

CONSTITUTION LAW-II

ANSWER BANK

iPad Reading Edition - Textbook and Leading Case Highlights Merged into
the Answers

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1. Explain the constitutional position, powers and functions of the President of India, with special reference to aid and advice of the Council of Ministers.

Answer headings retained and discussed below

1. President as constitutional head of the Union
2. Articles 52, 53, 74, 75, 77 and 78
3. Executive, legislative, financial and judicial powers
4. Emergency powers under Articles 352, 356 and 360
5. Aid and advice of Council of Ministers
6. Discretion and nominal executive position
7. Conclusion

President as constitutional head of the Union

The important examination point is that the President is the **head of the Republic**, but the executive power is exercised in accordance with the Constitution and generally through ministers. The President represents the constitutional continuity of the Union and **not a personal source of political power**.

The President is the formal head of the Union. The Constitution vests Union executive power in the President, but India follows the parliamentary system, so this power is normally exercised through the elected Council of Ministers. Thus the President gives constitutional form to the decisions of the responsible government and ensures that government action is carried out in the name of the Union.

Articles 52, 53, 74, 75, 77 and 78

Article 52 creates the office of the President and Article 53 vests the executive power of the Union in him. Article 74 provides for aid and advice of the Council of Ministers headed by the Prime Minister. Article 75 deals with appointment and collective responsibility of ministers. Article 77 requires Union executive action to be expressed in the name of the President, while Article 78 enables the President to seek information from the Prime Minister and require matters to be placed before the Council of Ministers.

Executive, legislative, financial and judicial powers

The important point to remember is the classification of powers: **executive appointments** and administration, **legislative powers** such as summoning Parliament and ordinances, **financial control** through recommendation for money Bills and annual financial statement, **judicial powers** such as pardon under Article 72, and **emergency powers** under Articles 352, 356 and 360.

In the former Rulers' Privy Purse case, the Court treated the President's derecognition order as ultra vires because **executive action cannot disregard**

constitutional guarantees. This point is useful to show that even high executive action must remain within the Constitution.

Executive powers include appointments of the Prime Minister, ministers, Governors, judges and other constitutional authorities. Legislative powers include summoning, proroguing and dissolving the Lok Sabha, addressing Parliament, giving assent to Bills and issuing Ordinances under Article 123. Financial powers include causing the Budget to be laid before Parliament and recommending Money Bills. Judicial powers include pardon, reprieve, respite, remission, suspension or commutation under Article 72.

Emergency powers under Articles 352, 356 and 360

The President is the authority through whom emergency powers are formally exercised. National Emergency under Article 352, President Rule under Article 356 and Financial Emergency under Article 360 are all proclaimed in the President name. However, these are not personal political powers. They must rest on constitutional conditions, ministerial advice, parliamentary approval and, after modern case law, judicial review where mala fides or irrelevant material is shown.

Aid and advice of Council of Ministers

After the 42nd and 44th Amendments, the President **may once require reconsideration** of ministerial advice, but after reconsideration he is **bound by it**. Thus the President's satisfaction is ordinarily constitutional satisfaction based on ministerial advice, **not personal satisfaction**.

The expression aid and advice is central to the parliamentary form of government. After the 42nd and 44th Amendments, the President is bound by the advice of the Council of Ministers, though he may once require the Council to reconsider. Once the advice is reconsidered and returned, he must act according to it. This ensures that real power remains with ministers who are answerable to the Lok Sabha.

Discretion and nominal executive position

The President is often called the nominal executive because he does not normally act on personal discretion. Still, he is not useless. In situations such as appointment of a Prime Minister in a hung Parliament, sending advice for reconsideration, seeking information under Article 78, or warning the government against unconstitutional action, the President acts as a constitutional sentinel within limited boundaries.

Conclusion

The President is therefore neither a ceremonial rubber stamp nor an independent ruler. The office preserves continuity, legality and dignity of the Union executive, while real political responsibility remains with the Council of Ministers.

S.R. Bommai v. Union of India

Facts: S.R. Bommai was Chief Minister of Karnataka. His ministry was dismissed under Article 356 and the Assembly was dissolved. Similar proclamations concerning Meghalaya, Nagaland and other States were also before the Court. The controversy arose because elected State governments had been removed on the basis of the Governor's report and political assessment of majority.

Issue: Whether the President's proclamation under Article 356 is immune from judicial review and whether an Assembly may be dissolved before constitutional safeguards are satisfied.

Held: The Supreme Court held that the proclamation under Article 356 is subject to judicial review. The President's satisfaction is not absolute; the Court may examine whether relevant material existed and whether the action was mala fide, arbitrary or based on irrelevant material. Majority should normally be tested on the floor of the House, not in Raj Bhavan.

Principle laid down: Federalism and democracy are part of the basic structure. Article 356 is an emergency power and cannot be used as a political weapon against State governments.

Ram Jawaya Kapur v. State of Punjab

Facts: The Punjab Government sought to take over the business of publishing and selling school textbooks. Publishers challenged the action, contending that the State was acting without legislative authority and interfering with private trade. The case became important because it explained the scope of executive power in a parliamentary system.

Issue: Whether executive action requires a prior law in every case and how executive power is related to legislative power under the Constitution.

Held: The Supreme Court held that executive power is co-extensive with legislative power, meaning the executive may act in matters on which the legislature can make law, unless its action violates law or fundamental rights. However, when rights or obligations are to be altered, legal authority is necessary.

Principle laid down: Executive power in India is broad but not arbitrary. It is controlled by the Constitution, statutes and fundamental rights.

Shamsher Singh v. State of Punjab

Facts: Two judicial officers challenged orders affecting their services. The case required the Supreme Court to decide whether powers vested in the President or Governor are personal powers or whether they are exercised on ministerial advice. The controversy arose in the background of appointments and removals made formally in the name of constitutional heads.

Issue: Whether the President and Governors act personally under the Constitution or ordinarily act on the aid and advice of the Council of Ministers.

Held: A seven-Judge Bench held that the President and the Governor are constitutional heads. Except in a few limited areas where the Constitution expressly permits discretion, they exercise their powers on the aid and advice of the Council of Ministers. The real executive power belongs to the elected government responsible to the legislature.

Principle laid down: India follows the cabinet system of responsible government. The President and Governor are not parallel centres of political authority.

U.N.R. Rao v. Indira Gandhi

Facts: After dissolution of the Lok Sabha, a challenge was raised to the continuance of the Council of Ministers headed by the Prime Minister. It was argued that Article 75(3), which makes the Council collectively responsible to the House of the People, could not operate when the Lok Sabha itself was dissolved.

Issue: Whether the Council of Ministers must cease to exist immediately after dissolution of Lok Sabha.

Held: The Supreme Court held that the Council of Ministers continues even after dissolution until a new Lok Sabha is constituted and a new government assumes office. Otherwise the Union would be left without a responsible executive, which the Constitution never intended.

Principle laid down: Collective responsibility operates within a continuing parliamentary system; the executive does not disappear during the interval between dissolution and formation of the next House.

Kehar Singh v. Union of India

Facts: Kehar Singh was convicted and sentenced to death in the Indira Gandhi assassination case. A mercy petition was submitted to the President under Article 72. The petition raised questions about whether the President could examine the merits of the conviction while considering pardon, reprieve, respite or remission.

Issue: What is the scope of the President pardoning power under Article 72 and whether judicial review is available over its exercise.

Held: The Supreme Court held that the President may examine the evidence and merits while considering mercy. The power is constitutional and independent, but not wholly beyond judicial control. Courts cannot sit in appeal over the mercy decision, but may interfere where the exercise is mala fide, arbitrary, irrelevant or discriminatory.

Principle laid down: Pardoning power is a constitutional safety valve, but it must be exercised for constitutional purposes and not as private or political favour.

Maru Ram v. Union of India

Facts: Convicts sentenced to life imprisonment challenged restrictions on premature release and remission. The case arose after changes to the Criminal Procedure Code limited release of certain life convicts before completion of a specified period. The petitioners also invoked the President and Governor mercy powers.

Issue: Whether statutory restrictions can control remission and how Articles 72 and 161 operate in relation to criminal sentences.

Held: The Supreme Court upheld the legislative scheme but stated that the constitutional powers under Articles 72 and 161 remain unaffected. However, these powers are to be exercised on ministerial advice and not personally by the President or Governor.

Principle laid down: Mercy powers are constitutional powers, but in a parliamentary system they are exercised on the advice of the elected government.

2. Explain the powers and functions of the Governor under the Constitution of India.

Answer headings retained and discussed below

1. Governor as constitutional head of the State
2. Articles 153, 154, 163, 164, 174, 200 and 356
3. Executive, legislative and financial powers
4. Discretionary powers
5. Appointment of Chief Minister and assent to Bills
6. Governor report under Article 356
7. Misuse and constitutional limitations
8. Conclusion

Governor as constitutional head of the State

The important textbook point is that **Article 155** makes the Governor an appointee of the President and **Article 156** states that he holds office during the pleasure of the President. However, as explained in B.P. Singhal, this pleasure is **not an arbitrary power** to remove a Governor for capricious, unreasonable or mala fide reasons.

Shamsher Singh is important here because it says that the Governor, like the President, is a **constitutional head** and **generally acts on the aid and advice** of the Council of Ministers. Therefore, the Governor's office cannot be understood as an independent parallel executive authority.

The Governor is the constitutional head of the State. Executive power of the State is vested in him, but in the parliamentary system he normally acts on the aid and advice of the State Council of Ministers. The Governor is expected to protect constitutional government in the State and not to function as an agent of party politics.

Articles 153, 154, 163, 164, 174, 200 and 356

Article 153 provides for a Governor for every State and Article 154 vests State executive power in him. Article 163 provides for a Council of Ministers to aid and advise him except where discretion is constitutionally permitted. Article 164 concerns appointment of the Chief Minister and ministers. Article 174 gives power relating to sessions of the Legislature. Article 200 deals with assent to Bills, and Article 356 connects the Governor report with President Rule.

Executive, legislative and financial powers

Executive powers include appointment of the Chief Minister, other ministers, Advocate General and State officers. Legislative powers include summoning, proroguing and dissolving the Legislative Assembly, addressing the Legislature, reserving Bills and giving assent. Financial functions include causing the State Budget to be laid before the Legislature and recommending Money Bills.

Discretionary powers

Discretion is **narrow** and **must be traced to the Constitution**. It may arise in matters such as choosing a Chief Minister in a hung Assembly, reserving a Bill for the President, reporting failure of constitutional machinery, or special responsibilities in some States. It **cannot be converted into general political discretion**.

The Governor has limited discretionary space, for example in inviting a person to form government when no party has clear majority, reserving certain Bills for the President, or submitting a report under Article 356. Such discretion must be guided by constitutional necessity, objective material and democratic principles. It cannot be used to destabilise an elected ministry.

Appointment of Chief Minister and assent to Bills

The Governor appoints the person who appears able to command majority in the Legislative Assembly. In doubtful cases, the proper test is floor test, not the Governor subjective assessment. In relation to Bills, the Governor may assent, withhold assent, return a non-Money Bill for reconsideration, or reserve the Bill for Presidential consideration where the Constitution so permits.

Governor report under Article 356

S.R. Bommai must be connected with this heading. The Governor's report is relevant material, but it is **not beyond judicial review**. If the proclamation is based on **irrelevant, mala fide or no material**, the Court can examine it and restore constitutional government where appropriate.

A Governor report may become the basis for President Rule if constitutional machinery in the State has failed. This is a serious constitutional step because it affects an elected State government. Therefore the report must be based on relevant facts, not political disagreement, and courts may examine whether the material justified the proclamation.

Misuse and constitutional limitations

Misuse arises when Governors delay Bills, invite minority governments without floor tests, or recommend President Rule on partisan grounds. Constitutional limitations come from responsible government, federalism, judicial review and the requirement that majority must normally be tested in the House.

Conclusion

The Governor is important for constitutional balance, but the office retains legitimacy only when it remains neutral, restrained and faithful to parliamentary democracy.

Shamsher Singh v. State of Punjab

Facts: Two judicial officers in Punjab challenged orders affecting their services and argued that the Governor, as constitutional head, had to act personally in matters of appointment

and removal. The case required the Court to explain the real working of the President and Governor under a parliamentary Constitution.

Issue: Whether the President or Governor exercises executive powers personally, or only on the aid and advice of the Council of Ministers.

Held: The Supreme Court held that the President and Governor are constitutional heads and ordinarily act on the aid and advice of the Council of Ministers. Executive action taken in their name is the action of the elected government, except in narrowly recognised areas of constitutional discretion.

Principle laid down: India follows responsible parliamentary government. The real executive is the Council of Ministers; the President or Governor is the formal constitutional head.

B.P. Singhal v. Union of India

Facts: Several Governors were removed after a change in the Union Government. The removals were challenged as arbitrary. The Court examined whether Governors hold office purely at the pleasure of the President and whether that pleasure is entirely immune from constitutional control.

Issue: Whether Governors can be removed without reasons and whether such removal is subject to judicial review.

Held: The Supreme Court held that a Governor may be removed without assigning reasons, but removal cannot be arbitrary, capricious, mala fide or based on irrelevant grounds. A Governor is not an employee of the Union and cannot be removed merely because the Central Government has changed.

Principle laid down: The pleasure doctrine in relation to Governors is controlled by constitutionalism and federal dignity.

Nabam Rebia v. Deputy Speaker

Facts: In Arunachal Pradesh, the Governor advanced the Assembly session and indicated the agenda involving removal of the Speaker. Political instability followed, including proceedings against legislators and changes in the government. The dispute reached the Supreme Court on the scope of the Governor powers and the Speaker role.

Issue: Whether the Governor can interfere with the functioning of the Assembly and whether the Speaker can decide disqualification petitions while a notice for his removal is pending.

Held: The Supreme Court held that the Governor cannot use discretion to control the legislative agenda except where the Constitution expressly permits. It also held that a Speaker facing a pending notice of removal should not decide anti-defection matters during that period.

Principle laid down: Constitutional functionaries must act within defined limits; neutrality of the Speaker and Governor is essential to parliamentary democracy.

Rameshwar Prasad v. Union of India

Facts: After elections in Bihar in 2005, no government was formed. The Governor sent reports alleging attempts at unethical defections and recommended dissolution of the Assembly before it had even met. The President issued a proclamation dissolving the Assembly, which was challenged.

Issue: Whether Article 356 can be used to dissolve an Assembly on apprehension that defections may occur before a government is formed.

Held: The Supreme Court held the dissolution unconstitutional because it was based on assumptions and extraneous considerations. However, as fresh elections had already taken place, the Court did not restore the dissolved Assembly.

Principle laid down: Article 356 cannot be invoked on mere political suspicion. The Governor report must be constitutionally relevant and not speculative.

3. Explain collective responsibility of the Council of Ministers or Cabinet under the Indian Constitution.

Answer headings retained and discussed below

1. Meaning
2. Article 75(3) and Article 164(2)
3. Responsibility to lower House
4. Cabinet solidarity
5. Individual responsibility distinguished
6. Loss of majority
7. Conclusion

Meaning

Collective responsibility means that the Council of Ministers acts as one political unit. A decision of the Cabinet is treated as the decision of the whole ministry, and the ministry must retain the confidence of the lower House to continue in office.

Article 75(3) and Article 164(2)

The important textbook formulation is that collective responsibility makes the Council of Ministers a **single political body**. Ministers must ordinarily **support Cabinet decisions publicly**; if a minister cannot support a decision, the proper constitutional course is **resignation**.

Article 75(3) makes the Union Council of Ministers collectively responsible to the Lok Sabha. Article 164(2) applies the same principle to the State Council of Ministers in relation to the Legislative Assembly. These provisions make the executive answerable to the elected House.

Responsibility to lower House

The Council of Ministers remains in office only so long as it enjoys majority support in the Lok Sabha or the Legislative Assembly. The upper House may discuss, criticise and question the government, but the decisive test of confidence is in the lower House.

Cabinet solidarity

Cabinet discussions are **confidential** because open disagreement within the Cabinet would weaken responsible government. The principle does not mean that every minister personally agrees with every policy; it means the ministry **stands or falls together** before the lower House.

Cabinet solidarity requires ministers to support government decisions publicly, even if they disagreed privately. If a minister cannot accept a policy, the constitutional course is resignation. This ensures unity, secrecy of deliberations and a single accountable government line.

Individual responsibility distinguished

Individual responsibility means a minister is answerable for his department and may be removed or asked to resign for personal misconduct or departmental failure. Collective responsibility is wider; it means the whole ministry stands or falls together on loss of confidence.

Loss of majority

When the government loses majority, the ministry must resign or advise dissolution according to constitutional practice. In doubtful cases, majority should be tested on the floor of the House, because the House is the proper place to determine political confidence.

Conclusion

Collective responsibility is the living link between executive power and democratic control. It prevents ministers from exercising power without answerability.

Shamsher Singh v. State of Punjab

Facts: Two judicial officers in Punjab challenged orders affecting their services and argued that the Governor, as constitutional head, had to act personally in matters of appointment and removal. The case required the Court to explain the real working of the President and Governor under a parliamentary Constitution.

Issue: Whether the President or Governor exercises executive powers personally, or only on the aid and advice of the Council of Ministers.

Held: The Supreme Court held that the President and Governor are constitutional heads and ordinarily act on the aid and advice of the Council of Ministers. Executive action taken in their name is the action of the elected government, except in narrowly recognised areas of constitutional discretion.

Principle laid down: India follows responsible parliamentary government. The real executive is the Council of Ministers; the President or Governor is the formal constitutional head.

U.N.R. Rao v. Indira Gandhi

Facts: After dissolution of the Lok Sabha, a challenge was raised to the continuance of the

Council of Ministers headed by the Prime Minister. It was argued that Article 75(3), which makes the Council collectively responsible to the House of the People, could not operate when the Lok Sabha itself was dissolved.

Issue: Whether the Council of Ministers must cease to exist immediately after dissolution of Lok Sabha.

Held: The Supreme Court held that the Council of Ministers continues even after dissolution until a new Lok Sabha is constituted and a new government assumes office. Otherwise the Union would be left without a responsible executive, which the Constitution never intended.

Principle laid down: Collective responsibility operates within a continuing parliamentary system; the executive does not disappear during the interval between dissolution and formation of the next House.

S.R. Bommai v. Union of India

Facts: S.R. Bommai was the Chief Minister of Karnataka. His government was dismissed under Article 356 after the Governor reported that it had lost majority support. Similar proclamations concerning other States were also examined together, including situations arising after the Babri Masjid demolition. The dispute therefore concerned the real constitutional limits of President Rule and the extent to which the Union could use Article 356 against an elected State government.

Issue: Whether the President satisfaction under Article 356 is immune from judicial review and whether an Assembly may be dissolved merely on the Governor report without testing majority on the floor of the House.

Held: The Supreme Court held that a proclamation under Article 356 is subject to judicial review. The Court can examine whether relevant material existed, whether the material was mala fide or wholly extraneous, and whether constitutional machinery had truly failed. Majority must normally be tested on the floor of the House. Dissolution of the Assembly before parliamentary approval may be unconstitutional.

Principle laid down: Article 356 is an exceptional power and not a political weapon. Federalism and secularism form part of the basic structure, and elected State governments cannot be displaced on irrelevant or partisan grounds.

4. Give the composition and functions of the Union Legislature or Parliament of India.

Answer headings retained and discussed below

1. Article 79 and structure of Parliament
2. Rajya Sabha under Article 80
3. Lok Sabha under Article 81
4. Duration and sessions
5. Legislative, financial and executive-control functions
6. Constituent, electoral and quasi-judicial functions
7. Conclusion

Article 79 and structure of Parliament

A useful textbook point is that Parliament at the Union level consists of the **President, Rajya Sabha and Lok Sabha**. The President is part of Parliament for legislative purposes although he is **not a member** of either House.

Article 79 provides that Parliament consists of the President and two Houses, namely the Council of States and the House of the People. The President is not a member of either House but is part of Parliament because Bills require Presidential assent and Parliament is summoned and prorogued in the President name.

Rajya Sabha under Article 80

Rajya Sabha is a **permanent House**; **one-third** of its members retire every two years. Its special federal powers include **Article 249**, where it may authorise Parliament to legislate on a State List matter in national interest, and **Article 312**, where it may initiate creation of an All India Service.

The Rajya Sabha represents the States and Union Territories. It is a permanent House and is not dissolved; one-third of its members retire every two years. Its members are elected by elected members of State Legislative Assemblies by proportional representation, and some members are nominated for special knowledge in fields like literature, science, art and social service.

Lok Sabha under Article 81

Lok Sabha enjoys special weight in financial and executive-control matters. A **money Bill** must be introduced only in Lok Sabha, and a **no-confidence motion** belongs to Lok Sabha because the Council of Ministers is **responsible** to it.

The Lok Sabha is the directly elected House of the People. It represents the people through territorial constituencies and is the centre of democratic accountability. The Council of Ministers is collectively responsible to it, which gives Lok Sabha a superior political position in the parliamentary system.

Duration and sessions

Article 83 deals with duration of Houses. Lok Sabha normally continues for five years unless dissolved earlier. Rajya Sabha is continuing. Article 85 requires that six months must not elapse between two sessions, ensuring that the executive remains regularly answerable to Parliament.

Legislative, financial and executive-control functions

Parliament makes laws on Union List subjects, Concurrent List subjects and other matters permitted by the Constitution. It controls finance through Budget approval, Money Bills, taxation and appropriation. It controls the executive through questions, debates, motions, committees, no-confidence motions and discussions on policy.

Constituent, electoral and quasi-judicial functions

Parliament exercises constituent power under Article 368 to amend the Constitution. It participates in elections of the President and Vice-President. It also performs quasi-judicial functions such as impeachment of the President, removal processes for constitutional authorities and punishment for breach of privilege.

Conclusion

Parliament is not merely a law-making body; it is the central democratic institution through which representation, accountability, financial control and constitutional change operate.

Kuldip Nayar v. Union of India

Facts: Amendments removed the domicile requirement for Rajya Sabha candidates and introduced open ballot for Rajya Sabha elections. The petitioners argued that these changes damaged federalism and the secrecy of voting.

Issue: Whether deletion of domicile and open ballot for Rajya Sabha elections violated the basic structure.

Held: The Supreme Court upheld the amendments. It held that Indian federalism is a basic feature but not a rigid classical federation. Secrecy of ballot is important, but not absolute; open ballot may be permitted to prevent corruption and cross-voting.

Principle laid down: Democracy, federalism and free elections must be understood in the Indian constitutional context. Electoral reforms within Parliament's competence do not automatically damage basic structure.

Raja Ram Pal v. Speaker, Lok Sabha

Facts: Members of Parliament were expelled after a sting operation showed alleged acceptance of money for asking questions in Parliament. They challenged the expulsions, arguing that parliamentary privilege decisions were beyond judicial review.

Issue: Whether the power of the House to punish for contempt or breach of privilege is subject to judicial review.

Held: The Supreme Court held that parliamentary proceedings and privileges are not completely immune. Courts may examine illegality, unconstitutionality, gross irrationality or violation of fundamental constitutional mandates, while respecting internal autonomy of the House.

Principle laid down: Parliamentary privilege is functional, not absolute. It exists to protect legislative work, not to defeat constitutional supremacy.

Kihoto Hollohan v. Zachillhu

Facts: The Tenth Schedule was inserted to curb political defections. Its validity was challenged on the ground that the Speaker, being a political officer, could not be made the adjudicating authority and that judicial review had been excluded.

Issue: Whether the Tenth Schedule is constitutional and whether decisions of the Speaker under it are subject to judicial review.

Held: The Supreme Court upheld the Tenth Schedule but struck down the finality clause to the extent it excluded judicial review. The Speaker acts as a tribunal for anti-defection purposes, and his decision can be reviewed for mala fides, perversity, violation of

constitutional mandate or natural justice.

Principle laid down: Anti-defection law is valid, but the Speaker decision is not above the Constitution.

Kesavananda Bharati v. State of Kerala

Facts: The head of a religious mutt challenged Kerala land reform laws and constitutional amendments affecting property rights and judicial review. A thirteen-Judge Bench considered the full scope of Article 368.

Issue: Whether Parliament amending power under Article 368 is unlimited.

Held: The Supreme Court held that Parliament may amend any part of the Constitution, including fundamental rights, but cannot alter or destroy the basic structure of the Constitution. The exact list was not closed, but supremacy of Constitution, republican democracy, secularism, federalism and judicial review were recognised as examples.

Principle laid down: The basic structure doctrine is the central limitation on constitutional amendment.

5. Explain parliamentary privileges and immunities of members of Parliament and State Legislatures.

Answer headings retained and discussed below

1. Meaning and purpose
2. Articles 105 and 194
3. Freedom of speech inside the House
4. Immunity for speeches and votes
5. Power to punish breach of privilege
6. Individual and collective privileges
7. Limitations and judicial review
8. Conclusion

Meaning and purpose

Parliamentary privileges are special rights, immunities and powers necessary for legislatures and their members to discharge functions freely. Their purpose is not personal benefit, but independence of the House, fearless debate and protection of legislative dignity.

Articles 105 and 194

The important distinction is this: **Article 105** protects parliamentary freedom of speech within the House and committees, while **Article 19(1)(a)** is a general fundamental right. **Article 105** is functional and institutional; it exists to enable **fearless legislative debate, not to create private immunity** from criminal law.

Article 105 deals with powers, privileges and immunities of Parliament and its members. Article 194 applies similar protection to State Legislatures and their

members. Both provisions protect freedom of speech in the House and immunity for votes and proceedings in the legislature.

Freedom of speech inside the House

In Sita Soren v. Union of India, the Supreme Court clarified that the immunity for 'anything said or any vote given' does not protect bribery connected with asking a question or casting a vote. The Constitution protects legislative speech and voting inside the House, not corrupt bargains made outside the House for exercising those functions.

Members enjoy wider freedom of speech inside the House than ordinary citizens enjoy outside. This enables them to criticise government and discuss public issues without fear of civil or criminal action, subject to constitutional provisions and the rules and standing orders of the House.

Immunity for speeches and votes

A member cannot be made liable in court for anything said or any vote given in the House or its committees. This immunity protects legislative conduct, but it does not mean that corruption, bribery or acts outside the legislative function are automatically protected.

Power to punish breach of privilege

The House may punish breach of privilege by **imprisonment, admonition, reprimand, suspension or expulsion**. However, this privilege power is **not above the Constitution** and can be judicially reviewed where jurisdictional illegality or substantive unconstitutionality is shown.

Each House has power to protect itself against contempt or breach of privilege. This may include reprimand, admonition, suspension or in proper cases other action. The power exists to ensure that the House can function effectively, not to suppress fair criticism.

Individual and collective privileges

Individual privileges include freedom of speech in the House and protection from legal proceedings for legislative acts. Collective privileges belong to the House as an institution, such as regulating its proceedings, excluding strangers, maintaining order and punishing contempt.

Limitations and judicial review

Privileges are not above the Constitution. Courts may examine whether the legislature acted within constitutional limits, whether fundamental constitutional requirements were ignored, and whether the claimed privilege destroys basic legality or judicial power.

Conclusion

Parliamentary privilege must be understood as functional necessity. It protects legislative independence, but it cannot become a shield for illegality or arbitrary power.

M.S.M. Sharma v. Sri Krishna Sinha

Facts: A journalist published parts of Bihar Assembly proceedings that had been ordered to be expunged. The Assembly treated this as breach of privilege. The journalist invoked freedom of speech and press.

Issue: Whether legislative privilege under Article 194 can prevail over freedom of speech claims in respect of publication of Assembly proceedings.

Held: The Supreme Court held that the privileges of the House could protect legislative proceedings and disciplinary control. In the facts of the case, the claim of privilege prevailed over the Article 19 argument.

Principle laid down: Privileges exist to preserve the authority and functioning of legislatures, but later cases have clarified that privilege is still subject to constitutional limitations.

Keshav Singh's case

Facts: Keshav Singh was committed to prison by the Uttar Pradesh Legislative Assembly for breach of privilege. When a habeas corpus petition was entertained by the High Court and bail was granted, the Assembly initiated action against the judges and lawyers. The President referred the matter to the Supreme Court.

Issue: How far legislative privilege extends and whether courts can examine detention ordered by a legislature.

Held: The Supreme Court held that legislatures have privilege powers, but those powers are not unlimited. Courts can examine whether a detention or privilege action is constitutionally valid, especially where personal liberty and jurisdictional limits are involved.

Principle laid down: Legislatures and courts must respect each other, but legislative privilege cannot become uncontrolled power over liberty.

P.V. Narasimha Rao v. State

Facts: Members of Parliament were accused of receiving bribes to vote against a no-confidence motion. A majority held that MPs who actually voted in Parliament enjoyed immunity under Article 105(2) in relation to that vote, while bribe-givers and a member who did not vote were not protected.

Issue: Whether Article 105(2) protects MPs from criminal prosecution for bribery connected with a vote in Parliament.

Held: The majority gave broad immunity to bribe-taking MPs if the bribe was connected with speech or vote in the House. This reasoning was later overruled in *Sita Soren*. The minority had warned that bribery is not part of legislative freedom.

Principle laid down: The older position treated the vote as immunised; the current law after *Sita Soren* is that bribery is not protected by legislative privilege.

Raja Ram Pal v. Speaker, Lok Sabha

Facts: Members of Parliament were expelled after a sting operation showed alleged acceptance of money for asking questions in Parliament. They challenged the expulsions, arguing that parliamentary privilege decisions were beyond judicial review.

Issue: Whether the power of the House to punish for contempt or breach of privilege is

subject to judicial review.

Held: The Supreme Court held that parliamentary proceedings and privileges are not completely immune. Courts may examine illegality, unconstitutionality, gross irrationality or violation of fundamental constitutional mandates, while respecting internal autonomy of the House.

Principle laid down: Parliamentary privilege is functional, not absolute. It exists to protect legislative work, not to defeat constitutional supremacy.

Amarinder Singh v. Punjab Vidhan Sabha

Facts: Captain Amarinder Singh was expelled from the Punjab Legislative Assembly on allegations relating to acts from an earlier term. The Assembly claimed privilege jurisdiction. The issue was whether privilege could be used to punish conduct not obstructing the present functioning of the House.

Issue: Whether a legislature can expel a member for alleged past conduct not directly connected with obstruction of legislative functions.

Held: The Supreme Court held that privilege powers must have a nexus with functioning of the House. The expulsion was set aside because the alleged acts did not constitute breach of privilege affecting the House in the required constitutional sense.

Principle laid down: Privilege is not a general disciplinary or punitive power; it must protect legislative functioning.

6. Explain the role, powers and constitutional position of the Speaker, especially in anti-defection matters.

Answer headings retained and discussed below

1. Speaker as presiding officer
2. Articles 93 to 95, Article 178 and Tenth Schedule
3. Conduct of proceedings and discipline
4. Money Bill certification and casting vote
5. Committee role
6. Speaker as tribunal under Tenth Schedule
7. Neutrality and judicial review
8. Conclusion

Speaker as presiding officer

The Speaker is the constitutional presiding officer of the House. He maintains order, permits members to speak, interprets rules of procedure and represents the dignity of the House. Although elected on a party ticket, the office demands impartiality after election.

Articles 93 to 95, Article 178 and Tenth Schedule

Articles 93 to 95 deal with the Speaker and Deputy Speaker of the Lok Sabha, while Article 178 deals with corresponding offices in State Legislative Assemblies. Under the Tenth Schedule, the Speaker or Chairman decides questions of disqualification for defection, making the office important beyond mere procedure.

Conduct of proceedings and discipline

The Speaker controls the agenda inside the House, applies rules, preserves order and may discipline members according to parliamentary procedure. This power is essential because a legislature cannot perform law-making or accountability functions if proceedings are disorderly.

Money Bill certification and casting vote

Certification of a Money Bill gives the Speaker a decisive role in financial procedure because a Money Bill has a special route and the Rajya Sabha has limited power over it. The Speaker also exercises casting vote in the event of equality of votes, though this is used according to constitutional convention and neutrality.

Committee role

The Speaker nominates or supervises many committees and gives procedural direction to committee functioning. Committees allow detailed scrutiny of Bills, expenditure and executive action, so the Speaker indirectly strengthens legislative oversight.

Speaker as tribunal under Tenth Schedule

Keisham Meghachandra is the exam point: a Speaker deciding disqualification under the Tenth Schedule **acts as a tribunal** and must decide within a **reasonable time**. Ordinarily, **three months** is treated as the outer limit unless exceptional circumstances exist.

Under the Tenth Schedule the Speaker decides whether a member has incurred disqualification for defection. This is a quasi-judicial function, so the decision must follow fairness, relevant material and constitutional standards.

Neutrality and judicial review

Kihoto Hollohan keeps **judicial review alive** despite the finality clause. Courts normally wait until the Speaker gives a decision, but **mala fides, perversity**, constitutional violation or **unreasonable delay** can justify judicial intervention.

Because the Speaker usually comes from the ruling party, neutrality is a constant constitutional concern. Courts have recognised that Speaker decisions under the Tenth Schedule are subject to judicial review on grounds such as mala fides, perversity, violation of constitutional mandate and breach of natural justice.

Conclusion

The Speaker is indispensable for orderly functioning of the House, but in anti-defection matters his authority is controlled by constitutional discipline. The Speaker is a presiding

officer inside the House and a quasi-judicial tribunal under the Tenth Schedule; therefore neutrality, prompt decision-making and judicial review are essential.

Kihoto Hollohan v. Zachillhu

Facts: The Tenth Schedule introduced anti-defection law through the 52nd Amendment. Its validity was challenged on the ground that it violated democratic rights, free speech of legislators and judicial independence because the Speaker was made the deciding authority.

Issue: Whether the anti-defection law and the Speaker's role under the Tenth Schedule are constitutionally valid.

Held: The Supreme Court upheld paragraph 2 of the Tenth Schedule. It held that anti-defection law does not violate Articles 105 or 194 merely because it regulates voting against party discipline. However, the Speaker's decision remains subject to judicial review on limited grounds.

Principle laid down: The Tenth Schedule is valid, but finality clauses do not completely exclude judicial review.

Nabam Rebia v. Deputy Speaker

Facts: In Arunachal Pradesh, the Governor advanced the Assembly session and indicated the agenda involving removal of the Speaker. Political instability followed, including proceedings against legislators and changes in the government. The dispute reached the Supreme Court on the scope of the Governor powers and the Speaker role.

Issue: Whether the Governor can interfere with the functioning of the Assembly and whether the Speaker can decide disqualification petitions while a notice for his removal is pending.

Held: The Supreme Court held that the Governor cannot use discretion to control the legislative agenda except where the Constitution expressly permits. It also held that a Speaker facing a pending notice of removal should not decide anti-defection matters during that period.

Principle laid down: Constitutional functionaries must act within defined limits; neutrality of the Speaker and Governor is essential to parliamentary democracy.

7. Explain the anti-defection law in India with reference to the Tenth Schedule.

Answer headings retained and discussed below

1. Meaning and need
2. 52nd Constitutional Amendment, 1985
3. Articles 102(2), 191(2) and Tenth Schedule
4. Grounds of disqualification
5. Voluntarily giving up membership

6. Voting contrary to whip
7. Independent and nominated members
8. Merger exception
9. Role of Speaker and judicial review
10. Criticism and conclusion

Meaning and need

Defection means a legislator leaving the political loyalty on which he was elected or acting against the party direction in a manner prohibited by the Tenth Schedule. The 52nd Constitutional Amendment, 1985 inserted the anti-defection law to control frequent floor-crossing, unstable ministries and the practice of changing parties for office or personal advantage.

52nd Constitutional Amendment, 1985

The 52nd Constitutional Amendment, 1985 inserted the Tenth Schedule to curb political defections. It was enacted because frequent floor-crossing, often for office or advantage, was weakening governments and making electoral mandates unstable.

Articles 102(2), 191(2) and Tenth Schedule

Articles 102(2) and 191(2) connect legislative disqualification with the Tenth Schedule for Parliament and State Legislatures. The Tenth Schedule then states the grounds, exceptions and authority for deciding defection disputes.

Grounds of disqualification

The important point from Kihoto is that **paragraph 2** of the Tenth Schedule was **upheld as valid** because it aims to control political defection. It was not treated as destroying parliamentary freedom of speech merely because **party discipline** restricts voting contrary to the whip.

A member may be disqualified for voluntarily giving up membership of the political party, or for voting or abstaining contrary to the party direction without permission or condonation. Independent and nominated members have separate rules because their relationship with political parties is different.

Voluntarily giving up membership

Voluntarily giving up membership does not require a formal resignation. Conduct, public statements, joining activities of another party or acting against the original party may show that the member has given up membership in substance.

Voting contrary to whip

Voting or abstaining contrary to a valid whip may attract disqualification if the party has not permitted the conduct and does not condone it within the prescribed time. This protects party discipline, especially on confidence motions and important votes.

Independent and nominated members

An independent member is disqualified if he joins any political party after election. A nominated member may join a political party within six months of taking the seat, but joining after that period attracts disqualification.

Merger exception

The merger exception protects members when the original political party merges with another party and the required legislative party strength supports the merger. This exception is narrow and cannot be used as a device for individual defection.

Role of Speaker and judicial review

The Speaker or Chairman decides disqualification petitions, but the decision is not completely immune. Judicial review is available after the decision, and in exceptional delay situations courts have insisted that such matters must be decided within a reasonable time.

Criticism and conclusion

The law is criticised because it may reduce independent thinking by legislators and give party leadership excessive control. Still, it is defended as necessary to preserve political stability and prevent betrayal of voters.

Kihoto Hollohan v. Zachillhu

Facts: The Tenth Schedule introduced anti-defection law through the 52nd Amendment. Its validity was challenged on the ground that it violated democratic rights, free speech of legislators and judicial independence because the Speaker was made the deciding authority.

Issue: Whether the anti-defection law and the Speaker's role under the Tenth Schedule are constitutionally valid.

Held: The Supreme Court upheld paragraph 2 of the Tenth Schedule. It held that anti-defection law does not violate Articles 105 or 194 merely because it regulates voting against party discipline. However, the Speaker's decision remains subject to judicial review on limited grounds.

Principle laid down: The Tenth Schedule is valid, but finality clauses do not completely exclude judicial review.

Ravi S. Naik v. Union of India

Facts: Members of the Goa Legislative Assembly were alleged to have defected. The Court considered whether "voluntarily giving up membership" requires a formal resignation from the political party or whether conduct can show abandonment of party membership.

Issue: Whether voluntarily giving up membership under the Tenth Schedule means only formal resignation.

Held: The Supreme Court held that voluntarily giving up membership is wider than resignation. Conduct, statements and political behaviour can show that a member has given up party membership even without a written resignation.

Principle laid down: Anti-defection law looks at substance over form; political conduct may prove defection.

G. Viswanathan v. Speaker, Tamil Nadu Legislative Assembly

Facts: Members elected on a party ticket were expelled from their political party. They claimed that after expulsion they became unattached members and could not be treated as defectors if they joined another political formation.

Issue: Whether an expelled member remains connected to the party for Tenth Schedule purposes.

Held: The Supreme Court held that for the Tenth Schedule, a member elected on a party ticket continues to be treated as belonging to that political party even after expulsion. Joining another party may attract disqualification.

Principle laid down: A legislator cannot avoid anti-defection consequences merely because the party expels him after election.

Rajendra Singh Rana v. Swami Prasad Maurya

Facts: A group of MLAs claimed to split from their party and support another political arrangement in Uttar Pradesh. The Speaker delayed and dealt with the matter in a way that affected government formation. The Supreme Court examined the validity of the Speaker approach.

Issue: Whether the MLAs were protected by the split/merger exception and whether the Speaker decision was legally sustainable.

Held: The Supreme Court held that the MLAs had incurred disqualification. It scrutinised the factual conduct and the Speaker approach, emphasising that constitutional adjudication under the Tenth Schedule must not be manipulated to protect defections.

Principle laid down: Tenth Schedule exceptions are to be strictly proved; political engineering cannot be dressed up as a constitutional merger.

8. Explain judicial accountability and appointment of judges in India.

Supreme Court Advocates-on-Record Association v. Union of India (NJAC case)

Facts: The 99th Constitutional Amendment and the NJAC Act sought to replace the collegium with a commission consisting of judges, the Union Law Minister and eminent persons. Under the scheme, non-judicial members could effectively block a recommendation.

Issue: Whether the NJAC violated judicial independence and the basic structure of the Constitution.

Held: By majority, the Supreme Court struck down the 99th Amendment and the NJAC Act. It held that the possibility of executive or non-judicial veto over judicial appointments damaged judicial independence. Justice Chelameswar dissented and upheld the NJAC, but the majority view prevailed.

Principle laid down: Independence of judiciary is part of the basic structure. Appointment of judges must not be controlled by the executive or non-judicial veto.

Independence and accountability

Judicial independence means judges must decide without fear of the executive, legislature or public pressure. Judicial accountability means judges must remain faithful to constitutional duty, ethics and reasoned decision-making. The Constitution tries to balance both.

Articles 124 and 217

Article 124 deals with appointment and removal of Supreme Court judges. Article 217 deals with appointment of High Court judges. These provisions originally used the language of consultation, but case law developed the collegium system to protect judicial independence.

Evolution of collegium

The sequence should be remembered clearly: **S.P. Gupta** represented executive primacy and treated consultation as not concurrence; the **Second Judges case** shifted primacy to the judiciary; the **Third Judges case** refined the collegium consultation process; the **NJAC** case later held that judicial primacy in appointments is linked with judicial independence and **basic structure**.

The collegium system evolved because the Court moved from executive primacy to judicial primacy in appointments. The underlying idea is that independence of judiciary, being part of the basic structure, requires meaningful judicial control over appointments and transfers.

First, Second and Third Judges cases

The First Judges Case gave greater weight to executive opinion. The Second Judges Case overruled that approach and created judicial primacy through the collegium. The Third Judges Reference clarified collegium composition and consultation requirements.

NJAC and basic structure

The important NJAC point is that the Law Minister and two eminent persons could together **block a recommendation**. The majority found this risk of **executive or non-judicial veto** inconsistent with judicial independence. **Justice Chelameswar dissented**, but even the majority accepted that the collegium needed greater **transparency and reform**.

The NJAC sought to replace the collegium with a commission including non-judicial participants. The Supreme Court struck it down because, in its view, the design damaged judicial independence, which is part of the basic structure of the Constitution.

Removal under Article 124(4)

A Supreme Court judge can be removed only by a difficult parliamentary process on grounds of proved misbehaviour or incapacity. The high threshold protects judges from political pressure while still allowing removal in serious cases.

Articles 121 and 211

Articles 121 and 211 restrict discussion in Parliament and State Legislatures about the conduct of judges except upon a motion for removal. This protects judicial independence from political attack while preserving the constitutional removal mechanism.

Conclusion

Judicial accountability must not be confused with executive control over judges. The Constitution protects judges through security of tenure, restricted legislative discussion and a difficult removal process, while cases like the Judges Cases and the NJAC case show that appointment procedure must preserve judicial independence as a basic feature of the Constitution.

S.P. Gupta v. Union of India

Facts: The Law Minister wrote to State Chief Ministers regarding transfer and continuance of High Court judges. Several petitions challenged the circular and raised issues concerning independence of judiciary, locus standi, transfer of judges and the meaning of consultation with the Chief Justice of India.

Issue: Whether consultation with the CJI means concurrence, and how judicial independence is to be protected in appointments and transfers.

Held: The Court emphasised judicial independence but held at that time that consultation did not mean concurrence and that executive primacy was not completely excluded. This position was later changed by the Second Judges case.

Principle laid down: The case is important as the First Judges case and marks the starting point of the debate that later produced the collegium system.

In re Presidential Reference, 1998

Facts: The President referred questions to the Supreme Court regarding the working of the collegium system created by the Second Judges Case. The questions concerned the number of judges to be consulted and the binding nature of collegium recommendations.

Issue: How the collegium system should operate for appointment and transfer of judges.

Held: The Supreme Court clarified that the Chief Justice of India must consult a plurality of senior judges. For Supreme Court appointments, consultation with the four senior-most judges was required; for High Court appointments, wider consultation was indicated.

Principle laid down: Judicial primacy means institutional opinion of the judiciary, not personal opinion of the Chief Justice of India.

C. Ravichandran Iyer v. Justice A.M. Bhattacharjee

Facts: Allegations were made against a sitting Chief Justice of a High Court. The case raised the question of how complaints against judges should be handled without harming judicial independence or public confidence.

Issue: What mechanism should exist for judicial accountability short of impeachment.

Held: The Supreme Court emphasised that judges are accountable to constitutional standards, but complaints must be handled with care. It recognised the importance of an in-house mechanism and restraint in public campaigns against judges.

Principle laid down: Judicial accountability must coexist with judicial independence; neither can be used to destroy the other.

9. Discuss the powers and jurisdiction of the Supreme Court of India.

Answer headings retained and discussed below

1. Apex constitutional court
2. Original jurisdiction under Article 131
3. Writ jurisdiction under Article 32
4. Appellate jurisdiction under Articles 132 to 134
5. SLP under Article 136
6. Review under Article 137
7. Advisory jurisdiction under Article 143
8. Complete justice under Article 142
9. Binding law under Article 141 and court of record
10. Conclusion

Apex constitutional court

Three leading-case principles are relevant here: *Antulay* shows that even the Supreme Court cannot bypass fair procedure; *Republic of Italy* shows how jurisdiction may shift to the Union in matters involving international and maritime elements; *Rajendra Diwan* shows that a State law cannot create statutory appellate jurisdiction in the Supreme Court.

The Supreme Court is the apex court and final interpreter of the Constitution. It protects federal balance, fundamental rights, rule of law and uniformity of legal interpretation throughout India.

Original jurisdiction under Article 131

Article 131 gives the Supreme Court original jurisdiction in certain disputes between the Union and States or between States. This jurisdiction protects federalism by giving inter-governmental constitutional disputes a neutral national forum.

Writ jurisdiction under Article 32

Article 32 empowers the Supreme Court to issue writs for enforcement of fundamental rights. Dr. Ambedkar described this remedy as central because a right becomes meaningful only when an effective constitutional remedy exists.

Appellate jurisdiction under Articles 132 to 134

Articles 132, 133 and 134 provide appellate jurisdiction in constitutional, civil and criminal matters. Through appeals the Supreme Court corrects serious errors and maintains uniform legal standards across the country.

SLP under Article 136

Article 136 gives the Supreme Court discretionary power to grant special leave to appeal from judgments, decrees, orders or sentences. It is not an ordinary right of appeal; it is used where substantial injustice or important legal questions require intervention.

Review under Article 137

Article 137 permits the Supreme Court to review its own judgments according to law and rules. Review is narrow and is not a rehearing of the entire case; it corrects patent errors or prevents miscarriage of justice.

Advisory jurisdiction under Article 143

Article 143 allows the President to seek the Supreme Court opinion on questions of law or fact of public importance. The opinion is advisory, but it carries high constitutional value.

Complete justice under Article 142

Article 142 gives the Supreme Court power to pass orders necessary for complete justice in a cause or matter before it. This power is wide but must operate consistently with substantive law and constitutional limitations.

Binding law under Article 141 and court of record

Article 141 makes the law declared by the Supreme Court binding on all courts in India. Article 129 makes it a court of record with power to punish for contempt. Together they maintain authority, consistency and discipline in the judicial system.

Conclusion

The Supreme Court therefore functions simultaneously as a federal court, appellate court, constitutional court, court of record and final interpreter of law. Articles 131, 32, 136, 141, 142 and 143 together make it the central institution for constitutional control and uniformity of law in India.

A.R. Antulay v. R.S. Nayak

Facts: A.R. Antulay, former Chief Minister of Maharashtra, faced corruption allegations. The Magistrate initially refused to take cognizance without sanction. Later proceedings reached the Supreme Court, which directed transfer of the case in a manner not

contemplated by the ordinary criminal procedure.

Issue: Whether the Supreme Court's earlier direction transferring the case was legally proper when it bypassed ordinary statutory procedure and affected the accused's rights.

Held: The Supreme Court held that the earlier direction was given per incuriam because relevant provisions, including Section 407 CrPC, were not considered. The direction deprived the accused of the normal forum and procedure.

Principle laid down: No court, including the Supreme Court, can pass an order that violates natural justice, statutory procedure or the constitutional guarantee of fair trial.

L. Chandra Kumar v. Union of India

Facts: Tribunals were created to decide service and other specialised disputes, and constitutional amendments sought to exclude High Court jurisdiction over such matters. Litigants challenged this exclusion as damaging judicial review.

Issue: Whether Articles 323A and 323B can exclude the power of judicial review of High Courts and the Supreme Court.

Held: The Supreme Court held that judicial review by High Courts under Articles 226/227 and by the Supreme Court under Article 32 is part of the basic structure. Tribunal decisions are subject to scrutiny by High Courts.

Principle laid down: Tribunals may supplement courts, but cannot replace constitutional judicial review.

Kesavananda Bharati v. State of Kerala

Facts: The head of a religious mutt challenged Kerala land reform laws and constitutional amendments affecting property rights and judicial review. A thirteen-Judge Bench considered the full scope of Article 368.

Issue: Whether Parliament amending power under Article 368 is unlimited.

Held: The Supreme Court held that Parliament may amend any part of the Constitution, including fundamental rights, but cannot alter or destroy the basic structure of the Constitution. The exact list was not closed, but supremacy of Constitution, republican democracy, secularism, federalism and judicial review were recognised as examples.

Principle laid down: The basic structure doctrine is the central limitation on constitutional amendment.

Pritam Singh v. State

Facts: In a criminal matter, the Supreme Court considered the scope of special leave under Article 136 and whether it should be used as a regular appellate jurisdiction in every case.

Issue: What is the nature of Article 136 jurisdiction.

Held: The Court held that Article 136 is extraordinary, residual and discretionary. It is not an ordinary right of appeal and should be used where substantial and grave injustice has occurred.

Principle laid down: SLP is a safety-valve jurisdiction, not a routine third appeal.

Supreme Court Bar Association v. Union of India

Facts: An advocate was punished for contempt and the question arose whether the Supreme Court could suspend his licence to practise while exercising contempt jurisdiction

under Article 142.

Issue: Whether Article 142 allows the Supreme Court to impose a punishment contrary to the Advocates Act disciplinary mechanism.

Held: The Supreme Court held that Article 142 cannot be used to supplant substantive law. The Court may punish for contempt, but professional disciplinary action belongs to the statutory Bar Council framework.

Principle laid down: Complete justice under Article 142 is broad but not a licence to ignore substantive law.

In re Kerala Education Bill

Facts: The President referred questions about the Kerala Education Bill to the Supreme Court under Article 143. The Bill affected management of educational institutions, including minority institutions.

Issue: Whether provisions of the Bill violated constitutional rights, especially minority educational rights.

Held: The Supreme Court gave an advisory opinion explaining permissible regulation and constitutional limits. It clarified that advisory opinions are important constitutional guidance, though given in a non-adversarial reference framework.

Principle laid down: Article 143 enables the President to obtain authoritative constitutional guidance on questions of public importance.

10. Explain Special Leave Petition under Article 136 of the Constitution.

Answer headings retained and discussed below

1. Meaning and constitutional basis
2. Extraordinary and discretionary nature
3. Difference from ordinary appeal
4. Civil, criminal and tribunal matters
5. Limitations and self-restraint
6. Doctrine of merger
7. Importance
8. Conclusion

Meaning and constitutional basis

Special Leave Petition under Article 136 means a request to the Supreme Court for permission to appeal against a judgment, decree, determination, sentence or order. It is called 'special leave' because the party has no automatic right to appeal; the Court first decides whether the case deserves to be heard at all.

Extraordinary and discretionary nature

The important lesson from *Antulay* and the *Italian Marines* case is that Article 136 is **not an ordinary appeal as of right**. It is a **residual, discretionary jurisdiction** used to correct grave injustice, procedural illegality or important questions of law.

The jurisdiction is extraordinary because it is not a normal appellate remedy available as of right. It is discretionary because the Supreme Court first decides whether the matter deserves leave before entering into the merits.

Difference from ordinary appeal

An ordinary appeal exists when a statute gives a right to challenge a decision before a higher court. A special leave petition is different because no party has an automatic right to be heard; the Supreme Court grants leave only in exceptional circumstances.

Civil, criminal and tribunal matters

Article 136 is wide enough to cover civil, criminal, tribunal and other adjudicatory decisions. However, this breadth is controlled by self-restraint so that the Supreme Court does not become a routine second or third appellate court in every matter.

Limitations and self-restraint

The Court usually avoids interference with pure findings of fact, minor errors or matters where adequate alternative statutory remedies exist. It intervenes where there is grave injustice, violation of natural justice, perversity or an important legal issue.

Doctrine of merger

When special leave is refused, the lower court decision generally does not merge into a Supreme Court judgment on merits. When leave is granted and the appeal is decided, the lower order merges into the Supreme Court decision.

Importance

Article 136 is important because it gives the Supreme Court a residuary corrective power where ordinary appellate remedies are inadequate. It is used sparingly, mainly where there is grave injustice, serious procedural illegality, manifest perversity or an important question of law requiring final determination.

Conclusion

Article 136 should be concluded as a constitutional safety valve, not as another regular appeal. Its strength lies in discretion: the Supreme Court can refuse routine matters but intervene where refusal to hear the case would allow serious injustice to stand.

A.R. Antulay v. R.S. Nayak

Facts: A.R. Antulay, former Chief Minister of Maharashtra, faced corruption allegations. The Magistrate initially refused to take cognizance without sanction. Later proceedings reached the Supreme Court, which directed transfer of the case in a manner not contemplated by the ordinary criminal procedure.

Issue: Whether the Supreme Court's earlier direction transferring the case was legally proper when it bypassed ordinary statutory procedure and affected the accused's rights.

Held: The Supreme Court held that the earlier direction was given per incuriam because relevant provisions, including Section 407 CrPC, were not considered. The direction deprived the accused of the normal forum and procedure.

Principle laid down: No court, including the Supreme Court, can pass an order that violates natural justice, statutory procedure or the constitutional guarantee of fair trial.

Pritam Singh v. State

Facts: In a criminal matter, the Supreme Court considered the scope of special leave under Article 136 and whether it should be used as a regular appellate jurisdiction in every case.

Issue: What is the nature of Article 136 jurisdiction.

Held: The Court held that Article 136 is extraordinary, residual and discretionary. It is not an ordinary right of appeal and should be used where substantial and grave injustice has occurred.

Principle laid down: SLP is a safety-valve jurisdiction, not a routine third appeal.

Kunhayammed v. State of Kerala

Facts: This case should be connected to the topic by stating the material facts that brought the constitutional issue before the court.

Issue: The issue was the constitutional validity, scope or limitation of the relevant power.

Held: The court applied the constitutional provision and controlled the power through legality, reasonableness and constitutional principle.

Principle laid down: Use the case for the specific proposition for which it is cited in this answer.

11. Explain the advisory jurisdiction of the Supreme Court under Article 143.

Answer headings retained and discussed below

1. Meaning
2. Article 143(1)
3. Article 143(2)
4. Role of President
5. Whether Supreme Court must answer
6. Binding value
7. Difference from ordinary adjudication
8. Importance and conclusion

Meaning

Advisory jurisdiction under Article 143 means the President may seek the Supreme Court's opinion on a question of law or fact of public importance. It is not ordinary litigation between parties; it is a constitutional consultation by which the executive obtains judicial guidance on a serious legal question.

Article 143(1)

Article 143(1) permits the President to refer a question of law or fact that is of public importance and on which it is expedient to obtain the Supreme Court opinion.

Article 143(2)

Article 143(2) concerns certain disputes arising out of pre-Constitution treaties, agreements or similar arrangements. It is a special advisory route for historically rooted obligations.

Role of President

The President initiates advisory jurisdiction by making a reference. The Court does not act suo motu under Article 143; it answers only the question referred, and may define the legal limits of the reference.

Whether Supreme Court must answer

The Supreme Court is not mechanically bound to answer every reference under Article 143(1). It may decline where the question is inappropriate, political in an unsuitable sense, unnecessary or incapable of judicial determination.

Binding value

An advisory opinion is not a decree between parties like an ordinary judgment. Still, it has great persuasive and constitutional authority and is generally followed because it states the Supreme Court understanding of the Constitution.

Difference from ordinary adjudication

Ordinary adjudication decides a lis between parties and produces a binding judgment. Advisory jurisdiction answers a constitutional question referred by the President, often without the same adversarial structure.

Importance and conclusion

Article 143 is useful where a question affects governance, federal relations or constitutional policy before an actual dispute is finally litigated. Its limitation is equally important: the Supreme Court may decline to answer unsuitable references and its opinion is advisory, though it carries great constitutional authority.

In re Delhi Laws Act

Facts: The President referred questions about delegated legislation and the power given to the executive to extend laws with modifications to certain areas. The case was one of the earliest advisory opinions of the Supreme Court.

Issue: How far Parliament can delegate legislative power to the executive.

Held: The Supreme Court held that essential legislative function cannot be delegated, but conditional and ancillary delegation is permissible. The legislature must lay down policy and standards.

Principle laid down: Delegated legislation is valid only when legislative policy remains with the legislature.

In re Kerala Education Bill

Facts: The President referred questions about the Kerala Education Bill to the Supreme Court under Article 143. The Bill affected management of educational institutions, including minority institutions.

Issue: Whether provisions of the Bill violated constitutional rights, especially minority educational rights.

Held: The Supreme Court gave an advisory opinion explaining permissible regulation and constitutional limits. It clarified that advisory opinions are important constitutional guidance, though given in a non-adversarial reference framework.

Principle laid down: Article 143 enables the President to obtain authoritative constitutional guidance on questions of public importance.

Special Courts Bill Reference

Facts: The President referred the Special Courts Bill for opinion. The Bill proposed special courts for speedy trial of offences committed by persons holding high public or political office during a specified period.

Issue: Whether special courts for a defined class violated equality or constitutional principles.

Held: The Supreme Court held that special procedure can be valid if classification is reasonable and has a rational nexus with the object of speedy trial of public offences. Some safeguards were emphasised.

Principle laid down: Article 14 permits reasonable classification, but special criminal procedure must remain fair and non-arbitrary.

In re Berubari Union

Facts: The President sought the Supreme Court opinion on implementation of an agreement between India and Pakistan involving transfer of territory in Berubari. The question concerned whether executive action or legislation was enough.

Issue: Whether Indian territory could be ceded without constitutional amendment.

Held: The Supreme Court advised that cession of Indian territory requires a constitutional amendment under Article 368. Ordinary executive action or legislation would not be sufficient.

Principle laid down: Territory of India is constitutionally protected; transfer of territory requires constitutional authority.

Ayodhya Reference

Facts: After acquisition of land around the disputed Ayodhya site, the President referred a question asking whether a Hindu temple existed at the site before construction of the mosque. The reference was linked to a highly sensitive religious dispute.

Issue: Whether the Supreme Court should answer a historical/religious question under Article 143 in those circumstances.

Held: The Supreme Court declined to answer the reference, holding that it was

unnecessary and inappropriate in the circumstances, especially because it could affect pending adjudication and was not framed as a proper legal question.

Principle laid down: The Supreme Court is not bound to answer every Article 143 reference; advisory jurisdiction must serve a constitutional legal purpose.

12. Explain the writ jurisdiction and supervisory jurisdiction of High Courts under Articles 226 and 227.

Answer headings retained and discussed below

1. High Court as constitutional court
2. Article 226 writ jurisdiction
3. Writs for fundamental and legal rights
4. Five writs
5. Article 227 superintendence
6. Article 226 vs Article 227
7. Article 32 vs Article 226
8. Limitations
9. Conclusion

High Court as constitutional court

A High Court is not merely an appellate court over subordinate courts; it is a constitutional court for the State. It protects rights, supervises the legal system and ensures that authorities act within jurisdiction.

Article 226 writ jurisdiction

The textbook distinction is that Article 226 is **wider than Article 32** because High Courts may issue writs not only for enforcement of fundamental rights but also for **other legal rights**. This makes Article 226 the wider constitutional remedy.

Article 32 empowers the Supreme Court to issue writs for enforcement of fundamental rights. Dr. Ambedkar described this remedy as central because a right becomes meaningful only when an effective constitutional remedy exists.

Writs for fundamental and legal rights

Under Article 226 a person may approach the High Court for enforcement of fundamental rights as well as statutory, public law and other legal rights. This allows High Courts to correct illegal administrative action at the State level.

Five writs

The five classic writs are Habeas Corpus, Mandamus, Certiorari, Prohibition and Quo Warranto. They protect liberty, compel public duties, quash illegal orders,

prevent courts from exceeding jurisdiction and test the legality of holding public office.

Article 227 superintendence

Article 227 is **supervisory and not appellate**. It allows the High Court to keep subordinate courts and tribunals within jurisdiction, but it is not meant for routine reappraisal of evidence.

Article 227 gives the High Court power of superintendence over courts and tribunals within its territory. It is mainly supervisory and keeps subordinate judicial bodies within the bounds of jurisdiction and procedure.

Article 226 vs Article 227

Article 226 is an original writ jurisdiction used to issue constitutional writs against State action, public authorities and, in suitable cases, bodies performing public duties. Article 227 is a supervisory jurisdiction over subordinate courts and tribunals. Therefore, Article 226 is rights-remedial, while Article 227 is jurisdiction-supervisory.

Article 32 vs Article 226

Article 32 is itself a Fundamental Right and is confined to enforcement of Fundamental Rights. Article 226 is wider because it covers both Fundamental Rights and other legal rights, but it is discretionary and normally exercised first at the High Court level.

Limitations

The limitations on Articles 226 and 227 are mainly self-imposed. High Courts generally avoid interfering where an effective alternative remedy exists, where disputed facts require trial, or where supervisory jurisdiction is invoked as if it were a regular appeal. Under Article 227, the High Court corrects jurisdictional error, perversity and grave procedural illegality, not every factual mistake.

Conclusion

Articles 226 and 227 make the High Court the immediate constitutional guardian within the State. Article 226 gives a wide writ remedy for fundamental as well as legal rights, while Article 227 keeps subordinate courts and tribunals within jurisdiction; together they prevent illegality at the local and State level.

Rajendra Diwan v. Pradeep Kumar Ranibala

Facts: A State rent control law attempted to create an appeal to the Supreme Court from decisions under the State legislation. The issue arose whether the State legislature could confer statutory appellate jurisdiction on the Supreme Court.

Issue: Whether a State legislature has competence to enact a law creating a statutory appeal to the Supreme Court.

Held: The Supreme Court held that the State legislature lacked competence to confer such jurisdiction. Article 136 remained unaffected, but statutory appellate jurisdiction of the Supreme Court cannot be created by a State law.

Principle laid down: The Supreme Court's jurisdiction is constitutional and parliamentary in source. A State cannot expand it by ordinary State legislation.

L. Chandra Kumar v. Union of India

Facts: Tribunals were created to decide service and other specialised disputes, and constitutional amendments sought to exclude High Court jurisdiction over such matters. Litigants challenged this exclusion as damaging judicial review.

Issue: Whether Articles 323A and 323B can exclude the power of judicial review of High Courts and the Supreme Court.

Held: The Supreme Court held that judicial review by High Courts under Articles 226/227 and by the Supreme Court under Article 32 is part of the basic structure. Tribunal decisions are subject to scrutiny by High Courts.

Principle laid down: Tribunals may supplement courts, but cannot replace constitutional judicial review.

Waryam Singh v. Amarnath

Facts: The High Court used its supervisory jurisdiction over subordinate courts. The Supreme Court explained the nature of Article 227 in the context of correcting jurisdictional errors by subordinate courts and tribunals.

Issue: What is the scope of High Court superintendence under Article 227.

Held: The Court held that Article 227 gives High Courts power of superintendence to keep subordinate courts and tribunals within the bounds of their authority. It is not meant to convert the High Court into a regular appellate court.

Principle laid down: Article 227 is supervisory and corrective, not a substitute for appeal.

Surya Dev Rai v. Ram Chander Rai

Facts: The case considered whether a writ of certiorari under Article 226 could be issued against orders of civil courts after changes limiting civil revision jurisdiction.

Issue: Whether judicial orders of civil courts are amenable to Article 226 certiorari.

Held: The Court took a broad view and permitted correction of certain civil court orders under Articles 226/227. This part of the decision was later corrected in Radhey Shyam.

Principle laid down: The present law must be read with Radhey Shyam: Article 227 supervision remains, but Article 226 certiorari does not ordinarily lie against civil court judicial orders.

Radhey Shyam v. Chhabi Nath

Facts: A civil court order was challenged by invoking writ jurisdiction. The Supreme Court reconsidered Surya Dev Rai and clarified the distinction between Article 226 and Article 227.

Issue: Whether judicial orders of civil courts can be challenged through writ of certiorari under Article 226.

Held: The Supreme Court held that judicial orders of civil courts are not amenable to writ jurisdiction under Article 226. They may be examined under Article 227 supervisory jurisdiction in appropriate cases.

Principle laid down: Article 226 writ jurisdiction and Article 227 supervisory jurisdiction are distinct and should not be merged.

Bandhua Mukti Morcha v. Union of India

Facts: A public interest petition alleged bonded labour and inhuman working conditions in

stone quarries. The Court treated the letter/petition as invoking fundamental rights of vulnerable workers.

Issue: Whether Article 32 can be used in a flexible manner to protect fundamental rights of disadvantaged groups.

Held: The Supreme Court expanded the procedural reach of writ jurisdiction and directed investigation and remedial measures. It treated bonded labour as a violation of Articles 21 and 23.

Principle laid down: Writ jurisdiction can be used creatively to enforce fundamental rights where poor or vulnerable persons cannot approach courts effectively.

13. Write a short note on the writ of Habeas Corpus.

Answer headings retained and discussed below

1. Meaning
2. Protection of personal liberty
3. Illegal detention
4. Who may file
5. Against whom issued
6. Emergency position
7. Articles 32 and 226
8. Conclusion

Meaning

Habeas Corpus literally means that the body of the detained person must be produced before the court. In constitutional law, it is the remedy used to test whether a person's detention is supported by lawful authority or is illegal, mala fide or procedurally defective.

Protection of personal liberty

Habeas Corpus protects personal liberty by requiring the detaining authority to justify detention before the court. It prevents the State or any person from keeping someone in illegal custody.

Illegal detention

Detention becomes illegal when it lacks legal authority, violates mandatory procedure, continues after expiry of lawful period, is mala fide, or ignores constitutional safeguards. The court may order immediate release if detention is not justified.

Who may file

Because liberty is precious, the detained person, a relative, friend or even a public-spirited person may move the court. Strict rules of locus standi are relaxed in Habeas Corpus matters.

Against whom issued

The writ may be issued against the State, police, jail authorities or even a private person who has unlawfully detained someone. The essential question is whether the custody is legally justified.

Emergency position

During Emergency the scope of remedies was historically restricted, but after the 44th Amendment Article 20 and Article 21 cannot be suspended. Modern constitutional law rejects the idea that life and liberty depend solely on executive grace.

Articles 32 and 226

Habeas Corpus may be sought under Article 32 before the Supreme Court for fundamental rights and under Article 226 before the High Court. High Courts are often the more immediate forum because the detention usually occurs within their territorial jurisdiction.

Conclusion

Habeas Corpus is the most direct constitutional remedy for personal liberty because the court does not decide abstract legality; it asks the detaining authority to justify the custody of a living person. After the 44th Amendment, Article 20 and Article 21 protection cannot be suspended even during Emergency.

A.D.M. Jabalpur v. Shivkant Shukla

Facts: During the 1975 Emergency, detenus filed habeas corpus petitions challenging preventive detention. The Government argued that because enforcement of Article 21 was suspended under Article 359, courts could not examine even unlawful detention.

Issue: Whether a person could seek habeas corpus during Emergency when enforcement of Article 21 was suspended.

Held: The majority held that no remedy was available during suspension, a view later widely criticised and effectively overruled. The 44th Amendment now protects Articles 20 and 21 from suspension under Article 359. K.S. Puttaswamy later stated that ADM Jabalpur was seriously wrong.

Principle laid down: Personal liberty cannot depend entirely on executive grace; the present constitutional position rejects ADM Jabalpur approach.

Rudul Sah v. State of Bihar

Facts: Rudul Sah remained in jail for years even after his acquittal. He filed a habeas corpus petition under Article 32. The case presented a stark example of unlawful detention by the State despite a judicial acquittal.

Issue: Whether the Supreme Court can award compensation in a writ petition for illegal detention.

Held: The Supreme Court ordered release and awarded monetary compensation. It held that merely releasing the person would not be sufficient remedy for gross violation of personal liberty.

Principle laid down: Constitutional remedies can include compensation for violation of

fundamental rights, especially unlawful detention.

Sunil Batra v. Delhi Administration

Facts: A prisoner complained through letters about solitary confinement, torture and inhuman prison conditions. The Supreme Court treated the letters as petitions concerning prisoner rights.

Issue: Whether prisoners retain fundamental rights and whether courts can intervene in prison administration.

Held: The Supreme Court held that prisoners do not lose all fundamental rights. Torture, inhuman treatment and arbitrary solitary confinement violate Article 21. The Court issued directions for humane prison administration.

Principle laid down: Article 21 travels inside prison walls; lawful custody does not authorise cruelty.

Kanu Sanyal v. District Magistrate

Facts: Kanu Sanyal challenged his detention and the procedure in habeas corpus proceedings. The case considered whether production of the detained person is always essential and what the Court examines in such cases.

Issue: What is the nature and object of habeas corpus proceedings.

Held: The Supreme Court held that habeas corpus is concerned with legality of detention, not with rigid procedural formality. Production of the body is not always indispensable if the legality can be examined otherwise.

Principle laid down: Habeas corpus is a practical remedy for liberty; courts focus on whether detention is lawful.

K.S. Puttaswamy v. Union of India

Facts: A nine-Judge Bench considered whether privacy is a fundamental right after earlier doubts created by cases such as M.P. Sharma and Kharak Singh. The issue arose in the background of Aadhaar and State use of personal data.

Issue: Whether the Constitution recognises a fundamental right to privacy.

Held: The Supreme Court unanimously held that privacy is a fundamental right protected under Articles 14, 19 and 21. It also expressly disapproved the reasoning of ADM Jabalpur on liberty during Emergency.

Principle laid down: Privacy, dignity and liberty are intrinsic to constitutional freedom and cannot be treated as State concessions.

14. Explain the Doctrine of Pleasure and constitutional safeguards available to civil servants.

Answer headings retained and discussed below

1. Meaning and English origin
2. Article 310
3. Article 311 safeguards
4. Reasonable opportunity

5. Exceptions
6. Dismissal, removal and reduction in rank
7. Limitations
8. Conclusion

Meaning and English origin

The Doctrine of Pleasure means that certain public servants hold office during the pleasure of the President or the Governor. In England it was a broad Crown prerogative, but in India it is expressly constitutionalised under Article 310 and restricted by Article 311, statutory service rules and judicial review.

Article 310

Article 310 states that civil servants hold office during the pleasure of the President or Governor, as the case may be. But this pleasure is controlled by the Constitution, especially Article 311 and principles of fairness.

Article 311 safeguards

Article 311 protects civil servants against dismissal, removal or reduction in rank by an authority subordinate to the appointing authority and usually requires a reasonable opportunity of hearing. It prevents arbitrary exercise of pleasure.

Reasonable opportunity

Reasonable opportunity means the employee must know the charge, receive a fair chance to answer, and face a proper inquiry where required. The protection is procedural but important because livelihood and reputation are affected.

Exceptions

Article 311 permits exceptions, such as where a person is dismissed after conviction on a criminal charge, where inquiry is not reasonably practicable, or where the President or Governor is satisfied that inquiry is not expedient in the interest of security of the State.

Dismissal, removal and reduction in rank

Dismissal ordinarily disqualifies future employment, removal terminates service without that disqualification, and reduction in rank lowers the employee position. All three are serious civil consequences and therefore attract constitutional safeguards.

Limitations

The pleasure doctrine in India is limited by constitutional provisions, statutory rules, natural justice and judicial review. The State cannot use pleasure as a cover for mala fide, punitive or arbitrary action.

Conclusion

The Indian Constitution accepts the pleasure doctrine only in a limited form. A civil servant may be removed in public interest, but dismissal, removal or reduction in rank cannot ordinarily be imposed without Article 311 safeguards, and the State cannot use pleasure as a device for arbitrary or punitive action.

Shamsher Singh v. State of Punjab

Facts: Two judicial officers in Punjab challenged orders affecting their services and argued that the Governor, as constitutional head, had to act personally in matters of appointment and removal. The case required the Court to explain the real working of the President and Governor under a parliamentary Constitution.

Issue: Whether the President or Governor exercises executive powers personally, or only on the aid and advice of the Council of Ministers.

Held: The Supreme Court held that the President and Governor are constitutional heads and ordinarily act on the aid and advice of the Council of Ministers. Executive action taken in their name is the action of the elected government, except in narrowly recognised areas of constitutional discretion.

Principle laid down: India follows responsible parliamentary government. The real executive is the Council of Ministers; the President or Governor is the formal constitutional head.

Parshotam Lal Dhingra v. Union of India

Facts: A railway employee was reverted from an officiating higher post. He claimed protection under Article 311. The Court examined when termination, reversion or reduction in rank amounts to punishment requiring procedural safeguards.

Issue: When does Article 311 protection apply to dismissal, removal or reduction in rank.

Held: The Supreme Court held that if the action visits the employee with evil consequences or is founded on misconduct, Article 311 safeguards may apply. Mere termination of a temporary/officiating arrangement may not always be punishment.

Principle laid down: Article 311 protects civil servants from punitive action disguised as administrative action.

Union of India v. Tulsiram Patel

Facts: Civil servants challenged dismissals where the Government invoked exceptions to departmental inquiry under Article 311(2). The case examined security, impracticability and conviction-based exceptions.

Issue: Whether inquiry under Article 311 can be dispensed with and what safeguards remain.

Held: The Supreme Court upheld the constitutional exceptions but stressed that the conditions must genuinely exist. The authority must apply its mind, and the decision is subject to judicial review on limited grounds.

Principle laid down: Article 311 safeguards are strong, but the Constitution permits limited exceptions for security, impracticability and conviction.

Shyam Lal v. State of U.P.

Facts: A civil servant was compulsorily retired. He argued that it was punishment and therefore Article 311 protections applied.

Issue: Whether compulsory retirement is dismissal or removal attracting Article 311.

Held: The Supreme Court held that compulsory retirement in public interest, without stigma and without forfeiture of earned benefits, is not punishment. Therefore Article 311 may not apply unless the order is punitive in substance.

Principle laid down: Courts look at the substance and consequences of service action, not merely its label.

Moti Ram Deka v. North East Frontier Railway

Facts: Railway employees challenged service rules permitting termination by notice. They argued that such rules could bypass Article 311 and deprive permanent employees of constitutional protection.

Issue: Whether service rules allowing termination by notice can override Article 311 safeguards.

Held: The Supreme Court struck down rules that allowed removal of permanent employees in a manner inconsistent with Article 311. Constitutional safeguards cannot be nullified by service rules.

Principle laid down: Pleasure doctrine in India is limited by Article 311 and rule-making power cannot destroy that protection.

Khem Chand v. Union of India

Facts: A government servant challenged disciplinary proceedings and claimed that reasonable opportunity under Article 311 had not been properly given.

Issue: What does reasonable opportunity under Article 311 include.

Held: The Supreme Court held that reasonable opportunity includes notice of charges, opportunity to deny charges, chance to cross-examine witnesses, opportunity to lead defence evidence and representation on proposed punishment where applicable.

Principle laid down: Article 311 is a practical guarantee of fair disciplinary procedure.

15. Write a short note on All India Services.

Answer headings retained and discussed below

1. Meaning
2. Article 312
3. IAS, IPS and Indian Forest Service
4. Creation by Rajya Sabha resolution
5. Administrative unity
6. Federal importance and criticism
7. Conclusion

Meaning

All India Services are services common to the Union and the States. Their officers are recruited on an all-India basis but serve in State cadres and hold important administrative

posts, which is why Article 312 treats their creation as a matter affecting both national administration and State governance.

Article 312

Article 312 permits creation of All India Services common to the Union and States if the Rajya Sabha passes a resolution by the required special majority declaring it necessary in national interest.

IAS, IPS and Indian Forest Service

The Indian Administrative Service, Indian Police Service and Indian Forest Service are the principal All India Services. Officers serve under both Union and State frameworks, creating administrative continuity across the federation.

Creation by Rajya Sabha resolution

Rajya Sabha is given a special role because it represents the States. A new All India Service affects State administration, so the Constitution requires State participation through the Council of States.

Administrative unity

All India Services promote uniform standards, continuity of governance, national integration and skilled administration. They are especially important in implementing Union and State policies across districts.

Federal importance and criticism

All India Services strengthen administrative unity by providing trained officers with common standards across the country. The criticism is that State governments may feel constrained by a cadre partly controlled through Union-level service rules and deputation policy, but the Constitution permits this arrangement because it supports national integration and continuity of administration.

Conclusion

Article 312 shows a deliberate federal compromise. The services are not purely Union services and not purely State services; they are shared instruments for maintaining administrative continuity, especially in a Constitution where national policy must often be implemented through State machinery.

S.R. Bommai v. Union of India

Facts: S.R. Bommai was Chief Minister of Karnataka. His ministry was dismissed under Article 356 and the Assembly was dissolved. Similar proclamations concerning Meghalaya, Nagaland and other States were also before the Court. The controversy arose because elected State governments had been removed on the basis of the Governor's report and political assessment of majority.

Issue: Whether the President's proclamation under Article 356 is immune from judicial review and whether an Assembly may be dissolved before constitutional safeguards are satisfied.

Held: The Supreme Court held that the proclamation under Article 356 is subject to judicial

review. The President's satisfaction is not absolute; the Court may examine whether relevant material existed and whether the action was mala fide, arbitrary or based on irrelevant material. Majority should normally be tested on the floor of the House, not in Raj Bhavan.

Principle laid down: Federalism and democracy are part of the basic structure. Article 356 is an emergency power and cannot be used as a political weapon against State governments.

16. Explain the concept of Indian federalism with special reference to cooperative and competitive federalism.

Answer headings retained and discussed below

1. Meaning of federalism
2. India as federal, unitary or quasi-federal
3. Federal features
4. Unitary features
5. Cooperative federalism
6. Competitive federalism
7. Inter-State Council, GST Council, Finance Commission and NITI Aayog
8. Emergency and federalism
9. Conclusion

Meaning of federalism

Federalism means division of governmental power between the Union and the States by the Constitution. In India, the division is real but not equal in the classical sense, because the Union has wider legislative fields, residuary power, emergency powers and financial influence.

India as federal, unitary or quasi-federal

Kuldip Nayar is useful because it says that **federalism is part of the basic structure**, but Indian federalism is **not a rigid classical federation**. Therefore, removal of domicile for Rajya Sabha candidature and **open ballot** did not by themselves destroy federalism.

India is federal in structure but has strong unitary features. It is often described as quasi-federal or a federation with a strong centre because the Constitution distributes powers but gives the Union special strength in emergencies and national matters.

Federal features

Federal features include written Constitution, supremacy of the Constitution, division of powers, independent judiciary, bicameral Parliament with Rajya Sabha and a rigid amendment procedure for federal provisions.

Unitary features

Unitary features include single citizenship, strong Union List, residuary power with Parliament, emergency provisions, power of Governors, integrated judiciary and All India Services.

Cooperative federalism

Cooperative federalism means the Union and States work together through consultation, shared institutions and coordinated policy. Examples include GST Council, Inter-State Council, Finance Commission transfers and centrally sponsored schemes.

Competitive federalism

Competitive federalism means States compete to improve governance, investment, infrastructure and welfare delivery. Healthy competition can improve performance, provided poorer States are not left without adequate support.

Inter-State Council, GST Council, Finance Commission and NITI Aayog

Institutions such as the Inter-State Council, GST Council, Finance Commission and NITI Aayog create channels for dialogue, fiscal distribution and policy coordination. They show that Indian federalism depends on both legal powers and practical cooperation.

Emergency and federalism

During Emergency the Union becomes more powerful and the federal balance shifts temporarily towards unitary control. This is why judicial review and constitutional safeguards are necessary to prevent misuse.

Conclusion

Indian federalism should be concluded as a strong-centre federation rather than a purely unitary system. The Constitution protects State spheres through legislative lists, Rajya Sabha representation and judicial review, but also permits Union coordination through institutions such as the GST Council, Finance Commission and Emergency provisions.

S.R. Bommai v. Union of India

Facts: S.R. Bommai was Chief Minister of Karnataka. His ministry was dismissed under Article 356 and the Assembly was dissolved. Similar proclamations concerning Meghalaya, Nagaland and other States were also before the Court. The controversy arose because elected State governments had been removed on the basis of the Governor's report and political assessment of majority.

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satisfied.

Held: The Supreme Court held that the proclamation under Article 356 is subject to judicial review. The President's satisfaction is not absolute; the Court may examine whether relevant material existed and whether the action was mala fide, arbitrary or based on irrelevant material. Majority should normally be tested on the floor of the House, not in Raj Bhavan.

Principle laid down: Federalism and democracy are part of the basic structure. Article 356 is an emergency power and cannot be used as a political weapon against State governments.

State of West Bengal v. Union of India

Facts: West Bengal challenged Parliament power to acquire coal-bearing lands belonging to the State. It argued that States possessed a form of sovereignty preventing such Union acquisition.

Issue: Whether Indian States are sovereign in a manner comparable to classical federations and whether Union law can acquire State property.

Held: The Supreme Court rejected the claim of separate State sovereignty. It held that the Indian Constitution creates a strong Union and that Parliament could legislate within its competence even where State interests are affected.

Principle laid down: India is federal, but not a compact of sovereign States; the Union has constitutionally superior features in specified fields.

Government of NCT of Delhi v. Union of India

Facts: The elected Delhi Government and the Lieutenant Governor disagreed over who controlled administration in the National Capital Territory. The dispute required interpretation of Article 239AA.

Issue: How power is divided between the elected Delhi Government and the Lieutenant Governor.

Held: The Supreme Court held that representative government and constitutional morality require the Lieutenant Governor to ordinarily act on aid and advice in matters where Delhi has legislative competence, except where the Constitution reserves power or requires reference.

Principle laid down: Even in special federal arrangements, democratic accountability and cooperative governance must be respected.

State of Rajasthan v. Union of India

Facts: After a change of government at the Centre, directions and threatened action were issued concerning State governments. States challenged possible use of Article 356. The case preceded the stricter Bommai doctrine.

Issue: Whether courts could interfere with threatened or proposed Article 356 action.

Held: The Supreme Court adopted a restrained approach and declined interference at that stage. Later, S.R. Bommai developed more robust judicial review of actual proclamations under Article 356.

Principle laid down: The case shows the older cautious approach; Bommai is now the leading authority on review of President Rule.

17. Explain the legislative relations between the Union and the States.

Answer headings retained and discussed below

1. Articles 245 and 246
2. Seventh Schedule
3. Residuary powers under Article 248
4. Parliament over State List under Articles 249 and 250
5. State request under Article 252
6. International obligations under Article 253
7. Repugnancy under Article 254
8. Conclusion

Articles 245 and 246

Article 245 deals with territorial extent of laws, while Article 246 distributes legislative subjects between Parliament and State Legislatures through the Seventh Schedule. Together they form the basic map of legislative power.

Seventh Schedule

Federation of Hotel and Restaurant Association illustrates that legislative competence depends on the **true nature and character** of the law. Where no specific entry applies, Parliament may rely on **Article 248** read with **Entry 97** of List I.

The Seventh Schedule contains the Union List, State List and Concurrent List. Union List subjects mainly concern national matters, State List subjects concern local governance, and Concurrent List subjects may be legislated on by both levels.

Residuary powers under Article 248

Article 248 gives residuary legislative power to Parliament. This means subjects not found in any list, including many new technological or modern matters, fall within Union legislative competence.

Parliament over State List under Articles 249 and 250

Articles 249 and 250 allow Parliament to legislate on State List matters in special situations. Article 249 operates when Rajya Sabha declares national interest; Article 250 operates during National Emergency.

State request under Article 252

Article 252 permits Parliament to legislate on a State List subject when two or more States consent. The law then applies to consenting States and to other States that later adopt it.

International obligations under Article 253

Article 253 empowers Parliament to make laws to implement international treaties, agreements and obligations, even if the subject would otherwise fall in the State List.

Repugnancy under Article 254

Bimal Chandra Banerjee is useful to remember that where the State field is constitutionally **subject to parliamentary legislation**, the State cannot act in a manner **inconsistent with the Union field** already occupied by Parliament.

Where a State subject is **expressly made subject to parliamentary legislation**, as discussed in Bimal Chandra Banerjee, the State **cannot act contrary** to the superior parliamentary field. This point helps distinguish ordinary State power from fields constitutionally subordinated to Union law.

Article 254 deals with conflict between Union and State laws on Concurrent List subjects. Generally Union law prevails, but a State law reserved for and receiving Presidential assent may prevail in that State unless Parliament later overrides it.

Conclusion

Centre-State legislative relations are built on distribution of fields, not watertight separation. Articles 245 to 254 show that Parliament and State Legislatures have defined spheres, but national interest, emergency, treaty obligations and repugnancy rules may give Parliament overriding authority in specified situations.

Federation of Hotel and Restaurant Association v. Union of India

Facts: Hotels challenged the Expenditure Tax Act, 1987, which imposed tax on chargeable expenditure incurred in certain hotels. They argued that Parliament lacked legislative competence and that the law violated Articles 14 and 19.

Issue: Whether Parliament had competence to enact the law under Article 248 read with Entry 97 of List I.

Held: The Supreme Court upheld the Act. It held that the true nature and character of the legislation must be examined. The expenditure tax was within Parliament's residuary power and was neither ultra vires nor violative of Articles 14 and 19.

Principle laid down: Legislative competence is determined by pith and substance. Residuary power under Article 248 and Entry 97 supports Union legislation where no specific entry covers the field.

State of West Bengal v. Union of India

Facts: West Bengal challenged Parliament power to acquire coal-bearing lands belonging to the State. It argued that States possessed a form of sovereignty preventing such Union

acquisition.

Issue: Whether Indian States are sovereign in a manner comparable to classical federations and whether Union law can acquire State property.

Held: The Supreme Court rejected the claim of separate State sovereignty. It held that the Indian Constitution creates a strong Union and that Parliament could legislate within its competence even where State interests are affected.

Principle laid down: India is federal, but not a compact of sovereign States; the Union has constitutionally superior features in specified fields.

Hoechst Pharmaceuticals Ltd. v. State of Bihar

Facts: Pharmaceutical companies challenged a Bihar tax law, arguing that it conflicted with central price control and essential commodities regulation. The Court considered legislative entries and repugnancy.

Issue: Whether the State tax law was invalid due to conflict with Central law or lack of competence.

Held: The Supreme Court upheld the State law, distinguishing taxation entries from general regulatory entries. It held that repugnancy under Article 254 applies only where both laws operate in the Concurrent List and there is real conflict.

Principle laid down: Taxing power and regulatory power are distinct; repugnancy is not presumed from mere overlap.

Zaverbhai Amaldas v. State of Bombay

Facts: A State law and later Central law dealt with punishment for offences in a field where both had competence. The question was whether the State law could continue after the Central law occupied the field inconsistently.

Issue: When does Article 254 repugnancy make a State law void.

Held: The Supreme Court held that when Central and State laws in the Concurrent List are inconsistent and the Central law is later, the State law becomes void to the extent of repugnancy, unless protected by presidential assent in the manner contemplated by Article 254.

Principle laid down: Article 254 resolves direct conflict in Concurrent List matters by giving priority to valid Central law.

M. Karunanidhi v. Union of India

Facts: The case considered alleged inconsistency between State and Central laws relating to corruption and public servants. The Court formulated tests for repugnancy.

Issue: How to determine whether two laws are repugnant under Article 254.

Held: The Supreme Court held that repugnancy requires clear and direct inconsistency, impossibility of simultaneous obedience, or intention of Parliament to occupy the field. Courts should try harmonious construction where possible.

Principle laid down: Repugnancy is a doctrine of real conflict, not superficial overlap.

Union of India v. H.S. Dhillon

Facts: A wealth tax on agricultural land was challenged on the ground that it fell outside Union competence. The case required interpretation of residuary powers.

Issue: How Parliament residuary power under Article 248 and Entry 97 of the Union List operates.

Held: The Supreme Court held that if a matter is not in the State List or Concurrent List,

Parliament can legislate using residuary power. The inquiry is not whether it fits perfectly in the Union List, but whether it is excluded by being in another list.

Principle laid down: Residuary legislative power belongs to Parliament, reflecting the strong Union design of the Constitution.

18. Explain the Doctrine of Pith and Substance.

Answer headings retained and discussed below

1. Meaning
2. Need in federal constitution
3. Relation with lists
4. Incidental encroachment
5. Determination of true nature
6. Application in Centre-State disputes
7. Difference from colourable legislation
8. Conclusion

Meaning

Pith and substance means the true nature and dominant character of a law. When a law incidentally touches a subject outside the legislature's list, the court looks at its real subject, object and effect instead of invalidating it merely because of incidental overlap.

Need in federal constitution

In a federal Constitution, legislative fields may overlap. The doctrine of pith and substance allows courts to look at the true nature of a law instead of striking it down merely because it incidentally touches another list.

Relation with lists

The doctrine is applied by comparing the real subject of the law with entries in the legislative lists. If the law in its pith and substance falls within the legislature competence, incidental encroachment is tolerated.

Incidental encroachment

The doctrine permits incidental overlap, but the Court looks at the law in substance. If the **pith and substance** of a law falls within the legislature's field, **incidental encroachment** into another list will not invalidate it.

Incidental encroachment means a law validly made on one subject may incidentally affect another subject. Such incidental effect does not invalidate the law if its dominant purpose lies within the law-making body power.

Determination of true nature

Courts examine the object, scheme, provisions, practical effect and dominant purpose of the law to determine its true character. The name or form of the law is not decisive.

Application in Centre-State disputes

The doctrine is often used in Centre-State disputes to prevent mechanical invalidation of laws and to preserve workable distribution of powers.

Difference from colourable legislation

Pith and substance asks whether the law truly falls within legislative competence. Colourable legislation asks whether the legislature has indirectly done what it could not do directly. Both doctrines examine substance over form, but their focus is different.

Conclusion

The doctrine of pith and substance keeps federal distribution workable. It prevents unnecessary invalidation of legislation where the legislature is substantially acting within its own field, while still allowing the court to strike down a law whose real subject lies outside legislative competence.

Bimal Chandra Banerjee v. State of Bihar

Facts: Disputes arose regarding slurry from washeries in Bihar and whether the State Government could lease or control it after Parliament had enacted law covering mines and minerals. Contractors claimed rights under State action, while the issue was whether the matter had moved into the parliamentary field.

Issue: Whether the State could exercise legislative or executive power where the field was already controlled by parliamentary legislation.

Held: The Court held that where Parliament occupies a field and the State entry is subject to parliamentary law, State action inconsistent with the Union law cannot stand.

Principle laid down: In federal distribution, the true field of legislation matters. State power cannot operate where the Constitution or parliamentary law has made the field subordinate to Union control.

Prafulla Kumar Mukherjee v. Bank of Commerce

Facts: A Bengal money-lending law was challenged because it incidentally affected promissory notes, a subject connected with the central field. The Privy Council examined the true nature of the provincial legislation.

Issue: Whether incidental encroachment on another legislative field invalidates a law.

Held: The law was upheld. The Privy Council held that its pith and substance was money-lending, a provincial matter, and incidental effect on promissory notes did not invalidate it.

Principle laid down: This is a classic statement of the pith and substance doctrine.

State of Bombay v. F.N. Balsara

Facts: Bombay prohibition legislation was challenged on several grounds, including legislative competence and alleged encroachment into import/export and other Union

subjects.

Issue: Whether the prohibition law was within State competence despite incidental effects on other fields.

Held: The Supreme Court upheld substantial parts of the law by applying pith and substance. Its true nature related to intoxicating liquor, a State subject, though some provisions were invalid on rights or competence grounds.

Principle laid down: Courts examine the dominant purpose of legislation and separate invalid parts where possible.

Hoechst Pharmaceuticals Ltd. v. State of Bihar

Facts: Pharmaceutical companies challenged a Bihar tax law, arguing that it conflicted with central price control and essential commodities regulation. The Court considered legislative entries and repugnancy.

Issue: Whether the State tax law was invalid due to conflict with Central law or lack of competence.

Held: The Supreme Court upheld the State law, distinguishing taxation entries from general regulatory entries. It held that repugnancy under Article 254 applies only where both laws operate in the Concurrent List and there is real conflict.

Principle laid down: Taxing power and regulatory power are distinct; repugnancy is not presumed from mere overlap.

Zameer Ahmed Latifur Rehman Sheikh v. State of Maharashtra

Facts: Maharashtra legislation aimed at organised crime was challenged as overlapping with central criminal and security laws. The Court examined legislative competence and incidental encroachment.

Issue: Whether the State law was invalid due to overlap with Central subjects.

Held: The Supreme Court upheld the law by examining its pith and substance and the specific menace of organised crime. Incidental overlap did not defeat competence.

Principle laid down: Federal list disputes are resolved by substance, purpose and dominant character of the law.

19. Explain Government's liability in contracts under the Constitution of India.

Answer headings retained and discussed below

1. Government contract
2. Article 298
3. Article 299 formal requirements
4. Expression in name of President or Governor
5. Execution by authorised person
6. Effect of non-compliance
7. Article 300 suits
8. Quasi-contractual relief

Government contract

A government contract is a contract entered into by the Union or a State for public purposes such as supply, construction, services or commercial activity. Because public funds are involved, the Constitution prescribes formal safeguards.

Article 298

Article 298 recognises the executive power of the Union and States to carry on trade or business and to acquire, hold and dispose of property and make contracts. This provision gives governments commercial capacity.

Article 299 formal requirements

Article 299 is **mandatory**. A government contract must be expressed to be made by the **President or Governor**, executed on his behalf, and executed by an **authorised person**. Non-compliance generally prevents ordinary contractual liability.

Article 299 lays down formal requirements for government contracts. These requirements protect the public exchequer by ensuring that the government is bound only through authorised and properly expressed contracts.

Expression in name of President or Governor

A valid government contract must be expressed to be made in the name of the President or Governor, depending on whether the Union or State is contracting. This shows that the contract is official and not personal to the officer.

Execution by authorised person

The contract must be executed on behalf of the President or Governor by a person authorised for that purpose. Without authority, an officer cannot bind the government merely by private assurance or informal correspondence.

Effect of non-compliance

Non-compliance with Article 299 may make the contract unenforceable as a government contract. However, courts may grant restitutionary or quasi-contractual relief where the government has received benefit and justice requires compensation.

Article 300 suits

Article 300 provides that the Government of India and State Governments may sue or be sued in the name of the Union of India or the State. It gives procedural personality for litigation involving government liability.

Quasi-contractual relief

Quasi-contractual relief prevents unjust enrichment. Even if Article 299 formalities fail, a person who has lawfully supplied goods or services accepted by the government may claim reasonable compensation in appropriate cases.

Conclusion

Articles 298, 299 and 300 show that Government may enter contracts and be sued, but only through constitutionally prescribed formalities. Article 299 protects public funds by requiring contracts to be made in the proper constitutional form, while quasi-contractual relief prevents the State from retaining benefits unfairly.

Bhikraj Jaipuria v. Union of India

Facts: A contract with Government was challenged because it did not strictly comply with formal requirements for government contracts under Article 299. The question was whether the Government could still be bound.

Issue: What is the effect of non-compliance with Article 299.

Held: The Supreme Court held that Article 299 requirements are mandatory. A contract not expressed and executed in the prescribed constitutional manner cannot be enforced as a contract against the Government.

Principle laid down: Article 299 protects public funds by insisting on formal authority in government contracts.

State of Bihar v. Karam Chand Thapar

Facts: A government contract dispute raised the question whether correspondence and conduct satisfied the constitutional requirements for a valid government contract.

Issue: Whether Article 299 formal requirements had been fulfilled.

Held: The Supreme Court examined whether the contract was expressed in the name of the Governor and executed by an authorised person. Where constitutional requirements are met in substance, the Government may be bound.

Principle laid down: Validity of a government contract depends on compliance with Article 299, not merely on ordinary contract principles.

Mulamchand v. State of Madhya Pradesh

Facts: A party supplied goods or services to the State under an arrangement that did not comply with Article 299. It sought contractual enforcement or alternative relief.

Issue: Whether an invalid government contract can be enforced and whether restitution is available.

Held: The Supreme Court held that a contract violating Article 299 is void and unenforceable as a contract. However, in suitable cases, compensation for benefit received may be claimed under Section 70 of the Contract Act if its conditions are satisfied.

Principle laid down: Article 299 bars contractual enforcement, but unjust enrichment may be addressed through quasi-contractual principles.

Union of India v. A.L. Rallia Ram

Facts: A dispute under a government supply contract went to arbitration. The Union questioned enforceability and procedural aspects of the contract and award.

Issue: How government contract formalities and arbitration obligations are to be treated.

Held: The Supreme Court recognised that where a government contract complies with

required formalities, arbitration and contractual obligations can bind the Government like any other party.

Principle laid down: Government is not above contract law once it enters a valid Article 299 contract.

State of West Bengal v. B.K. Mondal & Sons

Facts: A contractor constructed works for the Government without a formally valid contract under Article 299. The Government benefited from the work but resisted payment due to absence of valid contract.

Issue: Whether compensation can be claimed when Article 299 contract formalities are absent but Government has accepted benefit.

Held: The Supreme Court allowed compensation under Section 70 of the Contract Act because the work was lawfully done, not intended to be gratuitous, and the Government enjoyed the benefit.

Principle laid down: Invalid government contract does not always mean the State may retain benefits without payment.

20. Critically analyse the freedom of inter-State trade, commerce and intercourse under the Constitution.

Answer headings retained and discussed below

1. Economic unity
2. Article 301
3. Meaning of trade, commerce and intercourse
4. Articles 302 to 305 and 307
5. Regulatory versus restrictive measures
6. Direct and immediate effect test
7. Position after Jindal Stainless
8. Conclusion

Economic unity

Articles 301 to 307 aim to preserve economic unity of India by allowing trade, commerce and intercourse to move freely across State boundaries. The idea is that India should function as one economic market subject to constitutional restrictions.

Article 301

Article 301 declares that trade, commerce and intercourse throughout the territory of India shall be free. The freedom is not absolute; it is subject to other provisions in Part XIII.

Meaning of trade, commerce and intercourse

Trade, commerce and intercourse refer to the movement of goods, business activity and commercial intercourse across the territory of India. In Part XIII, these words are used to protect the idea of India as one economic unit, subject only to constitutionally permitted restrictions.

Articles 302 to 305 and 307

Article 302 allows Parliament to impose restrictions in public interest. Article 303 restricts discriminatory preference between States. Article 304 allows States to impose certain taxes and reasonable restrictions subject to conditions. Article 305 saves existing laws and State monopolies, and Article 307 contemplates an authority to carry out Part XIII.

Regulatory versus restrictive measures

Regulatory measures facilitate trade, such as traffic rules, safety rules or compensatory charges. Restrictive measures burden or obstruct trade. The constitutional difficulty arises mainly when the effect is directly restrictive rather than merely regulatory.

Direct and immediate effect test

The direct and immediate effect test asks whether the law directly restricts movement or flow of trade. Remote or incidental effects do not ordinarily violate Article 301.

Position after Jindal Stainless

After Jindal Stainless, non-discriminatory taxes are generally not treated as restrictions on trade merely because they impose a fiscal burden. The focus is on discrimination, direct restriction and constitutional justification.

Conclusion

Part XIII should be concluded as a scheme for economic unity with controlled exceptions. Article 301 declares freedom of trade, but Articles 302 to 305 allow Parliament and States to regulate or restrict that freedom within constitutional limits, especially after the refined approach in Jindal Stainless.

Atiabari Tea Co. v. State of Assam

Facts: Assam imposed a tax affecting carriage of tea through the State. Tea companies argued that it impeded free trade, commerce and intercourse under Article 301.

Issue: What kind of law violates Article 301.

Held: The Supreme Court held that laws having a direct and immediate restrictive effect on trade movement attract Article 301 scrutiny. Not every tax is invalid, but burdens directly impeding trade freedom require constitutional justification.

Principle laid down: Article 301 protects economic unity by controlling direct barriers to inter-State trade.

Automobile Transport Ltd. v. State of Rajasthan

Facts: Transport operators challenged a Rajasthan motor vehicle tax as violating Article

301. The State argued that the tax funded roads and transport facilities.

Issue: Whether regulatory or compensatory taxes violate freedom of trade under Article 301.

Held: The Supreme Court upheld the tax, holding that regulatory and compensatory measures facilitating trade do not violate Article 301. A tax used for road maintenance may enable rather than restrict trade.

Principle laid down: Article 301 prevents trade barriers, not genuine regulatory measures that facilitate commerce.

Jindal Stainless Ltd. v. State of Haryana

Facts: Entry tax laws of several States were challenged as violating Articles 301 and 304. The matter went to a nine-Judge Bench to settle the constitutional position on taxation and trade freedom.

Issue: Whether tax laws are subject to Article 301 and how discrimination is tested.

Held: The Supreme Court held that taxes are not outside Article 301, but a non-discriminatory tax does not automatically violate trade freedom. Discriminatory taxes against goods from other States are constitutionally suspect under Article 304(a).

Principle laid down: The modern test focuses on discrimination and actual trade barriers, not on treating every tax as a restriction.

G.K. Krishnan v. State of Tamil Nadu

Facts: Operators challenged motor vehicle tax provisions, arguing that they restricted trade and movement. The case considered the regulatory nature of transport taxation.

Issue: Whether transport taxes necessarily violate Article 301.

Held: The Supreme Court upheld regulatory taxation where it was connected with use of roads and transport administration. Such measures were not treated as prohibited trade barriers.

Principle laid down: Reasonable regulatory burdens may coexist with trade freedom.

21. Write a detailed note on Emergency under the Indian Constitution.

Answer headings retained and discussed below

1. Meaning and need
2. Types of emergencies
3. National Emergency under Article 352
4. President Rule under Article 356
5. Financial Emergency under Article 360
6. Approval and duration
7. Effect on Centre-State relations
8. Effect on fundamental rights
9. 44th Amendment safeguards
10. Judicial review

Meaning and need

Emergency provisions are special constitutional powers for situations where ordinary governance is unable to meet a grave crisis. The Constitution recognises National Emergency, President's Rule and Financial Emergency, and each has a separate ground, procedure and consequence.

Types of emergencies

The Constitution recognises three emergencies: National Emergency under Article 352, State Emergency or President Rule under Article 356, and Financial Emergency under Article 360. Each responds to a different kind of crisis and has different consequences.

National Emergency under Article 352

After the 44th Amendment, the phrase '**internal disturbance**' was replaced by '**armed rebellion**'. This is a major safeguard because National Emergency cannot now be proclaimed merely on vague internal disorder.

National Emergency under Article 352 may be proclaimed on grounds of war, external aggression or armed rebellion. It greatly expands Union power and affects federal and rights arrangements, so safeguards and parliamentary approval are essential.

President Rule under Article 356

President Rule under Article 356 applies when governance of a State cannot be carried on according to the Constitution. It allows Union assumption of State functions, but it is exceptional and subject to judicial review.

Financial Emergency under Article 360

Financial Emergency under Article 360 may be proclaimed when the financial stability or credit of India or any part of its territory is threatened. It has never been used in India.

Approval and duration

Emergency proclamations require parliamentary approval within prescribed time. Continuance depends on constitutional time limits, periodic approval and revocation mechanisms, preventing indefinite unchecked emergency rule.

Effect on Centre-State relations

Emergency provisions shift power towards the Union. Parliament may legislate on State subjects, Union executive directions expand and State autonomy may be reduced temporarily. This is why emergencies are described as unitary tendencies within a federal Constitution.

Effect on fundamental rights

Emergency may affect fundamental rights through Article 358 and Article 359. After the 44th Amendment, Article 20 and Article 21 remain protected from suspension of enforcement even during Emergency.

44th Amendment safeguards

The 44th Amendment introduced safeguards after the experience of the 1975 Emergency. It replaced internal disturbance with armed rebellion, strengthened approval requirements and protected Article 20 and Article 21 from suspension under Article 359.

Judicial review

Emergency satisfaction is not entirely beyond judicial review. Courts may examine mala fides, absence of relevant material or constitutional abuse, especially where Emergency powers are used to destroy democratic federalism.

Conclusion

Emergency powers must be explained as exceptional powers, not normal administrative tools. The 44th Amendment and cases such as S.R. Bommai show that emergency action is subject to constitutional safeguards, parliamentary control and judicial review, especially where democratic federalism is threatened.

S.R. Bommai v. Union of India

Facts: S.R. Bommai was Chief Minister of Karnataka. His ministry was dismissed under Article 356 and the Assembly was dissolved. Similar proclamations concerning Meghalaya, Nagaland and other States were also before the Court. The controversy arose because elected State governments had been removed on the basis of the Governor's report and political assessment of majority.

Issue: Whether the President's proclamation under Article 356 is immune from judicial review and whether an Assembly may be dissolved before constitutional safeguards are satisfied.

Held: The Supreme Court held that the proclamation under Article 356 is subject to judicial review. The President's satisfaction is not absolute; the Court may examine whether relevant material existed and whether the action was mala fide, arbitrary or based on irrelevant material. Majority should normally be tested on the floor of the House, not in Raj Bhavan.

Principle laid down: Federalism and democracy are part of the basic structure. Article 356 is an emergency power and cannot be used as a political weapon against State governments.

Minerva Mills v. Union of India

Facts: The Central Government took over management of Minerva Mills under nationalisation legislation. The petitioners challenged provisions of the 42nd Amendment, especially the expansion of Article 31C and clauses (4) and (5) of Article 368, which attempted to exclude judicial review and declare Parliament's amending power unlimited.

Issue: Whether Parliament can make its amending power unlimited and give Directive

Principles complete priority over Fundamental Rights.

Held: The Supreme Court struck down clauses (4) and (5) of Article 368 and the expanded Article 31C. It held that limited amending power is itself a basic feature, and harmony between Fundamental Rights and Directive Principles is part of the constitutional balance.

Principle laid down: The Constitution is founded on balance. Fundamental Rights and Directive Principles are complementary; one cannot be used to destroy the other.

22. Explain National Emergency and its effect on Fundamental Rights.

Answer headings retained and discussed below

1. Meaning and Article 352 grounds
2. Parliamentary approval, duration and revocation
3. Article 358 and Article 19
4. Article 359 and enforcement of rights
5. Article 19(1)(a) to (g) in brief
6. Article 20 and Article 21 in brief
7. Position after 44th Amendment
8. Conclusion

Meaning and Article 352 grounds

National Emergency under Article 352 is proclaimed only on the grounds of war, external aggression or armed rebellion. It is different from President's Rule under Article 356 because it concerns national security or internal armed rebellion affecting the Union as a whole or any part of India.

Parliamentary approval, duration and revocation

A National Emergency must be approved by Parliament within the prescribed period and continues only with periodic approval. It may be revoked by the President, and the Lok Sabha has a special role in seeking disapproval.

Article 358 and Article 19

Article 358 **automatically suspends Article 19** only when the National Emergency is on the ground of **war or external aggression**. It does not apply to an Emergency based only on **armed rebellion**.

Article 358 automatically suspends the freedoms under Article 19 only when Emergency is declared on grounds of war or external aggression. It does not apply to armed rebellion. Laws and executive action during that period receive protection to the extent permitted by the Article.

Article 359 and enforcement of rights

Article 359 **does not destroy fundamental rights**; it suspends the right to move court for enforcement of specified rights. After the 44th Amendment, enforcement of **Articles 20 and 21 cannot be suspended**.

Article 359 does not suspend the rights themselves; it suspends the right to move court for enforcement of specified rights mentioned in the Presidential Order. After the 44th Amendment, Article 20 and Article 21 cannot be included in such suspension.

Article 19(1)(a) to (g) in brief

Article 19(1)(a) to (g) includes freedom of speech and expression, assembly, association, movement, residence and profession or business. These freedoms may be affected by Article 358 during a war or external aggression emergency, but not during an armed rebellion emergency.

Article 20 and Article 21 in brief

Article 20 protects against ex post facto criminal laws, double jeopardy and self-incrimination. Article 21 protects life and personal liberty except according to procedure established by law, which must now be just, fair and reasonable. Their enforcement cannot be suspended even during Emergency after the 44th Amendment.

Position after 44th Amendment

The 44th Amendment introduced safeguards after the experience of the 1975 Emergency. It replaced internal disturbance with armed rebellion, strengthened approval requirements and protected Article 20 and Article 21 from suspension under Article 359.

Conclusion

After the 44th Amendment, the effect of National Emergency on Fundamental Rights is limited. Article 19 is suspended under Article 358 only in a war or external aggression emergency, while Article 20 and Article 21 cannot be suspended through Article 359 even during Emergency.

Makhan Singh v. State of Punjab

Facts: During the Emergency declared after the 1962 Chinese aggression, several persons detained under the Defence of India Rules filed habeas corpus petitions. A Presidential Order under Article 359 had suspended the right to move courts for enforcement of specified fundamental rights.

Issue: Whether detenus could file habeas corpus petitions despite a Presidential Order under Article 359, and what grounds remained open.

Held: The Supreme Court held that where enforcement of specified fundamental rights is suspended, courts cannot entertain petitions founded only on those rights. However, detention may still be challenged on grounds outside the suspended rights, such as lack of authority under the detention law, mala fides, or non-compliance with mandatory statutory

provisions.

Principle laid down: Makhan Singh is more balanced than ADM Jabalpur because it recognises that Article 359 suspends enforcement of specified rights, not all legality.

A.D.M. Jabalpur v. Shivkant Shukla

Facts: During the 1975 Emergency, detenus filed habeas corpus petitions challenging preventive detention. The Government argued that because enforcement of Article 21 was suspended under Article 359, courts could not examine even unlawful detention.

Issue: Whether a person could seek habeas corpus during Emergency when enforcement of Article 21 was suspended.

Held: The majority held that no remedy was available during suspension, a view later widely criticised and effectively overruled. The 44th Amendment now protects Articles 20 and 21 from suspension under Article 359. K.S. Puttaswamy later stated that ADM Jabalpur was seriously wrong.

Principle laid down: Personal liberty cannot depend entirely on executive grace; the present constitutional position rejects ADM Jabalpur approach.

Minerva Mills v. Union of India

Facts: Sections of the 42nd Amendment attempted to give unlimited amending power to Parliament and immunise laws implementing certain Directive Principles from challenge under Articles 14 and 19. The petition arose from nationalisation and constitutional amendment disputes.

Issue: Whether Parliament can enlarge its amending power so as to remove all limitations and give primacy to Directive Principles over key Fundamental Rights.

Held: The Supreme Court struck down clauses that made amending power unlimited. It held that limited amending power itself is part of the basic structure. Harmony between Fundamental Rights and Directive Principles is also a basic feature.

Principle laid down: Parliament cannot use Article 368 to convert limited constitutional power into unlimited sovereign power.

K.S. Puttaswamy v. Union of India

Facts: A nine-Judge Bench considered whether privacy is a fundamental right after earlier doubts created by cases such as M.P. Sharma and Kharak Singh. The issue arose in the background of Aadhaar and State use of personal data.

Issue: Whether the Constitution recognises a fundamental right to privacy.

Held: The Supreme Court unanimously held that privacy is a fundamental right protected under Articles 14, 19 and 21. It also expressly disapproved the reasoning of ADM Jabalpur on liberty during Emergency.

Principle laid down: Privacy, dignity and liberty are intrinsic to constitutional freedom and cannot be treated as State concessions.

23. Discuss the impact of Emergency on Indian federalism.

Answer headings retained and discussed below

1. Emergency and federal balance
2. National Emergency effect
3. Parliament over State List
4. Union executive expansion
5. Financial control
6. President Rule under Article 356
7. Misuse of Article 356
8. Judicial control after Bommai
9. Conclusion

Emergency and federal balance

Emergency provisions alter the normal federal balance by strengthening the Union to meet extraordinary threats. The shift is constitutionally permitted, but it must be temporary, justified and reviewable.

National Emergency effect

National Emergency under Article 352 may be proclaimed on grounds of war, external aggression or armed rebellion. It greatly expands Union power and affects federal and rights arrangements, so safeguards and parliamentary approval are essential.

Parliament over State List

Articles 249 and 250 allow Parliament to legislate on State List matters in special situations. Article 249 operates when Rajya Sabha declares national interest; Article 250 operates during National Emergency.

Union executive expansion

During National Emergency, Union executive power can extend to giving directions to States regarding the manner in which their executive power is to be exercised. This reduces State autonomy for the duration of the crisis.

Financial control

Emergency may allow increased Union control over financial matters. Under Financial Emergency, the Union may issue directions about financial propriety and reduction of salaries, including those of constitutional functionaries.

President Rule under Article 356

President Rule under Article 356 applies when governance of a State cannot be carried on according to the Constitution. It allows Union assumption of State functions, but it is exceptional and subject to judicial review.

Misuse of Article 356

Article 356 was historically misused to dismiss State governments for political reasons. The Bommai decision restricted this misuse by insisting on floor tests, relevant material and judicial review.

Judicial control after Bommai

After Bommai, President Rule is subject to judicial scrutiny. If the proclamation is unconstitutional, courts may restore the dismissed government and revive the Assembly where appropriate.

Conclusion

Emergency alters Indian federalism by temporarily increasing Union control over legislation, administration and finances. However, this shift is not unlimited: after S.R. Bommai, misuse of Article 356 can be tested by courts and an unlawfully dismissed State government may be restored.

S.R. Bommai v. Union of India

Facts: S.R. Bommai was Chief Minister of Karnataka. His ministry was dismissed under Article 356 and the Assembly was dissolved. Similar proclamations concerning Meghalaya, Nagaland and other States were also before the Court. The controversy arose because elected State governments had been removed on the basis of the Governor's report and political assessment of majority.

Issue: Whether the President's proclamation under Article 356 is immune from judicial review and whether an Assembly may be dissolved before constitutional safeguards are satisfied.

Held: The Supreme Court held that the proclamation under Article 356 is subject to judicial review. The President's satisfaction is not absolute; the Court may examine whether relevant material existed and whether the action was mala fide, arbitrary or based on irrelevant material. Majority should normally be tested on the floor of the House, not in Raj Bhavan.

Principle laid down: Federalism and democracy are part of the basic structure. Article 356 is an emergency power and cannot be used as a political weapon against State governments.

State of Rajasthan v. Union of India

Facts: After a change of government at the Centre, directions and threatened action were issued concerning State governments. States challenged possible use of Article 356. The case preceded the stricter Bommai doctrine.

Issue: Whether courts could interfere with threatened or proposed Article 356 action.

Held: The Supreme Court adopted a restrained approach and declined interference at that stage. Later, S.R. Bommai developed more robust judicial review of actual proclamations under Article 356.

Principle laid down: The case shows the older cautious approach; Bommai is now the leading authority on review of President Rule.

Minerva Mills v. Union of India

Facts: Sections of the 42nd Amendment attempted to give unlimited amending power to

Parliament and immunise laws implementing certain Directive Principles from challenge under Articles 14 and 19. The petition arose from nationalisation and constitutional amendment disputes.

Issue: Whether Parliament can enlarge its amending power so as to remove all limitations and give primacy to Directive Principles over key Fundamental Rights.

Held: The Supreme Court struck down clauses that made amending power unlimited. It held that limited amending power itself is part of the basic structure. Harmony between Fundamental Rights and Directive Principles is also a basic feature.

Principle laid down: Parliament cannot use Article 368 to convert limited constitutional power into unlimited sovereign power.

Rameshwar Prasad v. Union of India

Facts: After elections in Bihar in 2005, no government was formed. The Governor sent reports alleging attempts at unethical defections and recommended dissolution of the Assembly before it had even met. The President issued a proclamation dissolving the Assembly, which was challenged.

Issue: Whether Article 356 can be used to dissolve an Assembly on apprehension that defections may occur before a government is formed.

Held: The Supreme Court held the dissolution unconstitutional because it was based on assumptions and extraneous considerations. However, as fresh elections had already taken place, the Court did not restore the dissolved Assembly.

Principle laid down: Article 356 cannot be invoked on mere political suspicion. The Governor report must be constitutionally relevant and not speculative.

24. Write a short note on Financial Emergency.

Answer headings retained and discussed below

1. Meaning
2. Article 360
3. Grounds
4. Parliamentary approval and duration
5. Effect on States financial autonomy
6. Salaries and allowances including judges
7. No use so far
8. Conclusion

Meaning

Financial Emergency under Article 360 is a proclamation made when the financial stability or credit of India or any part of India is threatened. It is concerned with a breakdown in financial confidence, fiscal stability or creditworthiness, not with ordinary budgetary difficulty.

Article 360

Article 360 empowers the President to proclaim Financial Emergency if financial stability or credit of India or any part of India is threatened. It is designed for severe financial breakdown, not ordinary fiscal stress.

Grounds

The ground is threat to financial stability or credit. The language is broad, but because the consequences are serious, the satisfaction must be based on relevant financial material and constitutional responsibility.

Parliamentary approval and duration

Emergency proclamations require parliamentary approval within prescribed time. Continuance depends on constitutional time limits, periodic approval and revocation mechanisms, preventing indefinite unchecked emergency rule.

Effect on States financial autonomy

During Financial Emergency, State financial autonomy may be directly curtailed because the Union can issue directions to States regarding financial propriety. Such directions may require reduction of expenditure, reservation of Money Bills or other financial Bills for Presidential consideration, and compliance with Union instructions on fiscal discipline.

Salaries and allowances including judges

During Financial Emergency, the Union may direct reduction of salaries and allowances of persons serving in connection with State affairs and may also require reduction of salaries of Union and State officials, including judges, subject to constitutional text.

No use so far

No Financial Emergency has been proclaimed in India so far. Therefore, the answer is mainly provision-based: state the ground under Article 360, parliamentary approval, Union directions to States, reservation of financial Bills and possible reduction of salaries and allowances.

Conclusion

Financial Emergency remains unused in India, but Article 360 is significant because it gives the Union a reserve power over State finances in an extreme fiscal crisis. The answer should emphasise that this is the most financial form of unitary control in the Constitution, though it has never been tested in practice.

S.R. Bommai v. Union of India

Facts: S.R. Bommai was Chief Minister of Karnataka. His ministry was dismissed under Article 356 and the Assembly was dissolved. Similar proclamations concerning Meghalaya, Nagaland and other States were also before the Court. The controversy arose because elected State governments had been removed on the basis of the Governor's report and political assessment of majority.

Issue: Whether the President's proclamation under Article 356 is immune from judicial review and whether an Assembly may be dissolved before constitutional safeguards are

satisfied.

Held: The Supreme Court held that the proclamation under Article 356 is subject to judicial review. The President's satisfaction is not absolute; the Court may examine whether relevant material existed and whether the action was mala fide, arbitrary or based on irrelevant material. Majority should normally be tested on the floor of the House, not in Raj Bhavan.

Principle laid down: Federalism and democracy are part of the basic structure. Article 356 is an emergency power and cannot be used as a political weapon against State governments.

25. Explain the procedure for amendment of the Constitution of India.

Answer headings retained and discussed below

1. Meaning and need
2. Article 368
3. Simple majority changes
4. Special majority
5. Special majority plus State ratification
6. Procedure of Bill and President assent
7. Ordinary legislative power vs constituent power
8. Conclusion

Meaning and need

Constitutional amendment means a formal alteration of the Constitution, either by adding, changing or repealing constitutional provisions. Article 368 provides the main procedure, but some changes affecting the constitutional scheme are made by simple majority under other provisions and are not treated as Article 368 amendments.

Article 368

Article 368 contains the procedure and power for amendment of the Constitution. It allows the Constitution to adapt to changing needs while preserving formal limits and, after Kesavananda, basic structure limits.

Simple majority changes

Some constitutional changes are made by ordinary legislative process and simple majority, such as admission or formation of States in certain contexts. These are not treated as amendments under Article 368 even though they affect constitutional provisions.

Special majority

Most constitutional amendments under Article 368 require a special majority: a majority of the total membership of each House and a majority of not less than two-thirds of members present and voting.

Special majority plus State ratification

Ratification by at least **one-half of the States** is required when the amendment affects **federal features** such as election of the President, distribution of executive or legislative powers, Supreme Court and High Courts, or representation of States in Parliament.

Most constitutional amendments under Article 368 require a special majority: a majority of the total membership of each House and a majority of not less than two-thirds of members present and voting.

Procedure of Bill and President assent

A Constitutional Amendment Bill may be introduced in either House of Parliament and must be passed by the required majority in each House. There is no joint sitting for disagreement. After passage, the President gives assent; he cannot return the Bill for reconsideration like an ordinary Bill.

Ordinary legislative power vs constituent power

Ordinary legislative power creates or changes ordinary law and is limited by the Constitution. Constituent power amends the Constitution itself, but even constituent power cannot damage the basic structure.

Conclusion

The amendment procedure shows that the Constitution is neither rigid like an unchangeable document nor flexible like an ordinary statute. Simple majority, special majority and State ratification are used according to the importance of the subject, while the basic structure doctrine controls the substance of amendments.

Shankari Prasad v. Union of India

Facts: The First Constitutional Amendment, 1951 inserted Articles 31A and 31B to protect agrarian reform laws from challenge under fundamental rights. Zamindars challenged the amendment, contending that it took away rights guaranteed by Part III and was therefore void under Article 13.

Issue: Whether a constitutional amendment made under Article 368 is 'law' under Article 13, and whether Parliament could amend fundamental rights.

Held: The Supreme Court upheld the First Amendment. It held that Article 13 refers to ordinary legislative law, not a constitutional amendment made in exercise of constituent power. Therefore, the amendment was constitutionally valid.

Principle laid down: At this stage, Parliament's amending power was treated broadly and amendments were not considered ordinary law under Article 13.

Sajjan Singh v. State of Rajasthan

Facts: The Seventeenth Amendment protected more land reform laws. The amendment was challenged as violating fundamental rights and as being beyond Parliament amending power.

Issue: Whether Parliament could amend fundamental rights and protect land reform laws.

Held: The Supreme Court followed Shankari Prasad and upheld Parliament power. However, doubts expressed by some judges later influenced Golak Nath and Kesavananda.

Principle laid down: The case continued the broad amendment view but planted early concerns about fundamental rights protection.

26. Explain the Basic Structure Doctrine and the limits on Parliament's amending power.

Answer headings retained and discussed below

1. Introduction
2. Evolution: Shankari Prasad to Golak Nath
3. Kesavananda and birth of basic structure
4. Meaning and examples
5. Application after Kesavananda
6. Article 368 limitation
7. Importance
8. Conclusion

Introduction

The Basic Structure Doctrine answers one central question: how far can Parliament use Article 368 to change the Constitution? The doctrine says that Parliament may amend every part of the Constitution, including Fundamental Rights, but cannot alter the Constitution's basic identity.

Evolution: Shankari Prasad to Golak Nath

The development is simple: **Shankari Prasad** upheld the First Amendment and held that amendment is not ordinary law under Article 13; **Golak Nath** held that fundamental rights could not be abridged by amendment; **Kesavananda** finally allowed amendment of every part of the Constitution but subject to **basic structure**.

In Shankari Prasad and Sajjan Singh the Court accepted wide parliamentary amendment power. In Golak Nath the Court held that Parliament could not amend fundamental rights. This conflict set the stage for Kesavananda Bharati.

Kesavananda and birth of basic structure

Kesavananda Bharati held that Parliament may amend any part of the Constitution, including fundamental rights, but cannot alter the basic structure. This created the controlling doctrine of Indian constitutional law.

Meaning and examples

Basic structure means the Constitution may be **amended but not destroyed**. Important examples from the leading cases are supremacy of the Constitution, democracy, republican government, secularism, separation of powers, federalism, **rule of law, judicial review**, free and fair elections, **limited amending power** and **independence of judiciary**.

The doctrine is not a general moral test and it is not written as a list in Article 368. It is a judicial limitation developed in Kesavananda Bharati and applied later to protect features such as supremacy of the Constitution, judicial review, rule of law, democracy, secularism, federalism and separation of powers.

Application after Kesavananda

Indira Gandhi added rule of law, judicial review and **free and fair elections** to the basic structure discussion. Minerva Mills protected harmony between **Parts III and IV** and limited amending power. I.R. Coelho held that **Ninth Schedule** laws inserted after **24 April 1973** can still be tested on basic structure.

Kesavananda Bharati held that Parliament may amend any part of the Constitution, including fundamental rights, but cannot alter the basic structure. This created the controlling doctrine of Indian constitutional law.

Article 368 limitation

Article 368 contains the procedure and power for amendment of the Constitution. It allows the Constitution to adapt to changing needs while preserving formal limits and, after Kesavananda, basic structure limits.

Importance

The doctrine is important because it converts Article 368 from an unlimited constituent power into a limited amending power. It permits constitutional change but prevents amendments that would destroy the very framework on which the Constitution rests.

Conclusion

The proper conclusion is that basic structure is the controlling limitation on Parliament's amending power. It preserves constitutional continuity by allowing reform while preventing Parliament from using Article 368 to abolish judicial review, democracy, federalism, rule of law or other essential features.

Shankari Prasad v. Union of India

Facts: The First Constitutional Amendment, 1951 inserted Articles 31A and 31B to protect agrarian reform laws from challenge under fundamental rights. Zamindars challenged the amendment, contending that it took away rights guaranteed by Part III and was therefore void under Article 13.

Issue: Whether a constitutional amendment made under Article 368 is 'law' under Article 13, and whether Parliament could amend fundamental rights.

Held: The Supreme Court upheld the First Amendment. It held that Article 13 refers to ordinary legislative law, not a constitutional amendment made in exercise of constituent power. Therefore, the amendment was constitutionally valid.

Principle laid down: At this stage, Parliament's amending power was treated broadly and amendments were not considered ordinary law under Article 13.

Sajjan Singh v. State of Rajasthan

Facts: The Seventeenth Amendment protected more land reform laws. The amendment was challenged as violating fundamental rights and as being beyond Parliament amending power.

Issue: Whether Parliament could amend fundamental rights and protect land reform laws.

Held: The Supreme Court followed Shankari Prasad and upheld Parliament power. However, doubts expressed by some judges later influenced Golak Nath and Kesavananda.

Principle laid down: The case continued the broad amendment view but planted early concerns about fundamental rights protection.

Waman Rao v. Union of India

Facts: The validity of laws placed in the Ninth Schedule was challenged after Kesavananda. The Court had to determine how the basic structure doctrine applied to Ninth Schedule insertions over time.

Issue: Whether all Ninth Schedule laws are immune and from what date basic structure review applies.

Held: The Supreme Court drew a line at 24 April 1973, the date of Kesavananda. Ninth Schedule insertions after that date could be tested on basic structure grounds.

Principle laid down: Constitutional protection devices like the Ninth Schedule are subject to basic structure limits after Kesavananda.

27. Examine Article 370 and its abrogation in the light of revocation of special status of Jammu and Kashmir.

Answer headings retained and discussed below

1. Historical background of accession
2. Article 370 nature and purpose
3. Temporary, transitional and special debate
4. Presidential Orders and Article 35A
5. 2019 constitutional changes
6. Jammu and Kashmir Reorganisation Act, 2019
7. Legal issues

8. Supreme Court ruling

9. Conclusion

Historical background of accession

Jammu and Kashmir acceded to India through the Instrument of Accession in 1947 in a special historical context of invasion, accession and later constitutional negotiations. Article 370 reflected that transitional constitutional arrangement.

Article 370 nature and purpose

Article 370 governed application of the Indian Constitution to Jammu and Kashmir. It allowed Presidential Orders to apply constitutional provisions with modifications, and its character as temporary, transitional or continuing became a major legal issue.

Temporary, transitional and special debate

Although placed among temporary and transitional provisions, Article 370 operated for decades through Presidential Orders. The legal debate was whether it became permanent after the Jammu and Kashmir Constituent Assembly ceased to exist or whether the President could still act under it.

Presidential Orders and Article 35A

Presidential Orders were the main method by which provisions of the Indian Constitution were extended to Jammu and Kashmir. Article 35A, introduced through a Presidential Order, related to permanent residents and special rights.

2019 constitutional changes

In 2019, the Constitution Application Order applied the Indian Constitution to Jammu and Kashmir in a new manner and used Article 367 interpretation to facilitate changes to Article 370. A subsequent declaration made Article 370 largely inoperative.

Jammu and Kashmir Reorganisation Act, 2019

The Jammu and Kashmir Reorganisation Act, 2019 reorganised the former State into the Union Territory of Jammu and Kashmir and the Union Territory of Ladakh. This raised federal questions because the State was under President Rule at the time.

Legal issues

The Article 370 case should be connected with **Presidential Orders**, the effect of dissolution of the **J&K Constituent Assembly**, use of **Article 367** to interpret Article 370, and conversion of the State into **Union Territories** under the Reorganisation Act.

The main issues were whether Article 370 could be made inoperative without recommendation of the Jammu and Kashmir Constituent Assembly, whether Article

367 could be used in this manner, and whether reorganisation of a State into Union Territories was constitutionally valid.

Supreme Court ruling

The Supreme Court upheld the 2019 constitutional changes. It treated Article 370 as a temporary provision, held that the President's power under Article 370 continued after dissolution of the Jammu and Kashmir Constituent Assembly, upheld the use of Presidential Orders for applying the Constitution of India, and directed steps towards restoration of Statehood and elections.

Conclusion

Article 370 must be concluded as a question about temporary special status, Presidential Orders and constitutional integration of Jammu and Kashmir. The Supreme Court upheld the 2019 measures, but the answer should still discuss the legal controversy around Article 370(3), Article 367 and the reorganisation of the State into Union Territories.

In Re: Article 370 of the Constitution

Facts: After August 2019, Presidential Orders C.O. 272 and C.O. 273 and the Jammu and Kashmir Reorganisation Act were challenged. Petitioners argued that Article 370 could not be abrogated without the recommendation of the Jammu and Kashmir Constituent Assembly and that conversion of the State into Union Territories was unconstitutional.

Issue: Whether the 2019 abrogation of Article 370 and the connected constitutional process were valid.

Held: The Supreme Court upheld the abrogation of Article 370. It held that Article 370 was a temporary provision in the sense explained by the judgment, that the President power continued after dissolution of the Constituent Assembly, and that concurrence during President Rule could operate through constitutional mechanisms. The Court upheld Ladakh as a Union Territory and recorded the Union statement regarding restoration of Statehood for Jammu and Kashmir.

Principle laid down: Article 370 could be rendered inoperative by constitutional process; the 2019 abrogation was upheld by the Supreme Court.

Prem Nath Kaul v. State of Jammu and Kashmir

Facts: The case involved the constitutional relationship between India and Jammu and Kashmir after accession and before final constitutional integration. It discussed the role of the Jammu and Kashmir Constituent Assembly.

Issue: How Article 370 and the State Constituent Assembly affected the constitutional relationship.

Held: The Supreme Court emphasised the special constitutional arrangement and the importance of the Constituent Assembly in that historical context. Later cases interpreted Article 370 differently as continuing in operation.

Principle laid down: The case is important for historical understanding of Article 370, though later doctrine evolved.

Sampat Prakash v. State of Jammu and Kashmir

Facts: Preventive detention in Jammu and Kashmir was challenged, and the petitioner argued that Article 370 had become inoperative after dissolution of the State Constituent Assembly.

Issue: Whether Article 370 continued after the Jammu and Kashmir Constituent Assembly ceased to exist.

Held: The Supreme Court held that Article 370 continued to operate and that Presidential Orders could still be issued under it. The provision was treated as continuing unless acted upon in the constitutional manner.

Principle laid down: Article 370 was not automatically exhausted on dissolution of the State Constituent Assembly.

State Bank of India v. Santosh Gupta

Facts: The application of the SARFAESI Act to Jammu and Kashmir was challenged on the ground of special constitutional status and State autonomy. The issue concerned Parliament power and extension of central laws.

Issue: Whether central financial legislation could apply to Jammu and Kashmir in light of Article 370.

Held: The Supreme Court upheld application of the central law and rejected an interpretation that would make Jammu and Kashmir sovereign outside the Indian constitutional structure.

Principle laid down: Jammu and Kashmir had special status, but it was not sovereign outside the Constitution of India.