

## INDIAN CONSTITUTION

### Introduction:

Our Indian has a *written constitution* given by Bharat Ratna **Dr. B R Ambedkar**, as chairman of the drafting committee in 1947 to 1950.

### The meaning of Constitution is as follows:

- Υ A set of laws governing a country.
- Υ Body of fundamental principles by which a state or other body is governed.
- Υ System of laws and principles according to which a state is governed (controlled or administered)

### Introduction to Constitution of India:

An ideal democracy is one in which the people govern themselves, in which people use their voting rights to elect a body, by whom they should be governed through constitution.

*The word 'constitution' is derived from Latin term 'constitution'. It means to form or to establish or to order, i.e., used for regulation and order.*

*Therefore, the constitution is the formation or establishment of the fundamental law which determines the political structure of the state, under which its people are to be governed".*

**Definition:** A constitution is a fundamental body of rules that governs a state or a Nation.

### Constitution is called the rule of the state:

It's the rule of the state or fundamental law of the state without which a state cannot exist. Constitution provides necessary guidelines for good governance of the state.

### Importance of the constitution:

- A constitution plays a vital role in the social, economic, political and administrative (parliamentary or Presidential, Federal or Unitary) structure, the government and its functions, organs of the state and their relationships with the government (Parliamentary sovereignty Vs. Judicial Supremacy) etc.
- The constitution establishes three main organs of the state:
  - The Legislature
  - The Executive
  - The Judiciary
- Constitution is a fundamental body of rules that governs a state. i.e., the legislature, the executive and the judiciary, defines their powers, establishes their responsibilities and regulates their relationship with one another.
- Constitution defines the powers of the central and state governments, and also establishes the relationship between the people and the state by listing the rights and duties of the citizens.
- Government as to work under the umbrella of Constitution:

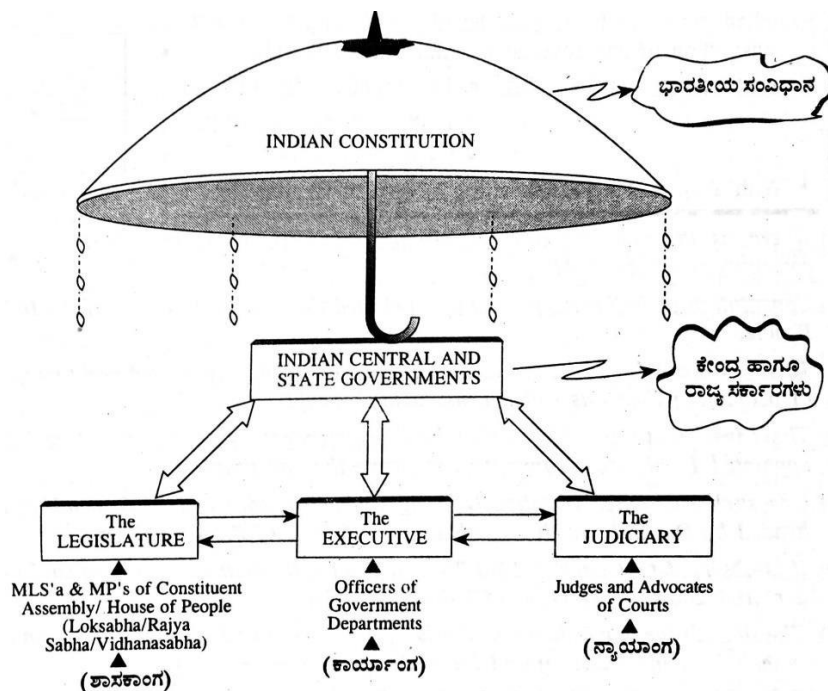


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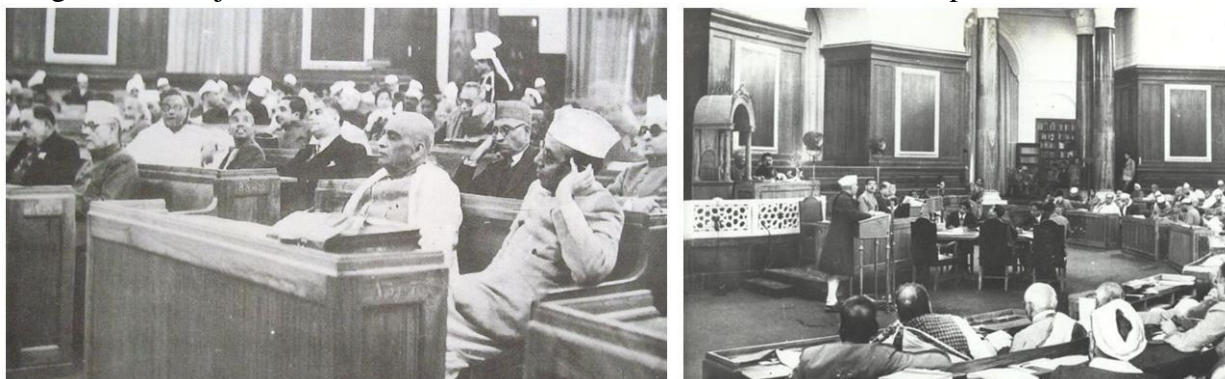
### Formation and Composition of the Constituent Assembly:

The formation of constituent assembly started at 1946, with the election of members to form constituent assembly. These members were elected by the recently elected members (MP) of legislative assembly (Parliament).

The constituent assembly has come into existence in November 1946. The strength of the constitution making body (i.e., the constituent assembly) was to be 389, comprising 296 representative from British India and 93 representatives from the Indian Native States (Princely state).

The constituent assembly had its first sitting on **9th December 1946** and **Dr. Sachidananda Sinha**, the oldest member of the house was elected as the interim President (short term) and later **Dr. Rajendra Prasad** was elected as its permanent president on December 1946.

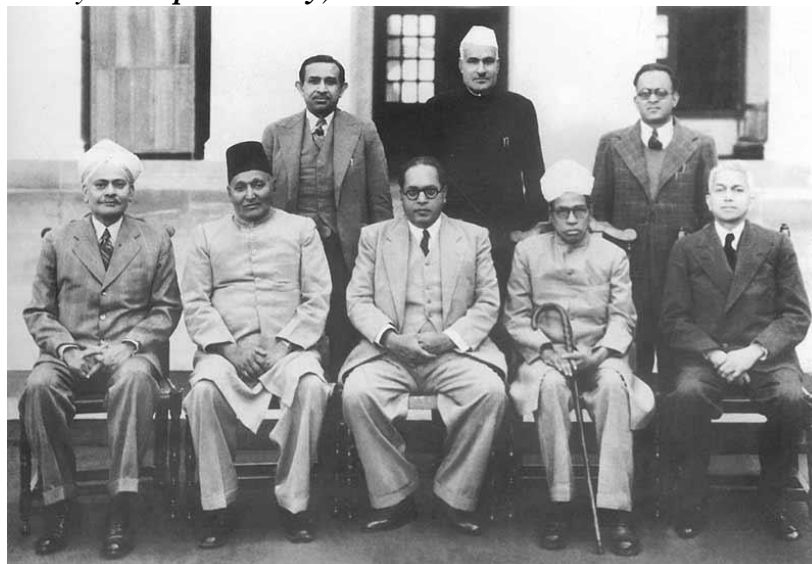
After the partition of the country, on 15th August 1947 (Indian Independence act), the strength of constituent assembly got reduced to 308. The members were prominent political leaders from all major regions, all major sections and communities of India and all shades of opinion.



*Constituent assembly in 1946.*

### Drafting Committee and Its Contributions:

- On 29th August 1947, the constituent assembly appointed a drafting committee, under the chairmanship of **Dr. B.R. Ambedkar**.
- The drafting committee had seven members including the chairman, Dr. B.R. Ambedkar and other members were **Alladi Krishnaswami Iyer**, **K.M. Munshi**, **Sayyed Mohammed Sanaullah**, **N. Madha Rao**, **N. Gopalswami Iyenger** and **T.T. Krishnamachari**.
- In February 1948, the first draft of the Indian constitution was prepared after inspecting closely the draft of the text of the constitution, prepared by the constitutional adviser B.N. Rao.
- It was published in English in all leading newspapers of the country to obtain public opinion.
- It was placed before the constituent assembly and discussed the draft over 2 years 11 months and 18 days
- Finally, it was passed and signed by Dr. Rajendra Prasad, the president of the constituent assembly on 26th November 1949.
- But the constitution of India came into force only from **26<sup>th</sup> January 1950** (we celebrate this day as **Republic Day**).



*Chairman and members of the drafting committee of the Indian Constitution. (Sitting from left) N. Madhava Rao, Syed Muhammad Saadulla, Dr. B. R. Ambedkar (Chairman), Alladi Krishnaswami Iyer, Sir Benegal Narsing Rao. (Standing from left) S. N. Mukherjee, Jugal Kishor Khanna and Kewal Krishnan. (29 August 1947)*

Source: Unknown author-via internet

([https://en.wikipedia.org/wiki/Constituent\\_Assembly\\_of\\_India#/media/File:Dr. Babasaheb Ambedkar Chairman, Drafting Committee of the Indian Constitution with other members on Aug. 29, 1947.jpg](https://en.wikipedia.org/wiki/Constituent_Assembly_of_India#/media/File:Dr._Babasaheb_Ambedkar_Chairman,_Drafting_Committee_of_the_Indian_Constitution_with_other_members_on_Aug._29,_1947.jpg))

### Contribution of Dr. B.R Ambedkar as a chairman of drafting committee:

- ❖ **Dr B.R Ambedkar**, India's first law minister and also as chairman had important contributions to the document, as it is his words that roll off when we read the Indian Constitution.
- ❖ Many basic problems were identified and solutions were addressed based on his own expertise and experience.
- ❖ Guarantee of basic civil rights.
- ❖ Abolition of all forms of discrimination based on caste and creed.
- ❖ Equal rights under law for all citizens of India.
- ❖ Full social and economic freedom.
- ❖ Removal of social inequalities.



*Dr. Babasaheb Ambedkar, chairman of the Drafting Committee, presenting the final draft of the Indian Constitution to Dr. Rajendra Prasad on 25 November 1949*

### Salient Features of Constitution of India:

The constitution of India is a comprehensive document and it has several outstanding salient features as follows:

1. Longest constitution in the world.
2. Written constitution.
3. Partly rigid and partly flexible.
4. A federation with a strong centralizing tendency.
5. Parliamentary form of government.
6. A secular state.
7. Single citizenship.
8. Fundamental rights.
9. Directive principles of state policy.
10. Establishment of welfare state.
11. Fundamental duties.
12. Adult suffrage or adult franchise.
13. An independent judiciary.
14. Official language.
15. Creation of all-India services.
16. Special status to Jammu- and Kashmir.

**1) Longest Constitution in the World:** The Indian constitution is a longest and most detailed of all written constitution consists of 395 articles divided into 12 parts and 12 schedules.

**2) Written Constitution:** It is a written document by a representative body elected for the purpose called the constituent assembly.



**3) Partly Rigid and Partly Flexible:** It is rigid because some of its provisions cannot be amended (make minor changes) unless there is a two-third majority of parliament and some can be amended only when they are passed by two-third majority of parliament and ratified (signed) by 50% of the state legislatures. It is also partly flexible in the sense that some of its provisions can be amended by a simple majority of parliament.

**4) A Federation with a Strong Centralizing Tendency:** It has a feature of federation like dual polity (State & Central), the supremacy of the Supreme Court, etc. But it has strong unitary or pro-union bias like use of article 352 under national emergency conditions ( i.e. war or internal armed rebellion), use of 356 article, implementation of president rule if state government fails to function properly according to constitution. Use of article 360 under financial emergency.

**5) Parliamentary Form of Government:** The constitution of India has given parliamentary form of government both at centre and in the states.

*In centre*, the **President is the constitutional head of state**. But, real power is given to the council of ministers with **Prime Minister as the head**. The council of ministers is collectively responsible for lower house called Lok Sabha. These members are elected by the people normally for 5 years.

*In the state*, the **Governor is the constitutional head of the state**. But the real power is with council of minister with **Chief Minister as the head**. The council of members are responsible for legislative assembly and these members are directly elected by the people for five years.

**6) A Secular State:** In India all religions are treated alike Articles 25 to 28 of our constitution guarantee to every person the freedom of conscience and the right to profess, practice and propagate religion and worship god according to the their own conscience.

**7) Single Citizenship:** Even though the constitution of India has dual Polity (i.e. centre and states), it provides single citizenship for the whole of India.

**8) Fundamental Rights:** It has granted on the Supreme Court, the power to grant the most effective remedies in the nature of writs habeas corpus, mandamus, prohibition, certiorari and quo warranto.

The fundamental rights are prohibitions against the State. If any state makes a law which remove the fundamental rights, then the court declares it as unconstitutional. The fundamental rights are declared in Part III of our constitution.

**9) Directive Principles of State Policy:** These are contained in Part IV of the constitution. 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 cannot be enforced by any court, but it is the duty of state to apply these principles in making the laws for the sake of just and progress in society. (Ex: Free & compulsory Education for children from 6-14 years of age, hostel facility for SC and ST's, The Prevention of Atrocities Act, uniform civil code, Minimum wages act, The consumer protection act etc)

**10) Establishment of Welfare State:** The preamble of our constitution and the directive principles of state policy of our constitution aim at the establishment of a welfare state in India. i.e. welfare of the people of the country.

**11) Fundamental Duties:** In 1976, the 42nd (Amendment) Act of the constitution has introduced a code of fundamental duties for our citizens. As the constitution introduced the fundamental rights, therefore it also requires the citizens to follow certain basic norms of democratic conduct and behavior.

**12) Adult Suffrage or Adult Franchise:** According to this new system, every man or woman of 18 years of age or above has been eligible for voting to elect representatives of legislature (earlier i.e., till 1988, the age limit was 21 years).

It is the bold step of our constitution to adopt universal adult suffrage under the article 326 without considering sex, property, education, income etc., after looking large size of the country and population with less literacy.

**13) An Independent Judiciary:** Our constitution has established an independent and impartial judiciary with a power of judicial review to safeguard the human rights of the citizens of a country against the powers of centre and states.

**14) Official Language:** In our India there are many languages, but our constitution has declared the Hindi as the official or national language to bring all people on a common platform. Besides, every

state is authorized to use their regional language for all or some of its official purpose and also English can be allowed to use for official purposes.

**15) Creation of All-India Services:** Our constitution has provided an article 312 for the establishment of all-India services like I.A.S. (Indian Administrative Service), I.F.S. (Indian Foreign Service), IPS. (Indian Police Service), etc. These officials are appointed by central government to all different states.

**16) Special Status to Jammu and Kashmir:** After the independence the princely state of Jammu and Kashmir opted to remain independent and signed an agreement with India on 27th October 1947, to grant a special status to Jammu and Kashmir. According to our constitution a separate constituent assembly was constituted for Jammu and Kashmir, and a separate constitution was drawn for Jammu and Kashmir. It came into effect January 1957. This is mentioned in our Indian constitution under the article 370.

### **PREAMBLE TO THE INDIAN CONSTITUTION AND ITS OBJECTIVES:**

The Preamble to our Constitution as adopted by the constituent assembly, reads

**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.**

The Preamble of Indian Constitution is considered to be a part of the Constitution India after the orders of the Supreme Court.

**Meaning of Preamble:** The preamble of a constitution is an introduction or preface to the constitution. It declares the aims and objectives of the constitution, and expresses the under lying philosophy and the fundamental values on which the constitution is based.

#### **Purpose:**

- The Preamble of Indian Constitution refers to the source that is responsible for the authority of the Constitution.
- The Preambles of Indian Constitution also states the objectives of the Indian Constitution.
- The Preamble is considered to be one of the most significant parts of the Constitution of India. Focusing on the main objective of the Indian Constitution, the Preamble includes the four objectives-Equality, Justice, Fraternity and Liberty.
- The Preamble is one of the most significant parts of the Constitution of India. Focusing on the core objective of the Indian Constitution, the Preamble includes the following:
  - Equality - which connotes equal opportunity for one and all
  - Justice - which means fair judgment in the fields of politics, society and economy
  - Fraternity- which works towards keeping the integrity and strength of the country intact along with special stress on individual dignity
  - Liberty - which assures every citizen of India the freedom of speech and expression, religious independence and choice of going by one's own belief

#### **The main objectives of the preamble of the constitution are as follows:**

- 1) To represent we, the people of India, having solemnly resolved to constitution of India into a sovereign socialist secular democratic republic.
- 2) To represent the social, economic and political justice to all citizens of India.
- 3) To represent liberty of thought, expression, belief, faith and worship.

- 4) To represent the equality of status and opportunity to all citizens.
- 5) To represent fraternity i.e., assuring dignity of the individuals and unity and integrity of the nation.
- 6) To present the aspirations and wishes of the people of India.
- 7) To declare the aims and objectives of the constitution of India.
- 8) To express philosophy and fundamental values on which the constitution is based.

### **Essential Features of the Preamble of the Indian Constitution:**

The preamble of our constitution has certain essential features. They are:

a) The preamble clearly declares that it is the people who have made the constitution of India, and they are the real source of authority under the constitution.

b) The preamble declares India to be a sovereign state, and declares the basic principles of our political system as sovereignty, socialism, secularism, democracy and republican form of Government.

i) *Sovereign State*: Signifies that India is no more dependent upon any outside, that is both internally and externally. India is a sovereign state. (It may be noted that India's membership of the Commonwealth of Nations and the membership of the United Nations Organization does not restrict its sovereignty).

ii) *Socialism*: The term 'socialist', included in the preamble of our constitution, signifies that the aim of the state is to regulate the economy in the interests of the society as a whole and to ensure a fair and equitable distribution of the wealth of the country.

iii) *Secularism* : The word 'secular' used in the preamble of our constitution suggests that India is not a religious state like Pakistan or Iran. In India, no religion is recognized as religion of the state, India treats all religions equally.

iv) *Democracy*: The term 'Democratic', used in the preamble of our constitution, signifies that the Government is of the people, by the people and for the people.

v) *Republic form of Government*: The term 'republic' used in the amended preamble of our constitution signifies, The President of India is the elected head of the state, and is the chief executive head. The president of India is not a hereditary monarch (ruler). He is an elected person, chosen for a limited period, usually for five years.

c) The preamble of our constitution intends to achieve certain ideals. In other words, the preamble indicates the ideals of the state. The ideals of the state are

i) *Justice* : Justice includes social, economic and political justice.

Social justice implies that all citizens are treated alike irrespective of their caste, creed, religion, sex, etc.

Economic justice means treating the rich and the poor alike and bridging the gap between the poor and the rich.

Political justice means equal right to all citizens in the political process without any distinction of race, caste, creed, religion, place of birth, etc.

ii) *Liberty*: Liberty means freedom of thought, expression, belief, faith and worship.

iii) *Equality*: Equality means equality of status and of opportunity. As all are born equal, they should be provided equal opportunity.

iv) *Fraternity*: Fraternity means the spirit of brotherhood among all the sections of the people, which will constitute the dignity of the individual and the unity and integrity of the nation.

### **Significance of the Preamble of the Indian Constitution:**

- i. In the words of B.R. Ambedkar, "This constitution has its roots in the people, and it derives its authority from the people".
- ii. The preamble of our constitution represents the aspirations and wishes of the people of India.
- iii. Though the preamble of our constitution is not legally binding, it is the key to open the mind of the makers of the constitution.

- iv. It projects the political and economic order which the framers of our constitution wanted to establish in independent India.
- v. Whenever there is confusion with regard to a particular clause of the constitution, the text of the preamble can be relied upon for the clarification of the point.
- vi. The preamble is the basic feature of the constitution of India.
- vii. The various concepts and terms used in the preamble of our constitution represent the essence, the philosophy, the ideals or the spirit of the constitution of India. Other parts and provisions of the constitution are only an elaboration and an attempt to give concrete shape, content and meaning to the words of the preamble.

### FUNDAMENTAL RIGHTS:

For the development of human personality in the country essentially requires certain rights, hence our constitution has given certain rights to citizens of our country, which are called fundamental rights.

**Meaning:** The fundamental rights are the basic rights given to the citizens by the constitution of the country and which are essential for citizen to lead a decent and respectable life and to attain the fullest development of his human personality.

- These are very essential to protect the rights and liberties of the people against the encroachment by the government.
- The fundamental rights are guaranteed by the constitution of India, they cannot be taken away unless the constitution is amended.
- The ordinary rights can be taken away by the government as and when required.

### Characteristics of Fundamental Rights:

- 1) These are integral part of the constitution.
- 2) These are universal in nature.
- 3) These are available to all citizens of India..
- 4) These are comprehensive and detailed.
- 5) These are positive and negative.
- 6) These are justifiable.
- 7) Available only against the state action and not against private action.
- 8) Maintains proper balance between individual liberty and social need.
- 9) Suspension of fundamental rights is possible by the constitution.
- 10) Amendable, but cannot be abrogated.

### Importance of Fundamental Rights:

- 1) These act as the on arbitrary action of the state.
- 2) These make the life of the people meaningful.
- 3) These will maintain an internal peace and order.
- 4) These will help in proper functioning of democracy.
- 5) They will help in abolition of oppressed people.

### Classification of Fundamental Rights:

- 1) **The Right To Equality (Articles 14 to 18):**  
*Equality before law, equal opportunity in matters of employment, Prohibition of discrimination on any citizen on grounds of caste, religion, sex, race.*
- 2) **The Right Of Freedom (Article 19 to 22):**  
*Freedom of speech and expression, right to practice any profession / Occupation.*
- 3) **The Right Against Exploitation (Articles 23 and 24):**  
*Prohibiting all kinds of Forced labour, child labour, beggary.*
- 4) **The Right Of Freedom Of Religion (Articles 25 to 28):**  
*Right to practice one's religion and no forced conversions & harming other communities.*
- 5) **The Cultural And Educational Rights (Articles 29 to 30):**  
*Protect and promote minorities' language, literature, culture and open their educational institutions.*

### 6) The Rights To Constitutional Remedies (Articles 32 to 45).

*Provisions for the courts to protect peoples fundamental rights and for the enforcement of public duties. (Writ petitions like Habeas Corpus, Mandamus, Quo Warranto)*

### FUNDAMENTAL DUTIES:

**Meaning:** The fundamental duties of our constitution are the code of conduct for the citizens of the country which they are expected to follow in their actions and reactions.

#### Objectives:

- 1) To make citizens to be aware of their social and economic obligations.
- 2) To warn them to do and not to do certain things in the interest of their country.

#### Need for Fundamental Duties:

- Our constitution of India has given the fundamental rights to the citizens to enjoy the liberty, equality, education etc.
- For their development and growth, it is equally important for the citizens to follow certain fundamental duties in the interest of society and country.
- Further rights and duties are the two faces of the same coin and these are correlated. Hence, the people who enjoy the fundamental rights should also be subjected to certain fundamental duties.
- Therefore our constitution has included the fundamental duties in Part IV-A with Article 51-A for the citizens by 42nd constitution (amendment) Act 1976, which came into effect from 3<sup>rd</sup> Nov 1977.

#### Importance:

- 1) These duties guide the citizens to do their duties as good citizens with dedication and discipline.
- 2) These will provide valuable guidelines to the courts to have proper control over people.
- 3) These duties maintain the balance between individual's civic freedom with his civic obligations (duty / responsibility).

#### List of Fundamental Duties:

*Our constitution has introduced ten fundamental duties in Article 51-A as follows:*

- 1) It shall be the duty of every citizen of India to abide by the constitution and to respect its ideals and institutions, the national flag and national anthem.
- 2) The citizens of India must cherish (value) and follow the noble ideals which inspired our national struggle for freedom.
- 3) Every Indian must uphold and protect the sovereignty, unity and integrity of India.
- 4) Every Indian is expected to defend the country and give national service, when called upon to do so.
- 5) Every Indian should promote harmony and the spirit of common brotherhood among all the sections of the people of India.
- 6) To value and preserve the rich heritage of our composite culture.
- 7) To protect and improve the natural environment like forests, lakes, rivers and wild life and to have kindness for living creatures.
- 8) To develop the scientific temper, humanism and the spirit of inquiry and reform.
- 9) To safeguard public property and to avoid violence.
- 10) 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.

### DIRECTIVE PRINCIPLES:

The directive principles of state policy are the aims and objectives to be pursued by the central and state governments in the governance of the country i.e., while formulating policies and passing laws.

(The principles are embodied in Part IV of our constitution with 16 articles from article 36 to 51).

#### Characteristics:

- 1) These are the ideals to be implemented by the government.
- 2) They are positive directions or instructions to be followed for running government and for making laws.
- 3) Establish social and economic democracy.
- 4) These are the bedrock of the welfare state.
- 5) These have to be implemented in stage wise not suddenly.
- 6) They are not legally enforceable in courts of law.



### Objectives:

- 1) To set out positive directions or instructions to be followed by government.
- 2) To establish the social and economic democracy.
- 3) To become reminder to central and state government to make laws and formulate the policies.

### Various Directive Principles of State Policies:

- 1) Definition of state (Article 36 defines the term state).
- 2) Obligation of the state to apply directive principles in making law. (Article 37)
- 3) Provide obligation to provide livelihood to all citizens (Article 38) (equal work, equal pay, health, strength to workers etc).
- 4) Social order based on justice.
- 5) Equal justice and free legal aid to economically weaker classes.
- 6) Organization of village panchayats.
- 7) Employment, education and public assistance to all citizens.
- 8) Living wage for workers.
- 9) Participation of workers in management of industries.
- 10) Uniform civil code.
- 11) Free and compulsory education for children.
- 12) Promotion of educational and economic interests of weaker sections.
- 13) Raising the level of nutrition and standard of living and improvement of public health.
- 14) Organization of agriculture and animal husbandry on modern and scientific lines.
- 15) Protection and improvement of environment and safeguarding of forest and wild-life.
- 16) Protection of monuments and places and objects of national importance.
- 17) Separation of judiciary from executive.
- 18) Promotion of international peace and security.

### PARLIAMENTARY SYSTEM OF GOVERNANCE:

The constitution of India establishes a parliamentary of Government both at the centre and states. The essence of the parliamentary form of Government is its responsibility to the legislature.

The President is the constitutional head of the state. The real executive power is in the council of Ministers whose head is the Prime Minister. The council of Ministers is collectively responsible to the Lower House i.e., Lok Sabha. The members of the Lower House are elected directly by the people on the basis of adult franchise (election) normally for five years. This Government is, therefore, called a responsible Government.

**Structure of Parliament:** In our constitution of India, the article 79 deals with the legislature of the union called the Union parliament which shall consist of three organs, these are:

1. President
2. House of the people (Lok Sabha).
3. Council of states (Rajya Sabha)

The president of India is an integral part of parliament. Though he is not a member of either houses of the parliament, he does the certain works relating to the proceedings of the parliament. The president command the two houses of parliament, dissolve the house of people and gives approval to bills.

### LOK SABHA:

It is a popular house and is also known as the *house of people* and it is the *lower house of the parliament*.

### Composition:

- It consists of not more than 530 members directly elected from the different constituencies of states and not more than 20 members from union territories.
- In addition, the president of India may nominate two members to represent the Anglo-Indian community.
- Hence, the maximum strength of the Lok Sabha becomes 552.
- The membership of the Lok Sabha is distributed among the states in proportion to the population of the states
- For SC and ST some seats are also reserved on the basis of their population.

### Election:

The members of Lok Sabha should possess the following eligibilities to elect:

- 1) Should be a citizen of India.

- 2) Should not be less than 25 years of age.
- 3) Should not hold any office of profit under the union government or the state government.
- 4) Should not be an undercharged insolvent or should not be one declared by a competent court to be of unsound mind.

*The candidate may contest any parliamentary constituency in the election to the Lok Sabha and these are elected directly by the people.*

### **Term:**

- Generally the lok sabha has a term of 5 years from the date fixed for its first meeting.
- If the prime minister advises to dissolve, the lok sabha may be dissolved before the expiry of its fixed term.
- Under the emergency conditions the lok sabha term may be extended not exceeding one year at the time and not exceeding in any case a period of six months after the declaration has ceased to operate.

### **Presiding Officer (Speaker) of Lok Sabha:**

The speaker and deputy speaker for lok sabha are elected by the members of the lok sabha from amongst themselves. The speaker presides over the meetings of the lok sabha. In the absence of the speaker, the deputy Speaker presides the function of the speaker.

*(Once the speaker is elected, he holds the office until a new speaker is chosen by a new Lok Sabha. But he may be removed by a resolution of the house with 14 days notice passed by a majority of the members of the lok sabha).*

### **Functions of Presiding Officer:**

- 1) He presides over the meetings of the lok sabha.
- 2) He conducts the joint sitting of both the houses of parliament.
- 3) He certifies the bill passed by parliament.
- 4) He decides as to who shall speak first.
- 5) He maintains the order and discipline in the house.
- 6) He can adjourn the house.
- 7) He qualifies and disqualifies the members in the worst condition or misbehavior of the members.

*(The speaker can also vote only when there is a tie in the voting).*

### **RAJYA SABHA:**

It is the upper house of the parliament and is also known as the house of elders.

**Composition:** It consists of not more than 250 members. In these 250 members, 238 members are elected by the members of the various legislative assemblies of the states and the union territories and 12 members are nominated by the president from persons of special knowledge or practical experience in respect of literature, science and social service.

### **Election:**

For electing a member, he must be :

- 1) A citizen of India.
- 2) Not less than 30 years of age.
- 3) Not hold any office of profit under the union government or the state government.
- 4) Not be an undercharged insolvent or should not be one declared by a competent court to be of unsound mind.

*These members are indirectly elected by elected members of the legislative assemblies of the states and union territories.*

**Term:** A Rajya Sabha is a permanent house and is not subjected to dissolution. These members are elected for period of 6 years. These members will retire after their term and the same members will be reelected.

**Presiding Officer:** The vice-president of India is a ex-officio chairman of rajya sabha and he will be the presiding officer and presides over the meetings of the rajya sabha. He does the same functions as that of speaker of the lok sabha. The deputy chairman is elected by a members of the rajya sabha and he is the presiding officer in the absence of the chairman.

### FUNCTIONS OF PARLIAMENT:

Some of the major functions of the parliament are:

1. Legislative functions
2. Executive functions.
3. Financial functions.

#### 1] Legislative Functions:

- i) It makes the laws for Governance of the country.
- ii) It makes laws on the following subjects in the state
  - a) When Rajya sabha passes a resolution to that effect.
  - b) When a proclamation of National Emergency is in operation.
  - c) When 2 or more states make joint request to the parliament.
  - d) When necessary to give effect to international agreements, treaties and conventions.
  - e) When president's rule is in the operation in the state.
- iii) It approves all the ordinances issued by the president within six weeks after its reassembly.
- iv) It takes the decisions of declaring the emergencies. It frames the foreign policies of the country.

#### 2] Executive Functions:

- 1) It conducts the parliamentary sessions.
- 2) It exercises the control over executive through question hour, zero hour.
- 3) It discusses the dissolution of the Lok sabha.
- 4) It makes all major functions.
- 5) It makes all major appointments.
- 6) It resolves the inter-departmental disputes.
- 7) It appoints the inquiry commission, whenever it is necessary.
- 8) It is responsible for the adjustment of parliamentary sessions.
- 9) It may call the emergency parliamentary sessions.
- 10) It supervises all the activities of the executive with the help of committees.
- 11) Lok sabha can also express lack of confidence in the government in the following ways:
  - By rejecting money bill.
  - By passing a cut motion.
  - By passing an adjournment motion.
  - By not passing motion of thanks on the presidents inaugural address.
  - By defeating the government on a vital issue.

#### 3] Financial Functions:

- 1) Budgetary control - to control before the appropriation of grants through the enactment of the budget.
- 2) Post budgetary control - to control after the appropriation of grants through the three financial committees.
- 3) It passes the money bill.
- 4) It recommends the financial commission.
- 5) To allot the charge on contingency fund.

### POWERS OF LOKSABHA AND RAJYASABHA (PARLIAMENT):

The parliament of India has extensive powers like legislative powers, administrative powers and financial powers.

#### 1) Legislative Power:

How law is made?

- Article 246 of Indian constitution lays down that the union parliament will have exclusive powers to make a law on matters which are given in the union list and concurrent list.
- In certain case parliament can pass laws even on those matters which are given in the state list.
- If law is to be made for a particular matter a bill for the same matter is prepared and introduced in either house of the parliament.
- Each house the parliament has to pass the bill with two-third majority and then sent it to the president for approval.
- Once the president approves the bill it becomes a law and comes into effect.
- Article 249 also provides that parliament can make law on any matter listed in state matters by a two – third majority declaring such matters are of the national importance or interest.

### **Difference between Bill and Act:**

#### **BILL:**

- Bill is a proposed legislation – a draft.
- The bill can come from both the government as well as private members.
- A bill is something that is written up by someone who wants it to become a law, but it must pass through legislature to become a law.
- Bill becomes an Act, once it has been discussed and debated by the members of the parliament who can introduce changes in the bill.

#### **ACT:**

- An Act is a law made by the legislature like Parliament or State Legislative Assembly.
- Once the Bill is passed by the legislature, it is presented to the President or the Governor for approval and it becomes an Act.
- An act is adopted and effective legislation.
- An act is another name for law.
- An act can be list of laws, like a civil rights act etc.

### **2)Administrative Power:**

#### *Administrative Control No-Confidence Motion or Censure Motion:*

A motion no-confidence is a parliamentary motion whose passing would demonstrate to the head of the state that the elected parliament no longer has confidence in the appointed government.

When a parliament passes a vote of non-confidence in an existing government, the head of the state must respond in one of two ways:

- Ask another individual, who he believes will command the confidence of parliament, to try to form a government as per law of constitution.
- Dissolve the elected parliament and call a general election to elect the parliament as per the law of parliament.

#### **Confidence Motion:**

- Whenever there is a coalition (combination/alliance) government in the parliament resumes the office, the President will fix the date after some days to prove his majority or confidence on the government,
- On the day, which was fixed by the president all the members of parliament present on the floor of house and supporting members will show their confidence on the government by voting or raising their hand in favour of government.
- Sometimes, if there is any misunderstanding between the members of ruling government, the opposition party may submit their memorandum (message/memo) of no-confidence on the government.
- In such case President may ask the ruling government to prove their majority in the floor of the house, and then the ruling government may pass the confidence motion on their government to show that we have a confidence on the ruling government.

#### **Concept of Question Hour:**

- Generally, the first hour of a sitting a Lok Sabha is devoted to questions and that hour are called the question hour.
- It has a special significance in the proceeding of parliament.
- In this hour, the members of parliament mainly from opposition party ask the questions to the ministers of the government on every aspect of administration and government activity.
- Government policies in national as well as international levels come into sharp focus as the members try to draw out related information during the question hour.
- Question hour is an interesting part of the parliamentary proceedings.
- Although the question is asked to seek the information, sometimes questions and answers are filled with humor.
- That is why the public galleries and the press galleries are packed to capacity during the question hour.
- Every minister whose turn it is to answer questions has to stand up and answer.

#### **Importance of Questioning:**

- Asking the questions is an inherent and free parliamentary right of members.
- It is during the question hour that the members can ask questions on every aspect of administration and government activity.
- It is through questions in parliament that the government remains in touch with the people.



- Questions enable ministers to gauge the popular reaction to their policy and administration.
- Questions bring to the notice of the ministers many an abuse which otherwise would have gone unnoticed.
- Sometimes questions may lead to the appointment of a commission, a court of enquire or even legislation when matters raised are of wide public importance.

### Concept of Zero Hour:

- Normally zero hours gives the place for raising important and current affairs.
- Question hour is to ask questions in the parliament and zero hour is to negotiate the mutual benefits and what questions can be asked.
- It is the time which begins at 12 O'clock after question hour which is from 11.00 am to 12.00 noon.
- Zero hour may not last for an hour; it may last for some time which may be half-an-hour or more or less.
- Sometimes it may occupy full one hour or may extend beyond an hour, depending on the matters which members may like to raise and the gravity and importance of such matters.
- It is also not necessary that there would be a 'zero hour' every day during the session.

### 3. Financial Power:

A finance minister submits the budget before the houses of parliament with the permission of president. This statement gives out the estimated income and expenditure for that year. This estimated expenditure is shown separately under two heads

- (a) The sums charged upon the consolidated fund of India and
- (b) The sums required to meet other expenditure out of the consolidated fund of India.

### Structure of Union Executive:

*The structure of union executive consists of:*

1. President
2. Vice president
3. Council of ministers
4. Prime minister.

### 1. THE PRESIDENT OF INDIA:

**Position:** In parliament, the president is the head of the state having all executive, legislative and judicial powers and it is one of the highest honors, dignity and position.

### Appointment or Election of the President:

According to the article 58, a person should have the following eligibility

- a) Must be a citizen of India.
- b) Should be completed 35 years.
- c) Should be qualified to the election as member of house of people.
- d) Should not hold any office of profit in any government and not disqualified for election as a president on any ground.
- e) The presidential candidate should deposit a Rs. of 15,000/-.
- f) The presidential candidate should be proposed by 50 electors and seconded by another 50 electors of the Electoral College.

The president of India has a term of 5 years. But however, before the completion of the term he may be removed through impeachment motion. Article 61 gives detailed information regarding impeachment motion.

### Functions and Powers of President:

Under the article 53, the president has the following powers:

#### 1. Executive powers :

- i. Execution of laws enacted by the legislature and the administration of a the affairs of the government.
- ii. He carries out all executive actions and he controls union territories.
- iii. He appoints prime minister and ministers of union cabinet as per Prime minister's recommendations.
- iv. He appoints judges of supreme and high courts, attorney general of India, election commissioners, governors, ambassadors, members of UPSC, etc.

### 2. *Legislative powers:*

- i. He assents the bills passed by the two houses of parliament.
- ii. He command and discontinue the sessions of the two houses of the parliament and may dissolve the lower house i.e., lok sabha.
- iii. He addresses the members of two houses together at the beginning of the first session of every year and after each general election.
- iv. He nominates 12 members of Rajya sabha and also nominates Anglo-Indian members to the lok sabha.

### 3. *Judicial powers:*

- i. He has a power to make ordinance and circulate ordinances (rule), when the parliament is not in session.
- ii. He has the power to grant pardons, cancel or postpone the punishment or suspend the sentence against any person of all classes.

### 4. *Financial powers:*

- i. He approves the budgets.
- ii. He approves the annual estimates of income and expenditure of parliament, the recommendations of the finance commission and charge on emergency fund, sanctioning the money bill, etc.

### 5. *Emergency powers:*

- i. By the act 352, the president may declare the national emergency under worst condition due to war, external aggression etc.
- ii. By the article 356, he may impose the president rule in the state.
- iii. By the article 360, he can declare financial emergency.
- iv. He can declare the war.

### 6. *Diplomatic powers:*

- i. He may send or receive the ambassadors and other diplomatic representatives.
- ii. He can sign the international treaties and agreements.

## 2. THE VICE-PRESIDENT OF INDIA:

Position: Under the article 63 of constitution, India has provided with vice-president. It is one of the second highest honours, dignity and position.

**Election or Appointment:** To become a vice-president a person should be –

- i. Citizen of India.
- ii. Completed age of 35 years.
- iii. Qualified for election as a member of the rajya sabha.
- iv. Must not hold any office of profit under any government.

The vice-president of India is elected by the members of an electoral college having members of both the houses of parliament. The vice-president is elected for the term of 5 years.

### **Functions:**

- i. He look after the proceedings of the Rajya sabha.
- ii. In the absence of president, the vice-president acts as a president of India.
- iii. He certifies the bills passed by the Rajya sabha.
- iv. He can adjourn the house.

## 3.The Council of Ministers:

Under the article 74 of the constitution there shall be a council of ministers with the prime minister as a head to aid and advise the president.

### **Appointment:**

- Under the article 75 of the constitution the council of ministers are appointed by the president on the advice of the prime minister.
- The ministers hold the office during the pleasure of the president.
- The selection of the ministers is done by the prime minister only.

### **Cabinet:**

A cabinet is council consisting of ministers of cabinet rank i.e., cabinet is a council of cabinet ministers. It is the inner body within the council of ministers. The council of ministers is usually called as ministry consisting of all different ministers.

### **Functions:**

- i. All ministers are to perform their work of responsible department.
- ii. All ministers have to answer the questions regarding the activities of his department.

### **Functions of Cabinet:**

- i. It approves all the proposals for the legislative enactments.
- ii. It makes all major appointments.
- iii. It frames the foreign policies of the country.
- iv. It resolves the inter-departmental disputes.
- v. It co-ordinates all activities of different departments.
- vi. It proclaims ordinances, when the parliament is not in session.
- vii. It appoints the inquiry commissions, whenever it is necessary.
- viii. It also discusses the dissolution of the lok sabha.
- ix. It takes the decisions of declaring the emergencies.
- x. It is responsible for the adjournment of parliamentary sessions.

## **4.THE PRIME MINISTER OF INDIA:**

According to the constitution of India, the prime minister becomes the head of council of ministers in the parliament of India.

### **Appointment:**

- After the Lok sabha election, the elected representatives of the leading party sit at one place and choose their leader by expressing their confidence in him.
- The chosen leader will be considered and proposed by the party high command to the president for appointment as a prime minister.
- The president appoints the prime minister as a head of council of ministers.

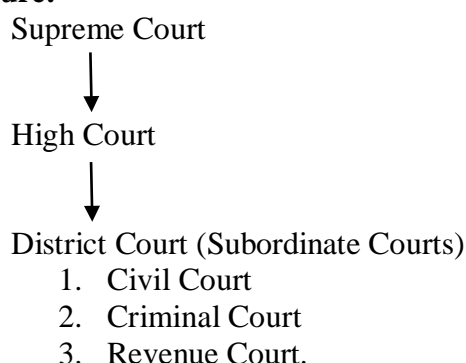
### **Functions:**

- i. The prime minister has the control over the ministers as head of union minister.
- ii. He selects the ministers for his government, allots the works and can change the portfolio (range) as per his desire.
- iii. He communicates to president for all decisions of the council of ministers.
- iv. He fixes the dates for parliamentary sessions and its programs.
- v. He acts as a leader of ruling party and the parliament. Hence, he has to perform many political functions.
- vi. He takes all the members into confidence; he is the chairman of planning commission and makes the economic plans.
- vii. He represents all national and international conferences and summits; he is the chief spokesman of government in foreign affairs, the diplomats, delegates, high commissioners etc.

## **STRUCTURE OF JUDICIARY:**

- Our Indian constitution of India has provided an integrated single judiciary system.
- The supreme court of India is at the apex (at the top) is the highest judicial authority.
- The high court's at the state level are subordinate to the Supreme Court.
- The subordinate courts at district level are supervised by the high courts.

### **Structure:**



### **THE SUPREME COURT OF INDIA:**

- It is the apex (top) court in Indian judicial system.
- According to the article 124 of the constitution, the parliament of India determines the number of judges for the Supreme Court.
- Today the supreme court of India has 25 judges and a chief justice.
- The judges of the Supreme Court including the chief justice are appointed by the president of India as per the advice of the union cabinet headed by prime minister.
- The judges will retire after 65 years of age.

### ***Qualifications of the Judges:***

- i. He should be a citizen of India.
- ii. He should have served as judge of high court for at least 5 years.
- iii. He should be an excellent jurist.
- iv. He should have an experience as an advocate for at least 10 years.

### ***Functions:***

- 1) Original jurisdiction - the power to hear and determine a dispute in the first instance between the states or centre and state.
- 2) Appellate jurisdiction the power to hear cases on appeal.
- 3) Handles the cases of violation of fundamental rights.
- 4) The Supreme Court has original jurisdiction in many disputes arising out of election to the office of president and vice-president of India.
- 5) Supreme Court has appellate jurisdiction in the civil cases, criminal cases and constitutional matters.
- 6) The Supreme Court has an advisory jurisdiction on any question of law or fact of public importance, when president referred it to SC for its opinion.
- 7) Under the article 137, Supreme Court can review any judgment pronounced or order made by it.
- 8) Under the article 129, the Supreme Court is a court of record; it maintains the records of proceedings, acts and decisions.
- 9) It acts as guardian of the fundamental rights of citizens.
- 10) It acts as a guardian of our constitution.

### **HIGH COURT:**

- These are at the middle level court and are subordinate to the Supreme Court.
- The high courts have full control over subordinate courts in the state.
- Our constitution establishes a high court in each state, but the parliament may establish by law a common high court for two or more states or union territories, for example, there is a single court in Chandigarh for Punjab and Haryana states.

### ***Composition and Appointments:***

- Every high court consists of a chief justice and other judges if they are required.
- The judges of high courts are appointed by the president of India by consulting Chief justice of India, the governor and chief justice of the concerned state.
- The chief justice and other judges hold their office up to 62 years of age and he may be removed by president of India.

### ***Qualification:***

- He should be citizen of India.
- He should have served as judicial officer or judge of the lower court.
- He should have been an advocate of a high court.

### ***Functions:***

- i. These courts have no original jurisdiction in criminal cases and also minimum in civil cases, but under article 226 a high court can issue writs in the nature of habeas corpus, mandamus, prohibition, certiorari and quowarranto for enforcement of human rights.
- ii. It will issue writs in all cases of violation of any rights.
- iii. It has appellate jurisdiction - appeals against the judgments of subordinate courts in the state.
- iv. It has an administrative control over subordinate courts in the state.
- v. It maintains the records of proceedings, acts and decisions of high court.
- vi. It also deals with the cases of interpretation of the constitution.



### SUBORDINATE COURTS:

- Article 233 of the Indian constitution provides an appointment of a person to be, and the posting and promotion of district judges in any state by the governor of the state in consultation with the high court.
- A person to be a district judge should have an experience of minimum 7 years as an advocate and should be recommended by the high court.
- Other than district judges a person can be selected under the article 234 in consultation with UPSC and with the high court of the state by the governor of the state or UPSC may conduct a competitive examinations for the recruitment to the judicial service of the state.
- Article 235 provides the control over the district and other subordinate courts by the high courts.

*Types of subordinate courts are:*

- i. Civil courts
- ii. Criminal courts
- iii. Revenue courts.

**i) Civil courts:** The district court is a civil court presided over by a district judge who is also a session's judge. Below district court there are courts of subordinate judges.

Appeals from subordinate civil courts lie first in district court and then to the high court.

#### Functions:

- 1) It exercises both original and appellate jurisdiction in civil cases.
- 2) It supervises the subordinate courts in the district.

**ii) Criminal courts:** It is also called session court and presided over by a sessions judge. He can pass the death sentence but it has to be confirmed by the high court before execution. Below this court, there are munsiff courts.

**iii) The revenue courts:** These are headed by a district collector, assistant commissioner and Tahasildar. They hear revenue cases of the district at different levels.

### Federalism in the Indian Constitution:

Article 1 of the Indian constitution declares that, India shall be a union of state. Part XI of the Indian constitution defines the power distribution between the federal government (the centre or union) and the states in India.

The power is divided between legislative, administrative and executive powers. The legislative section is divided into three lists and these are:

1. Union list
2. State list
3. Concurrent list.

#### Division of Powers:

According to the Indian constitution the division of the powers are defined in the following ways:

- 1) Union list
- 2) State list and
- 3) Concurrent list
- 4) Residuary subjects.

#### 1) Union List:

The union list consists of 100 items on which the parliament has exclusive power to legislate and these are:

Defense, armed forces, arms and ammunition, atomic energy, foreign affairs, citizenship, extradition, railways, shipping and navigation, airways, posts and telegraphs, wireless and broadcasting, currency, foreign trade, interstate trade and commerce, banking, insurance, central of industries, regulation and development of mines, mineral and oil resources, electronics, audit of government accounts, constitution and organization of the supreme court, high courts and union public service commission, income tax, custom duties and export duties, duties of excise, corporation tax, taxes on capital value of assets, estate duty, terminal taxes.

#### 2) State List:

The state list consists of 61 items on which the state has exclusive power to legislate and these are:

Maintaining law and order, police forces, health care, transport, land policies, electricity in the state, village administration, etc. The state has exclusive power to make laws on these subjects. But in certain circumstances, the parliament can also make laws on subject mentioned in the state list, then the parliament has to pass a resolution with 2/3rd majority that it is expedient to legislate on this state list in the national interest.

### 3) Concurrent List:

In this case, both the parliament and the states will going to have the powers as per the directions from the constitution of India.

The concurrent list consists of 52 items, and these are: Marriage and divorce, transfer of property other than agricultural land, education, contracts, bankruptcy and insolvency, trustees and trusts, civil procedure, contempt of court, adulteration of food stuffs, drugs and poisons, economic and social planning, trade union, labor welfare, electricity, newspapers, books and printing press, stamp duties.

**4) Residuary Subjects:** Parliament and the state legislature have exclusive powers to legislate on items in the union list and state list respectively. Both can legislate on items in the concurrent list.

However, foreseeing the possibility of a situation in which legislation might be required on matters that are not mentioned in any of the three lists. Therefore a provision has been made i.e., Residuary provisions in article 248 of the Indian Constitution and entry 97 of the union list. The residuary powers of legislation are rested in parliament over residuary subjects, such as Making any law imposing a tax not mentioned in either of those lists. If there is any difference between the parliament and state legislatures over the matter of residuary subjects, then, the court can also decide whether a subject matter falls under the residuary power or not.

### STRUCTURE OF STATE LEGISLATURE:

According to the constitution of India the state legislature consists of a governor of the state and one or two houses of state legislature. Most of the states in India consist of only one house called the legislative assembly and in few states like Karnataka, UP, Maharashtra, etc., consist of two houses called the legislative assembly and legislative council.

### Functions of State Legislature:

- 1) It can make the laws on all matters of the state.
- 2) It controls the financial matters i.e., all the revenues and expenditures, it passes money bills etc.
- 3) It can ratify the amendment bills passed by the union government concerned to state.
- 4) To control work of all the ministry of state.
- 5) It can remove the council of ministers by passing no confidence motion.
- 6) It can elect the speaker and deputy speaker.
- 7) It can take part in the president's election.
- 8) Bills other than money bills may ordinate in legislative council or legislative assembly.
- 9) The legislative council may pass or may not pass the bills passed by the legislative assembly.

### LEGISLATIVE ASSEMBLY (VIDHAN SABHA):

It is a popular house consisting of members who are directly elected by the People from different constituencies in the state.

### Composition:

It consists of not more than 500 and not less than 60 members. The strength is fixed on the basis of population in the state. Governor can nominate one member from Anglo-Indian community in the states like WB, MP, UP, Karnataka, Maharashtra, TN, AP, etc., and some seats are reserved for SC and ST.

### Election:

Citizen of India.

The age not less than 25 years.

Must have qualifications as prescribed by parliament at that time.

### Term:

These are directly elected by the people for a term of 5 years from the date first meeting fixed unless it is dissolved earlier. These members elect the speaker and deputy speaker.

The speaker presides over the meetings of the legislative assembly and in the absence of speaker; deputy speaker presides over the legislative assembly.

### **Powers and Functions:**

- 1) Legislative powers: It can frame the laws on all matters of the state.
- 2) Financial powers: It can control the financial matters i.e., all the revenues and expenditures should be approved by legislative assembly. No Tax can be imposed or withdrawn without the approval of legislative assembly. It will also pass the money bills.
- 3) Constitutional powers: It can ratify the amendment bills passed by the union government concerned to state.
- 4) Control over executives: Legislative assembly supervises the work of ministry and it can remove the council of ministers by passing no confidence motion.
- 5) It can elect the speaker and deputy speaker.
- 6) It can take part in the president's election.

### **LEGISLATIVE COUNCIL (VIDHAN PARISHAD):**

It is the upper house of the state legislature and it is not present in all the states only we can find in Karnataka, UP, Bihar, Maharashtra, J & K.

As per the constitution of India, the legislative council can be created or abolished by the following procedure. First the resolution should be passed by the legislative assembly for creation or abolition of legislative council and it is passed by two-third majority of the members, then it is presented to the union parliament. The union parliament in turn passes an act to create or abolish the parishad.

### **Composition:**

The strength of Vidhan Parishad should not be less than 40 members and should not exceed the two-third of the total members in legislative assembly of the state.

It consists of both elected and nominated members of five different categories:

1/3 members are elected by members of legislative assembly from amongst who are not the members of the legislative assembly.

1/3 members are elected by members of local self-governing bodies like (municipalities, panchayaths, etc.

1/12 members are elected by teachers of secondary schools and colleges.

1/12 members are elected by registered graduates.

1/6 members are nominated by the governor of the state from persons who have involved in science, art, co-operative movement and social service etc.

### **Election:**

A person to be a member of legislative council he should be –

- i. a citizen of India.
- ii. not less than 30 years of age.
- iii. not be an undischarged insolvent.
- iv. should have qualification as prescribed by the parliament at that time.

### **Term:**

The members of legislative council are elected for six years.

### **Presiding officer:**

The presiding officer is the chairman of the legislative council elected by the members of the legislative council. He presides over the meetings of the legislative council. There is also deputy chairman who presides over the meetings of the legislative council in the absence of the chairman.

### **Powers and Functions:**

- i. Bills other than money bills may originate in legislative council or legislative assembly.
- ii. He can withhold an ordinary bill passed by the legislative assembly for a maximum period of four months.
- iii. He can withhold a money bill for 14 days. After this the bill is deemed to be passed by legislative council and sent for assent of the governor.

### **Structure of the State Executives:**

The state executives consists of :

- 1) Governor
- 2) Chief Minister
- 3) Council of ministers.

### 1) THE GOVERNOR:

#### Position:

Article 153 of the constitution provides the governor for each state. It is one of the highest, honor, dignity and position in each state.

**Appointment:** The governor of the state has been appointed by the president of India and a person to be governor he should be -

- i. a citizen of India.
- ii. completed the age of 35 years.
- iii. should not hold any office of profit.
- iv. not a member of parliament or state legislature.

#### Term:

He will be appointed for a period of 5 years but can be removed at any time by the president i.e., no security of term. The governor may be transferred by the president from one state to another state.

#### Powers and Functions of the Governor

- 1) He exercises all executive powers to all executive actions of the state.
- 2) He appoints the leader of majority party as a chief minister in the legislative assembly.
- 3) He appoints all other ministers of the council to the advice of the chief minister.
- 4) He gives the oath of office to the chief minister and to all ministers.
- 5) Governor appoints advocate general of the state, the chairman and members of public service commission and supervises the work of these people.
- 6) He looks after the smooth running of the government.
- 7) He dissolves the legislative assembly on the advice of CM.
- 8) He summons and prorogues the legislative assembly.
- 9) He addresses the members of the state assembly.
- 10) He gives assent to the bills passed by the government and he may reject it for reconsideration.
- 11) He gives the permission to the money bills to be introduced in the legislative assembly.
- 12) He recommends the grants and manages the contingency fund of the state.
- 13) He determines the questions of appointments, postings, promotions, etc. of subordinate courts.
- 14) He appoints the judges of high court in consult with president.
- 15) He can pardon, suspend, commute the sentence of any person convicted any offence against any law.
- 16) He appoints a new chief minister in hung assembly.
- 17) He dismisses the ministry when they refuse to quit even after losing their majority.
- 18) Sending report of political situation in the state to the president time to time to impose president rule.

### 2) THE CHIEF MINISTER:

**Position:** The chief minister of the state becomes the head of the council of ministers, cabinet, and legislative assembly.

**Appointment:** chief minister of the state is appointed by the governor of the state after he has been elected as a leader of legislative assembly of major party.

#### Powers and Functions of the Chief Minister:

The chief executive of the state is the chief minister and he performs the following functions:

- i. He appoints the ministers of the state.
- ii. He allots the portfolio to all ministers and he can appoint them as cabinet ministers or deputy chief minister among them.
- iii. He can recommend the removal of ministers.
- iv. He presides over the meetings of the cabinet and makes the major decisions.
- v. He is the communicator between council of ministers and governor.
- vi. He approves all major financial bills, resolutions, etc.
- vii. He maintains the order and discipline in the legislative assembly.
- viii. He can approve the major appointments in the state.

### 3) COUNCIL OF MINISTERS IN THE STATE:

According to the constitution of India there should be a council of ministers headed by a chief minister under the article 163(1) to aid and advise the governor during the exercise of his functions.



**Appointment:** The council of ministers are appointed by the governor as per the recommendation of chief minister and hold their office during pleasure of the governor. It consists of cabinet ministers, ministers of state and deputy ministers.

**Powers and Functions of Council of Ministers:** The council of ministers of the state performs the following functions:

- 1) They perform individual work which has been assigned by CM.
- 2) The cabinet of ministers can take major decisions on the behalf of the council of ministers.

**LOCAL SELF GOVERNMENT:** The constitution of India provided the provisions for local self-government to have an effective development in the country from the gross route level.

**Meaning:** The local self government means the management of local affairs by the representatives of a locality itself. It deals mainly with the problems concerned to local area, like water supply, sanitation, education, road development, agricultural works, health, construction etc

**Importance:**

- 1) It solves the local problems effectively.
- 2) It gives effective foundation to the democratic structure of the country.
- 3) It contributes to have economically and educationally develop the country.
- 4) It will contribute to have gross route level development.

**Types of Local Self Governing Institutions:**

There are of two types of local governing institutions these are:

- 1) Rural self governing institutions.
- 2) Urban self governing institutions.

**1) Rural self governing institutions (Three-tier System):**

The rural self governing institutions are also called as panchayat raj or panchayati raj institutions. The panchayat raj institutions consist of three-tier system i.e.,

- a) Panchayat at village level - **Village Panchayat**
- b) Panchayat at taluk level - **Taluk Panchayat**
- c) Panchayat at district level - **Zilla Panchayat.**

This system is only for the state having population of about 20 lakhs. If the state having a population of less than the 20 lakhs, there will not be a panchayat raj institution at the taluk level.

**a) VILLAGE PANCHAYAT:**

Usually a village having a population of not less than 5000 and not more than 7000 is declared as the village panchayat.

**Formation:**

- For the village panchayat, the electorates are the gram sabha.
- It consists of the persons registered in the electoral rolls of the village.
- The members of the village panchayat are directly elected by the people during election through territorial constituencies, one member for a population of 400 is elected and seats will be reserved for women and for SC and ST.
- The village panchayat is elected for a period of 5 years.
- It is headed by a president or a chairman elected among the members and a vice-president to assist the president.
- It will hold the sessions once in a two months.

**Staff of the Village Panchayat:**

The state government appoints an officer as a secretary and he has the executive powers and the office bearers of village panchayat render a honorary services.

The different activities of the village panchayat are carried out by a number of standing committees, among them the important are

1. *Production committee:* For development in agriculture, animal husbandry, rural industries etc.
2. *Social justice committee:* For socio-economic justice, education and cultural interest.
3. *Amenities committee:* For education, public health, public work etc.

The financial resources for this village panchayat is the amount sanctioned as a grant-in-aid by zilla panchayat, taluk panchayat and a state government. The amount is also earned through taxes and fees etc.

### Functions of Village Panchayat:

- 1) Agricultural development.
- 2) Land improvements, land reforms, land consolidation and soil conservation.
- 3) Water shed development and irrigation developments.
- 4) Fisheries works.
- 5) Minor forest development.
- 6) Animal husbandry, poultry farming.
- 7) Social forestry and farm forestry.
- 8) Khadi, cottage and small scale industry development.
- 9) Rural housing and drinking water supply works.
- 10) Libraries, cultural activities, family welfare, health and sanitation developments.
- 11) Public distribution system and maintenance of community assets.
- 12) Rural electrification and distribution system development.

**b) TALUK PANCHAYAT:** According to the constitution of India the Taluk panchayat has been established at taluk level.

### Composition:

- In taluk panchayat for every 10000 population one member is elected by election and a taluk having more than 1 lakh population is going to have minimum of 11 members.
- Members of lok sabha and state legislative assembly, whose constituencies fall in a particular taluk are also nominated as members of the taluk panchayat.
- Members of rajya sabha and the legislative council who have enrolled themselves as voters in the taluk are also nominated as members of the taluk panchayat.
- 1/5th of the presidents of the village panchayats of that taluk are also nominated as members of taluk panchayat for 1 year.
- President and vice-president of the taluk panchayat are elected from the elected members.

**Term:** The taluk panchayat has a term of 5 years.

### Staff of Taluk Panchayat:

Assistant commissioner of state services are appointed as the executive officer by state government.

The financial resource for the taluk panchayat is the grant-in-aid by government or zilla panchayat to which it belongs, loans from government, income from taxes and fees collection etc.

**Functions of Taluk panchayat:** It does all functions as the village panchayat at taluk level in large scale depends on population and according to the 11 schedule of the constitution.

**c) ZILLA PANCHAYAT:** The zilla panchayats are established at zilla level in every state.

**Composition:** For every 40,000 population, one member is elected through election.

- Members of lok sabha and state legislative assembly whose constituencies fall in particular district will also be ex-officio members of zilla panchayat.
- Members of rajya sabha and legislative council who are from that district and enrolled as voters are also ex-officio members of zilla panchayat.
- 1 /5th of the presidents of the taluk panchayats are also nominated as members of zilla panchayat for 1 year.
- The president and vice-president are elected from the members of zilla panchayat.

**Term:** These members are elected for a period of 5 years.

**Committees:** Every zilla panchayat has following committees:

- 1) General standing committee.
- 2) Finance, audit and planning committee.
- 3) Education and health committee.
- 4) Social justice committee.
- 5) Agricultural and industrial committee.

**Staff:**

The state government appoints DC as the chief executive of the zilla panchayat.

**Financial Resources:**

- 1) Grant-in-aid by state government.
- 2) Income from tax and fees.
- 3) Loans and other contributions etc.

**Functions of Zilla Panchayat:**

Zilla panchayat performs all the functions as village and taluk panchayats in large scale at district level as per 11th schedule of the constitution of India.

**2) Urban self governing institutions:**

The urban self governing institutions will look after the affairs of urban areas, it is provided with municipal corporation for a larger urban areas, municipal council for small urban areas and nagar panchayat for a transitional area i.e., the area bigger than village and smaller than city.

**CITY CORPORATION OR MUNICIPAL CORPORATION OR MAHANAGAR PALIKE:**

As per the constitution of India the corporations are formed in big cities having a population more than 3 lakh people. It is established under a specific laws passed by the state legislature.

**Composition:**

It consists of corporators i.e., representatives of the people who are elected by the people of different wards of the municipal corporation. The total number of these cooperators is not more than 100 and should not be less than 30 and depends on the population of the city. It also includes:

- i. The state government nominates 5 members to municipal corporation who are the residents of that city and have the experience in that field.
- ii. The members of lok sabha and legislative assembly whose constituencies fall in that city are also ex-officio corporators.
- iii. The members of rajya sabha and legislative council who have enrolled as voters in that municipal corporation area are also the ex-officio corporators.
- iv. Mayor and deputy mayor are elected by corporators in first meeting for 1 year. The mayor presides over the meetings of the council of the city corporation and the deputy mayor presides over the meetings in the absence of the mayor.

**Term:**

These are elected for a period of 5 years, but the nominated members may be removed as and when the government needed.

**Staff and Commissioner:**

The IAS officer is appointed as commissioner and he is the office head. There are number of staff who will work under the commissioner in the office.

**Committees:** The city corporation has the following committees:

- 1) Finance, taxation and appeals committees.
- 2) Education, social justice and public health committees.
- 3) Accounts and town planning committees.

**Functions of Municipal Corporation:**

1. To plan activities.
2. Building and repair of roads and bridges.
3. Regulation of land use and construction of building.
4. Economic and social development planning and implementing.
5. Sanitation, sewage, waste, public health, conservancy and pollution management.
6. Water supply management for domestic, commercial and industrial purposes.
7. Safety and security services, fire services, etc
8. Promotion of cultural, asthetic and educational aspects.
9. Development of gardens, parks, play grounds, cremation grounds etc.
10. Taxes, penalties and fees collection and utilization for city development.
11. To safeguard the interests of SC, ST and other backward class people.

### **Municipality or Municipal Council:**

The constitution of India provides the municipality or municipal council for the city having a population of more than 50,000 and less than 3 lakhs.

### **Composition:**

The municipality consists of councilors who are directly elected by the people from different wards in the city area. The number of councilors is determined on the basis of population of the city.

Along with the councilors, it has also –

1. State Government nominate 5 members who are residents of that city and have the knowledge of municipal administration.
2. The members of lok sabha and state legislative assembly whose constituencies fall in that city are also ex-officio members.
3. The members of rajya sabha and state legislative council who have enrolled their names as the voters in that municipality are also ex-officio members.
4. The elected members of /municipal council will elect the president and vice president. The president presides over the meetings of the council and in the absence of president, the vice president will take his charge.

### **Term and Sessions:**

The municipal council has a term of 5 years and municipal council meets once in six months.

### **Committees:**

*The municipal council has the following committees:*

1. Town planning and development committee.
2. Education, social justice and public health committee.
3. Finance, taxation and appeals committee.
4. Accounts and audit committee.

### **Functions of Municipalities:**

1. Town planning activities.
2. Building and repair of roads and bridges.
3. Regulation of land use and construction of building.
4. Economic and social development planning and implementary.
5. Sanitation, sewage, waste, public health, conservancy and pollution management.
6. Water supply management for domestic, commercial and industrial purposes.
7. Safety and security services, fire services, etc.
8. Promotion of cultural, artistic and educational aspects.
9. Development of gardens, parks, play grounds, cremation grounds etc.
10. Taxes, penalties and fees collection and utilization for city development.
11. To safeguard the interests of SC, ST and other backward class people.
12. Public facilities include street lighting, parking areas, bus stands etc.

### **Importance of Constitutional Bodies:**

As per the constitution of India, some important constitutional bodies are:

- 1) Election Commission of India
- 2) Public Service Commission (UPSC)
- 3) Karnataka Public Service Commission (KPSC).

### **1) Election Commission of India:**

The article 324 in our constitution of India has provided a single permanent election commission of India for conducting free, fair and regular elections to set a democratic government in the center, in the different states of the country and dent body which performs its work without the influence and interference of political parties and executives.

### **Composition:**

It consists of chief election commissioner and other such number of election commissioners as the president may fix from time to time.

The chief election commissioner shall be the chairman of the election commission.

Today the election commission of. India consists of three members including its chief commissioner.

**Term:** The election commissioner holds the office for six years but they have to retire if they attain a age of 65 years.



### Functions of Election Commission of India:

The election commission of India performs the following important functions:

- 1) Preparation of the electoral rolls.
- 2) Outer line of the constituencies i.e., determination of boundaries of each constituencies for parliament and state elections.
- 3) Allotment of seats.
- 4) Conduct of elections - fixing the dates for different activities for completing the elections.
- 5) Granting or recognition to political parties, for election purposes.
- 6) Allotment of symbols to the political parties and independent candidates for election.
- 7) Ensuring free and fair election through code of conduct.
- 8) It sends central observers to all constituencies for supervision.
- 9) It can cancel postpone the polling under sensitive conditions.
- 10) It can advice the president or governor of concerned state regarding the electoral matters.
- 11) It can settle disputes and petitions referred to it by president or governor of a state.

### 2) Public Service Commission (or Union Public Service Commission):

In our constitution article 315 provides that there should be a public service commission for the union and for each state. It is an independent body and not influenced by political parties and executives with the responsibility of recruitment and management of public services.

#### Objectives:

- 1) To appoint civil servants on the basis of merit and efficiency.
- 2) To maintain efficiency in administration and the unity in the country by servants.
- 3) To preserve the democracy by servants.

#### Composition:

- The UPSC consists of a chairman and other members appointed by the president of India.
- The chairman and other members of the state public service commission are appointed by the governor of the state.
- At present UPSC has got 8 members and for the state the governor of the state will decide.
- According to article 316 they hold the post for a term of 6 years or until they attain an age of 65 years, whichever is earlier.

### Functions of Public Service Commission:

The public service commission performs the following functions:

- 1) To conduct the examinations for appointment to the services to the union and to the state.
- 2) They make recommendations to the union government by UPSC and to the state by SPSC for appointment of persons to its services.
- 3) They advise union by UPSC and state by SPSC on all matters relating to the methods and principles to be followed during appointments, promotions and transfers from one service to another.
- 4) To assist two or more states in regard to schemes of joint recruitment.
- 5) The public service commission has to perform any function which the parliament or state assembly may by law assign to it.
- 6) To send report annually to the president of India about the work carried out by UPSC or to the governor by state public service commission.

### 3) KPSC (Karnataka Public Service Commission):

According to the article 320(1) of the Indian Constitution has provided a KPSC, which conducts the examinations for recruitment of candidates to the various services of the state. The selection of the candidates to the various categories of post in the state civil services is made on the basis of:

- ❖ Both competitive examination and personality test.
- ❖ Only by interview.
- ❖ Only by competitive examination.

#### Composition:

It consists of chairman and nine members, secretary (an IAS officer) and controller of examination.

#### Functions of the KPSC:

- 1) It recruits the candidates to the various civil services across the state.
- 2) It conducts the selection procedure.
- 3) It conducts the personality test and written competitive examination.

- 4) It conducts the interview for the candidates for final selection.
- 5) It circulates the notification for recruitment of candidates for various civil services across the state.
- 6) To get the requirement of human resource from different departments.

### **HUMAN RIGHTS:**

**Definition:** Human rights can be defined as moral entitlements that place obligations on other people to treat one with dignity and respect.

OR

“Human rights are those minimal rights, which every individual must have against the state, or other public authority, by virtue of his being a „member of human family“ irrespective of any consideration.

**Introduction:** Human beings are rational beings, by virtue of their being human possess certain basic and absolute rights which are commonly known as human rights. Since these rights belong to them because of their very existence, they become operative with their birth.

Human rights being the birth rights, are therefore, inherent in all the individuals irrespective of their caste, creed, religion, sex and nationality. These rights are essential for all the individuals as they are constant with their freedom and dignity and are conducive to physical, moral, social and spiritual welfare.

Human rights are also sometimes, referred as the fundamental rights, inbuilt rights, natural rights and birth rights.

### **Characteristics of Fundamental Rights:**

The fundamental rights have the following characteristics:

1. These are integral part of the constitution.
2. These are universal in nature.
3. These are available to all citizens of India.
4. These are comprehensive and detailed.
5. These are positive and negative.
6. These are justifiable.
7. These are available only against state action and not private action.
8. Maintains proper balance between individual liberty and social need.
9. Suspension of fundamental rights is possible by the constitution.
10. Amendable, but cannot be abrogated.

### **Importance of Human Rights:**

The significance of fundamental rights is as follows:

1. These act as check on arbitrary action of the state.
2. These make the life of the people meaningful.
3. These will maintain internal peace and order.
4. These will help in proper functioning of the democracy.
5. They will help in abolition of oppressed people.

### **CONSTITUTIONAL PROVISIONS UNDER HUMAN RIGHTS:**

Organizational and engineers are to be familiar with the minimum provisions under the human rights, so that the engineers and organizations for a firm base for understanding and productivity.

*Following are the various provisions under the human rights:*

1. Rights to life.
2. Right to liberty.
3. Right to privacy.
4. Right to property.
5. Right to non-discrimination.
6. No sexual harassment.
7. Right to debate .
8. Right of speech.
9. Freedom from torture.
10. Right of movement.

### **RIGHT TO LIFE AND LIBERTY:**

#### **Right to life:**

According to the constitution of India, Article 6 of the part 3 deals with the specific rights of

individuals and obligations of the states parties. According to article 6, every human being has the inherent right to life. This right shall be protected by law. No one shall be without reason rundown of his life.

Any one sentenced to death shall have the right to seek pardon or commutation of the sentence. Forgiveness of the sentence of death may be granted in all the cases.

### **Right to Liberty:**

Everyone has the right to life and liberty and security of person. Everyone is entitled to all the rights and freedoms set forth in this declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion national or social origin, property, birth or other status.

Everyone one has the freedom of thought and religion. Everyone has the right to freedom of opinion and expression. Everyone has the right to freedom of peaceful assembly and association.

### **International Human Rights:**

We have basic international human rights, according to the universal declaration of human rights created by United Nations in 1948, to provide a global understanding of how to treat individuals. These are:

1. We are all free and equal.
2. Do not discriminate the right to life.
3. Right of life.
4. No slavery-past and present
5. No torture.
6. We all have same right to use the law.
7. Fair treatment by fair courts.
8. No unfair detainment (to keep in custody).
9. The right to trial.
10. Innocent until proven guilty
11. Right to privacy.
12. Freedom to move.
13. The right to nationality
14. Marriage and family
15. Your own things.
16. Freedom of thoughts.
17. Free to say what you want.
18. Meet where u like.
19. Right to democracy
20. Right to social security.
21. Right to play
22. Workers right.
23. A bed and some food.
24. The right to education
25. Culture and copy right
26. A free and fair word.
27. Our responsibilities.
28. Nobody can take away these rights and freedoms from us.

### **Features of International Human Rights:**

*Following are the main features of International Human Rights :*

1. Prevention and punishment of crime.
2. Elimination of all forms of racial discrimination.
3. Elimination of all forms of racial discrimination against women.
4. Elimination of human torture.
5. Provisions of rights of a child.
6. Protection of all migrant workers and member of their families.
7. Rights of prisoners and disabilities
8. It provides the protection for all persons from enforced disappearance.
9. It works for piece
10. It strengthens the democracy
11. It promotes the sustainable developments.
12. It promotes fight against the corruptions.
13. It protects the children against sexual exploitation and sexual abuse.
14. Promotes preventing and combining domestic violence against women.

### HUMAN RIGHTS OF WOMEN:

United Nations since the drafting of the universal declaration of Human Rights as guided the organization in the activities for the promotion and protection of human ever since. The human rights of women are not different from human rights in general. It is necessary to maintain all the rights completed in the UDHR 1948(Universal Declaration of Human Rights).

There are 30 articles in the declaration. These are as follows:

1. All human beings are born free and equal in dignity and rights.
2. All human beings are gifted with reason and ethics.
3. Rights to life liberty and security of person
4. Prohibition of slavery and slavery trade.
5. Prohibition of torture, cruel, inhuman or degrading treatment of punishment.
6. Right to be recognized as person before law.
7. Equality before law, equal protection of law against any discrimination in violations of the declaration.
8. Right to effective remedy by the competent national tribunals.
9. Prohibition of arbitrary arrest, determination or exile.
10. Right to full equality to a fair and public hearing by an independent and impartial tribunal (committee/board).
11. Right to education.
12. Freedom from ex-post facto laws (freedom from forced law).
13. Freedom from arbitrary interference with privacy, family, home, correspondence of attack on honor or reputation and right to protect by law against such interference.
14. Right to leave any country including his own, and return to his country.
15. Freedom to change nationality.
16. Right to marry.
17. Right to freedom of thoughts, conscience and religion.
18. Right to freedom of opinion and expression.
19. Right to freedom of peaceful assembly and association.
20. Right to take the part in government of the country.
21. Right to equal access to public service in the country.
22. Right to social security and right to realization of the economic, social and cultural rights.
23. Right to work and favorable conditions of work.
24. Right to equal pay for equal work.
25. Right to just and favorable remunerations.
26. Right to form and to join trade unions.
27. Right to rest and leisure.
28. Right to living wages.
29. Right to all children to enjoy same social protection.

### DISCRIMINATION AGAINST WOMEN:

**Meaning:** Discrimination against women means any distinction, exclusion or restriction made on the basis of sex which has the effect of nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on basis of equality of men and women, of human rights and fundamental freedoms in the political, economical, social, cultural, civil or any other field.

### STEPS TAKEN TO ELIMINATE DISCRIMINATION AGAINST WOMEN:

As per Article 11 of convention, the state parties are required to take all the appropriate measures to eliminate discrimination against women.

1. To establish adequate legal protection for equal right by abolishing discriminatory laws, customs, regulations and practices, etc.
2. Limiting equality of rights with men is unjust and constitutes an offence against human dignity.
3. Appropriate measures shall be taken to educate public opinion towards the eradication of intolerance against women.
4. Child marriage before teenage years shall be prohibited.
5. Appropriate measure shall be taken to ensure to women married or unmarried equal rights with men in field or property.
6. Equal rights in the field of education.
7. Equal protection in employment and professional advancement.
8. Women shall have the same Rights as of men to acquire, change or retain their nationality in case of marriage.
9. To ensure to women right to vote, to be eligible for election, to hold public office etc.
10. Discriminatory penal laws shall be replaced.
11. Combat all forms of traffic in women.

12. To establish legal protection of rights of women on an equal basis with men.
13. To take all the appropriate measures to eliminate discrimination against women any person, organization or enterprise.

### **ELIMINATE DISCRIMINATION AGAINST WOMEN IN EDUCATION:**

To eliminate the discrimination against women in education, state parties have undertaken all appropriate measures in order to ensure the women in the field of education.

The declaration reaffirmed that states are duty-bound to ensure that education is aimed at strengthening the respect of human rights and fundamental freedoms.

Ultimately state parties shall take all appropriate steps to eliminate the discrimination against women in field in the field of education to ensure them equal rights with men and to ensure, on a basis of equality of men and women, and also strengthening the potential of women.

### **Following steps are taken to eliminate the discrimination against women in Education:**

1. The same condition for career and vocational guidance, for a access to of all categories in rural as well as in urban areas, this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training.
2. Reservation of seats under special quota to the women.
3. Giving awareness about the higher education and technical programs.
4. Access to the same curricula, the same examination, teaching staff with qualifications of the same standard and school premises and equipment of the same quality.
5. Encouraging the co-education and other types of the education which will help to achieve the aim, in particular by the revision of text books, school programs and the adoption of teaching methods.
6. The same opportunities to benefit from scholarship and other study grants.
7. The opportunities to access adult and functional literacy programs at the earliest possible time.
8. Reduction on female student drop-out rates.
9. The awareness programs for girls and women who have left school prematurely.
10. The same opportunities to participate actively in sports and physical education.
11. Access to specific educational information to help to ensure the health and well being of families including information and advice on family planning.

### **ELIMINATING THE DISCRIMINATION AGAINST WOMEN IN EMPLOYMENT:**

In order to ensure, the following rights on the basis of equality of men and women in employment have been taken to eliminate the discrimination against women in employment.

1. The right to the same employment opportunities including the application of the same criteria for selection in field of employment.
2. The right of free choice of profession and employment, the right to employment. The right to promotion, job security and all the benefits and conditions of service.
3. Right to receive the vocational training including apprenticeship, advanced vocational training and recurrent training.
4. The right to equal remuneration for equal work.
5. Equal treatment in respect of work of equal values, as well as equality of treatment in the evaluation of equality of work.
6. Right to social security, particularly in cases of retirement, unemployment, sickness, old age and other capacity to work, as well as right to paid leave.
7. Right to protection of health, to safety in working conditions including maternity benefits, (maternity leave etc.).
8. Reservation in all kinds of employment.
9. Provide special protection to women during pregnancy in those types of work proved to be harmful to them.

### **DISCRIMINATION AGAINST WOMEN IN THE FIELD FOR HEALTH CARE:**

The following measures have taken into consideration in the view of health care and to eliminate the discrimination against women in the field of health care.

1. Employed women should be provided with the health care centre.
2. Employed women should be provided baby care centre.
3. On the basis of medical grounds she should have medical leaves along with medical claims and benefits.
4. Women should be enjoyed with maternity leaves with remuneration.
5. Measures taken to protect women in certain types of work, for reasons inherent in their physical nature, shall not be regarded as discriminatory.
6. Awareness program to the women about health care.



7. Measures should be taken to standard of living adequate for health.
8. Provision of smokeless chullus to rural women.
9. Providing emergency first aid provisions.
10. Providing security of employment during pregnancy, confinement (during custody/imprisonment), illness due to pregnancy or confinement.
11. She should not be dismissed for absent from her work for a longer period as a result of illness medically certified.
12. Provisions of maternity benefit taken into account during the event of miscarriage. And every insured woman claiming the benefits.
13. Extraordinary expense incurred in case of sickness, maternity and death.
14. For the health point of view separate latrine and urinals should be provided to women.
15. Separate enclosed accommodation shall be provided for female workers.

### **DISCRIMINATION AGAINST WOMEN IN THE FIELD OF ECONOMIC AND SOCIAL LIFE:**

Following are the measures taken in the field of economic and social life to avoid the discrimination against women.

1. On the eve of economic life, free choice of professional and employment advance.
2. The right to leave with pay.
3. Retirement rights and provisions for security in respect of unemployment.
4. The right to leave with pay during sickness.
5. The Right to leave with pay during old age or other incapacity to work.
6. The right to receive family allowance on equal terms, with men.
7. Socially the most important measures have taken to eliminate discrimination against women as below :
  - a) Fundamental freedoms on basis of equality with men.
  - b) Appropriate measures including legislation to suppress all forms of traffic in women and exploitation of prostitution of women.
  - c) The same right to enter marriage.
  - d) The same right freely to choose a spouse and enter into marriage only with their permission.
  - e) The same right for both spouses in respect of the ownership, acquisition, management, administration, enjoyment, and disposition of property whether free of charge or valuable consideration.
  - f) Participation in the public function at all levels of government.
  - g) To participate in the work of international organizations.
  - h) To participate in the formulation of government policy.
  - i) Rights to vote in all elections.
  - j) Every woman has the right to social security.
  - k) Every woman has the right to rest and leisure and periodic holiday.
  - l) Every woman has the right to education.
  - m) Provide the necessary social service including child care.

### **WOMEN IN RURAL AREAS:**

- Women in rural area have faced lot of problems as they unaware of their right due to illiteracy. Only rural women are considered or meant for house-wife and agricultural laborer without expecting any benefits for their life.
- States parties have called for equal participation of women with men in participation and development of rural areas.
- Women have equal right in elaboration and implementation of development planning, health care facility, including family planning, to benefit from social security programmers, obtain all types of training and education, to organize self-help groups and cooperatives and to participate in community activities (EX: Soap making, cashew nut processing, candle making, weaving).
- Rural women are also to have equal access with men to agricultural credits and loans, marketing facilities, appropriate technology and equal treatment in land and land resettlement schemes.
- Rural women also have equal rights with men to enjoy sufficient living conditions, including housing, sanitation, electricity, water supply, transport and communication.

### **STATUS OF WOMEN IN INDIA:**

- Religious attitudes are entered much deeper than the social values into the Hindu mind, which has created a complexity and crude ideas about women's in capabilities.
- The root of Hindu society is the "Aryan" society. The birth of son was especially welcomed than the girl child.
- According to our ancient shastras women is represented as „Shakti". She was equal to goddess

and symbol of fertility. However “Manu the world’s greatest law giver” said that, women had to be dependent before marriage on her parents and after marriage on her husband. This concept is a great damage to the position of women in India.

- In Vedic period, the women enjoyed equal status with men but now women are most suppressed and most neglected group in the society mainly in the rural areas.
- The miseries faced by the women in nineteenth and twentieth centuries are child marriage, purdah, sati and enforced widowhood which are “unknown in ancient times”. The present day Constitution of India provided equality between sexes and equality before law based on Human Rights of U.N declaration.

### **WID [Women In Development] or [Women & Development].**

- Development will favor all people of different level and leads to empowerment.
- The basic assumption on economic planning had a negative impact on women.
- Thus women are brought under development program through employment and higher education.
- By this considerable progress had been noticed in women life style.
- This has been possible due to various steps taken by the government from time to time.
- The central governments have developed various innovative programs, special plans and policies for women empowerment.

*Ex: - Quality education, health care, job opportunity, fundamental freedom etc.*

### **Various special programs for women development by government.**

- Indira Gandhi Matrutva sahayog yojana (IGMSY)
- Rajeev Gandhi scheme for empowerment of adolescent girls or sabla (RGSWAG)
- National Maternity Benefit Scheme (NMBS)
- Reproductive and child health program.
- Mahila coir yojana.
- Mahila Samakya (education for women equality).
- Stree Shakti project.
- Santhwana.
- Rastriya Mahila Kosh.
- Swadhar.
- Indira Mahila Yojana.
- National Literacy Mission.
- Short stay home for women and girls (SSH).
- Women component plan.
- Ujjawala scheme for women development.
- Under working children scheme, 2009-2010.
- Kishori Shakti Yojana (KSY).

### **PRESENT STATUS OF WOMEN IN INDIA:**

The United Nations have actively involved for several years in promoting and strengthening the potential of women. As a result of this revolution, the Constitution of India provides the following:

- 1) Right to equality
- 2) Right against exploitation
- 3) Directive principles of state policy
- 4) Fundamental duties
- 5) Elections

The global campaign for elimination of violence against women in the recent years is clear indicators for the seriousness of status for women world over.

As per the declaration of human rights of women, every women enjoying all the basic right of human, i.e. equality, education, employment, participation in the election, rights to freedom, rights to own the property and right to a standard of living like men.

At present there is a tremendous change in the women community as compared to status in Ancient India.

- This change is very important as the men and women are the two pillars of the social structure.
- If one of the pillars is weak then it creates the burden to the society.
- The role of men and women are complimentary and supplementary towards each other.
- Men should not exploit the women in any way, empowerment of women is necessary for the overall development of the entire civilization.
- There is a big revolution on status of women in India at present.

### CONSTITUTIONAL SAFEGUARDS:

According to the Indian Constitution, some Act which is having special provisions to safeguard women and their interest are:

- ⇒ The Employees State Insurance Act 1948
- ⇒ The Plantation Labor Act 1951
- ⇒ The family court Act 1954
- ⇒ The special Marriage Act 1954
- ⇒ The Hindu Marriage act 1955
- ⇒ The Hindu Succession Act 1956
- ⇒ Immoral Traffic Act 1956
- ⇒ The Maternity Benefit Act 1961
- ⇒ Dowry Prohibition Act 1961
- ⇒ The Medical Termination of Pregnancy Act 1971
- ⇒ The equal remuneration Act 1976
- ⇒ The child Marriage Restraint Act 1979
- ⇒ The criminal Law Act 1983
- ⇒ Indecent Representation of women Act 1986
- ⇒ Commission of Sati act 1987
- ⇒ Protection of women from Domestic Violence act 2005

### DOWRY PROHIBITION ACT 1961:

Dowry is a consideration from the side of bride family to the groom or to his family as the wedding agreement. Traditionally dowry was an integral part of the marriage of the daughter by the father.

Dowry means any property or valuable security given or agreed to be given either directly or indirectly.

- By one party to other party in the marriage.
- Or by the parents of either parties at the time of wedding or any time before or after the marriage.

#### *Need of Dowry Prohibition:*

Dowry took away the peace in every family. It was the serious threat for women property right and also survival. The birth of girl child treated as burden because of dowry.

#### *According to Dowry Prohibition act:*

- ⇒ Giving and taking of dowry- any request, acceptance or payment of dowry in terms of cash, gift, property etc. during the time of marriage.
- ⇒ This act prevents giving or taking dowry and the demand for dowry.
- ⇒ Any person demanding in connection with marriage will be punished with an imprisonment for at least 6 months to 2 years.
- ⇒ The imprisonment can extend up to 5 to 7 years and even life time in case of dowry death.
- ⇒ Also a fine of Rs.15000 will be penalized.

### DOMESTIC VIOLENCE ACT 2005:

Domestic violence means, the female are beaten up, threatened or harassed at their home or by a person with whom they are residing in the same house.

#### *Violence can be classified as:*

- 1) *Physical violence:* Beating, slapping, hitting, kicking, punching, pushing, causing injuries or bodily pain.
  - 2) *Sexual violence:* Forced sexual intercourse, forced to watch pornography or any other obscene pictures or materials, any act of sexual nature to abuse, child sexual abuse.
  - 3) *Verbal and Emotional violence:* Insult, name-calling, insult for not having male child, insult for not bringing the dowry, preventing to take a job, forcing to leave a job, threat to commit suicide, any other verbal abuse.
  - 4) *Economic violence:* Not providing money for maintaining child, forcing to leave the house, not providing food, cloth, medicine etc.
- ⇒ Domestic violence act provides more effective protection to women and safeguards her interests if they are the victims of any kind of violence that occurs within the family or any such relevant incidents of violence connected with family matters.
  - ⇒ This act covers those women victims who are in relationship with the abuser as wife, sister, mother, widow and are entitled to get legal protection.
  - ⇒ This act attempts to safeguard the women right to secure housing and to reside in the matrimonial or shared household.

### **Sexual Harassment:**

Beauty of the women is her most valuable jewel. Everyone has a word of praise for that. But taking women as sex-symbol is legally wrong.

The sexual harassment can be defined as whoever intending to insult the modesty of any women, utters any sound or gesture or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen or intrudes upon the privacy of women is called sexual harassment.

### **SEXUAL HARASSMENT AT WORK PLACE BILL 2006:**

- ⇒ Government has taken many steps to ensure compliance with the law laid down by the Supreme Court.
- ⇒ The service rule have been amended to include sexual harassment at work place as misconduct providing for developmental inquiry against such complaints and punishment for the same if the charges are held proved.
- ⇒ National Commission for women for women and Ministry of Human Resources Development have taken necessary steps to ensure that all educational institutions and organizations under the control of the Government and even private institutions, carry out necessary amendments to include sexual harassment at work place as an offence and pressure is kept on the management of the establishment to provide for setting up of a committee for essential of sexual harassment complaint.
- ⇒ This is a bill protect women against sexual harassment and to protect the rights to livelihood of women.
- ⇒ Sexual harassment infringers the fundamental right of woman to gender equality under article 14 of the constitution of India and her right to life and live with dignity.
- ⇒ Under article 21 of the constitution which includes a right to a safe and the right to work with dignity are recognized as universal human rights and elimination of all forms of discrimination against women, which has been ratified by the Government of India.
- ⇒ This bill extends to the whole of India except the state of Jammu and Kashmir and it shall come into force with immediate effect.

### **The main features of this bill as follows:**

1. This bill makes the provisions for the constitution of the internal Complaints Committees and it shall be mandatory for every work place and every employer incharge of a work to constitute an Internal Complaints Committee.
2. The committee is required to complete the inquiry within a time period of 90 days. On completion of the inquiry, the report will be sent to the employer or the District Officer, as the case may be, they are mandated to take action on the report within 60 days.
3. Every employer is required to constitute an INTERNAL Complaints Committee at each office or branch with 10 or more employees. The District Officer is required to constitute a Local Complaints Committee at each district, and if required at the block level.
4. The Complaints Committees have the powers of civil courts for gathering evidence.
5. The Complaints Committees are required to provide for conciliation before initiating an enquiry, if requested by the Complainant.
6. The inquiry process under the act should be confidential and the act lays down a penalty of Rs. 5000 on the person who has breached confidentially.
7. The act requires employers to conduct education and sensitization programs and developed policies against sexual harassment, among other obligations.
8. Penalties have been prescribed for employers. Non-compliance with the provisions of the act shall be punishable with a fine of up to Rs. 50000. Repeated violations may lead to higher penalties and cancellation of license or registration to conduct business.
9. Government can order an officer to inspect workplace and records related to sexual harassment in any organization.

### **Need of the Bills:**

The Bill confers upon women the right to protection against sexual harassment and to protect the right to livelihood for the prevention and correcting of sexual harassment of women.

- The sexual harassment of women at work place (prevention, prohibition and corrective) bill, 2006 provides that sexual harassment will amount to misconduct in employment under all relevant conduct and service rules and regulations.
- This bill makes it the responsibility of every employer or management of the work place to take all the necessary and reasonable steps to prevent and ensure that, no women employed in the establishment is subject to sexual harassment by any third party during the course of employment.



- If any such sexual harassment occurs the professional body shall take all necessary steps to assist the hurt women to redress the act of sexual harassment.
- This bill provides that every woman shall have a right to be free from sexual harassment and the right to work in an environment free from any form of sexual harassment.
- A hurt woman shall have the right to claim compensation from the defendant or any sexual harassment.
- The bill ensures a safe environment free from sexual harassment.
- The bill seeks to confer upon women the right to protection against sexual harassment at work place has been drafted in consultation with the National Commission for women and prominent women organizations.
- According to the bill, the proposed new legislation would cover women working in organized, unorganized and informal sector and would have clear provisions about the employer's obligations to prevent and redress sexual harassment at work place.

### **HUMAN RIGHTS OF CHILDREN:**

Who is a Child (Meaning):

Biologically a child (plural: children) is a human between the stages of Birth and Purity. The legal definition of child generally refers to "a minor otherwise known as a person younger than the age of majority".

Child defines child as "human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier".

Biologically, a child is generally anyone between birth and teens. In many cultures, a child is considered an adult after undergoing a rite of passage, which may or may not correspond to the time of teens.

Children generally have fewer rights than adults and are classed as unable to make serious decision and legally must always be under the care of responsible adult. Recognition of childhood as a state different from adulthood.

### **Rights of the Child (Human Rights of the Child):**

The universal declaration of Human rights had fixed that childhood is entitled to special care and assistance. The principles of the Universal Declaration concerning the child were incorporated in the declaration of the rights of the child adopted by the general Assembly on November 20, 1959.

The International Covenant made provisions for the care of the child. A number of rights have been fixed in the meeting which includes the following.

1. Right to life(Article 6 Para 1)
2. Right to acquire nationality.
3. Right to freedom of expression.
4. Right to freedom of thought, conscience and religion.
5. Right to freedom of association and to freedom of peaceful assembly.
6. Right to education.
7. Right to benefit from social security.
8. Right to standard of living adequate for the child's physical, mental, spiritual, and social development.
9. Right to employment.
10. Right to facilities for the treatment of illness and rehabilitation of health.
11. Right to protection of the law against arbitrary or unlawful interference with his or her privacy, family, home or correspondence.

### **Right To Education (RTE):**

- ▮ The constitution (86<sup>th</sup> amendment) act, 2002 inserted article 21-A in the constitution of India to provide free and compulsory education of all children in the age group of 6-14 years as a fundamental right.
- ▮ The right of children to free to compulsory education (RTE) Act, 2009 means that every child has a right to full time elementary education of satisfactory and equitable quality in a formal school.
- ▮ Every child has right of „free and compulsory“.

### **The RTE Act provides for the:**

1. Right of children to free and compulsory education till completion of elementary education in a neighborhood school.
2. It clarifies that „compulsory education“ means obligation of appropriate government provide free elementary education and ensure compulsory admission, attendance and completion of elementary education to every child in the six to fourteen age group .“Free „means that no child



shall be liable to pay any kind of free or charges or expenses which may prevent him or her from pursuing and completing elementary education.

3. It makes provisions for a non-admitted child to be admitted to an age appropriate class.
4. It specifies the duties and responsibilities of appropriate governments, local authority and parents in providing free and compulsory education, and sharing of financial and other responsibilities between the central and state governments.
5. It lays down the norms and standards to fulfill teacher ratios, buildings and infrastructures, school-working days, teacher working hours.
6. It provides for rational deployment of teachers by ensuring teacher ratio at state or district or block, thus ensuring there is no urban-rural imbalance in teacher's posting.
7. It also provides for prohibition of deployment of teachers for non-educational work, other than decennial census, elections to local authority, state legislatures and parliament, and disaster relief.
8. It provides for appointment of appropriately trained teachers, i.e. teachers with the academic qualifications.
9. It prohibits (a) physical punishment and mental harassment (b) screening procedures for admission of children (c) capitation fee (d) private tuition by teachers and (e) running of schools without recognition.
10. It provides all-round development of the child, building on the child's knowledge, talent and making the child free and fear, by a system of child friendly and child centered learning.

### **Protection of children from Sexual Offences act (POCSO) 2012:**

**POCSO** is an Act to protect children from offences of

- Sexual assault,
- Sexual harassment and pornography and provide for establishment of special court for trial of such offences and for matters connected therewith.

This law operates in a manner to ensure the healthy physical, emotional, intellectual and social development of the child.

Also to undertake all possible measures to prevent:-

- a) Child to engage in any unlawful sexual activity.
- b) Use of children in prostitution or other unlawful sexual practices.
- c) Use of children in pornographic performances and materials.

This Act includes:

#### ***A. Penetrate Sexual Assault and Aggravated Penetrative Sexual Assault Punishment Therefore:***

When a child is subjected to sexual assault by one or more persons of a each of such person shall be liable for that act and shall be punished with rigorous imprisonment for a term not less than ten years, which may extend to imprisonment for life and shall also be liable to fine.

#### ***B. Sexual Assault and Punishment Therefore:***

Whoever commits sexual assault shall be punished with imprisonment for a term which shall not be less than three years, which may extend to five years, and shall also be liable to fine.

#### ***C. Sexual Harassment and Punishment Therefore:***

Whoever commits sexual Harassment shall be punished with imprisonment, which may extend to three years, and shall also be liable to fine.

#### ***D. Using Child for Pornographic Purpose and Punishment Therefore:***

Whenever child is used in media (TV, internet etc.) for the purpose of sexual fulfillment, distribution of pornographic material shall be punished with imprisonment, which may extend to five years, and shall also be liable to fine. And in case of second conviction, imprisonments can be for seven years and shall also be liable to fine.

#### ***E. Abetment of an Attempt to commit offence:***

Any person, who stores, for commercial purpose any pornographic material in any form involving a child shall be punished with imprisonment of three years or with fine or with both.

#### ***F. Punishment for False Complaint or False Information:***

Any person, who makes false complaint against any person in respect to an offence, shall be punished with imprisonment for a term which may extend to six months or with fine or with both.

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

- As per the protection of Human Rights Act, 1993, the national Human Right Commission (NHRC) was established on October 12, 1993.
- Human rights mean the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International covenants and enforceable by courts in India.
- According to NHRC act, main provisions relating to it are as follows:
  - ▮ Right relating to the life
  - ▮ Rights relating to the privacy
  - ▮ Rights relating to the liberty
  - ▮ Rights relating to the equality
  - ▮ Right to dignity of individuals

### **NHRC constitution:**

- It shall have 8 members and will be headed by the former chief justice of the Supreme Court.
- The other members of the commission shall be sitting are retired judge of the supreme court, a servicing or retired chief justice of the High court, 2 prominent persons having knowledge or practical experience in the sphere of human rights and chairpersons of the National Commission for minorities, the scheduled caste and scheduled tribe and women.
- The chairperson and members will be appointed by the President on the recommendation of 6 member committee headed by the prime minister.
- The chairperson and the members hold the office for a period of 5 years from the date of office.
- The President will be having a full right to remove the chairperson or any other members.

### **Power and Function of NHRC :**

The function of the commission is laid under the section 12 of the act which is as follows:

1. The commission can inquire a violation of human rights by a public servant.
2. The commission may interfere in any proceeding involving any allegation of violation of human right pending before a court with the approval of such court.
3. The commission shall visit, under intimation to the state government, any jail or any other institution under the control of state government.
4. The commission shall review the safeguards, provide by or under the constitution for the protection of the human rights.
5. The commission shall review the factors; including acts of terrorism that inhabited exercise of one's human rights as well as the safeguard currently in force and make appropriate recommendation.
6. The commission studies the other international instruments on human rights for their effective implementation.
7. The commission will undertake and promote research in the field of human rights.
8. The commission will spread the human rights literacy among various section of society, and promote awareness of safeguards.
9. The commission encourages the non-government organizations and institutions working in the field of human rights.
10. The commission shall submit an annual report to the central government and to the state government concerned and may at any submit special report on any matter.
11. The commission may perform any other function as it may consider necessary for the promotion of human rights.

### **Employee rights:**

Employee rights are the moral and legal rights that are obtained by the status of being an employee. Various provisions made under the employee's rights are:

#### **1) Professional rights (provisions under professional rights):**

Following are the various provisions made under the professional rights:

1. Right to form and express professional judgment.
2. Right to refuse to participate in unethical activities.
3. Right to fair recognition and to receive remuneration and to receive remuneration for professional services.
4. Right to warn the public about dangers.
5. Right to talk publically about the job.
6. Right to engage in the activities of professional societies.

**1. Right to form and express professional judgment:** it also known as the right of professional conscience. The right empowers one to form and exercise the professional judgment, while pursuing the professional responsibilities. It includes both moral and technical judgments.

**2. Right to refuse to participate in unethical activities:** it also known as right to conscientious refusal. The employer cannot force or threaten the employee to do something which is unethical in the view of employee, for example taking bribe or giving bribe, altering the test results, falsifying data, forging documents, etc. it is the right to refuse to do so solely because in his view it is unethical. There may be situations such as doctors have a right not to participate in the abortions. Similarly the engineers must have a right to refuse assignments that violate their personal ethical feelings.

**3. Right to fair recognition and to receive remuneration for professional services:** engineers have a right to professional recognition for their work and achievements. The right helps to motivate themselves to concentrate their energy on jobs and to update their skills through continuing education. This will prevent the engineers from diversion such as brother or money matters. Based on the resources of the organization and the bargaining power of the engineers, the reasonable salary on remuneration for patent discovery can be worked out.

**4. Right to warn the public about dangers:** it should be done without damaging the reputation of the employer. The views can be expressed through the professional society to get a backing.

**5. Right to talk publically about the job:** this should be done within the limits of decency, confidentiality and loyalty

**6. Right to engage in the activities of professional societies:** Attending membership seminars and campaign are the typical activities to promote the professional society.

**2) Basic human rights** Human rights are those minimal rights, which every individual must have against the state, or other public authority, by virtue of his being a „member of human family“ irrespective of any consideration.

### **3) Institutional Rights or Contractual Employee Rights:**

- These include the rights to the institution due to the organizational policies or contracts, rights to receive specified salary and annual increments and profit sharing.
- The quantum of such benefits, scale of pay etc, are fixed and reviewed periodically by the employers and employees.

### **4) Non-contractual Employee Rights:**

These are the rights provided in the common, besides the contractual ones. They are:

1. Right to privacy.
2. Right to choose outside activities.
3. Right to due process from employer.
4. Right to equal opportunity-non-discrimination.
5. Right to equal opportunity-sexual harassment in the workplace.
6. Right to equal opportunity-affirmative action or preferential treatment.

#### **1. Right to Privacy:**

It is the right to control the access to and use of information about oneself. This right is limited in certain situations by employers' rights. But who among the employees can access the personal information is again restricted. Only duly authorized persons can get the personal information.

*For example,*

- a) The Pay Bill section can access the information on insurance premium paid, medical reimbursement etc., but one's immediate boss need not get this data.
- b) Persons who have applied for the jobs of cashier are required to report if there are any criminal or civil cases pending against them. Those persons may mishandle the money. Hence that information may be sought from them.
- c) A supervisor might suspect a worker and conduct search in his cupboard when the worker is absent, but he is to have another officer as witness.

#### **2. Right to choose Outside Activities:**

This is also interpreted as a right to personal privacy that means a right to have a private life outside the job. For example:

- a) When those activities lead to violation of their job.
- b) When the activities of the employees forms a conflict of interest (moonlighting).
- c) When the interest of the employer is getting damaged (when confidential matters are shared to the competitor).

### 3. Right to Due Process from Employer:

It is right to fair process or procedures in firing, demotion and in taking any disciplinary against employees. (Written explanation, memo, reasons, simple appeal etc.).

### 4. Right to equal opportunity – non-Discrimination:

Discrimination because of caste, sex, religion, creed and language are regressive actions. Discrimination which means a morally unjust treatment of people in the workplace is damaging to the human dignity. For Example:

- a) A senior manager post is vacant. There are competent and proven candidates from outside the state. A local engineer with lesser competence is promoted.
- b) Prize amount for the winners in the word sport events are not the same for men and women.

### 5. Right to Equal opportunity- sexual Harassment in the workplace:

- a. The sexual harassment is a display of superiority and misuse of power through sexual means. It is freedom to decide on one's own body. It is also an assault on one's human dignity and trust.
- b. Sexual harassment may be defined as the unwanted compulsion or attack on sexual requirements between unequal powers.
- c. It includes physical and psychological attack, indecent gestures by men shown on women or by women on men.
- d. Types can be „Exchange of favors“ by seniors officers, demanding sexual favor in return of giving job, promotion, increment etc.
- e. Another type is called „hostile work environment“, i.e. threatening, undesirable sexual proposals, remarks; mailing obscene photographs are some examples.

Sexual harassment can be removed by following the ethics in workplace. i.e. Right ethics says one should be free from threat or insult. A duty ethics says treat human being with dignity and respect for freedom. The utilitarian gives importance to the happiness and the welfare of the women.

### 6. Right to Equal Opportunity-Affirmative Action or Preferential Treatment:

It means giving advantages or preference especially to women and minorities all over the world.

### Features of the Employee Rights:

1. They uphold the interest of all employees.
2. It prevents and punishes the crime against employee.
3. Eliminate all forms of discrimination in workplace.
4. Provides the scope for employee privacy.
5. Provide the protection to have a privet life outside the job.
6. Elimination of employee torture.
7. It works for mutual benefits.
8. It works for preventing and combating the domestic violence against women at workplace.
9. It eliminates all forms of racial discrimination against women at workplace.
10. Provides security in the job.
11. Promotes all forms of minimum comforts to all category employees.
12. It protects the human dignity at the workplace.
13. Promotes fair process in firing, demotion and talking any disciplinary actions against the employees.

### Whistle Blowing:

*Definition:* Whistle Blowing can be defined as conveying the information by an employee, on an important moral problem to somebody in a position to take action on the problem. Further, this is done outside the approved organizational channels.

### Aspects:

*Normally there are four accepts of whistle blowing, these are:*

- 1) **Basis of disclosure:** The basis of disclosure may be intentional or under pressure from superior or others not to disclose.
- 2) **Relevance of topic:** the whistle blower believes that the information is about a significant problem for the reorganization or its business alloy. It can be a threat to the public or

employee's health, safety and welfare or a criminal activity, or unethical policies or practices, or an injustice to the workers within the organization.

- 3) **Agent:** the person disclosing the information may be a current or former employee or a person having a close link to the organization.
- 4) **Recipient:** the person or organization, who receives the information, is in a position to remedy the problem or alert the affected parties. Usually, the recipients are not aware of the information fully or even partially.

### Types of whistle blowing:

Whistle blowing can be classified on the following:

1. Based on destination (recipient): organization.
  - a) Internal whistle blowing
  - b) External whistle blowing
2. Based on source or origin(agent):
  - a) Open whistle blowing
  - b) Anonymous whistle blowing.
  - c) Partly anonymous whistle blowing.
  - a) **Internal whistle blowing:** in this case, the information is conveyed to a person within the organization, but beyond the approved channels.
  - b) **External whistle blowing:** this happens when information is transmitted outside the organization. the recipient may be MP or MLA. It becomes severe if the information reaches the press and to public. the damage is more and sometimes situation may go out of control.
  - c) **Open:** the originator reveals his identity as he conveys the information. this information is reliable and true, but sometimes practically true.
  - d) **Anonymous:** the identity is concealed. the information may or may not be true. but the agent anticipates perhaps some repression or threat, if identity is revealed.
  - e) **party anonymous (or party open):** such a situation exists when the individual reveals his identity to the journalist, but insists that the name be withheld from others.

### Instruction to be followed before Whistle Blowing:

1. One should familiarize with the rules for appealing within the organization. Normal organizational channels, up to the ombudsman or top ethics committee, should be tried, except when extreme urgency conditions exist.
2. Consult the trusted colleagues for advice and to avoid isolation.
3. Use polite and tactful language. Avoid any personal criticism that may antagonize and divert the attention towards solving the problems.
4. Keep the supervisors informed of your actions, through informal discussing and formal memorandum.
5. Keep your observations and claims precise and accurate. Prepare formal Records of events in support of your claims.
6. Before going outside the organization, consult the ethics committee of your professional society.
7. If necessary consult a lawyer regarding potential litigations.
8. Offering to resign is one of the peaceful and effective methods of blowing your views. Whether you are relieved from the specific project or from the organization, either way your autonomy and self-respect are recognized.

### Intellectual Property (IP) Rights:

**Meaning:** Intellectual property rights are the rights given to persons over the creations of their minds.

It is the information and original expression that derives its original value from creative ideas with a commercial value. Intellectual property permits people to have fully independent ownership for their innovations and creativity, like that of own physical property.

It encourages the Intellectual Property owners towards innovation and benefit to the society. It is an asset which can be bought or sold, licensed and exchanged. It is intangible i.e, it cannot be identified by specific parameters.

The agreements with World Trade Organization (WTO) and trade related aspects of Intellectual Property System (TRIPS) have been adopted from January 2005 which promotes international trade.

### Need for Protection of Intellectual Property (IP):

It is very essential to have the proper protection of IP because, IP plays an important role to stabilize and develop the economy of a nation. This protection actually stimulates creativity, research and innovation by ensuring freedom to individuals and organization to benefit from their creative intellectual investment.



### **The IP serves the following Purposes:**

- a) It prevents others to use it.
- b) Prevents using it for financial gain.
- c) Prevents copying of ideas.
- d) Fulfill obligation of funding agency, ICICI Bank has advanced loan against IP as security to shoppers, New Delhi.
- e) Provides a strategy to generate steady income.

### **Challenges in the Acquisition of IP are:**

- i) Shortage of man power in the industry. Educational institutions play a very vital role in providing same.
- ii) High cost of patenting and lengthy procedure. this was being considered by the Government and a simpler and faster procedure is expected, and
- iii) Lack of strong enforcement mechanism.

### **Types of Intellectual Properties (IP):**

#### **Following are the types of intellectual properties:**

1. Patents.
2. Copyright.
3. Trade Mark.
4. Trade Secret.
5. Industrial design rights.

### **1. Patent and its Concept:**

Patent is a contract between the individual (contractor) and the society (all other). Patent is a form of right granted by the government to an inventor, giving the ownership and the right to stop others from making, using, selling or offering to sell, without permission of the patent holder.

Patent holder has the legally-protected monopoly power as one's own property. The validity is 20 years from the date filing the application for the patent; anybody can make use of the invention. The owner of the patent can sell this property. He can also grant licenses to others to use or develop the invention. The above provisions have been made according to the patent (amendment) Act 2002.

Patent is given to a product or a process, which is entirely new, suitable for industrial applications. While applying for a patent, it is essential to submit the documents in detail regarding the problem addressed its solution, innovation, typical applications, particulars of the inventor and the resources utilized. *Inventors are patentable but discoveries are not.*

### **Salient Features of the Patent Act 2002:**

Following are the some salient features of Patent Act 2002.

#### **A) Patent outside India:**

- i. Application for patent outside India, on defense purposes or related to atomic energy is prohibited.
- ii. For other patents, an innovator should apply for a patent within India and then seek clearance for filing patents abroad.

#### **B) Licensing:**

- i. The controller of a patent grants the license upon verification by some terms and conditions.
- ii. The articles manufactured under the patent shall be available to public at the lowest price at the same time the patentees have to get reasonable gain from their patent rights.

#### **C) Negative Right:**

- i. The grant of patent does not guarantees the merit or any other commercial value for an innovation.
- ii. The state which grants the patent does not also guarantee the validity of the patent granted.

#### **D) First to File Rule:**

- i. Indian like many other countries follows the system of first to file or first to register system to determine priority.
- ii. Accordingly, a patent or invention which is filled or registered first in the patent office will have precedence to the patent or invention, which is filled later in the date, even if it had been invented earlier.

#### **E) Burdon of proof of Infringement:**

- i. Legal rights of patent cannot be enforced automatically. In an suit for infringement of a patent, the patentee must move to the court.
- ii. The court may direct the defendant to prove that the process used by him to obtain the product, identical to the product of the patented process, is different from the patented process.

### Types of patents:

- 1) **Utility patent:** It is granted to anyone who invents or discovers any new and useful process, machine, manufacture or chemical composition of any manner or any new and useful improvement thereof he utility time is 20 years.
- 2) **Industrial design patent:** It is an idea or conception regarding features of shape, configuration, pattern, ornamental with lines or color applied to any article, two or three dimensional, may be any industrial process and is judged by the eye or a product. It has a term of 14 years.

## 2. Copyright:

The copyright is a specific and exclusive right, describing right given to creators for their literary and artistic works. Literary and artistic creation is a unique feature of human beings. This intellectual creativity has been recognized and protected by law in the form of copyright. It is an exclusive right given by law for a certain term to an author, computer etc, to print, publish and sells copies of his original work.

This copyright protects literary material, aesthetic material, music, film, sound recording, broadcasting, software, multimedia, printing, sculptures and drawing including maps, diagrams, engravings or photographs from copying or duplicating by others. There is no need for registration and no need to seek lawyer's help for settlement. The life of the copyright protection is the life of the inventor or author plus 50 years.

Copyright gives protection to particular expression and not for the idea. Copyright is effective in-

- i. Preventing others from copying or reproducing or storing the work.
- ii. Publishing and selling the copies.
- iii. Performing the work in public, commercially.
- iv. To make film.
- v. To make translation of the work and
- vi. To make any adaption of the work.

The objective of copyright law is to encourage authors, composers and artists to create original works by rewarding them with exclusive right for limited period to reproduce the work for the benefit of the public. On the expiry of the term copyright, the work belongs to public domain and any one may reproduce them without the premission.

### Features of copyright:

- Terms of copyright for different categories.
- Broadcasting rights
- International copyrights.
- Author's special rights.
- Provisions relating to performing rights of works.
- Provisions to determine the first ownership of copyright in various categories of works.

### Characteristics of copyright:

Following are the characteristics of copyright

- 1) Creation of written law.
- 2) Multiple rights.
- 3) The work must be original.
- 4) Copyright exists in expression of idea and not the idea itself.

## 3. Trademarks:

Trademark is a wide identity of specific good and services, permitting differences to be made among different trades. It is a territorial right, which needs registrations. Registration is valid for 10 years and can be renewable. The trademark or service mark can be registered in the form of a label, a letterman device, a word or words, a heading, a number or any combination of these, designs, logos, symbols and sounds.

Trademark is not for a design, for example, the shape of a bottle in which a product is marketed, will not be registered as a trademark.

**Example:**



### Functions of Trademark:

- 1) The goods are identified by their trademarks. Ex: "santoor" is a trademark of santoor soap.
- 2) Trademark carries an indication of quality of goods and customer's satisfaction.
- 3) Trademark act as silent promoter of sales.
- 4) It serves as a medium for advertising the goods

The trademarks should be distinctive, i.e., it must be able to distinguish from one good to the other. The term generally used for trademarks are generic, descriptive and suggestive.

The terms which are not distinguishing the goods or services from others are called generic terms and are eligible for protection under trademarks.

The terms which are descriptive should clearly indicate the specific purpose, physical characteristics, functions and the end use of the product.

The suggestive terms do describe the goods at the first sight, but with an element of imagination or perception the nature of the goods can be understood. Therefore, the suggestive marks are distinctive and are protected as trademarks. Arbitrary marks and fanciful marks are distinctive hence accepted for registration.

Besides this, there is also a certification mark by Bureau of Indian Standards (BIS or ISI) which guarantees that the holder's product bearing the mark has met certain standards or requirement which adds considerably to the market value and to a great value in the export trade.

### Characteristics of Trademark:

Based on various judicial verdicts, certain essential characteristics of trademark may be highlighted as under:

1. The definition of "trademark" and "mark" includes within itself trade name under which articles, goods are sold. For ex: Kirloskar, Bajaj, Godrej etc.
2. Trademark is a kind of property and it is entitled to protection under law.
3. A trademark is generally transmitted in connection with the goodwill of a business.
4. A Trademark may be registered or unregistered. Registration ensures ownership of trademark and it enables him to avoid proving his title against any infringement or the mark. But in case of unregistered trademark the only way in which the owner can protect the infringement is the passing off action.
5. Trademark has many species such as service marks, certification marks, collective marks, and well known trademark.
6. Distinctiveness is the basic quality of a trademark.

### Features of a Trademark:

Trademark should possess the following features:

1. It should be easy to "pronounce and remember".
2. The device should be described by a single word.
3. It should be spelt correctly and write readably.
4. It should be short.
5. It should be attractive to eye.
6. It should satisfy the requirement of registration.

**Various Form of Trademark:**

A trademark can be found in various forms:

- 1) Brand – For ex. PERRY brand rice, TORTOISE Mosquito coil etc.
- 2) Letters – For ex. LG, GM, IBM letter marks.
- 3) Label and Tickets – For ex. WRANGLER Jeans, PENTLOON Shirts, ZODIAC ties.
- 4) Numerals – For ex. 303 capsules, 555 cigarettes.
- 5) Symbol or Logos – For ex. TATA, IDBI, ICICI, LIC etc.
- 6) Containers – A container in a three dimensional form may be treated as a mark.
- 7) Shape of goods – For ex. Shape of soap, shape of tooth brush.
- 8) Packaging – A packaging can also get trademark for ex. A pouch containing tooth paste or cream with a distinctive feature.
- 9) Title – A title of book or magazine is also qualified to be a valid trademark, for ex. India Today, Outlook, Famine.

**4. Trade secret:**

A trade secret is the information which is kept confidential as a secret. This information cannot be accessed by any other people than the owner and this gives valuable commercial advantages over the competitors. Generally, the trade secrets are not registered but only kept confidential.

These are given limited legal protection, against abuse by the employee or contractor, by keeping confidentiality and trust.

The trade secret may be formulae or programs or methods or processes or data collected or test results or any analysis. These may be related to technical processes, designs, list of suppliers, plant facilities or customers etc. This information should not be disclosed or used by any other person.