

### Anti-Defection Law

- The 52nd Amendment in 1985 inserted the Tenth Schedule into the Constitution.
- It outlined grounds for disqualification due to defection, including voluntary resignation or disobeying party directives.
- Exceptions allowed for members joining the speaker's or chairman's position and permitted party mergers with two-thirds majority.

### Judicial Review

- Legal challenges, including the **Kihoto Hollohon vs. Zachillhu case**, questioned the law's validity.
- The Supreme Court upheld the constitutional validity but allowed for judicial review.
- **91st Amendment Act 2003** changed criteria for party mergers, requiring a two-thirds majority.
- Members switching sides must now resign and seek re-election.

**Kihoto Hollohon vs. Zachillhu:** Kihoto Hollohon, a member of the Nagaland Legislative Assembly, challenged his disqualification under the Tenth Schedule (Anti-Defection Law); Supreme Court upheld the validity of the Anti-Defection Law, stating that the Speaker's decision on disqualification is subject to judicial review but not by a regular court.

**Ravi S Naik vs. Union of India:** Ravi S Naik, a former Chief Minister of Goa, challenged the imposition of President's Rule in Goa; Supreme Court ruled in favor of Naik, declaring the imposition of President's Rule unconstitutional, emphasizing the importance of democratic principles and state government's autonomy.

## **Union and State Judiciary**

### **Union Judiciary - Supreme Court**

- Replaced the king's role in ensuring justice.
- Interprets rights and acts as guardian of the constitution.
- Conducts checks on the legislature and executive to prevent abuse of power.
- Ensures transparency and fairness in the legal system.

#### **Structure:**

- Initially composed of one Chief Justice and seven judges.
- Parliament can prescribe the number of judges, which increased to thirty-one to handle increasing workload.
- Chief Justice appointed by the President after consulting other judges.

#### **Qualification and Tenure:**

- Judges must be Indian citizens with judicial or advocacy experience.
- Mandatory retirement at age 65.
- Removal possible on grounds of misconduct with a rigorous procedure involving Parliament.

**Salaries and Allowances:** Determined by Parliament, and Ensures independence by prohibiting laws that adversely affect judges' positions after appointment.

#### **Jurisdiction:**

- A Court of Record with power to punish for contempt.
- Original jurisdiction over disputes between the center and states, and among states.
- Power of judicial review to ensure constitutionality of laws and actions.
- Appellate jurisdiction over civil, criminal, and constitutional matters.

#### **Special Powers:**

- Authority to withdraw and transfer cases.
- Power to compel obedience to its orders.
- Can review its own judgments.
- Can issue advisory opinions to the President.

#### **Enforcement:**

- Judgments binding on all courts.
- Not bound by its own decisions, but follows precedent.
- Power to enforce orders throughout the country.

## **State Judiciary - High Court**

- Each state has its own High Court.
- Consists of a Chief Justice and other judges appointed by the President.

### **Appointment and Qualifications:**

- Judges appointed by the President, consulting with relevant authorities.
- Must be Indian citizens with judicial or advocacy experience.

### **Powers and Functions:**

- Control over all courts and tribunals within its jurisdiction.
- Can issue writs for fundamental rights enforcement.
- Superintendence over subordinate courts and tribunals.

### **Jurisdiction:**

- Original jurisdiction over certain civil and criminal matters.
- Writ jurisdiction to protect fundamental and legal rights.
- Appellate jurisdiction over decisions of subordinate courts within its territory.

### **Role in Modern Times:**

- Acts as a guardian of rights and interpreter of laws.
- Ensures fairness and justice within its jurisdiction.
- Empowered to review laws and actions for constitutionality.

### **Independence and Accountability:**

- Not subject to Right to Information Act to maintain judicial independence.
- Supreme Court has the power to review its decisions.
- Enforces its orders throughout its jurisdiction.

## **JUDGES INQUIRY ACT 1986**

- Purpose: Sets procedure for investigating charges against judges.
- Composition: Includes judges from SC, HC Chief Justices, and a distinguished jurist.
- Investigation: Committee frames charges and conducts investigation.
- Grounds for Removal: Judges can be removed for proven misdemeanor or incapacity.
- Fairness: Ensures impartiality and adherence to principles of natural justice.
- Role of Committee: Conducts investigation, considers evidence, and recommends action.
- Decision Making: Committee decides validity of charges based on evidence.
- Safeguards: Operates independently to uphold judiciary's integrity and ensure accountability.

## Emergency Provisions in the Indian Constitution:

### 1. National Emergency: National emergency requires parliamentary approval every 6 months.

- Grounds: War, External Aggression, Armed Rebellion.
- Proclaimed by the President on Cabinet advice.
- Proclamation must be approved by Parliament within one month by a two-thirds majority.
- Approval valid for 6 months and can be extended.
- Centralization of power; Parliament can legislate on state subjects.
- Extension of Lok Sabha and Legislative Assembly terms.

### 2. State Emergency (President's Rule): State emergency subject to judicial review.

- Ground: Breakdown of Constitutional Machinery.
- Inability to form a government.
- Failure to adhere to central government's administrative directions.
- Failure to uphold secularism (per Mumbai case, 1994).
- Proclaimed by President; must be approved by Parliament within two months by a simple majority.
- Approval valid for 6 months; extendable up to 1 year.
- National emergency in force.
- Election Commission's inability to conduct elections.
- Beyond 3 years requires constitutional amendment.
- Dismissal of state government; Legislative Assembly dissolution or suspension.
- President assumes legislative and executive powers, except those of High Courts.

### 3. Financial Emergency: Financial emergency never proclaimed in India to date.

- Grounds: Threat to Financial Stability.
- Proclaimed by President; approval by Parliament within two months by a simple majority.
- Automatically ends at the close of the financial year (March 31st).
- Central government can dictate state money bills.
- Regulation of salaries and allowances, including for judges.

## Elections, Administrative tribunals

### Election Commission

- Administration of Elections: Conducts elections for various offices and bodies outlined in the Constitution.
- Autonomy and Freedom: Operates independently alongside institutions like Judiciary, UPSC, and CAG.
- Ensuring Free and Fair Elections: Upholds the basic structure of the Constitution by ensuring elections are conducted freely and fairly.
- Power to Direct Counting of Votes: Has the authority to direct the manner of vote counting to safeguard the interests of electors and prevent intimidation.



**Functions:**

- Supervises, directs, and controls the preparation of electoral rolls for all elections.
- Conducts elections for Parliament, State Legislatures, President, and Vice President.
- Advises the President or Governor on disqualification of Members of Parliament or State Legislature.
- Right to Vote: Not a fundamental right but subject to statutory limitations and special laws.

**Administrative Tribunals:**

- Tribunals in administrative law refer to adjudicatory bodies outside the regular judicial system.
- In India, judicial powers are vested in courts, but administrative tribunals handle specific matters to simplify the judicial system.
- They possess quasi-judicial features and aim to provide effective dispute resolution.
- Introduced through the **42nd Amendment** with Article 323A and 323B of the Constitution.
- Intended to reduce the burden on High Courts and provide an alternative mechanism for specific judicial cases.
- Ensures the integrity of the judicial system while addressing the issue of case overload.

**Characteristics of Administrative Tribunals:**

1. Statutory Origin: Created by statute.
2. Quasi-Judicial Functions: Perform judicial and quasi-judicial functions.
3. Judicial Independence: Act independently without administrative interference.
4. Procedural Flexibility: Not bound by strict rules of evidence and procedure.
5. Principle of Natural Justice: Bound to adhere to the principle of natural justice.
6. Limited Jurisdiction: Limited to specific matters outlined in the statute.
7. Availability of Writs: Subject to judicial review through writs like certiorari and prohibition.

**Administrative Tribunals for Service Matters (Article 323A):**

- Established for adjudication of disputes related to recruitment and conditions of service of government servants.
- Covers employees of central and state governments, local authorities, and government-owned corporations.

**Tribunals for Other Matters (Article 323B):**

- Empowers Parliament and State Legislatures to establish tribunals for various specified matters.
- Includes taxation, industrial disputes, food supply, rent regulation, and other issues.

**The Administrative Tribunals Act, 1985:**

- Passed to regulate matters under Article 323A of the Constitution.
- Establishes Central Administrative Tribunal (CAT) and State Administrative Tribunals (SAT) to handle service-related disputes.
- Defines jurisdiction, composition, appointment, and powers of tribunals.

**Advantages of Administrative Tribunals:**

- Flexibility in procedure.
- Speedy justice delivery.
- Cost-effectiveness.
- Quality justice.
- Relieves burden on ordinary courts.

**Drawbacks of Administrative Tribunals:**

- Potential violation of rule of law.
- Lack of specified procedure.
- Unpredictable decisions.
- Scope for arbitrariness.
- Absence of legal expertise among members.

**Human Rights & Human Rights Commission.**

- Human rights are essential rights every individual should have against the state or public authorities.
- The UDHR defines human rights as rights stemming from human dignity, known as Fundamental Rights when guaranteed by a written constitution.
- NHRC is established to protect and promote human rights in India.

**Characteristics and Nature of Human Rights:**

1. Inalienable: Cannot be taken away or surrendered.
2. Essential and Necessary: Fundamental for human dignity and fulfillment of life's purpose.
3. Irrevocable: Once granted, cannot be revoked.
4. Connection with Human Dignity: Essential for upholding human dignity.
5. Universal: Applicable to all individuals regardless of race, religion, or nationality.
6. Never Absolute: Subject to limitations.
7. Dynamic: Evolve with societal changes.
8. Limits to State Power: Serve as checks on state authority.

**National Human Rights Commission (NHRC):**

- Established in 1993 as an independent statutory body to safeguard human rights guaranteed by the Indian Constitution or international covenants.
- Conforms to the Paris Principles and endorsed by the UN General Assembly.

**Human Rights Council**

- Established in 2006 to replace the UN Commission on Human Rights.
- Ensures global human rights promotion and protection.

**Structure of the Commission:**

- Consists of a chairman and 7 other members.
- Appointed by the President based on recommendations from a high-powered committee headed by the Prime Minister.
- Term of 5 years or until the age of 70.
- Removal only for proved misbehavior or incapacity after an inquiry by the Supreme Court.
- Divisions: Law Division, Investigation Division, Policy Research & Programmes Division, Training Division, and Administration Division (LIPTA).

**Functions and Powers of NHRC:**

1. Investigates grievances related to human rights violations.
2. Can intervene in judicial proceedings involving human rights allegations.
3. Authorized to visit jails and other institutions under state control to assess inmate living conditions and make recommendations.
4. Reviews constitutional safeguards and recommends remedial measures.
5. Conducts and promotes research in human rights.
6. Empowered with civil court powers and can grant interim relief.
7. Can recommend compensation or damages.

**Limitations of NHRC:**

1. Lack of investigation mechanism; often relies on government agencies to investigate complaints.
2. Limited capacity to provide practical relief to aggrieved parties.
3. Recommendations are not enforceable, leading to partial compliance or outright rejection by the government.
4. Inadequate funding hampers its effectiveness.
5. Time limitations on registering complaints may lead to many grievances going unaddressed.
6. Government rejection or partial compliance with NHRC recommendations undermines its authority.

**NHRC Powers:**

1. Investigative authority over human rights violations.
2. Power to intervene in legal proceedings.
3. Authority to visit and assess conditions in state-controlled institutions.
4. Ability to recommend remedial measures and compensation.
5. Civil court powers to grant interim relief.

## Unit 3 - Consumer Protection Law

### Definition and Need of Consumer Protection

- **The Consumer Protection Act of 2019** is a law designed to safeguard the interests of consumers and provide efficient mechanisms for addressing consumer grievances.
- It replaced the old Consumer Protection Act of 1986, aiming to modernize consumer protection laws in India.
- 

#### Key Objectives:

- The primary aim of the Consumer Protection Act 2019 is to protect consumer rights by establishing authorities for the timely and effective resolution of consumer disputes.
- It aims to ensure that consumers are adequately informed, protected, and empowered to seek redressal against unfair trade practices.

**Definition of Consumer:** A consumer is defined as a person who avails services or purchases goods for personal use. Goods or services purchased for resale purposes do not fall under this definition.

### Consumer Rights under the Consumer Protection Act, 2019

#### Establishment of Central Consumer Protection Authority (CCPA):

- The CCPA is responsible for protecting, promoting, and enforcing consumer rights.
- It regulates cases related to unfair trade practices and violations of consumer rights.
- The CCPA has the authority to impose penalties on violators and issue orders for the recall of goods.
- It includes an investigation wing and is headed by a Director-General.

**Rights of Consumers:** The Act provides consumers with six fundamental rights (PIAHRA):

1. To be protected against hazardous goods or services.
2. To be Informed regarding the quality, quantity, and price of goods or services to prevent unfair trade practices.
3. To be assured of the variety of goods or services at competitive prices.
4. To be heard and considered upon consumer interests.
5. To seek redressal against unfair trade practices or exploitation.
6. To be Aware of consumer rights and responsibilities.

## Unfair Trade Practice and Defect in goods

- Unfair trade practices occur when an entity engages in illicit and illegal means to promote its services or sale of goods, misleading the general public into opting for deceptive products or services.
- Examples include portraying goods as high quality when they are actually inferior.

### Regulation under the Consumer Protection Act:

- **The Consumer Protection (E-Commerce) Rules, 2020**, address unfair trade practices in e-commerce platforms.
- These rules apply to all e-commerce portals, inventories, marketplaces, and entities involved in providing services to customers.

### Mandatory Information Dispensation:

- E-commerce entities are required to provide essential information such as:
- Refund policy
- Warranty details
- Exchange rules
- Payment options
- Quality or mark of the product as portrayed
- Sellers are held liable for the accuracy and compliance of this information.

### Timely Resolution of Consumer Queries:

- E-commerce platforms must respond to any consumer query or complaint within 48 hours of receipt.
- Proper redressal of consumer complaints must be provided within one month from the date of receipt.

### Appointment of Grievance Officer:

- E-commerce entities are mandated to appoint a grievance officer to handle consumer complaints and grievances effectively.

## Deficiency in services

- Consumers can lodge complaints under the Consumer Protection Act if they encounter any deficiency in service.
- Deficiency is defined as any imperfection, defect, or negligence in the feature, quality, quantity, or standard of goods or services.
- It includes the deliberate concealment of information or acts leading to injury or loss.
- Deficiency can occur in any sector where there is a buyer-seller relationship.

### **Judicial Precedents:**

- **Indian Medical Association v V.P. Shanth:**
- Medical negligence was included under the scope of the Consumer Protection Act, enabling aggrieved individuals to seek damages for deficiency in medical services.
- **Gurshinder Singh vs. Shriram General Insurance Co. Ltd and ors. (2020):**
- Insurance claims should not be declined on technical grounds if satisfactory reasons are provided.
- Mere delay in informing the insurance company about theft should not be a valid reason to reject a claim.

### **Product liability and Penal Consequences**

- Product liability refers to the responsibility of product sellers or manufacturers to compensate consumers for any harm caused by defective or deficient products, ensuring that they meet reasonable expectations.
- Products should be both merchantable and marketable, meeting the standards of quality and safety.
- The Consumer Protection Act of 2019 is the first legislation in India that expressly defines and contains provisions related to product liability.

### **Nature of Product Liability Law:**

- Statutory liability on manufacturers and product sellers is very strict, deriving from the principle of Caveat Venditor, which holds sellers accountable for any harm caused by their products.
- Privity of Contract is no longer a requirement to sue for product liability, making it more accessible to consumers.

### **Types of Product Liability:**

- Manufacturing Defects
- Design Defects
- Marketing Defects
- Breach of Warranty

### **Remedies available to consumers under the Consumer Protection Act, 2019:**

#### **Against Product Manufacturer (Section 84):**

1. Manufacturing Defect
2. Design Defect
3. Non-confirmation to express warranty
4. Marketing defect (failure to warn of danger)
5. Non-compliance with specified manufacturing standards

**Against Product Service Provider (Section 85):**

1. Substandard quality of service
2. Negligent act or omission causing harm
3. Failure to provide necessary warnings
4. Breach of warranty or contract terms

**Against Product Seller (Section 86):**

1. Involvement in product manufacturing, testing, labeling
2. Modifications made to the product while selling
3. Failure to meet express warranty provided by the manufacturer
4. Personal obligation if manufacturer is unidentified
5. Negligence in product care, inspection, or maintenance

**Defenses against Product Liability Claims (Section 87):**

1. Consumer's ill motives or ignorance of their own mistake
2. Consumer's modification of the product causing harm

**Defenses available to a Product Manufacturer:**

1. Adequate warnings provided to employer (for work-related use)
2. Product used as a component with proper warnings given
3. Product intended for expert use with warnings provided
4. Consumer's intoxication or use against recommendations
5. Reasonable consumer knowledge of product dangers

**Online Shopping and Product Liability:**

1. Increased liability due to consumer reliance on seller's description
2. Delivery service also liable for defects
3. Liability for false advertisement or delivery issues
4. Liability for gray market items and fraud

**Liability Related to Online Food Products:**

1. Increased safety measures needed for online food products
2. Importance of food traceability for identifying safety defects

**False and Misleading Advertisement**

- Health-related ads promoting questionable cures, medications, and health gadgets.
- Non-health-related ads containing fraudulent or deceptive claims, violating consumer rights and causing financial loss.

## Indian Laws and Regulations:

### 1. Consumer Protection Act 2019:

- Establishes CCPA to prevent unfair e-commerce practices, with investigative powers.
- Mandates e-commerce platforms to acknowledge complaints within 48 hours and resolve them within 1 month.
- Facilitates consumer dispute resolution through consumer councils and provides for mediation and simplified arbitration.

### 2. The Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply, and Distribution) Act, 2003 (CTP Act):

- Prohibits direct or indirect advertisement of tobacco products in various media forms.

### 3. The Cable Television Networks (Regulations) Act, 1995 (CTN Act):

- Restricts rebroadcasting programs on cable TV unless permitted.
- Requires cable providers to avoid airing offensive ads against decency, morality, and religious beliefs.

### 4. Other Applicable Laws:

1. Doordarshan/All India Radio (AIR) Advertisement Code
2. Drugs and Cosmetics Act, 1940, Drugs (Control) Act, 1950
3. Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954
4. Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994
5. Pharmacy Act, 1948
6. Prize Competitions Act, 1955
7. Emblems and Names (Prevention of Improper Use) Act, 1950
8. Indecent Representation of Women (Prohibition) Act, 1986
9. Code of Ethics for Advertising in India

## E-Commerce

### Applicability of Rules:

- Covers any person operating digital or electronic platforms for e-commerce, excluding sellers on marketplace platforms.
- Applies to all goods and services sold over digital networks, including digital products.
- Encompasses various e-commerce models like marketplace, inventory, and multi-channel retail.
- Includes both domestic and foreign e-commerce entities serving consumers in India.

### Key Obligations for E-commerce Entities and Sellers:

- E-commerce entities must prevent unfair trade practices by sellers on their platform.
- Prohibited from engaging in price manipulation and must have mechanisms for consumer complaint redressal.
- Government standardizes regulations for all e-commerce entities, addressing any disparity.



**Explicit Consumer Consent:**

- E-commerce platforms must obtain express consent from consumers for each purchase, prohibiting automatic consent.
- Terms and conditions agreed upon during account creation apply to subsequent purchases.
- Guest checkout option requires presenting terms and obtaining consent before purchase.

**Price Manipulation:**

- Prohibits manipulating prices for unreasonable profits, ensuring fair competition among sellers.
- Listing goods above MRP is an offense under the Consumer Protection Act.
- E-commerce platforms must ensure fair competition without bias.

**Consumer Discrimination and Disclosure:**

- E-commerce entities must not discriminate among consumers or sellers.
- No clear definition of consumer classes or seller categories, leaving discretion to e-commerce platforms.
- Parameters like sales volume, duration of association, and product type may influence classification.

**Cancellation Charges:** Entities cannot levy cancellation charges on consumers unless they incur similar charges for unilateral order cancellations.

**Timely Refunds:** Refund requests must be processed within a reasonable period, with interpretation varying among entities and individuals.

**Alternate dispute Redress mechanism, Redresses Mechanisms under the Consumer Protection Act, 2019. An overview of Indian Penal Code 1860 (Law Of Crimes)****Grievance Redressal Officer:**

- Mandatory for e-commerce entities.
- Details must be displayed on online platforms.
- Officer to acknowledge complaints within 48 hours and resolve them within one month.
- Challenges include the volume of complaints and timely redressal.

**Nodal Person of Contact:**

- Required to ensure compliance with consumer protection laws.
- Issues regarding personal liability and protection from litigation become important.
- Ensures oversight and compliance within e-commerce entities.

**Complaint Token:**

- Mandatory for tracking the status of consumer complaints.
- Provides a unique ticket number for each complaint.
- Enhances transparency and accountability in grievance redressal.

**Seller Obligations:**

- Written Contract: Sellers must have a written contract with e-commerce platforms.
- False or Misleading Advertisements: Sellers must ensure accuracy and honesty in advertisements.
- Disclosure: Sellers must provide certain prescribed information to the marketplace.

**Consumer Complaint Redressal Mechanism (CCRM):**

**Three-tier system:** District, State, and National Consumer Disputes Redressal Commission.

**Jurisdiction based on the value of the claim:**

- District Consumer Disputes Redressal Forum: Up to Rs. 1 Crore.
- State Consumer Disputes Redressal Commission: Between Rs. 1 Crore to Rs. 10 Crore.
- National Consumer Disputes Redressal Commission: More than Rs. 10 Crore.

**Steps for Consumer Complaint Redressal:**

1. Approach Grievance Redressal Mechanism: Consumers should initially approach the internal grievance redressal mechanism of the service provider.
2. Sending of Legal Notice: If no resolution is reached, the consumer can send a legal notice to the service provider outlining the complaint and desired remedy.
3. File Consumer Complaint: If the service provider fails to address the issue, the consumer can file a complaint in the appropriate Consumer Forum.
4. The complaint must contain all necessary details, and there's a limitation period of two years from the date of cause of action.
5. The District Forum must respond on the admissibility of the complaint within 21 days.

**Additional Procedures:**

- **Mediation:** The Forum may suggest mediation, and if agreed upon by both parties, mediation is attempted. If unsuccessful, the case proceeds.
- **Review Application:** If dissatisfied with the District Forum's decision, a review application can be filed within 30 days. Further appeals can be made to higher authorities.
- **Filing Appeal with National Commission:** If not satisfied with the State Commission's decision, an appeal can be made to the National Commission within 30 days.

**Central Consumer Protection Authorities (CCPA):**

- Introduced under Chapter III of the 2019 Consumer Protection Act.
- Purpose: To regulate matters related to violation of consumer rights, unfair trade practices, and false or misleading advertisements prejudicial to public and consumer interests.
- Consists of a Chief Commissioner and other Commissioners appointed by the Central Government.
- Functions: Enforce consumer rights, address grievances, and regulate trade practices.

- Investigation Wing: Headed by a Director-General for conducting inquiries or investigations as directed by the Central Authority.
- Appeals against CCPA orders: Can be filed before the National Commission within 30 days from the receipt of the order.

#### **How to Make a Complaint:**

- Complaints can be related to violation of consumer rights, unfair trade practices, or false/misleading advertisements.
- Complaint Submission: Can be forwarded in writing or electronically to authorities such as the District Collector, Commissioner of Regional Office, or the Central Authority.

Powers of the Central Authority: Section 21 grants the Central Authority the power to issue directions and penalties against false or misleading advertisements.

#### **Consumer Dispute Redressal Commission (CDRC):**

- Empowered to resolve complaints related to unfair and restrictive trade practices, defective goods and services, overcharging, and hazardous goods.
- Three levels: District, State, and National commissions.
- Enhanced jurisdictions compared to the previous Act.
- Composition: President and members, with specific jurisdictional limits.

#### **Mediation:**

- Introduced as an alternate dispute resolution mechanism under Chapter V of the Act.
- Aims to resolve consumer disputes faster without approaching commissions.
- Successful mediation results in written agreements, while partial resolutions are recorded, and remaining issues are continued to be heard.

#### **Offences and Penalties:**

- Central Authority empowered to impose penalties for false or misleading advertisements.
- Separate chapter (Chapter VII) for offences and penalties, detailing punishments for non-compliance and sale of adulterated or spurious products.

#### **Related Rules and Regulations:**

- Consumer Protection (E-Commerce) Rules, 2020:
  - Mandatory rules for e-commerce entities, covering information disclosure, grievance redressal, and refund policies.
- Consumer Protection (Consumer Disputes Redressal Commissions) Rules, 2020:
  - Fee waiver for complaints filed in the District Commission up to Rs 5 lakhs.
  - Credit of unidentifiable consumer dues to the Consumer Welfare Fund (CWF).
- Central Consumer Protection Council (CCPC) Rules:
  - Advisory body on consumer issues, headed by the Union Minister of Consumer Affairs.
  - Includes regional representation and a three-year tenure for members.

In the case of **Horlicks Ltd. v. Zydus Wellness Products Ltd., 2020** SCC OnLine Del 873, the Delhi High Court issued an interim order restraining Zydus from broadcasting an advertisement comparing Complan to Horlicks, deeming it misleading and disparaging. The court referenced various judgments on misleading advertisements and disparagement, emphasizing that advertisements must not be false, misleading, unfair, or deceptive to be protected under **Article 19(1)(a)** of the Constitution.

In **Connaught Plaza Restaurants Ltd. Kapil Mitra, 2020** SCC OnLine NCDRC 192, a consumer participated in a McDonald's scheme but alleged unfair trade practices when the prizes were not awarded as promised. The District Forum awarded compensation, which was increased by the State Commission. However, the NCDRC partially allowed the appeal, reducing the compensation and costs.

The **Ernakulam Medical Centre P.R. Jayasree, 2020** SCC Online NCDRC 490 case involved the release of a deceased person's body to an unrelated third party, deemed a deficiency in service under the Consumer Protection Act, 1986.

In **Union of India N.K. Srivastava, 2020 SCC OnLine SC 636**, the Supreme Court upheld a decision by the National Consumer Disputes Redressal Commission (NCDRC) regarding medical negligence. The NCDRC held one hospital liable for compensation while exonerating another, emphasizing its role in resolving consumer disputes.

**Om Prakash v. Reliance General Insurance:** Reliance General Insurance was accused of denying insurance claim due to delayed reporting of theft; the court ruled in favor of Om Prakash, emphasizing the importance of efficient service and timely processing of insurance claims.

**Indian Medical Association v. V.P. Shanth:** The Indian Medical Association challenged the application of consumer protection laws to medical negligence cases; the court ruled that medical negligence falls under the purview of consumer protection laws, ensuring accountability in the healthcare sector.

**Donoghue vs Stevenson:** Donoghue sued Stevenson, a manufacturer, for negligence resulting in injury, despite not having a contractual relationship; the House of Lords established the "neighbour principle," allowing third parties to sue for negligence, ensuring accountability beyond contractual agreements.

## **Unit 4 - Introduction to Labour Legislations**

### **Industrial Relation**

- Industry: Refers to any productive activity in which individuals are engaged. Industries can be categorized into primary and secondary activities:
- Primary Activities: Include sectors such as agriculture, fishing, plantation, forestry, horticulture, mining, etc. These are often involved in the extraction or cultivation of raw materials.
- Secondary Activities: Encompass manufacturing, construction, trade, transport, commerce, banking, and other activities involved in processing or transforming raw materials into finished goods or services.

### **Types of Industrial Relations:**

- Labour Relations: Focuses on the relationship between management and labor, including issues related to wages, working conditions, grievances, and collective bargaining.
- Group Relations: Involves interactions among different groups within the workforce, such as unions, teams, departments, or shifts. Group dynamics and cooperation are essential aspects.
- Employer-Employee Relations: Concerned with the interactions between employers (management) and employees (workers), including hiring, supervision, performance evaluation, and termination.
- Community or Public Relations: Relates to the relationship between the industry or organization and the broader community or public. It involves aspects such as corporate social responsibility, environmental impact, and community engagement.

### **Labour Problem and Labour Policy in India, Labour Welfare and Social Security, Factories Act, 1948**

#### **Problems with unorganized labor**

1. Very low wages is the main problem for unorganized workers.
2. Maximum workers do not have any perfect living areas near to their work place.
3. They do not have any knowledge about work hazards and occupational safety.
4. Overtime, paid holiday or sick leave are not provided to them.
5. They do not have idea on Trade union/ labour union.
6. High level job insecurity is a common phenomenon unorganized sector.
7. Women and children are vulnerable and draw very low wages.
8. Maximum workers are leaving in a very deplorable condition.
9. Loss of employment due to silly reason is a natural incident.
10. Numbers of harassment issues at workplace for working women.
11. Susceptible to diseases.
12. Bonded labor

**The Factories Act of 1948** is a crucial piece of legislation aimed at ensuring the health, safety, and welfare of workers employed in factories. Its objectives and definitions are as follows:

1. **Working Hours:** To regulate the working hours of adult workers, ensuring they do not exceed 48 hours in a week, and provision of a weekly holiday.
2. **Health:** To maintain cleanliness in factories and take necessary precautions for the health of workers. This includes provisions for drainage, lighting, ventilation, temperature control, drinking water facilities, and sanitation.
3. **Safety:** To ensure the safety of workers by mandating the fencing of machinery, prohibiting young persons from working on dangerous machines, and providing emergency escape routes such as manholes of sufficient size in confined spaces.
4. **Welfare:** To provide adequate and suitable welfare facilities for workers, including provisions for washing, storing and drying clothes, seating arrangements, first-aid appliances, shelters, restrooms, and lunchrooms.
5. **Penalties:** Imposition of penalties, including imprisonment for up to 1 year and fines up to Rs 1 lakh, or both, for violations of the rules under the Act.

**Occupier:** The person having ultimate control over the affairs of the factory. In the case of a firm, it refers to any partner or member of the firm, and in the case of a company, it refers to the director(s). If the factory is held by the central, state government, or any local authority, the occupier is the person appointed by them.

**Factory:** Any premises where:

- 10 or more workers are working on any day in the past twelve months, and a manufacturing process is carried out with the aid of power, or
- 20 or more workers are working on any day in the past twelve months, and a manufacturing process is carried out with the aid of power.
- However, it does not include mines, units belonging to the armed forces of the union, railway sheds, restaurants, hotels, etc.

### **Laws relating to Industrial Relations**

1. Industrial Disputes Act, 1947
2. Trade Unions Act, 1926

### **Laws relating to Wages**

3. Minimum Wages Act, 1948
4. Payment of Wages Act, 1936
5. Payment of Bonus Act, 1965

## Laws relating to Social Security

6. Labour Welfare Fund Act (of respective States)
7. Weekly holidays Act
8. Equal remuneration Act
9. Child labour
10. Apprentice ACT

## Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

- **The Prevention of Sexual Harassment (POSH) Act** aims to address and prevent sexual harassment in the workplace, recognizing it as a violation of fundamental rights and a hindrance to women's social and economic empowerment. Here are some key points about the POSH Act:
- **Legal Basis:** Sexual harassment at the workplace is considered a violation of the right to equality, life, and liberty. It creates a hostile and insecure work environment, which can deter women from participating in the workforce, impacting their social and economic empowerment.
- **Origin:** The need for legislation to address sexual harassment at the workplace was highlighted in the landmark case of **Vishaka vs State of Rajasthan**. The POSH Act was enacted after 16 years of this case, providing a legal framework to address and prevent sexual harassment in the workplace.

**Definition of Sexual Harassment:** The Act defines sexual harassment broadly to include unwelcome acts or behavior such as physical contact and advances, demands or requests for sexual favors, making sexually colored remarks, showing pornography, or any other verbal or non-verbal conduct of a sexual nature.

**Circumstances Constituting Sexual Harassment:** The Act outlines various circumstances that constitute sexual harassment, including:

1. Implied or explicit promise of preferential treatment in employment.
2. Implied or explicit threat of detrimental treatment in employment.
3. Implied or explicit threat about the present or future employment status.
4. Interference with work or creating an intimidating, offensive, or hostile work environment.
5. Humiliating treatment likely to affect the victim's health or safety.

## the Child Labour (Prohibition and Regulation) Act, 1986

- defined as the employment of children (ppl below 14 years age) in any manual work.
- ILO defines child labour as a work that not only affects their childhood but also
- doesn't let the children attend the school regularly, or have a proper education.

### **Causes of child labour in India**

1. Poverty
2. Previous debts
3. Professional needs
4. Bonded labour
5. Domestic help
6. Child sex workers
7. Forced begging

### **Types of child labour**

1. Slavery
2. Child trafficking
3. Debt bondage
4. Serfdom
5. Forced labour
6. Beggary

### **Effects of Child Labour:**

- Malnutrition, drug dependency, and mental health issues.
- Endangerment of dignity and morals.
- Physical and sexual exploitation.
- Exposure to violence and hazardous working conditions.

### **Obstacles in Implementation of Labour Laws:**

1. Lack of awareness about child labour laws.
2. Poverty and economic pressures on families.
3. Illiteracy and lack of education.
4. Lack of political will to enforce laws effectively.
5. Inefficiency in monitoring and enforcement mechanisms.
6. High unemployment rates.
7. Parental consent or willingness to send children to work.
8. Insufficient educational and healthcare facilities in rural areas.

### **Child Labour Amendments:**

- **Child Labour Amendment Act, 2016:** Introduced stricter penalties for employers violating child labour laws and expanded the list of hazardous occupations and processes.
- **Child Labour Amendment Act, 2017:** Further strengthened child labour laws and aimed to enhance the protection of children from exploitation and hazardous work conditions.



### **Maternity Benefit (Amendment) Act, 2017**

- Eligibility: Woman must have worked at least 80 days in the past 12 months.
- Payment: Based on average daily wage during absence.

#### **Amendment Highlights:**

1. Paid maternity leave extended to 26 weeks.
2. Leave can begin 8 weeks prior to expected delivery.
3. No increased benefit for third child.
4. Adoption/surrogacy: 12 weeks of benefit.
5. Provision for creche facility.
6. Work from home option based on nature of work.
7. Prior intimation required.

### **Industrial Dispute Act, 1947 Reference of Disputes to Boards, Courts or Tribunals.**

- The **Industrial Dispute Act, 1947**, was enacted to address the absence of machinery for dispute resolution in the industrial sector.
- Common law principles were insufficient for resolving industrial disputes, leading to the need for specialized legislation.

#### **Objectives**

1. Promotion of amity between employer and workers.
2. Prevention of illegal strikes and lock-outs.
3. Relief to workers in cases of lay-off, retrenchment, and closure of undertakings.
4. Regulating industrial needs like unity of work, mutual trust, and tolerance.
5. Protecting the democratic rights of strikes and lock-outs.
6. Safeguarding Trade Union rights.
7. Regulating lay-off and retrenchment.
8. Ensuring industrial peace, harmony, good relations, and economic justice.
9. Regulating production and productivity.

#### **Main Features:**

1. Prohibition of Strikes/Lock-outs: Prohibited during conciliation or adjudication proceedings.
2. Industrial Tribunals: Adjudicate disputes related to employment conditions.
3. Binding Awards: Awards made by tribunals are binding for a specified period.
4. Public Utility Services: Essential industries can be declared public utilities during emergencies.
5. Compensation: Provision for compensation in case of lay-off or retrenchment.
6. Authorities for Dispute Resolution: Various authorities like Labour Courts, Tribunals, and Boards for Conciliation.
7. Work Committee: Facilitates discussions on common interests between employers and workers.

**Definitions:**

- *Lay-off*: Temporary suspension of workmen.
- *Lock-out*: Closure of a place of employment or suspension of work by the employer.
- *Retrenchment*: Termination of service by the employer for any reason, except as a disciplinary action.

**Differences:**

- Lock-out coerces labor during an industrial dispute, while lay-off is due to trade reasons.
- Lock-out continues during the dispute, whereas lay-off is not dispute-related.
- Retrenchment is termination without disciplinary action.

**M/S Burn & Co. Ltd. V/s Their Workmen**: Burn & Co. Ltd. terminated employees for participating in an illegal strike or lockout; the Supreme Court ruled against the company, emphasizing the right of workers to engage in collective bargaining and strike action as protected under industrial dispute laws.

**Industrial Tribunals (Section 7A)**

- Appointment: The appropriate government can establish one or more Industrial Tribunals via notification in the Official Gazette.
- Purpose: They adjudicate industrial disputes concerning matters listed in the Second or Third Schedule.
- Composition: Consists of one person appointed by the appropriate government, with the option to appoint two assessors for advice.
- Qualifications: Presiding officers must have qualifications such as being a High Court Judge, District Judge, Additional District Judge, Deputy Chief Labour Commissioner, Joint Commissioner of State Labour Department with relevant experience, or an officer of Indian Legal Service with requisite experience.

**National Tribunals (Section 7B)**

- Appointment: Established by the Central Government through notification in the Official Gazette.
- Purpose: Adjudicate industrial disputes of national importance or those likely to affect establishments in multiple states.
- Composition: Comprises one person appointed by the Central Government, with the option to appoint two assessors.
- Qualifications: Presiding officers must have been or currently be a High Court Judge.

## **Unit 5 - Scope and aims of engineering ethics (NSPE Code of Ethics)**

### **Responsibility of Engineers, Impediments to responsibility, Honesty, Integrity and reliability, Risks, Safety and Liability in Engineering**

#### **I. Fundamental Canons:**

1. Prioritize public safety, health, and welfare.
2. Work only in areas of expertise.
3. Be truthful and objective in public statements.
4. Act faithfully for employers or clients.
5. Avoid deceptive acts.
6. Conduct oneself honorably and responsibly.

#### **II. Rules of Practice:**

1. Safety of the public is paramount.
2. Report safety concerns and maintain confidentiality.
3. Avoid conflicts of interest and report violations.
4. Work within areas of competence.
5. Be truthful in public statements.
6. Act faithfully for employers or clients.
7. Avoid deceptive acts.
8. Respect confidentiality and avoid conflicts of interest.
9. Don't deceive the public.

#### **III. Professional Obligations:**

1. Uphold honesty and integrity.
2. Serve the public interest.
3. Avoid deceiving the public.
4. Respect confidentiality and avoid conflicts of interest.
5. Don't let conflicting interests influence your duties.
6. Don't harm the professional reputation of others.
7. Take responsibility for your actions and adhere to standards.
8. Give credit where due and respect proprietary interests

## Engineering ETHICS

**Morals:** stem from personal principles regarding right and wrong conduct.

- Development: Morals are shaped by individual beliefs and perceptions over time.
- Examples: Being truthful, fair, and compassionate are common moral principles.

**Ethics:** societal standards distinguishing between good and bad conduct.

- Origin: Derived from external groups or society, ethics provide guidelines for behavior.
- Types of Ethics: Duty ethics, right ethics, virtue ethics, etc., form the basis of ethical theories.
- Engineers face ethical dilemmas in various phases of project development.
- Impact: Ethical decisions affect product safety, company reputation, public trust, legal compliance, and environmental impact.
- Responsibility: Engineers have a moral duty to prioritize public safety and well-being.

### **Moral Conduct:**

- Principles: Respect, honesty, integrity, fairness, and gratitude are essential moral values.
- Behavioral Guidelines: Upholding promises, avoiding harm, and showing respect are integral to moral conduct.

### **Steps to Deal with Issues (ARCIC):**

1. Awareness: Recognize moral problems in engineering practice.
2. Reasoning: Analyze and comprehend moral arguments to reach a conclusion.
3. Coherence: Formulate consistent viewpoints based on relevant facts and moral principles.
4. Imagination: Consider creative solutions to moral dilemmas while separating moral and practical issues.
5. Communication: Clearly articulate moral views without distorting their meaning.

### **Important Skills for Ethical Reasoning (MRTMI):**

1. Moral Reasonableness: Ability to engage in fair and rational moral discourse.
2. Respect for Persons: Treat individuals with genuine concern and respect for their rights.
3. Tolerance of Diversity: Accept and appreciate ethnic, religious, and moral differences.
4. Moral Hope: Believe in the potential for moral conflicts to be resolved through rational dialogue and evidence-based decisions.
5. Integrity: Maintain honesty and strong moral principles while considering others' perspectives.

### **Types of Moral Issues:**

- Micro-ethics: Daily ethical challenges in engineering practice.
- Macro-ethics: Societal ethical dilemmas at regional or national levels.

**Types of Inquiries:**

1. Normative Inquiries: Determine morally desirable actions and professional responsibilities in engineering.
2. Conceptual Inquiries: Understand the meaning and implications of ethical concepts in engineering practice.
3. Factual or Descriptive Inquiries: Gather factual information to analyze and resolve ethical issues in engineering.

**Steps in Facing Moral Dilemmas (IRIDF):**

1. Identification: Understand the moral problem, duties, responsibilities, and conflicting factors involved.
2. Ranking: Prioritize considerations based on moral principles and obligations.
3. Inquiries: Gather detailed information and consider alternative courses of action.
4. Discussions: Engage in dialogue with others to gain different perspectives and insights.
5. Final Solution: Formulate a comprehensive solution considering all viewpoints and implications.

**Moral Autonomy and Skills:** independent judgment and decision-making in moral matters.

- Skills Needed: Understanding ethical language, processing arguments, suggesting solutions, viewing problems from different perspectives, and maintaining tolerance.
- Improving Moral Autonomy: Cultivate patience, interest, kindness, and adherence to moral principles while developing psychological and ethical maturity.

**Ethical Climate in Corporations:**

- Recognition of Ethics: Ethical values are acknowledged and appreciated by managers and employees.
- Management Role: Top management sets a moral tone through words, policies, and personal example.
- Conflict Resolution: Procedures are established for resolving ethical conflicts within the corporate environment.

**Responsibility of Engineers: (LCR3CJCB)****1. Loyalty:**

- Two types: Agency-loyalty and Attitude-loyalty.
- Agency-loyalty involves fulfilling contractual duties.
- Attitude-loyalty relates to attitudes and emotions towards work.

**2. Collegiality:**

- Shared responsibility and authority among colleagues.
- Importance highlighted in engineering codes of ethics.
- Factors: Respect, commitment, connectedness.

### **3. Respect for Authority:**

- Essential for meeting organizational goals.
- Types: Executive Authority and Expert Authority.
- Distribution based on company goals.

### **4. Collective Bargaining:**

- Addresses employee welfare through negotiation.
- Resolves conflicts between management and employees.
- Types: Distributive Bargaining, Integrative Bargaining, Attitudinal Structuring, Intra-organizational Bargaining.

### **5. Confidentiality:**

- Maintaining secrecy of sensitive information.
- Types: Privileged Information and Proprietary Information.
- Protects intellectual property and trade secrets.

### **6. Changing Jobs:**

- Obligation to protect confidential information even after changing jobs.
- Avoiding disclosure of sensitive information to new employers.
- Considerations for employment contracts and restrictions.

### **7. Management Policies:**

- Balancing personal interests with employer rights.
- Contracts may impose restrictions on future employment.
- Emphasis on professional responsibility beyond employer directives.

### **8. Justification:**

- Respects autonomy and control over private information.
- Fosters trust and trustworthiness.
- Supports professional growth and progress.

### **9. Conflicts of Interest:**

- Arise when individual interests conflict with employer or client obligations.
- Distinction between conflicts of interest and conflicting interests.
- Examples: Gifts, Moonlighting, Insider Information.

### **10. Gifts, Bribes, and Kickbacks:**

- Definitions and distinctions between bribes and gifts.
- Thumb rule: Avoid gifts that could embarrass the company if made public.
- Risks associated with moonlighting and insider information.

## **Corporate Social Responsibility**

- Integration of social and environmental concerns into business operations.
- Balancing economic, environmental, and social imperatives ("Triple-Bottom-Line-Approach").
- Distinguishing CSR from charity, sponsorships, or philanthropy.

### **Approaches for SMEs:**

- Tailoring CSR approaches to fit the needs and capacities of small and medium-sized enterprises (SMEs).
- UNIDO's CSR program based on the Triple Bottom Line (TBL) Approach for SMEs in developing countries.
- TBL approach measures corporate performance against economic, social, and environmental standards.

### **Key CSR Issues:**

- Environmental management, eco-efficiency, responsible sourcing.
- Stakeholder engagement, labour standards, working conditions.
- Employee and community relations, social equity, human rights.
- Good governance, anti-corruption measures.

### **Competitive Advantages of CSR:**

- Enhanced access to capital and markets.
- Increased sales, profits, and operational cost savings.
- Improved productivity, quality, and efficient human resource base.
- Enhanced brand image, reputation, and customer loyalty.
- Better decision making and risk management processes.

**Starbucks:** Initially faced criticism for its sourcing practices and environmental impact.

- Implemented CSR initiatives by ensuring ethical sourcing of coffee beans, promoting diversity and inclusion in its workforce, and supporting communities through education and disaster relief efforts.
- These efforts led to improved public perception, increased customer loyalty, and a positive impact on the communities it serves.

**DMart (Avenue Supermarts Ltd.):** Faced challenges related to energy consumption and waste generation in its retail operations.

- Implemented sustainable retail practices focusing on energy efficiency and waste reduction, alongside community development initiatives in areas of operation.
- This resulted in improved operational efficiency, reduced environmental footprint, and strengthened community relations.

**Tata Group:** Faced issues related to social inequality and lack of access to education and healthcare in the communities it operated in.

- Implemented CSR initiatives by investing in educational institutions, healthcare facilities, and rural development programs.
- These efforts led to empowerment of marginalized communities, improved social indicators, and enhanced brand reputation for Tata Group.

**Bata:** Faced challenges related to child poverty and environmental degradation due to its manufacturing processes.

- Implemented the Bata Children's Program to provide footwear to underprivileged children and adopted eco-friendly manufacturing processes to reduce environmental impact.
- These initiatives resulted in improved access to footwear for disadvantaged children, reduced environmental footprint, and enhanced corporate social responsibility image for Bata.

**Ultratech** cement-Medical camps, village development

### **Statutory Provision regarding prohibition and prevention of Ragging.**

Ragging-Disorderly conduct with junior student

**If ragging happens these things they can impose on them**

1. Punishment
2. Debarment
3. Suspension
4. Rustication
5. Admission cancellation
6. No scholarships for them
7. Fine of 25k

**What is done to prevent ragging**

1. Zero tolerance policy-Just explain how there is no tolerance, put full bhaav and write
2. Anti Ragging monitoring committee by govt
3. Squads sent to each college to check and supervise
4. Transparent complain process
5. What college can do to fight this is given below
6. A compulsory affidavit should be taken by all students
7. Orientation programmes should be made
8. Posters should be posted throughout college



### Answers for few quiz questions:

1. Telephone tapping is considered a violation of **Article 21** of the Indian Constitution.
2. **Article 9** of the Indian Constitution deals with the right of citizenship of certain persons of Indian origin residing outside of India.
3. The rule of equality before the law is not applicable to **foreigners and enemy aliens**.
4. The **PARliament** is described as the knowledge house in the Indian government.
5. The maximum age for being eligible as a child under the Child Labour (Prohibition and Regulation) Act is **14 years**.
6. The **Attorney General** of India is the highest law officer in the country.
7. The President of India has the authority to summon and prorogue **either house of parliament**.
8. The matter of a worker who has been employed in an office for more than a year but dismissed by his employer without any appropriate reason must be addressed under the **Industrial Disputes Act, 1947**.
9. The High Courts of states directly fall under the jurisdiction of the respective **state in the judicial system of India**.
10. Someone with a high level of **integrity** stands by their values even if others put pressure on them to do something wrong or make fun of them.
11. **Ethics** is the study of moral principles that govern a person's behavior or conduct of an activity.
12. "Ex post facto law" refers to *a law that is enacted retroactively, meaning it applies to actions that took place before the law was passed.*
13. The Indian Constitution took the concept of single citizenship from the Constitution of the **United Kingdom**.
14. In India, within **90 days** after receiving a reply on the first appeal, a second appeal can be filed in the Right to Information (RTI) Act.
15. A member of the council of ministers can hold office without being a member of the parliament for a maximum period of **six months**.
16. The ordinances issued by the **Governor** are subject to approval by the state legislature.
17. The Right to Education was inserted into Part III of the Constitution by the **86th** Amendment Act of 2002.
18. The Consumer Protection Act is more significant to protecting **consumers' rights and interests**.

19. When the seller manipulates the price, it is known as **price gouging**.
20. The **61st Amendment** of the Constitution lowered the voting age from **21 years to 18 years** for elections to the Lok Sabha and state legislative assemblies.
21. High courts are empowered to issue writs for the enforcement of fundamental rights under **Article 226** of the Indian Constitution.
22. Emergency provisions are contained in **Part XVIII** of the Indian Constitution.
23. The Governor of a state is appointed by the **President on the advice of the Prime Minister**.
24. The President gives his resignation to the **Vice President** of India.
25. The total number of members nominated by the President to both Lok Sabha and Rajya Sabha is **12**.
26. The President's rule in a state can be continued for a maximum period of **six months initially**. However, it can be extended for a maximum of three years with the approval of both houses of Parliament.
27. The first President of India was **Dr. Rajendra Prasad**.
28. The control of the preparation of electoral rolls for Parliament and state legislatures vests with the **Election Commission of India**.
29. A proclamation of emergency issued under **Article 352** must be approved by the Parliament within two months.
30. The ex-officio Chairman of the Council of States, also known as the Rajya Sabha, is the **Vice President of India**.
31. The minimum age required to contest for the Presidential election in India is **35 years**.
32. The **Prime Minister** of India is appointed by the President of India.
33. The "Heart and soul" of the Indian Constitution is often attributed to **Article 32**. This article guarantees the right to Constitutional Remedies, allowing individuals to approach the Supreme Court of India for the enforcement of their fundamental rights.