

Constitutional Law II

Chicag Vora

LL.B. II SEMESTER 3 YEARS PROGRAMME

INDIAN CONSTITUTIONAL LAW-II

(6 U's)

CORE COURSE (CC): 2.1

UNIT: I

Executive under the Indian Constitution

- President and Union Council of Ministers
- Powers and functions of the office of the President
- Governor and State Council of Ministers-Dual capacity of the Governor
- Powers and functions of the Governor and Legislature under the Indian Constitution
- Union and State Legislatures- Composition, Powers, Functions
- Privileges of the members of legislature; Privileges and Fundamental Rights
- Anti-Defection law-X schedule

UNIT: II

Judiciary under the constitution

Supreme Court of India

- Appointment of Judges
- Powers and Jurisdictions of the Supreme Court: Original, Appellate and Advisory Jurisdiction- Articles 131, 132, 136, 143
- Articles 141, 142

High Courts

- Appointment and Transfer of Judges
- Powers and Jurisdiction of the High Courts Articles 226 & 227

Independence of Judiciary & Judicial Accountability

UNIT: III

- Concept of Co-operative and Competitive Federalism
- Centre State Relations-Legislative, Administrative and Financial Relations
- Article 370 and its abrogation

UNIT: IV

- Freedom of Interstate Trade, Commerce and Intercourse
- Services under the State- All Indian Services; Doctrine of Pleasure & Its Exceptions

UNIT: V

Emergency

- Need of Emergency Provisions
- Different kinds of Emergency-National, State and Financial emergency
- Impact of Emergency on Federalism and Fundamental Rights

UNIT: VI

Amendment of the Constitution:

- Need of provisions for Amendment of the Constitution
- Power and procedure of amendment of the Indian Constitution
- Amendability of Fundamental Rights & the Basic Structure Theory

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President and Union Council of Ministers under the Constitution of India

The Constitution of India establishes a parliamentary form of government in which the President is the **formal, nominal and constitutional head of executive**, while the **real executive power** is exercised by the **Council of Ministers headed by the Prime Minister**. Articles 52 to 78 of the Constitution comprehensively deal with the position, powers, functions, and relationship between the President and the Council of Ministers. The scheme reflects a careful balance between constitutional form and political reality, ensuring democratic accountability.

Article 52 mandates that **there shall be a President of India**. Article 53 vests the executive power of the Union in the President, to be exercised either directly or through subordinate officers in accordance with the Constitution. However, this power is not absolute and is subject to constitutional limitations, particularly **Article 74**, which requires the **President to act on the aid and advice of the Council of Ministers**.

Election of President

The election of the President is provided under **Article 54**, through an **electoral college** consisting of **elected members of both Houses of Parliament** and **elected members of State Legislative Assemblies**.

Why this way? **This system ensures federal balance** and democratic legitimacy.

How it's done? Using method of **proportional representation by means of the single transferable vote** ensures fairness.

Term of President

The term of office of the President is **five years** under Article 56, **subject to resignation or removal by impeachment** under Article 61. The impeachment process is quasi-judicial in nature and can be initiated for violation of the Constitution.

Powers of President

The powers of the President can be broadly classified into

1. executive
2. legislative
3. judicial
4. diplomatic
5. military and

6. emergency powers.

However, these powers are largely formal in nature and are exercised on the aid and advice of the Council of Ministers.

The Westminster model

The Westminster model is a form of parliamentary government defined by the integration of the executive and legislative branches. Named after the Palace of Westminster in London—the home of the UK Parliament—it serves as the blueprint for many parliamentary systems around the world (particularly in former British colonies like Canada, Australia, and India).

In this system, the head of government, typically a Prime Minister, and their cabinet are sitting members of the legislature who derive their authority from the support of the majority. This structure ensures that the government is directly accountable to parliament; should the executive lose a vote of confidence, it is constitutionally required to resign or call for a general election. This creates a centralized power dynamic where the ruling party can generally pass legislation efficiently, provided they maintain internal party discipline.

Case laws

In *Shamsher Singh v. State of Punjab* (1974)

Facts: Two judicial officers on probation in Punjab, Shamsher Singh and Ishwar Chand Agarwal, had their services terminated by the State Government. The termination orders were issued in the name of the Governor.

The appellants challenged their dismissal, arguing that under the Constitution, the Governor must exercise his personal "satisfaction" and discretion in appointing or dismissing judicial officers, rather than acting on the advice of the Council of Ministers.

They also argued that their termination was actually a punishment for alleged misconduct (specifically a "stigmatic" dismissal), which entitled them to a formal inquiry under Article 311.

Issues:

1. Constitutional Status: Does the Governor (or President) act as a personal executive or as a formal head bound by the "aid and advice" of the Council of Ministers?
2. Meaning of "Satisfaction": Does the "satisfaction" required by the Constitution for executive actions mean the personal satisfaction of the Governor/President or the institutional satisfaction of the Cabinet?
3. Article 311 Applicability: Does the termination of a probationer require a formal departmental inquiry if the dismissal is based on misconduct rather than mere unsuitability?

Held:

- **Parliamentary Form of Government:** The Supreme Court held that India follows the **Westminster model**. The Governor and President are constitutional and formal heads who must exercise their formal powers only on the aid and advice of the Council of Ministers.
- **No Personal Satisfaction:** The "satisfaction" of the President or Governor required by the Constitution is not their personal satisfaction, but the satisfaction of the Council of Ministers.
- **Delegation of Power:** The Governor can delegate his functions to Ministers or other officials through the Rules of Business; he does not need to deal with every file personally.
- **Punitive Termination:** The Court ruled that if a probationer's termination is "stigmatic" (based on allegations of misconduct or a secret inquiry into their character) rather than a simple discharge for unsuitability, it amounts to punishment. In such cases, a formal inquiry under Article 311(2) is mandatory.
- **Outcome:** The termination orders were quashed because the procedures followed were found to be punitive without providing a fair hearing.

In U.N.R. Rao v. Indira Gandhi (1971)

Facts:

In 1970, the Fourth Lok Sabha was dissolved by the President on the advice of the Prime Minister, Indira Gandhi. After the dissolution of the House, Indira Gandhi continued to hold office as Prime Minister leading a "Caretaker Government" until the next general elections.

U.N. Raghavendra Rao (the petitioner) challenged her right to stay in office. He argued that once the Lok Sabha is dissolved, the Council of Ministers ceases to be "collectively responsible" to the House (as required by Article 75(3)), and therefore, the Prime Minister cannot legally hold the post.

Issues:

1. **Mandatory nature of Article 74(1):** Is the provision that "there shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President" mandatory or directory?
2. **Collective Responsibility vs. President's Power:** Can the Council of Ministers exist when the Lok Sabha is dissolved and they can no longer be responsible to it?
3. **Presidential Governance:** Does the President have the power to exercise executive functions without the aid and advice of the Council of Ministers during the period between the dissolution of one House and the formation of another?

Held:

The Supreme Court dismissed the petition and upheld Indira Gandhi's position as Prime Minister. The key rulings were:

The "Shall" is Mandatory: The Court held that Article 74(1) is mandatory. The word "shall" means that the President cannot exercise executive power without the aid and advice of a Council of Ministers.

No Vacuum in Governance: The Constitution does not contemplate a "vacuum" where the executive exists without a Council of Ministers. Even if the Lok Sabha is dissolved, the Council of Ministers must remain in office to advise the President until a new government is formed.

Harmonious Construction: The Court applied the principle of harmonious construction between Article 75(3) (collective responsibility) and Article 74(1) (aid and advice). It ruled that while the House may be dissolved, the requirement for a Council of Ministers under Article 74(1) does not vanish.

The President is a Formal Head: Since India follows the Westminster (British) model of cabinet government, the President is a constitutional head who must always act on the advice of the Ministers. To rule without them would be a violation of the parliamentary nature of the Constitution.

S.R. Bommai v. Union of India (1994)

Facts:

Between 1989 and 1992, the President dismissed several state governments (Karnataka, Meghalaya, Nagaland, Madhya Pradesh, Rajasthan, and Himachal Pradesh) under Article 356, citing a breakdown of constitutional machinery.

S.R. Bommai was the Chief Minister of Karnataka. His government was dismissed in 1989 on the grounds that he had lost his majority, despite his request to prove it on the floor of the House.

The Religious Angle: In the cases of Madhya Pradesh, Rajasthan, and Himachal Pradesh, the governments were dismissed following the Babri Masjid demolition, with the Center arguing that these secular state governments could not maintain order.

Issues:

1. **Judicial Review:** Is the President's proclamation under Article 356 subject to judicial review, or is it a "political thicket" the courts shouldn't enter?
2. **Scope of "Satisfaction":** What constitutes the "satisfaction" of the President? Can the courts examine the material (evidence) upon which that satisfaction is based?
3. **Secularism:** Is secularism a basic feature of the Constitution, and can a state government be dismissed for violating it?
4. **Floor Test:** What is the proper way to determine if a government has lost its majority?

Held:

The 9-judge bench of the Supreme Court delivered a landmark ruling that severely restricted the Center's power to dismiss state governments:

Judicial Review is Allowed: The Court held that the President's proclamation is not immune from judicial review. While the court won't question the wisdom of the decision, it can check if the decision was based on "mala fide" (bad faith) or irrelevant grounds.

The "Floor Test" is Mandatory: The Court ruled that the only place to decide whether a Chief Minister has lost the majority is on the floor of the Legislative Assembly, not in the Governor's private chambers.

Secularism as a Basic Structure: The Court declared that Secularism is part of the "Basic Structure" of the Constitution. Therefore, if a state government acts against secularism, it can be considered a breakdown of constitutional machinery.

Power of the Court to Restore: In a historic move, the Court ruled that if a dismissal is found to be unconstitutional, the Court has the power to revive the dissolved Legislative Assembly and restore the dismissed government.

Warning to the Center: Article 356 is an "extreme power" and should be used only as a last resort in cases of "deadlock" that cannot be resolved otherwise.

Conclusion

In conclusion, the constitutional scheme clearly establishes a parliamentary executive in which the President acts as a formal head while the Council of Ministers exercises real executive authority. Judicial pronouncements have reinforced this position, ensuring that democratic accountability is maintained while preserving constitutional dignity.

each topic in detail with articles & case laws. write here provision in case laws. syllabus units & sub-topics attached along with Sp1 emphasis on PQA

POWERS AND FUNCTIONS OF THE PRESIDENT OF INDIA

The office of the President of India occupies a central and indispensable position in the constitutional framework. Under Article 52 of the Constitution, there shall be a President of India, who functions as the formal head of the State. However, the Indian constitutional scheme adopts a parliamentary form of government, whereby the real executive power is exercised by the Council of Ministers headed by the Prime Minister. The President acts in accordance with the aid and advice of the Council of Ministers as mandated under Article 74.

EXECUTIVE POWERS

The executive power of the Union is vested in the President under Article 53 of the Constitution. This power extends to all matters upon which Parliament has the authority to legislate. The President exercises this power either directly or through subordinate officers. The President appoints the Prime Minister, and on his advice, appoints other ministers. Additionally, the President appoints Governors, the Attorney General of India, and judges of the Supreme Court and High Courts.

Shamsher Singh v. State of Punjab

Facts: The case involved the validity of actions taken by the Governor without consulting the Council of Ministers.

Issue: Whether the President and Governor can exercise executive powers independently without ministerial advice.

Held: The Supreme Court held that the President and Governor are constitutional heads and must act on the aid and advice of the Council of Ministers except in limited circumstances.

LEGISLATIVE POWERS

The President forms an integral part of Parliament under Article 79. The President has the power to summon, prorogue, and dissolve the Lok Sabha. No bill becomes law without the assent of the President. The President also possesses veto powers, including absolute, suspensive, and pocket veto. Furthermore, under Article 123, the President can promulgate ordinances when Parliament is not in session.

A.K. Roy v. Union of India

Facts: The validity of an ordinance issued by the President was challenged on the ground of misuse of power.

Issue: Whether the ordinance-making power is subject to judicial review.

Held: The Court held that ordinance-making power is legislative in nature and subject to judicial review if exercised mala fide.

JUDICIAL POWERS

Under Article 72, the President has the power to grant pardons, reprieves, respites, or remissions of punishment, or to suspend, remit or commute sentences in certain cases. This power is particularly significant in cases involving death sentences and court-martial convictions.

Kehar Singh v. Union of India

Facts: The petitioner challenged the rejection of a mercy petition by the President.

Issue: Whether the President can review the merits of a case while deciding mercy petitions.
Held: The Supreme Court held that the President can examine the merits of the case independently while exercising pardoning power.



EMERGENCY POWERS

The Constitution confers extensive emergency powers on the President under Articles 352, 356, and 360. These provisions enable the President to declare a national emergency, impose President's rule in states, and declare a financial emergency. During such times, the federal structure of the Constitution assumes a unitary character.

S.R. Bommai v. Union of India

Facts: Several state governments were dismissed under Article 356, leading to challenges.

Issue: Whether the proclamation of President's Rule is subject to judicial review.

Held: The Supreme Court held that such proclamations are subject to judicial review and cannot be exercised arbitrarily.

In conclusion, the President of India serves as the constitutional head of the Union, exercising a wide range of powers within the framework of the Constitution. While the office is largely ceremonial in nature, it plays a crucial role in ensuring constitutional governance, maintaining stability, and acting as a guardian of the Constitution.

Governor and State Council of Ministers: Constitutional Position and Dual Capacity

The office of the Governor occupies a pivotal position within the constitutional framework of India. Conceived as the nominal head of the State, the Governor functions within the contours of parliamentary democracy, acting ordinarily on the aid and advice of the Council of Ministers. However, the Constitution also vests the Governor with certain discretionary powers, giving rise to the concept of dual capacity. This article examines the constitutional provisions, judicial interpretations, and evolving role of the Governor, with particular emphasis on the relationship with the State Council of Ministers and the doctrine of dual capacity.

1. Constitutional Position of the Governor

Articles 153 to 162 of the Constitution of India lay down the framework governing the office of the Governor. The Governor is appointed by the President and holds office during the pleasure of the President under Article 156. Although the Governor is the executive head of the State, the real executive power is exercised by the Council of Ministers under Article 163.

Shamsher Singh v. State of Punjab (1974)

Facts: The case arose when judicial officers challenged their termination orders, which were formally issued in the name of the President and Governor. The question was whether such actions reflected personal satisfaction of these constitutional heads or were subject to ministerial advice.

Issues: Whether the President and Governor exercise executive powers personally or are bound by the aid and advice of the Council of Ministers.

Held: The Supreme Court held that the President and Governor are constitutional heads and must act on the aid and advice of the Council of Ministers except in narrowly defined discretionary areas. The Court emphasized that personal discretion is an exception, not the rule.

2. Governor and State Council of Ministers

Article 163 establishes that there shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor. Article 164 further provides that the Chief Minister is appointed by the Governor, and other ministers are appointed on the advice of the Chief Minister. The relationship between the Governor and the Council of Ministers is foundational to the working of responsible government at the State level.

Nabam Rebia v. Deputy Speaker (2016)

Facts: The Governor of Arunachal Pradesh advanced the session of the Legislative Assembly without the aid and advice of the Council of Ministers, leading to a constitutional crisis and disqualification proceedings.

Issues: Whether the Governor can exercise powers independently of the Council of Ministers in summoning or advancing Assembly sessions.

Held: The Supreme Court held that the Governor cannot act without the aid and advice of the Council of Ministers in matters such as summoning the Assembly, except where the Constitution explicitly permits discretion. The Governor's action was declared unconstitutional.

3. Dual Capacity of the Governor

The Governor functions in a dual capacity: first, as the constitutional head of the State acting on ministerial advice; and second, as an agent of the Union in certain situations. This dual role has often been the subject of judicial scrutiny and political debate.

Rameshwar Prasad v. Union of India (2006)

Facts: The Governor of Bihar recommended dissolution of the Assembly before it convened, alleging horse-trading. Acting on this report, the President dissolved the Assembly.

Issues: Whether the Governor's report recommending dissolution was valid and whether such discretion could be exercised without objective material.

Held: The Supreme Court held that the Governor's report was based on extraneous considerations and lacked objective material. The dissolution was declared unconstitutional, though the Assembly was not restored due to subsequent elections.

4. Discretionary Powers of the Governor

Although the Governor is generally bound by ministerial advice, certain discretionary powers exist, such as in the appointment of a Chief Minister in a hung assembly, reservation of bills for the President, and reporting under Article 356.

S.R. Bommai v. Union of India (1994)

Facts: Several State governments were dismissed under Article 356 based on Governors' reports alleging breakdown of constitutional machinery.

Issues: Whether the President's Rule imposed on the basis of Governor's reports is subject to judicial review.

Held: The Supreme Court held that the imposition of President's Rule is subject to judicial review and that the Governor's report must be based on relevant material. Arbitrary use of Article 356 was declared unconstitutional.

Conclusion

The constitutional position of the Governor reflects a delicate balance between ceremonial authority and functional responsibility. While the Governor is expected to act on the aid and advice of the Council of Ministers, the Constitution entrusts certain discretionary powers that enable intervention in exceptional circumstances. Judicial decisions have consistently reinforced the principle that discretion must be exercised sparingly, transparently, and in accordance with constitutional morality. The dual capacity of the Governor thus remains a dynamic and evolving aspect of Indian federalism.

Powers and Functions of the Governor and State Legislature under the Indian Constitution

Introduction

The Indian Constitution establishes a federal structure with a strong unitary bias, wherein the distribution of powers between the Union and the States is carefully designed to maintain unity while accommodating diversity. Within this constitutional scheme, the Governor and the State Legislature occupy central positions. The Governor functions as the constitutional head of the State, while the Legislature embodies the democratic will of the people. This article provides a comprehensive academic analysis of their powers, functions, and constitutional limitations, supported by detailed judicial precedents.

Constitutional Position and Role of the Governor

The office of the Governor is established under Article 153 of the Constitution of India. The Governor acts as the nominal executive head of the State, and all executive actions are taken in his name. However, under Article 163, the Governor is required to act on the aid and advice of the Council of Ministers, except in certain limited discretionary areas. The Governor also plays a crucial role as a link between the Union and the State.

Case Law: Shamsher Singh v. State of Punjab (1974)

Facts: The petitioners challenged executive actions taken in the name of the Governor, arguing that such actions were invalid because they were not personally exercised by the Governor. The case raised fundamental questions regarding the nature of executive power under the Constitution.

Issues: Whether the Governor can exercise executive powers independently or whether such powers must be exercised on the aid and advice of the Council of Ministers. **Held:** The Supreme Court held that the Governor is only a constitutional or formal head and must act on the aid and advice of the Council of Ministers, except in limited situations. This decision firmly established that India follows a parliamentary system at the State level, where real executive power lies with the elected government.

Legislative Powers of the Governor

The Governor is an integral part of the State Legislature under Article 168. His legislative powers include summoning, proroguing, and dissolving the Legislative Assembly, giving assent to Bills, reserving Bills for the consideration of the President, and promulgating Ordinances under Article 213 when the Legislature is not in session.

Case Law: Nabam Rebia v. Deputy Speaker (2016)

Facts: The Governor of Arunachal Pradesh advanced the Assembly session without the aid and advice of the Council of Ministers and set the legislative agenda, leading to political instability.

Issues: Whether the Governor has discretionary power to interfere in legislative functioning without ministerial advice. **Held:** The Supreme Court held that the Governor cannot act independently in legislative matters and must follow the aid and advice of the Council of Ministers. The discretionary powers of the Governor are limited and cannot be expanded arbitrarily.

Discretionary Powers and Judicial Control

The discretionary powers of the Governor have been a subject of significant judicial scrutiny. While the Constitution provides certain areas where discretion may be exercised, such powers are not

absolute and are subject to constitutional limitations and judicial review.

Case Law: S.R. Bommai v. Union of India (1994)

Facts: Several State governments were dismissed under Article 356 based on reports submitted by Governors recommending President's Rule. The dismissals were challenged as arbitrary and politically motivated. **Issues:** Whether the imposition of President's Rule based on the Governor's report is subject to judicial review. **Held:** The Supreme Court held that the proclamation of President's Rule is subject to judicial review and that federalism is a basic feature of the Constitution. The Governor's report cannot be arbitrary, and the power under Article 356 must be exercised with caution.

Powers and Functions of the State Legislature

The State Legislature derives its authority from Articles 168 to 212 of the Constitution. It has the power to legislate on subjects in the State List and Concurrent List. The Legislature also exercises financial control, represents the will of the people, and ensures executive accountability through debates, questions, and motions.

Case Law: Kihoto Hollohan v. Zachillhu (1992)

Facts: The constitutional validity of the Tenth Schedule, which deals with anti-defection, was challenged. The role of the Speaker in deciding disqualification was questioned. **Issues:** Whether the Speaker's decisions under the Tenth Schedule are subject to judicial review. **Held:** The Supreme Court upheld the validity of the law but held that the Speaker's decisions are subject to judicial review, thereby reinforcing the supremacy of the Constitution over legislative actions.

Conclusion

The Governor and the State Legislature together form a vital part of the constitutional framework of India. While the Legislature represents democratic governance, the Governor ensures constitutional compliance and continuity. Judicial decisions have clarified that both institutions must function within constitutional limits, maintaining a balance between democratic will and constitutional authority. The evolving jurisprudence continues to refine this balance, ensuring that governance remains accountable, transparent, and constitutionally sound.

Privileges of the Members of Parliament

Academic Article with Case Law Analysis

Articles 105, 122, 361A and related constitutional principles

SOURCE

SCOPE

POWERS

LIMITS

CASES

Designed for quick recall: color-coded provisions, case cards, memory hooks and revision frames

How to Read This Article

Core idea: Parliamentary privilege is not a personal luxury. It is an institutional protection given so that Parliament, its Houses, members and committees can perform legislative functions without obstruction.

One-line memory formula: Privilege = special constitutional protection + functional necessity + internal discipline + limited judicial review.

Individual privileges

Freedom of speech; immunity for votes and speeches; limited freedom from arrest in civil cases; exemption from jury/witness attendance during sessions.

Collective privileges of the House

Control of internal proceedings; exclude strangers; prohibit/permit publication; punish breach of privilege or contempt.

Constitutional controls

Articles 105, 122, 361A; Articles 19, 21, 22; judicial review for illegality or constitutional violation.

From your attached topic: The notes classify Parliament into Lok Sabha and Rajya Sabha, trace privilege to special rights/advantages, discuss Article 105(3), House of Commons as the historic source, the flexible power of Parliament to define privileges, disciplinary action, Articles 122 and 212, and specific privileges such as freedom from arrest, exclusion of strangers, prohibition of publication, regulation of internal proceedings, and punishment for contempt of the House.

Privileges of the Members of Parliament: Meaning, Scope and Constitutional Limits

Parliamentary privileges are special rights, immunities and powers enjoyed by each House of Parliament, its members and its committees. Their purpose is not to place MPs above law, but to protect the independence and effective functioning of Parliament. A legislator must be able to speak, vote, inquire, criticise the executive and participate in committee work without fear of civil suits, executive obstruction, intimidation or outside interference.

The Indian Constitution deals with these privileges mainly through Article 105 for Parliament. A similar provision for State Legislatures appears in Article 194. Article 105(1) protects freedom of speech in Parliament; Article 105(2) gives immunity from court proceedings in respect of anything said or any vote given in Parliament or its committees; Article 105(3), after constitutional amendment, states that the powers, privileges and immunities shall be such as may be defined by Parliament by law from time to time; and Article 105(4) extends these protections to persons who have a right to speak in or take part in parliamentary proceedings.

Thus, privileges are function-based. They exist only to the extent necessary for the House to discharge its constitutional duties. Where the conduct has no real connection with legislative functions, privilege cannot become a shield against the ordinary law.

Historical Background: From the House of Commons to Indian Parliament

The historical source of parliamentary privilege is the British House of Commons. In England, privilege grew out of the struggle of Parliament against the Crown. Freedom of debate, freedom from arrest in civil matters and control over publication of debates developed as tools to secure legislative independence. Indian constitutional law borrowed the idea, but placed it inside a written Constitution. This is why Indian privilege is not identical to unlimited British privilege. In India, the Constitution is supreme.

Memory anchor: British history explains the origin; the Indian Constitution controls the limit.

Constitutional Scheme

Provision	Plain meaning	Why it matters
Article 105(1)	Freedom of speech in Parliament, subject to the Constitution and rules of procedure.	Protects debate inside the House.
Article 105(2)	No member is liable in court for anything said or any vote given in Parliament or a committee.	Creates judicial immunity for speech and vote.
Article 105(3)	Privileges shall be those defined by Parliament by law from time to time.	Gives flexibility to define or modify privileges.
Article 122	Courts cannot question parliamentary proceedings merely for procedural irregularity.	Protects internal autonomy but not unconstitutional action.
Article 361A	Protects substantially true publication of proceedings, unless malicious; excludes secret sittings.	Balances privilege with press reporting.

Nature and Sources of Parliamentary Privileges

Parliamentary privilege has several sources. First, the text of the Constitution directly confers freedom of speech and immunity for speech and vote. Secondly, Parliament may define privileges by law. Thirdly, the rules of procedure and directions of the Presiding Officer regulate the internal working of the House. Fourthly, established parliamentary practice and conventions continue to guide the Houses. Fifthly, judicial decisions explain the constitutional limits of privilege.

Source	Role	Example
Constitution	Creates core privilege and immunity.	Article 105(1), 105(2), 105(3).
Parliamentary law	Can define or modify privileges.	Power under Article 105(3).
Rules of procedure	Regulate internal proceedings and discipline.	Rules on exclusion of strangers, publication, disorder.
Practice and precedent	Fills operational gaps.	Speaker directions and House practice.
Judicial decisions	Set constitutional boundaries.	Raja Ram Pal, Searchlight, Keshav Singh.

Individual Privileges of Members

- 1 Freedom of speech in Parliament:** A member may speak freely inside Parliament, subject to the Constitution, rules of procedure and control of the Speaker or Chairman. Courts cannot try the member for the speech if it forms part of parliamentary proceedings.
- 2 Immunity for votes and speeches:** A member is protected from court proceedings in respect of anything said or any vote given in Parliament or any committee.
- 3 Freedom from arrest in civil cases:** Traditionally, a member enjoys protection from arrest in civil cases during the session and for a reasonable period before and after it. This does not extend to criminal arrest, preventive detention or contempt of court.
- 4 Exemption from attendance as witness or juror:** During parliamentary duties, members are not ordinarily compelled to attend courts in a manner that obstructs attendance in the House.

Do not confuse: Freedom from arrest is not freedom from criminal law. If the matter is criminal, preventive detention, contempt, or a serious statutory offence, privilege does not give automatic immunity.

Collective Privileges of the House

- 1 Right to regulate internal proceedings:** Each House regulates its procedure, order and discipline through its rules and the Presiding Officer.
- 2 Right to exclude strangers:** The House may exclude non-members from its proceedings when necessary.
- 3 Right to prohibit publication:** The House may control publication of proceedings, especially expunged material or secret sittings.
- 4 Right to punish breach of privilege or contempt:** The House may reprimand, admonish, suspend, expel or take other disciplinary action where conduct obstructs its functioning or lowers its authority.
- 5 Right to secure attendance and protect committees:** Committees and the House may secure evidence, require documents and protect proceedings from obstruction.

Relationship with Fundamental Rights and Judicial Review

The central constitutional question is whether parliamentary privilege is above fundamental rights. Indian law does not treat privilege as unlimited. At the same time, courts respect the autonomy of the legislature. The correct balance is this: courts do not interfere with ordinary internal procedure, but they may intervene where there is substantive illegality, unconstitutionality, mala fides, violation of fundamental rights, or lack of jurisdiction.

Article 122 protects parliamentary proceedings from judicial inquiry on the ground of mere procedural irregularity. It does not create a complete bar against judicial review where the action is unconstitutional or suffers from gross illegality. This distinction was strongly explained in Raja Ram Pal.

Where courts usually do not interfere	Where courts may interfere
Mere irregularity of procedure; internal scheduling; ordinary rulings of the Chair; discipline within rules.	Gross illegality; violation of constitutional limits; mala fides; jurisdictional error; breach of fundamental rights such as personal liberty.

Psychological memory cue: Procedure = mostly internal. Constitution = always supreme.

Breach of Privilege and Contempt of the House

A breach of privilege occurs when a specific privilege of the House or its members is violated. Contempt of the House is wider: it includes any act or omission that obstructs or tends to obstruct the House, its members or committees in the performance of legislative functions, or lowers the authority and dignity of the House. The House may punish by reprimand, admonition, suspension, expulsion, or other constitutionally permissible action. The purpose is corrective and protective, not revenge.

Leading Case Law: Facts, Issues and Held

The following case-law analysis is written in non-generic form. It connects the factual setting with the constitutional principle established by each judgment.

Raja Ram Pal v. Honble Speaker, Lok Sabha

Citation: (2007) 3 SCC 184; Supreme Court of India

Facts

A television sting operation, popularly known as the cash-for-queries scandal, showed certain Members of Parliament allegedly accepting money for asking questions or raising issues in Parliament. Parliamentary committees examined the allegations and found the conduct proved. Consequent resolutions led to expulsion of eleven members from Lok Sabha/Rajya Sabha. The expelled members challenged the action before the Supreme Court, arguing that Parliament had no power to expel them and that the action violated constitutional provisions dealing with membership and disqualification.

Issues

The Court had to decide whether the power of parliamentary privilege under Article 105(3) includes the power to expel a member for conduct amounting to contempt or breach of privilege. It also had to decide whether such parliamentary action is completely immune from judicial review because of Article 122.

Held

The majority upheld Parliament's power to expel members for serious misconduct affecting the dignity and functioning of the House. At the same time, the Court rejected the idea of absolute immunity from judicial review. Article 122 bars interference for mere procedural irregularity, but not for substantive illegality, unconstitutionality, mala fides or violation of constitutional limitations. The expulsions were ultimately sustained.

Memory hook: Parliament can discipline itself, but the Constitution remains the referee.

K. Anandan Nambiar v. Chief Secretary, Government of Madras

Citation: AIR 1966 SC 657; 1966 SCR (2) 406

Facts

The petitioners were members of Parliament who had been detained under the Defence of India Rules during a period of national emergency. They argued that because they were MPs, they had a right or privilege to attend the sittings of Parliament, participate in debates and vote. They challenged their detention and asserted that parliamentary privilege should protect their attendance in the House.

Issues

The issue was whether an MP under lawful preventive detention can claim parliamentary privilege to secure release or temporary attendance in Parliament for speaking and voting. A connected issue was whether freedom from arrest applies to criminal or preventive detention.

Held

The Supreme Court held that the privilege of freedom from arrest does not extend to criminal arrest or preventive detention. Parliamentary privilege cannot be used to defeat a lawful detention under a valid law. A detained MP may lose the practical ability to attend and vote, but that does not make the detention unconstitutional merely because he is a member of Parliament.

Memory hook: Freedom from arrest protects legislative attendance in civil matters, not criminal or preventive detention.

Pandit M.S.M. Sharma v. Shri Sri Krishna Sinha - The Searchlight Case

Citation: 1959 SCR Supp (1) 806; AIR 1959 SC 395; later proceedings AIR 1960 SC 1186

Facts

M.S.M. Sharma was the editor of the Searchlight newspaper in Patna. The newspaper published a speech delivered in the Bihar Legislative Assembly, including portions which the Speaker had ordered to be expunged. The Bihar Assembly treated the publication of expunged proceedings as breach of privilege and issued notice to the editor. Sharma approached the Supreme Court under Article 32, invoking freedom of speech and expression under Article 19(1)(a), and also arguing that the privilege power could not override fundamental rights.

Issues

The Court had to decide whether the Legislative Assembly had privilege to prohibit publication of expunged parts of proceedings and whether such privilege prevailed over the newspaper editor's Article 19(1)(a) right. The case also raised the larger question of conflict between legislative privilege and press freedom.

Held

The Supreme Court held that, in the absence of a law defining privileges, the Assembly enjoyed the relevant privileges under Article 194(3) as they existed at the commencement of the Constitution. The House could control publication of its proceedings, including expunged portions. In the specific conflict between Article 194(3) privilege and Article 19(1)(a), the privilege prevailed. However, the decision did not give the legislature unlimited power over all fundamental rights.

Memory hook: Press freedom is strong, but publication of expunged proceedings is not automatically protected.

Gunupati Keshavram Reddy v. Nafisul Hasan - Homi Mistry / Blitz Case

Citation: AIR 1954 SC 636

Facts

A correspondent associated with the Blitz newspaper, Homi Mistry, was arrested under a warrant issued by the Speaker of the Uttar Pradesh Legislative Assembly in connection with contempt or breach of privilege of the House. He was detained in the Speaker's custody and was not produced before a Magistrate within twenty-four hours. A habeas corpus petition was filed before the Supreme Court under Article 32.

Issues

The issue was whether a person arrested under a legislative privilege warrant could be detained without compliance with Article 22(2), which requires production before a Magistrate within twenty-four hours unless otherwise constitutionally authorised.

Held

The Supreme Court ordered release because Article 22(2) had been violated on the admitted facts. The case is important because it shows that even when the House asserts privilege, personal liberty safeguards cannot be ignored. Later judgments discussed the scope of this case, but it remains a useful illustration that privilege cannot casually override express constitutional protections of personal liberty.

Memory hook: Privilege meets its strongest limit when personal liberty is directly affected.

More Case Law: Constitutional Boundaries of Privilege

Special Reference No. 1 of 1964 - Keshav Singh Case

Citation: AIR 1965 SC 745; Presidential Reference under Article 143

Facts

Keshav Singh was committed to prison by the Uttar Pradesh Legislative Assembly for contempt of the House. He approached the Allahabad High Court by habeas corpus and obtained interim bail. The Assembly then treated not only Keshav Singh but also his advocate and the High Court judges as having committed contempt of the House. This created a serious constitutional conflict between the Legislature and the Judiciary. The President referred questions to the Supreme Court under Article 143.

Issues

The Supreme Court had to determine the constitutional limits of legislative privilege, whether High Court judges and advocates could be proceeded against for entertaining or filing a habeas corpus petition, and whether judicial review could examine detention ordered by a legislature.

Held

The Supreme Court held that legislative privileges are important, but they function within the Constitution. Courts may examine legality of detention through habeas corpus. Judges and advocates do not commit contempt of the House merely by discharging constitutional functions. The case is the leading authority on the need for harmony between Legislature and Judiciary.

Memory hook: No organ is supreme over the Constitution; each organ works within its assigned field.

P.V. Narasimha Rao v. State (CBI/SPE)

Citation: (1998) 4 SCC 626

Facts

The case arose out of the JMM bribery scandal connected with a no-confidence motion against the government. Certain MPs were alleged to have accepted bribes to vote in a particular manner. Criminal prosecution was launched under the Prevention of Corruption Act and the Indian Penal Code. The accused MPs claimed immunity under Article 105(2), arguing that the alleged bribe was connected with their vote in Parliament.

Issues

The issue was whether Article 105(2), which protects members from court proceedings in respect of any vote given in Parliament, also protects a member from prosecution for accepting a bribe connected with that vote.

Held

By majority, the Supreme Court extended immunity to MPs who had allegedly accepted bribes and actually voted as agreed, while denying immunity where the member did not vote. This created a controversial position because it appeared to protect the corrupt act when followed by the parliamentary vote. The judgment has now been overruled on this point by Sita Soren.

Memory hook: Earlier law: bribe plus actual vote received immunity. This is no longer good law.

Sita Soren v. Union of India

Citation: 2024; Seven-Judge Bench, Supreme Court of India

Facts

Sita Soren, a member of the Jharkhand Legislative Assembly, was accused of accepting a bribe in relation to voting in a Rajya Sabha election. She claimed immunity under Article 194(2), relying on the majority view in P.V. Narasimha Rao. The matter was referred to a larger bench because of the serious constitutional importance of bribery and legislative immunity.

Issues

The Court had to decide whether a legislator can claim immunity under Article 105(2) or Article 194(2) for accepting a bribe connected with a speech or vote in the House, and whether P.V. Narasimha Rao was correctly decided.

Held

The seven-judge bench unanimously held that no immunity exists for bribery. The offence of bribery is complete when illegal gratification is accepted or agreed to be accepted. It is not a protected legislative act. The Court overruled the majority in P.V. Narasimha Rao and clarified that privileges exist to protect fearless legislative functioning, not corruption.

Memory hook: Privilege protects honest speech and vote; it does not protect the sale of speech or vote.

State of Kerala v. K. Ajith

Citation: 2021; Supreme Court of India

Facts

During a disorderly incident in the Kerala Legislative Assembly in 2015, certain MLAs were accused of damaging public property during protest inside the House. Later, the Public Prosecutor sought permission under Section 321 CrPC to withdraw the prosecution. The plea was supported by an argument that the acts were protected by legislative privilege under Article 194.

Issues

The issue was whether acts such as vandalism, destruction of public property or general mayhem inside the Assembly can be treated as protected legislative proceedings or immunised by parliamentary privilege. The Court also considered the propriety of withdrawal of prosecution.

Held

The Supreme Court held that privileges and immunities are not gateways to exemption from criminal law. Acts of destruction and vandalism are not essential legislative functions and cannot be protected as proceedings of the House. The Court refused to permit withdrawal of prosecution on such grounds.

Memory hook: Debate is protected. Destruction is not.

Privilege-wise Analysis with Legal Position

Privilege	Purpose	Limit	Leading authority
Freedom of speech in Parliament	Allows fearless debate and criticism of executive action.	Subject to Constitution, rules and discipline of House.	Article 105(1); Article 105(2)
Immunity for speech and vote	Prevents court proceedings for protected legislative acts.	Does not protect bribery or crime outside legislative act.	Tej Kiran Jain; Sita Soren
Freedom from arrest	Ensures attendance in House in civil matters.	No immunity from criminal arrest or preventive detention.	K. Anandan Nambiar
Control publication	Prevents unauthorised or malicious publication of proceedings.	Article 361A protects substantially true reports unless malicious; secret sittings excluded.	M.S.M. Sharma; Article 361A
Exclude strangers	Protects confidential or orderly proceedings.	Must be used for legitimate House purposes.	Rules of procedure; House practice
Punish contempt	Protects dignity and functioning of the House.	Subject to judicial review for constitutional violations.	Raja Ram Pal; Keshav Singh

Publication of Proceedings and Article 361A

Article 361A was inserted after the experience of privilege conflicts concerning reporting of legislative proceedings. It protects a person from civil or criminal liability for publication of a substantially true report of proceedings of Parliament or State Legislatures, unless the publication is made with malice. It does not protect publication of secret sittings. This provision creates a bridge between legislative privilege and democratic transparency.

Revision cue: Substantially true + no malice + not secret sitting = protected publication.

Why Parliamentary Privileges Matter

Privileges are necessary because Parliament represents the people and performs functions that require independence: law-making, scrutiny of the executive, financial control, debates on national questions and committee investigations. If members could be sued for every statement, arrested in civil disputes during sittings, or obstructed by outsiders, Parliament would become ineffective. However, privilege must not become a weapon against citizens, press, courts or criminal law. The modern trend of the Supreme Court is to preserve functional privilege while rejecting misuse.

Exam-oriented Analytical Structure

Suggested introduction: Parliamentary privileges are constitutionally recognised special rights and immunities necessary for the independent and effective functioning of Parliament. They are not personal exemptions from law, but institutional safeguards of representative democracy.

Suggested thesis: The Indian position balances legislative autonomy with constitutional supremacy. Courts ordinarily do not interfere with internal proceedings, but privilege cannot defeat fundamental constitutional guarantees or criminal accountability.

Use this flow in an answer

- 1 Define parliamentary privilege as special rights, immunities and powers of the House, members and committees.
- 2 Mention Article 105 for Parliament and Article 194 for State Legislatures.
- 3 Explain historical source: House of Commons, but controlled in India by the written Constitution.
- 4 Classify privileges into individual and collective privileges.
- 5 Explain key privileges: freedom of speech, immunity for vote/speech, freedom from arrest in civil cases, exclusion of strangers, publication control, internal regulation, punishment for contempt.
- 6 Discuss limits: not a shield for crime, bribery, vandalism, mala fide action or violation of constitutional rights.
- 7 Use cases: Raja Ram Pal, Anandan Nambiar, Searchlight, Gunupati Reddy, Keshav Singh, Sita Soren, Kerala v K. Ajith.
- 8 Conclude that privilege is functional, not absolute.

High-value quotations in plain language

1. Privilege exists to protect Parliament, not to create a privileged class.
2. Courts respect internal procedure, but the Constitution remains supreme.
3. Freedom of speech in the House is not freedom to commit corruption.
4. A member is protected while performing legislative functions, not while committing ordinary crimes.

Conclusion

Privileges of Members of Parliament are essential to democracy because they protect legislative debate, voting, committee work and institutional dignity. But they are not absolute. Indian constitutional law has moved towards a balanced doctrine: the House controls its own proceedings, but the Constitution controls the House. Articles 105 and 122 protect parliamentary autonomy, while Articles 19, 21, 22, judicial review and modern anti-corruption jurisprudence prevent abuse. Therefore, parliamentary privilege must be understood as a functional constitutional necessity, not as personal immunity from law.

Quick Revision Sheet

Question	Fast answer
What are parliamentary privileges?	Special rights and immunities of Parliament, its members and committees for effective legislative functioning.
Main constitutional article?	Article 105 for Parliament; Article 194 for State Legislatures.
Are privileges personal?	No. They are institutional and functional.
Can an MP be arrested in a criminal case?	Yes. Freedom from arrest does not cover criminal or preventive detention.
Can courts question proceedings?	Not for mere procedural irregularity, but yes for constitutional illegality or lack of jurisdiction.
Can the House expel a member?	Yes, for serious contempt or misconduct affecting the dignity/functioning of the House, subject to judicial review.
Can bribery be protected?	No. Sita Soren overruled the contrary majority view in P.V. Narasimha Rao.
Can vandalism inside the House be protected?	No. State of Kerala v. K. Ajith held privilege is not a gateway to criminal immunity.
Article 361A?	Protects substantially true reporting of legislative proceedings unless malicious; no protection for secret sittings.

Final memory line: Privilege protects the process of Parliament, not misconduct by parliamentarians.

Source Note

This article was prepared from the attached topic notes titled "Privileges to the Members of Parliament" and supplemented with leading constitutional case-law and statutory/constitutional references.

Important sources consulted for legal accuracy:

Constitution of India - Article 105, Article 122 and Article 361A.

Raja Ram Pal v. Honble Speaker, Lok Sabha, (2007) 3 SCC 184.

K. Anandan Nambiar v. Chief Secretary, Government of Madras, AIR 1966 SC 657.

Pandit M.S.M. Sharma v. Shri Sri Krishna Sinha, AIR 1959 SC 395 and later proceedings AIR 1960 SC 1186.

Gunupati Keshavram Reddy v. Nafisul Hasan, AIR 1954 SC 636.

Special Reference No. 1 of 1964, AIR 1965 SC 745.

P.V. Narasimha Rao v. State (CBI/SPE), (1998) 4 SCC 626.

Sita Soren v. Union of India, Seven-Judge Bench, Supreme Court of India, 2024.

State of Kerala v. K. Ajith, Supreme Court of India, 2021.

Note: This academic article is designed for educational use. For filing or court citation, always verify the final case text from the official Supreme Court/High Court source or an authorised law report.

Legislative Freedom of Speech

An academic article on Articles 105(1), 105(2), 194(1), 194(2) and Article 361A

Core memory line

Inside the House: freedom is broad. Outside the House: privilege is limited.

Color-coded for quick reading: Blue = text | Green = cases | Amber = memory | Red = limits

Reading Map

How to read this article

First understand the constitutional text, then compare ordinary free speech with legislative free speech, then study the cases as progressive limits: absolute protection inside the House, no protection for unauthorised publication outside the House, constitutional control over privilege, and no immunity for bribery.

1. Constitutional base

Articles 105 and 194 protect speech and vote inside Parliament and State Legislatures.

2. Institutional purpose

The privilege belongs to the House as an institution; it is not a private licence for misconduct.

3. Modern limit

After Sita Soren, bribery is outside legislative immunity even if connected with speech or vote.

1. Introduction

Freedom of speech is the foundation of representative democracy. In ordinary public life, this freedom is protected by Article 19(1)(a) of the Constitution of India. However, when speech is made on the floor of Parliament or a State Legislature, the Constitution creates a special and separate protection through Articles 105 and 194.

Article 105 applies to Parliament. Article 194 applies to State Legislatures. Both provisions protect freedom of speech in the House and provide immunity from court proceedings in respect of anything said or any vote given in the House or its committees. The attached notes correctly place this topic in contrast with Article 19(1)(a) and Article 19(2), because ordinary free speech and legislative free speech operate in different constitutional fields.

Memory Anchor

Article 19(1)(a) protects citizen speech generally. Articles 105 and 194 protect legislative speech institutionally. The first is a fundamental right; the second is a legislative privilege and immunity designed to make the House function freely.

2. Historical Background

Legislative privilege has its historical roots in the English constitutional struggle between Parliament and the Crown. The idea was that a legislative body cannot function if its members fear punishment outside the House for what they say inside the House. The Bill of Rights, 1689, declared that freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place outside Parliament.

The Indian Constitution adopted the principle, but placed it within a written constitutional framework. Therefore, Indian legislative privilege is not uncontrolled English parliamentary supremacy. It is constitutional privilege. This point becomes important in cases such as the Keshav Singh Reference, where the Supreme Court balanced legislative privilege with judicial review and personal liberty.

See	Provision	Movement
The historical need was to allow legislators to see and expose executive misconduct without fear.	Articles 105 and 194 convert this need into constitutional text.	Modern law moves from privilege as power to privilege as constitutional responsibility.

3. Constitutional Text and Structure

Article 105(1) says that, subject to the Constitution and the rules and standing orders regulating parliamentary procedure, there shall be freedom of speech in Parliament. Article 105(2) gives immunity by providing that no Member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given in Parliament or in any committee of Parliament. Article 194 creates a parallel structure for State Legislatures.

The two most important expressions are anything said and any vote given. These words are deliberately wide. Their purpose is to prevent courts from examining speeches and votes as if they were ordinary civil wrongs or criminal accusations. However, the protection operates only where the speech, vote or publication is part of legislative proceedings or authorised by the House.

Point	Article 19(1)(a)	Articles 105 and 194
Nature	Fundamental right of citizens.	Constitutional privilege and immunity connected with legislative functioning.
Place of operation	Generally outside the House and in public life.	Inside Parliament, State Legislature and their committees.
Restriction	Subject to reasonable restrictions under Article 19(2).	Subject to the Constitution, House rules, standing orders and internal discipline.
Remedy for misuse	Court proceedings may be possible subject to law.	Ordinarily controlled by Speaker, Chairman, House procedure and privilege mechanisms.

4. Scope and Limits of Legislative Freedom of Speech

The freedom under Articles 105 and 194 is wide because democracy requires fearless deliberation. A legislator must be able to question the executive, criticise policy, debate bills and vote without fear of defamation suits or criminal complaints based on legislative speech.

At the same time, privilege is not a personal exemption from all law. It is limited by four controlling ideas. First, the act must be connected with legislative proceedings. Secondly, the Constitution remains supreme. Thirdly, internal rules of the House continue to apply. Fourthly, criminal conduct such as bribery is not transformed into protected legislative speech merely because it is linked to a future speech or vote.

Balanced Rule
The protection is absolute against court proceedings for protected speech or vote inside the House. But it is not absolute for independent acts outside the House, unauthorised publication, contempt of constitutional courts, or bribery.

5. Article 361A: Publication of Legislative Proceedings

Article 361A protects publication of substantially true reports of parliamentary and legislative proceedings. It says that no person shall be liable to civil or criminal proceedings in court for publishing a substantially true newspaper report of proceedings of Parliament or a State Legislature, unless the publication is proved to have been made with malice. The protection does not apply to secret sittings.

This provision performs a democratic function. Articles 105 and 194 protect what happens inside the House. Article 361A helps citizens know what happened inside the House by protecting honest reporting. Therefore, legislative privilege and press freedom meet at Article 361A.

Protected	Not protected	Purpose
Substantially true reports of legislative proceedings.	Malicious reporting and reports of secret sittings.	Transparency and public accountability of elected bodies.

6. Case Law: Facts, Issues and Held

Case-law learning method

Read each case in this order: where did the act occur? inside the House or outside? what was the nature of the act? speech, vote, publication, detention or bribery? which institution controls the remedy? court or House?

Tej Kiran Jain v. N. Sanjiva Reddy

Supreme Court of India, 1970 - Article 105(2) and alleged defamation in Lok Sabha

Facts	During a calling-attention discussion in the Lok Sabha, certain Members of Parliament allegedly made defamatory remarks concerning the Shankaracharya. Persons who felt aggrieved filed a civil suit for damages, claiming that the statements injured reputation. The High Court rejected the plaint because the statements were made on the floor of Parliament. The matter then reached the Supreme Court.
Issues	Whether Members of Parliament can be sued in a civil court for alleged defamatory statements made during parliamentary proceedings. The Court also had to interpret the phrase "anything said" in Article 105(2).
Held	The Supreme Court gave a wide meaning to the words "anything said" and held that once a statement is made in Parliament during proceedings, no court proceeding can be maintained against the member in respect of that statement. Whether the remark was defamatory, relevant or proper was not for the civil court to examine; it was a matter for the House.
Principle to remember	Inside Parliament, judicial immunity for speech is extremely broad. The remedy for improper speech is parliamentary discipline, not a defamation suit in court.

Dr. Jatish Chandra Ghosh v. Hari Sadhan Mukherjee

Supreme Court of India, 1961 - Article 194 and publication of disallowed questions

Facts	A member of the West Bengal Legislative Assembly submitted certain questions. The Speaker disallowed them. The member nevertheless published the disallowed questions outside the House in the newspaper Janamat. A criminal complaint for defamation was filed against him and the printer/publisher. The member claimed that Article 194 gave him absolute privilege.
Issues	Whether Article 194 protects a legislator from criminal prosecution for publishing outside the House questions that were disallowed by the Speaker and never became part of authorised legislative proceedings.
Held	The Supreme Court held that the legislator did not enjoy absolute privilege for such outside publication. Article 194 protects speech and proceedings within the Legislature, but it does not automatically protect independent publication outside the House, especially of questions that were disallowed.
Principle to remember	Privilege is strongest inside the House. It does not become a general licence to publish defamatory material outside the Legislature.

Special Reference No. 1 of 1964 - Keshav Singh Reference

Supreme Court advisory opinion, 1965 - Legislative privilege versus judicial review

Facts	The Uttar Pradesh Legislative Assembly committed Keshav Singh, a non-member, to prison for contempt of the House. Keshav Singh approached the Allahabad High Court through a habeas corpus petition and obtained interim relief. The Assembly then took the view that the judges who entertained the petition, the advocate and Keshav Singh had committed contempt of the House. This created a direct constitutional conflict between the Legislature and the Judiciary.
Issues	Whether a State Legislature can use its privilege powers so widely as to proceed against High Court judges and advocates for entertaining or filing a habeas corpus petition. The broader issue was whether legislative privilege is subject to judicial review.
Held	The Supreme Court held that legislative privileges are important but must operate within the Constitution. High Courts can examine legality of detention where personal liberty and jurisdictional questions arise. Judges and advocates do not commit contempt merely by performing constitutional functions.
Principle to remember	Legislative privilege is not above the Constitution. The House has dignity, but courts retain constitutional power to protect liberty and examine jurisdictional legality.

P.V. Narasimha Rao v. State (CBI/SPE)

Supreme Court of India, 1998 - JMM bribery case and Article 105(2)

Facts	The case arose from allegations that some Members of Parliament accepted bribes to vote against a no-confidence motion and thereby support the government. Criminal prosecution was initiated. The accused MPs claimed that the alleged bribe was connected with a vote given in Parliament and therefore Article 105(2) protected them from prosecution.
Issues	Whether an MP who accepts a bribe in connection with a parliamentary vote can claim immunity from criminal prosecution under Article 105(2). The difficult interpretive question was the breadth of the expression "in respect of any vote given".
Held	By majority, the Court held that MPs who accepted bribes and actually voted as alleged enjoyed immunity from prosecution in respect of the vote. Those who accepted bribes but did not vote were not similarly protected. This created a controversial distinction and was widely criticised for allowing immunity where corruption was followed by a vote.
Principle to remember	This case represented the old controversial position. It has now been overruled by the seven-judge bench in Sita Soren.

Sita Soren v. Union of India

Supreme Court of India, 2024 - Seven-judge bench on bribery and legislative immunity

Facts	Sita Soren, a member of the Jharkhand Legislative Assembly, was accused of accepting a bribe to vote for a particular candidate in a Rajya Sabha election. She claimed immunity under Article 194(2), relying on P.V. Narasimha Rao. The issue was placed before a seven-judge bench because of the importance of legislative immunity and corruption.
Issues	Whether Members of Parliament or State Legislatures can claim immunity under Articles 105(2) or 194(2) from prosecution for accepting a bribe connected with speech or vote in the House. The Court also considered whether P.V. Narasimha Rao should continue to stand.
Held	The seven-judge bench unanimously held that there is no legislative immunity for bribery. Bribery is complete when illegal gratification is accepted or agreed to be accepted. It is not part of the protected act of speech or voting. The Court overruled the majority view in P.V. Narasimha Rao and restored a corruption-free interpretation of privilege.
Principle to remember	Articles 105 and 194 protect free legislative functioning, not corruption. Bribery destroys the integrity of legislative democracy and falls outside immunity.

N. Ravi v. Speaker, Legislative Assembly, Chennai

Supreme Court - pending/important constitutional issue on Article 194 and Article 19(1)(a)

Facts	The attached notes identify this matter as important because it raises the relationship between legislative privilege and the ordinary freedom of speech under Article 19(1)(a), especially where legislative action affects journalists, publications or outsiders who comment on proceedings or conduct connected with the Legislature.
Issues	Whether the immunities and privilege powers of a State Legislature under Article 194 can override or restrict freedom of speech and expression under Article 19(1)(a), and how courts should balance legislative dignity with press and citizen freedoms.
Held	As the matter is noted as pending/significant, the final governing principle may be clarified by the Supreme Court in due course. Its importance lies in the possibility of redefining the boundary between legislative privilege and fundamental rights.
Principle to remember	The future balance may turn on this question: privilege protects the House, but can it be used in a way that chills legitimate public criticism and reporting?

7. Principles Emerging from the Cases

- Absolute protection inside the House: In *Tej Kiran Jain*, the Court treated Article 105(2) as a complete bar to court proceedings for words spoken in Parliament.
- No general protection outside the House: In *Jatish Chandra Ghosh*, publication of disallowed questions outside the Legislature was not covered by privilege.
- Privilege is constitutionally controlled: In the *Keshav Singh Reference*, the Supreme Court maintained the role of judicial review and habeas corpus.
- Bribery is not speech or vote: *Sita Soren* overruled the controversial majority in *P.V. Narasimha Rao* and held that corruption is outside legislative immunity.
- Honest reporting is separately protected: Article 361A protects substantially true publication of proceedings, unless made with malice or relating to secret sittings.

One-line conclusion

Legislative freedom of speech is broad enough to protect fearless debate, but not so broad as to protect corruption, malicious publication or constitutional lawlessness.

8. Analytical Conclusion

The doctrine of legislative freedom of speech is best understood as an institutional guarantee. It is not created for the personal benefit of individual legislators. It exists because a democratic Legislature cannot function if its members are exposed to outside litigation for every speech, allegation, question or vote made in the course of proceedings.

At the same time, the Constitution does not create a lawless zone inside or around the Legislature. The House may control disorderly or irresponsible speech through its own rules. Courts generally cannot punish protected legislative speech, but they can examine constitutional limits where personal liberty, jurisdiction or criminal acts outside the protected field are involved.

Therefore, Articles 105 and 194 should be read as shields for democratic deliberation, not swords against accountability. The modern law after *Sita Soren* makes this clear: privilege protects the purity of legislative functioning; it cannot be used to legitimise bribery that corrupts that functioning.

Quick Revision Sheet

Concept	Simple meaning	Key memory point
Article 105(1)	Freedom of speech in Parliament.	Parliamentary speech is separately protected.
Article 105(2)	No court proceedings for anything said or any vote given in Parliament or its committees.	Tej Kiran Jain is the central case.
Article 194(1)	Freedom of speech in State Legislatures.	State-level version of Article 105(1).
Article 194(2)	No court proceedings for anything said or any vote given in State Legislature or its committees.	Jatish Chandra Ghosh and Sita Soren are important.
Article 361A	Protection for substantially true reports of proceedings.	No protection for malicious reports or secret sittings.

Final Memory Formula

Speech + vote + inside House = immunity from courts.

Publication outside House + malice + bribery + constitutional illegality = no automatic immunity.

Selected References

- Constitution of India, Articles 19(1)(a), 19(2), 105, 194 and 361A.
- Tej Kiran Jain v. N. Sanjiva Reddy, Supreme Court of India, 1970.
- Dr. Jatish Chandra Ghosh v. Hari Sadhan Mukherjee, Supreme Court of India, 1961.
- Special Reference No. 1 of 1964, also known as the Keshav Singh Reference, Supreme Court of India, 1965.
- P.V. Narasimha Rao v. State (CBI/SPE), Supreme Court of India, 1998.
- Sita Soren v. Union of India, Supreme Court of India, 2024.
- Attached topic notes: Legislative Freedom of Speech, pages 1 to 10.

Anti-Defection Law in India: A Comprehensive Constitutional Analysis

Introduction

The Anti-Defection Law in India, enshrined in the Tenth Schedule of the Constitution, represents a significant constitutional mechanism aimed at preserving political stability and maintaining party discipline within legislative bodies. Introduced through the Constitution (Fifty-Second Amendment) Act, 1985, and later strengthened by the Ninety-First Amendment Act, 2003, the law seeks to curb the menace of political defections which had become rampant in Indian politics, especially during the 1960s and 1970s. The phrase 'Aaya Ram, Gaya Ram' epitomized this era of frequent party-switching. The Tenth Schedule thus institutionalizes rules governing disqualification on the grounds of defection and vests adjudicatory powers in the Speaker or Chairman of the House.

Constitutional Framework of the Tenth Schedule

The Tenth Schedule lays down the grounds on which a legislator may be disqualified for defection. These include voluntarily giving up membership of the political party, voting or abstaining contrary to party directions without prior permission, and joining another political party after election. Independent members and nominated members are also subject to specific conditions under the Schedule. The decision regarding disqualification is entrusted to the Speaker or Chairman, whose decision was initially deemed final, though later subjected to judicial review.

Judicial Review and Constitutional Validity

Kihoto Hollohan v. Zachillhu (1992)

Facts: The constitutional validity of the Tenth Schedule was challenged on the ground that it violated principles of democracy and basic structure, particularly due to vesting adjudicatory powers in the Speaker, who is a political figure.

Issues: Whether the Tenth Schedule violates the basic structure of the Constitution, and whether the Speaker's decision is subject to judicial review.

Held: The Supreme Court upheld the validity of the Tenth Schedule but struck down Paragraph 7, which barred judicial review. The Court held that judicial review is a part of the basic structure of the Constitution. It further held that the Speaker's decision is subject to judicial review, though only after the decision is made, and not at an interlocutory stage except in exceptional cases.

Scope of 'Voluntarily Giving Up Membership'

Ravi S. Naik v. Union of India (1994)

Facts: Members of a legislative assembly were alleged to have defected by their conduct, even though they had not formally resigned from their political party.

Issues: Whether conduct of a member can be construed as voluntarily giving up membership without formal resignation.

Held: The Supreme Court held that the expression 'voluntarily giving up membership' is not synonymous with resignation. It can be inferred from the conduct of the member. Thus, even in absence of a formal resignation, actions indicating disloyalty to the party may amount to defection.

Limits on Speaker's Powers

Nabam Rebia v. Deputy Speaker (2016)

Facts: The Speaker initiated disqualification proceedings against members while a motion for his own removal was pending.

Issues: Whether the Speaker can adjudicate disqualification proceedings while facing a motion for removal.

Held: The Supreme Court held that the Speaker cannot adjudicate disqualification petitions when a motion for his removal is pending, as it would compromise impartiality. The judgment emphasized the need for neutrality in exercising quasi-judicial powers.

Amendments and Evolution

The Ninety-First Amendment Act, 2003 further strengthened the Anti-Defection Law by removing the provision related to splits and limiting the size of the Council of Ministers. It also introduced stricter provisions to curb political defections and opportunistic realignments.

Conclusion

The Anti-Defection Law serves as a critical instrument for maintaining political stability and party discipline in India's parliamentary democracy. While it has been successful in reducing opportunistic defections, concerns remain regarding its impact on legislative independence and the role of the Speaker. Judicial interpretations have played a pivotal role in balancing these concerns by ensuring that the law operates within the framework of constitutional principles, particularly the doctrine of basic structure and judicial review.

THE JUDICIARY UNDER THE CONSTITUTION OF INDIA

A
Comprehensive
Academic
Treatise on
Structural
Governance,
Appointments,
and the
Evolution of
~~*the Basic*~~
~~*Research*~~
Structure
Monograph

Role of SC
is described as.

Abstract: The Indian Judiciary occupies a pivotal role as the "Sentinel on the Qui Vive." As the ultimate guardian of the Constitution and the fundamental rights of over 1.4 billion citizens, it navigates the delicate balance between legislative sovereignty and the rule of law. This monograph provides an exhaustive analysis of the judicial architecture, the saga of judicial appointments from the Three Judges Cases to the NJAC verdict, and the chronological development of constitutional doctrines that define the current status quo of the Indian Republic.

I. The Judicial Architecture

The Constitution of India establishes a single, integrated judicial system. Unlike the dual system in the United States, where state and federal courts operate independently, India follows a pyramid structure that ensures uniformity in the application of both Union and State laws [cite: 4].

1.1 The Supreme Court of India (Apex)

Established under Articles 124 to 147, the Supreme Court is the highest court of the land. Its law is binding on all courts under Article 141 [cite: 7]. Its jurisdictions include:

- **Original Jurisdiction (Art. 131):** Exclusive power to adjudicate disputes between the Union and States.
- **Writ Jurisdiction (Art. 32):** The right to approach the SC for the enforcement of Fundamental Rights, famously called the "Heart and Soul" of the Constitution by Dr. Ambedkar.
- **Appellate Jurisdiction (Art. 132-136):** The final court of appeal in civil, criminal, and constitutional matters. The power of *Special Leave Petition* (Art. 136) allows it to hear any appeal from any court/tribunal [cite: 8].
- **Advisory Jurisdiction (Art. 143):** The President can seek the Court's opinion on questions of law or fact.

1.2 The High Courts and Subordinate Judiciary

High Courts (Arts. 214-231) serve as the highest judicial authority in a State. Their power under Article 226 is wider than the SC's Art. 32, as they can issue writs not only for

fundamental rights but for "any other purpose" [cite: 8]. Below them are the Subordinate Courts (District and Magistrate Courts), which handle the bulk of original litigation [cite: 9].

INDEPENDENCE OF JUDICIARY

Independence is a "Basic Feature" [cite: 10]. Safeguards include: (1) Security of tenure (removal only by impeachment), (2) Fixed service conditions, (3) Expenses charged on the Consolidated Fund (not votable by Parliament), (4) Prohibition on post-retirement practice in the same courts.

II. The Saga of Appointments: The Three Judges Cases & NJAC

The methodology of appointing judges has been a source of intense conflict between the Judiciary and the Executive. The transition from Executive primacy to Judicial primacy is mapped through four major judgments.

1. First Judges Case: S.P. Gupta v. Union of India (1981)

Context: Issue of whether "consultation" with the CJI meant "concurrence" [cite: 17].

Ruling: The Court held that consultation does not mean concurrence. The Executive (President) has the final word in appointments, provided it is an informed decision. This era was marked by high executive interference [cite: 18].

2. Second Judges Case: SC Advocates-on-Record v. UoI (1993)

Context: Re-evaluating judicial independence in the wake of political instability [cite: 19].

Ruling: Overruled S.P. Gupta. Held that "Consultation" means "Concurrence." It established the Collegium System, where the CJI and two senior-most judges make recommendations. The CJI's opinion was given "primacy" to safeguard independence [cite: 20].

3. Third Judges Case: Special Reference 1 of 1998

Context: A Presidential reference under Art. 143 to clarify the norms of the Collegium.

Ruling: The Court expanded the Collegium. For the Supreme Court, it is the CJI + 4 senior-most judges. For High Courts, it is the CJI + 2 senior-most judges. It emphasized "plurality of thought" over a single judge's discretion.

4. The NJAC Verdict (Fourth Judges Case): SC Advocates-on-Record v. UoI (2015)

Context: Parliament passed the 99th Amendment and the NJAC Act to replace the Collegium with a commission including the Law Minister and two eminent persons.

Ruling: A 5-judge bench (4:1) struck down the NJAC as unconstitutional. It held that judicial independence is part of the "Basic Structure" and executive participation in appointments violates this independence. The Collegium system was restored [cite: 3.1].

III. Chronological Evolution of the Basic Structure

The "Basic Structure Doctrine" is the judicial innovation that prevents Parliament from destroying the core essence of the Constitution through amendments.

✓ 1951 | **Shankari Prasad v. UoI:** SC held that Parliament can amend any part of the Constitution, including Fundamental Rights, under Art. 368.

1967 | **I.C. Golaknath v. State of Punjab:** Reversed Shankari Prasad. Held that Fundamental Rights are "transcendental" and cannot be amended by Parliament. Introduced the doctrine of prospective overruling.

The Watershed Moment: Kesavananda Bharati v. State of Kerala (1973)

A 13-judge bench (largest ever) heard the challenge to the 24th, 25th, and 29th Amendments [cite: 11].

Verdict: While Parliament can amend the Constitution, it **cannot alter its Basic Structure** [cite: 13].

Elements like secularism, federalism, judicial review, and the rule of law were later identified as part of this structure.

1975 | **Indira Nehru Gandhi v. Raj Narain:** Applied Basic Structure to strike down the 39th Amendment, affirming that "Free and Fair Elections" and "Rule of Law" are essential features.

Minerva Mills v. Union of India (1980)

Struck down clauses (4) and (5) of Article 368 (inserted by the 42nd Amendment) which gave Parliament unlimited power to amend [cite: 14]. Held that "limited amending power" is itself part of the basic structure [cite: 16].

✓ 2007 | **I.R. Coelho v. State of Tamil Nadu:** Ruled that even laws in the 9th Schedule (immune from review) are subject to the Basic Structure test if they violate the "Golden Triangle" (Arts. 14, 19, 21).

IV. The Transformative Judiciary: Rights and Liberty

The Court has transitioned from a "literalist" to a "purposive" interpreter of the Constitution, particularly regarding Article 21 (Right to Life).

4.1 The Evolution of Article 21

A.K. Gopalan (1950): The Court took a narrow view, holding that "procedure established by law" didn't require that law to be reasonable.

Maneka Gandhi v. UoI (1978): Overturned the Gopalan view [cite: 21]. Held that any procedure must be "fair, just, and reasonable" [cite: 22]. This effectively introduced "Substantive Due Process" into Indian law.

Justice K.S. Puttaswamy v. Union of India (2017)

A 9-judge bench unanimously declared the **Right to Privacy** as a fundamental right under Article 21 [cite: 3.1]. It overruled the earlier ADM Jabalpur (1976) and M.P. Sharma (1954) judgments.

4.2 Public Interest Litigation (PIL)

PIL has democratized justice [cite: 23]. Initiated by Justice V.R. Krishna Iyer and Justice P.N. Bhagwati, it relaxed the rule of *Locus Standi*, allowing any citizen to represent those whose rights are violated but cannot approach the court [cite: 24].

V. Current Status Quo & Challenges (2026)

In 2026, the Judiciary stands at a crossroads of tradition and technology.

- **Status of Appointments:** The Collegium (currently led by CJI Surya Kant) continues to function, though friction persists over the Memorandum of Procedure (MoP) and the timeline for Executive clearance.

- **Digitization (e-Courts):** The e-courts project has moved into Phase III, integrating AI for case management and virtual hearings to tackle the 50-million-case pendency [cite: 25, 26].
- **Transparency:** Recent years have seen live-streaming of constitutional bench proceedings and the publication of detailed Collegium resolutions to address criticisms of "opacity."

VI. Conclusion

The Indian Judiciary remains the ultimate shield for the common citizen. From its early subservience to its current role as a transformative force, it has proven that the Constitution is a living document. While challenges of backlog and vacancy remain, the "Sentinel on the Qui Vive" continues to ensure that the flame of justice never dims [cite: 27].

Primary Sources: *Judiciary India (Gold Edition)*; *Kesavananda Bharati v. Kerala*; *NJAC Case*; *Puttaswamy Case*. Generated for Academic Use, 2026.

JUDICIAL APPOINTMENTS AND TRANSFERS IN INDIA

A Comprehensive Constitutional Commentary

I. Introduction

The independence of the judiciary is an essential feature of the Indian Constitution, often described as part of its "Basic Structure." The process by which judges are appointed to the Superior Judiciary (the Supreme Court and High Courts) and subsequently transferred is pivotal to maintaining this independence. Unlike many other democracies where the executive or legislature holds primary power, India has evolved a unique "Collegium System" characterized by judicial primacy.

II. Constitutional Framework

The Constitution of India vests the power of appointment in the President of India, acting on the advice of the Council of Ministers, but mandates "consultation" with judicial authorities.

Article 124(2): Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary...

Article 217(1): Every Judge of a High Court shall be appointed by the President... after consultation with the Chief Justice of India, the Governor of the State, and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court.

Article 222(1): The President may, after consultation with the Chief Justice of India, transfer a Judge from one High Court to any other High Court.

III. The "Judges Cases" and Evolution of the Collegium

The interpretation of the word "consultation" has evolved through three landmark Supreme Court judgments, shifting power from the Executive to the Judiciary.

1. First Judges Case: S.P. Gupta v. Union of India (1981)

The Court held that "consultation" does not mean "concurrence." It gave the Executive the final say in appointments, provided the consultation was "full and effective." This established Executive Primacy.

2. Second Judges Case: SCAORA v. Union of India (1993)

The Court overruled S.P. Gupta, holding that "consultation" means "concurrence." It ruled that the Chief Justice of India's (CJI) opinion holds primacy. To prevent individual arbitrariness, it introduced the 'Collegium'—a body consisting of the CJI and two senior-most judges.

3. Third Judges Case: Special Reference 1 of 1998

In an advisory opinion, the Court expanded the Collegium. For the Supreme Court, it now consists of the CJI and four senior-most associate judges. For High Courts, it involves the CJI and two senior-most judges.

IV. The Transfer of Judges

Under Article 222, the transfer of a judge is an administrative act. However, the Supreme Court has consistently held that a transfer cannot be used as a punitive measure. It must be in the "interest of the administration of justice."

The consent of the judge being transferred is not constitutionally required, but the recommendation must originate from the Collegium. The judiciary maintains that transfers are necessary to bring "fresh blood" into High Courts and to ensure that judges with local connections do not develop biases.

V. The NJAC Controversy and Current Status

In 2014, the Parliament passed the 99th Constitutional Amendment Act to establish the National Judicial Appointments Commission (NJAC). This commission was intended to include the Law Minister and two eminent persons alongside judges, aimed at increasing transparency.

In 2015, in the **Fourth Judges Case**, the Supreme Court struck down the NJAC as unconstitutional, arguing that the presence of the Executive in the appointment process violated the independence of the judiciary. Consequently, the Collegium system was revived.

VI. Critical Analysis

Aspect	The Collegium System	The Executive Perspective
Merit vs. Seniority	Focuses on judicial temperament and seniority.	Argues for a broader talent pool including diverse backgrounds.
Transparency	Criticized for being "opaque" and "secretive."	Demands a more public and accountable selection criteria.
Independence	Shields judges from political influence.	Argues that "Judges appointing Judges" is undemocratic.

Conclusion

The debate over judicial appointments in India is a struggle for balance. While the Collegium system ensures that the judiciary remains free from political patronage, the lack of a structured "Memorandum of Procedure" (MoP) often leads to delays in filling vacancies. For a robust legal system, the Executive and the Judiciary must find a middle ground—ensuring that the selection process is both independent and transparent, upholding the rule of law for the common citizen.

THE DUAL ARCHITECTURE OF INDIAN FEDERALISM

An Analysis of Cooperative and Competitive Models in Constitutional Law

1. Introduction: The Quasi-Federal Construct

The Indian Constitution does not adhere to the classical definition of federalism seen in the United States. Instead, it creates a **"Union of States" (Article 1)**. Dr. B.R. Ambedkar described it as a federation that could be both unitary and federal according to the requirements of time and circumstances. This flexibility has allowed for the co-existence of collaborative and rivalrous dynamics between the Union and its constituent units.

Key Concept: Modern Indian federalism has transitioned from a centralized "command-and-control" model to a dynamic framework where *Cooperative* and *Competitive* federalism act as two sides of the same coin.

2. Cooperative Federalism: The Synergy of Governance

Cooperative federalism implies that the Center and States share a horizontal relationship, acting as partners in national development. It moves away from the "Big Brother" attitude of the Union toward a spirit of mutual consultation.

Institutional Pillars:

- **GST Council (Article 279A):** A landmark in fiscal federalism where States and the Center jointly decide on taxation.
- **Inter-State Council (Article 263):** A constitutional body for coordination and dispute resolution.
- **The Finance Commission (Article 280):** Ensuring the equitable vertical and horizontal distribution of tax proceeds.

"Indian federalism is a dialogue between cooperative and uncooperative federalism... it is a 'fine balance' that must be maintained to ensure the Basic Structure of the Constitution remains intact." — Supreme Court in Union of India v. Mohit Minerals (2022).

3. Competitive Federalism: Excellence through Rivalry

Competitive federalism shifts the focus to a horizontal relationship between States. Here, States compete with each other to attract investment, improve ease of doing business, and enhance social indicators. This model gained significant traction with the inception of NITI Aayog.

Drivers of Competition:

- **Ranking Frameworks:** The SDG India Index and the Ease of Doing Business rankings create a healthy race to the top.
- **Performance-linked Incentives:** Central funding is increasingly tied to the implementation of reforms.
- **Economic Sovereignty:** States are encouraged to host Global Investor Summits to independently seek foreign capital.

4. Comparative Analysis

Feature	Cooperative Federalism	Competitive Federalism
Nature of Relationship	Vertical & Horizontal Collaboration	Inter-State Rivalry (Horizontal)
Core Philosophy	Unity and Consensus	Efficiency and Innovation
Decision Making	Joint councils and deliberation	Independent policy-driven action
Primary Catalyst	Constitutional Mandates (GST Council)	Market Reforms and NITI Aayog

5. Conclusion: The Way Forward

The future of Indian federalism lies in "**Coopetitive Federalism**"—a hybrid model where States cooperate with the Union to maintain national integrity and standards, while competing with each other to provide better governance. While legal frictions regarding the role of the Governor and fiscal autonomy persist, the constitutional machinery remains resilient enough to balance these competing forces for the ultimate goal of "Sabka Saath, Sabka Vikas."

CONSTITUTIONAL LAW ACADEMIC NOTE

Interstate Trade & Commerce | Services Under the Union and States

PART I: FREEDOM OF TRADE, COMMERCE, AND INTERCOURSE

Constitutional Framework (Articles 301 - 307)

The primary objective of Part XIII is to ensure India remains a single economic unit. Article 301 provides that trade, commerce, and intercourse shall be free throughout the territory of India.

- **Article 301:** General declaration of freedom.
- **Article 302:** Parliament's power to impose restrictions in public interest.
- **Article 304(b):** State's power to impose reasonable restrictions with Presidential sanction.

Case Law: *Atiabari Tea Co. Ltd. v. State of Assam (1961)*

Facts: The State of Assam levied a tax on tea carried by road or inland waterways. The petitioners challenged this under Article 301.

Issue: Does a tax law constitute a restriction on freedom of trade?

Held: The Supreme Court held that Article 301 is not limited to physical barriers. If a tax directly and immediately restricts the movement of goods, it violates Article 301 unless protected by other articles in Part XIII.

Case Law: *Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan (1962)*

Facts: Rajasthan imposed a motor vehicle tax. It was challenged as a violation of free movement.

Held: The Court introduced the "**Compensatory Tax Theory.**" Taxes that are compensatory in nature (e.g., used for maintaining roads) do not violate Article 301 because they facilitate rather than hinder trade.

PART II: SERVICES UNDER THE STATE

All India Services (Article 312)

Unlike Central or State services, All India Services (IAS, IPS, IFoS) are common to both the Union and the States. They are recruited by the Center but serve in State Cadres.

Article 312: If the Rajya Sabha declares by resolution (2/3rd majority) that it is necessary in the national interest, Parliament may create such services.

The Doctrine of Pleasure (Article 310)

Based on the English common law maxim "*durante bene placito*", it implies that a public servant holds office at the pleasure of the Crown. In India:

- Union employees hold office during the pleasure of the **President**.
- State employees hold office during the pleasure of the **Governor**.

SAFEGUARDS AND EXCEPTIONS

Constitutional Safeguards (Article 311)

To prevent arbitrary exercise of 'pleasure', Article 311 provides:

1. **No Subordinate Dismissal:** Cannot be dismissed by an authority lower than the appointing one.
2. **Reasonable Opportunity:** No dismissal/reduction in rank without an inquiry and a chance to be heard.

Case Law: Purshottam Lal Dingra v. Union of India (1958)

Held: Article 311 applies to both permanent and temporary employees if the termination is "penal" in nature (i.e., carries a stigma or loss of benefits).

Exceptions to Article 311(2)

The requirement of an inquiry is dispensed with in three cases:

- **Criminal Conviction:** Where dismissal follows a conviction by a court.
- **Impracticability:** Where the authority records in writing that it is not reasonably practicable to hold an inquiry.
- **National Security:** Where the President/Governor deems it inexpedient for state security.

Case Law: Union of India v. Tulsiram Patel (1985)

Issue: Validity of the second proviso to Article 311(2) (the exceptions).

Held: The Supreme Court upheld the exclusion of *audi alteram partem* (right to be heard) in the interest of public good and security, provided the reasons for dispensing with the inquiry are bona fide.

CONSTITUTIONAL JURISPRUDENCE

A Comprehensive Academic Note on Emergency Provisions

1. INTRODUCTION & PHILOSOPHY

Emergency provisions in a Constitution represent the "Doctrine of Necessity." They are designed to protect the sovereignty, unity, and integrity of the nation during extraordinary situations where the normal machinery of the government cannot function. While federal in normal times, the state becomes unitary during an emergency to ensure a swift, centralized response to threats.

2. TYPOLOGY OF EMERGENCIES

A. National Emergency (Article 352)

Grounds: War, External Aggression, or Armed Rebellion (term 'Armed Rebellion' inserted by 44th Amendment, replacing 'Internal Disturbance').

- **Proclamation:** Issued by the President on the written advice of the Cabinet.
- **Parliamentary Approval:** Must be approved within 1 month by a Special Majority (2/3 present & voting + absolute majority of total strength).
- **Revocation:** Can be revoked by the President at any time or if the Lok Sabha passes a resolution disapproving it.

B. State Emergency / President's Rule (Article 356)

Grounds: Failure of constitutional machinery in a State (Art. 356) or failure to comply with Union directions (Art. 365).

- **Proclamation:** President assumes the functions of the State Government and powers of the Governor.
- **Parliamentary Approval:** Must be approved within 2 months by a Simple Majority.

- **Limit:** Maximum period of 3 years (subject to periodic approval).

C. Financial Emergency (Article 360)

Grounds: Threat to financial stability or credit of India.

- **Effect:** The Union can direct states to reduce salaries of persons serving the state (including High Court/Supreme Court judges) and reserve money bills for President's consideration.

3. IMPACT ON FEDERALISM & FUNDAMENTAL RIGHTS

Transformative Federalism

The distribution of powers is suspended. The Union Parliament gains power to legislate on any subject in the **State List**. The executive power of the Union extends to giving directions to any State as to the manner in which its executive power is to be exercised.

The Status of Fundamental Rights

Provision	Effect
Article 358	Automatic suspension of Article 19 (Six Freedoms) when emergency is declared on grounds of War/External Aggression. <i>→ speech</i>
Article 359	Empowers the President to suspend the <i>enforcement</i> of other Fundamental Rights. However, Articles 20 & 21 cannot be suspended post-44th Amendment. <i>Protection with respect to conviction of offences → Life & personal Liberty</i>

4. LANDMARK CASE LAWS

ADM Jabalpur v. Shivkant Shukla (1976)

Facts: During the 1975 Emergency, political dissidents were detained under MISA. They filed Habeas Corpus petitions challenging their detention.

Issue: Whether a writ of Habeas Corpus is maintainable for enforcing the right to life when Art. 21 is suspended.

Held: A 4:1 majority held that citizens lose the right to move any court for life or liberty during an emergency. Justice H.R. Khanna's dissent became legendary, arguing that the right to life is natural and not a gift of the Constitution.

S.R. Bommai v. Union of India (1994)

Facts: Dismissal of several state governments by the Union under Article 356.

Issue: Is the President's proclamation under Article 356 subject to judicial review?

Held: The court held that Art. 356 is a conditional power. The court can examine the material on which the President's satisfaction is based. If found *mala fide*, the court can restore the dismissed government.

Minerva Mills v. Union of India (1980)

Facts: Challenge to sections of the 42nd Amendment which sought to give the Parliament unlimited power to amend the Constitution.

Held: The Court struck down clauses that excluded judicial review. It held that the "Limited Amending Power" of the Parliament and "Judicial Review" are parts of the **Basic Structure** of the Constitution.

The Living Constitution: Dynamics of Amendment and the Basic Structure Doctrine

An Analysis of Article 368 and the Evolution of Indian Constitutionalism

1. Introduction: The Concept of a Living Constitution

A Constitution is not a mere static document of law; it is a dynamic instrument designed to govern the future. Thomas Jefferson once remarked that "no society can make a perpetual constitution." The Indian Constitution, drafted by the Constituent Assembly under the chairmanship of Dr. B.R. Ambedkar, reflects this philosophy. It was designed to be a "living document," capable of adapting to the evolving socio-economic and political realities of a burgeoning democracy.

2. The Necessity of Amendment Provisions

The provision for amendment is a safety valve. If a Constitution is too rigid, it risks being broken by the pressures of social change; if it is too flexible, it fails to provide the stability required for a rule of law. The necessity arises from:

- **Social Progress:** Overcoming traditional barriers like untouchability or gender inequality requires legal transitions that the original framers might not have fully codified.
- **Economic Evolution:** Shifting from a socialist leaning to a market-driven economy necessitated changes in property rights and taxation.
- **Political Stability:** Providing a legal channel for change prevents violent revolutions or extra-constitutional movements.

3. Power and Procedure of Amendment: Article 368

The power to amend the Constitution is vested in the Parliament under **Article 368**. However, the procedure varies based on the sensitivity of the provision.

The Three-Fold Classification of Amendments

Type of Amendment	Procedure	Subject Matter Examples
Simple Majority	Majority of members present and voting (outside Art. 368).	Admission of new states, salaries of judges, quorum in Parliament.
Special Majority	2/3rd majority of members present and voting AND a majority of the total membership of each house.	Fundamental Rights, Directive Principles of State Policy.
Special Majority + State Ratification	Special majority in Parliament plus ratification by half of the state legislatures.	Election of President, High Courts/Supreme Court, GST, Seventh Schedule.

4. The Amendability of Fundamental Rights

The question of whether Fundamental Rights (Part III) can be amended has been one of the most litigated issues in Indian history.

Shankari Prasad v. Union of India (1951): The Supreme Court initially held that Parliament's power to amend the Constitution under Article 368 also includes the power to amend Fundamental Rights.

This stance was reversed in **Golaknath v. State of Punjab (1967)**, where the Court ruled that Fundamental Rights were "transcendental" and Parliament had no power to abridge them. This led to a direct confrontation between the Judiciary and the Executive.

5. The Basic Structure Theory

The conflict reached its zenith in the landmark case of **Kesavananda Bharati v. State of Kerala (1973)**. By a thin 7:6 majority, the Supreme Court propounded the *Basic Structure Doctrine*.

Core Principles of the Doctrine:

The Court ruled that while Parliament has the power to amend any part of the Constitution (including Fundamental Rights), it **cannot alter or destroy the "Basic Structure"** of the document. The Basic Structure includes:

- Supremacy of the Constitution
- Sovereign, Democratic, and Republican nature of the Indian polity
- Secular character of the Constitution
- Separation of powers between the Legislature, Executive, and Judiciary
- Federal character of the Constitution
- Judicial Review

6. Evolution and Conclusion

Subsequent cases like **Minerva Mills (1980)** and **I.R. Coelho (2007)** further solidified this doctrine, ensuring that the Constitution remains protected from "majoritarian impulses."

In conclusion, the amendment process in India is a masterclass in balance. It allows the nation to grow while ensuring that the foundational values of liberty, equality, and justice remain untouched. The Constitution lives not because it is unchangeable, but because it contains within it the mechanism for its own rebirth.

Constitutional Law - II

Important Questions with Exhaustive Academic Answers

Prepared from attached PDF notes first, then supplemented and verified with leading constitutional case law and authoritative sources.

Psychological reading design

This PDF uses chunking, color-coded recall boxes, provision boxes, case cards, memory formulas, short paragraphs and visual separation. The aim is to reduce cognitive load and make long constitutional answers easy to revise.

How to Use This PDF

Study method

For each answer, first read the recall line, then the key provisions, then the body, and finally the case cards. The case cards are deliberately written in Facts - Issues - Held format to make them usable in academic answers.

Table of Contents

Q1. Explain the Parliamentary System of Government	3
Q2. What are the important functions of the Speaker of Lok Sabha?	4
Q3. What are the powers and functions of Parliament?	5
Q4. Write a short note on State Legislature	6
Q5. Explain the powers of the President of India	8
Q6. Explain the judicial powers of the President of India	9
Q7. Explain the ordinance making power of the President and Governor	10
Q8. Explain Anti-Defection Law under the Indian Constitution	11
Q9. Write a note on the privileges of the members of Parliament	13
Q10. Write a short note on Freedom of Speech under Articles 105(1) and 194(1)	14
Q11. Explain the jurisdiction of the Supreme Court of India	15
Q12. What is writ jurisdiction of the Supreme Court and High Courts?	16
Q13. What are the powers and functions of High Courts?	17
Q14. Explain the concept of Judicial Review	19
Q15. Explain the concept of Judicial Activism	20
Q16. What are the important grounds for Judicial Review?	21
Q17. Explain the principles of Natural Justice	22
Q18. Explain the concept of Co-operative Federalism in India	24
Q19. Explain the legislative relationship between Centre and State	25

Q1. Explain the Parliamentary System of Government

Recall line

Parliamentary system = real executive from the legislature, nominal head, collective responsibility, majority support and accountability to the House.

Key provisions

Articles 52, 53, 74, 75, 77, 78 for the Union; Articles 153, 154, 163, 164 for the States; Article 75(3) and Article 164(2) embody collective responsibility.

Meaning and constitutional foundation

The parliamentary system is a system in which the executive is drawn from, and remains answerable to, the legislature. In India the President and Governors are constitutional heads, while real executive power is exercised by the Council of Ministers headed by the Prime Minister or Chief Minister. The system is not a mere political convention; it is embedded in the text of the Constitution through Articles 74, 75, 163 and 164.

Essential features

- Nominal and real executive: the President is the formal head of the Union; the Prime Minister and Council of Ministers form the real executive.
- Collective responsibility: the Union Council of Ministers is collectively responsible to the Lok Sabha, and the State Council of Ministers to the Legislative Assembly.
- Fusion of powers: ministers ordinarily belong to the legislature and answer questions, defend policies and face motions.
- Majority rule and confidence: the government continues only so long as it commands confidence of the popular House.
- Cabinet solidarity: ministers must publicly support cabinet decisions or resign.
- Role of opposition and legislative control: questions, debates, adjournment motions, no-confidence motions and committees keep the executive accountable.

Indian adaptation

India follows the Westminster model but adapts it to a written Constitution, federalism, judicial review and fundamental rights. The President is not a rival executive like in a presidential system. He acts on ministerial advice except in narrowly defined constitutional situations. Similarly, the Governor ordinarily acts on the aid and advice of the State Council of Ministers.

Advantages and limits

The parliamentary system promotes daily accountability, flexibility and responsible government. Its limitation is that a government with a strong majority may dominate the legislature. Therefore, courts, federalism, fundamental rights, free press and constitutional conventions act as checks.

Leading case law: facts, issues and held

Shamsher Singh v. State of Punjab (1974)

Facts: Two probationary judicial officers challenged termination orders issued in the name of the Governor/President and argued that constitutional heads must personally exercise satisfaction in such matters.
Issues: Whether the President and Governor are personal executives or formal heads bound by ministerial advice; and whether constitutional satisfaction means personal satisfaction or cabinet satisfaction.
Held: The Supreme Court held that India follows the parliamentary form of government. The President and Governor are constitutional heads; their satisfaction is ordinarily the satisfaction of the Council of Ministers.
Principle: This case is the standard authority for the proposition that real executive power lies with the elected cabinet, not the nominal head.

U.N.R. Rao v. Indira Gandhi (1971)

Facts: After the Fourth Lok Sabha was dissolved, Indira Gandhi continued as Prime Minister heading a caretaker Council of Ministers. The petitioner argued that collective responsibility to a dissolved House was impossible.
Issues: Whether a Council of Ministers can exist when the Lok Sabha is dissolved and whether the President can act without ministerial advice during that interval.
Held: The Court held that Article 74 is mandatory and the Constitution does not contemplate executive vacuum. The Council of Ministers continues until the new government is formed.
Principle: Even during dissolution, cabinet government continues because the President cannot rule alone.

S.R. Bommai v. Union of India (1994)

Facts: Several State governments were dismissed under Article 356, including the Karnataka government of S.R. Bommai, where majority was disputed without a floor test.
Issues: Whether President Rule is judicially reviewable and how majority is to be tested.
Held: The Court held that Article 356 is subject to judicial review and majority must ordinarily be tested on the floor of the House.
Principle: Parliamentary confidence is proved in the House, not in the Governor chamber.

Q2. What are the important functions of the Speaker of Lok Sabha?

Recall line Speaker = guardian of the House, controller of procedure, presiding authority, certifier of Money Bills and constitutional decision-maker under the Tenth Schedule.

Key provisions Articles 93 to 97, 100, 101, 110, 118, 122 and the Tenth Schedule; Rules of Procedure and Conduct of Business in Lok Sabha.

Constitutional position

The Speaker is the presiding officer of the Lok Sabha and occupies a position of institutional trust. Once elected, the Speaker is expected to rise above party considerations and act as the neutral guardian of the House. The authority of the Speaker is essential because parliamentary government cannot function without order, discipline and procedural certainty.

Important functions

- Presides over sittings, maintains order, gives rulings and decides who may speak.
- Interprets and applies the Rules of Procedure, standing orders and parliamentary conventions.
- Decides points of order and may direct expunction of unparliamentary expressions.
- Exercises casting vote in case of equality of votes under Article 100.
- Certifies whether a Bill is a Money Bill under Article 110; this certification has great constitutional importance.
- Conducts disciplinary control, including naming members, suspension according to rules and referring matters to committees.
- Controls admission of questions, motions, adjournment motions, calling attention and other devices of accountability.
- Chairs or supervises important parliamentary committees and protects committee functioning.
- Decides disqualification petitions under the Tenth Schedule, subject to judicial review.

Speaker and neutrality

The Speaker is not merely a chairperson. He is a constitutional functionary whose rulings affect the opposition, the government and the quality of democracy. Delay or partisan conduct in anti-defection matters can change the majority in the House and therefore courts have insisted that the Speaker function within constitutional limits.

Leading case law: facts, issues and held

Kihoto Hollohan v. Zachillhu (1992)

Facts: The constitutional validity of the Tenth Schedule was challenged after anti-defection provisions vested disqualification decision-making in the Speaker/Chairman, who may belong to a political party.
Issues: Whether the Speaker can be the adjudicating authority and whether his decision can be excluded from judicial review.
Held: The Supreme Court upheld the Tenth Schedule but struck down the finality clause to the extent it excluded judicial review under Articles 136, 226 and 227.
Principle: The Speaker has constitutional authority, but not immunity from constitutional review.

Nabam Rebia v. Deputy Speaker (2016)

Facts: In Arunachal Pradesh, the Governor advanced the Assembly session and set the agenda amid disqualification proceedings against MLAs. The Speaker role and House procedure became central to the political crisis.
Issues: Whether constitutional authorities can interfere with the Speaker and Assembly process without ministerial advice and constitutional basis.
Held: The Supreme Court invalidated the Governor action and emphasized limited discretion and constitutional procedure.
Principle: The Speaker is a crucial internal authority, but all actors remain bound by constitutional morality.

Keisham Meghachandra Singh v. Speaker, Manipur Legislative Assembly (2020)

Facts: Disqualification petitions under the Tenth Schedule remained pending for a long time before the Speaker, affecting legislative majority.
Issues: Whether courts may intervene when the Speaker delays anti-defection decisions.
Held: The Supreme Court held that Speakers should decide disqualification petitions within a reasonable time, ordinarily three months unless exceptional circumstances exist.
Principle: Delay by the Speaker can itself damage democracy and invite judicial directions.

Q3. What are the powers and functions of Parliament?

Recall line

Parliament = law-making body + financial controller + executive watchdog + constitutional amending body + representative forum.

Key provisions

Articles 79 to 122, 245 to 255, 107 to 111, 112 to 117, 123, 368, 105, 32/136/143 related to institutional balance.

Composition and constitutional role

Article 79 provides that Parliament consists of the President and two Houses: the Rajya Sabha and the Lok Sabha. Parliament is the central representative institution of the Union. It makes laws, controls public finance, supervises the executive, debates national policy and participates in constitutional amendment.

Legislative powers

Parliament makes laws on subjects in the Union List and Concurrent List. It may also legislate on State List matters in special situations, such as national interest resolution by the Rajya Sabha under Article 249, national emergency under Article 250, State request under Article 252, implementation of international obligations under Article 253 and President Rule under Article 356.

Financial powers

No tax can be levied or expenditure incurred except by authority of law. The annual financial statement, demands for grants, appropriation bills and finance bills are considered by Parliament. The Lok Sabha has primacy in financial matters, while the Rajya Sabha has a limited role in Money Bills.

Control over executive

Parliament controls the executive through questions, motions, debates, no-confidence motion, censure motion, committee scrutiny, budget control and ministerial accountability. Collective responsibility to Lok Sabha is the central democratic control.

Constituent, electoral and judicial functions

Parliament amends the Constitution under Article 368, participates in the election and impeachment of the President, removal of judges and other constitutional authorities, and may punish for breach of privilege. It also debates treaties, security, federal issues and public policy.

Limitations

Parliament is powerful but not sovereign in the British sense. It is limited by the Constitution, federal division of powers, fundamental rights, basic structure, judicial review and bicameral procedure.

Leading case law: facts, issues and held

Raja Ram Pal v. Honble Speaker, Lok Sabha (2007)

Facts: A sting operation showed MPs allegedly accepting money for asking questions. Parliamentary committees found misconduct and the Houses expelled eleven members.
Issues: Whether Parliament privilege under Article 105(3) includes power to expel and whether Article 122 completely bars judicial review.
Held: The Supreme Court upheld the power of expulsion but held that judicial review is available for substantive illegality, unconstitutionality, mala fides or jurisdictional error.
Principle: Parliament controls its dignity, but the Constitution controls Parliament.

Kesavananda Bharati v. State of Kerala (1973)

Facts: The petitioner challenged constitutional amendments affecting property rights and the scope of Parliament amending power.
Issues: Whether Parliament power to amend under Article 368 is unlimited.
Held: By a 7:6 majority the Court held that Parliament may amend any part of the Constitution but cannot destroy the basic structure.
Principle: Parliamentary power is wide but constitutionally limited.

Sita Soren v. Union of India (2024)

Facts: A legislator claimed immunity from bribery prosecution because the alleged bribe was connected with a legislative vote.
Issues: Whether legislative immunity protects bribery linked to speech or vote.
Held: A seven-judge bench held that bribery is not protected; P.V. Narasimha Rao was overruled on this point.
Principle: Legislative power protects debate and voting, not corruption.

Q4. Write a short note on State Legislature

Recall line

State Legislature = elected law-making institution of the State, with Governor as part of Legislature and Assembly as the popular House.

Key provisions

Articles 168 to 212; Articles 213, 214 onwards for connected institutions; Articles 245-255 for distribution of legislative power.

Composition

Under Article 168, every State has a Legislature consisting of the Governor and one or two Houses. In most States there is a Legislative Assembly. Some States also have a Legislative Council. The Legislative Assembly is directly elected and is the real popular House at the State level. The Council, where it exists, is a revising chamber.

Powers and functions

- Legislative function: makes laws on State List and Concurrent List subjects, subject to constitutional limits.
- Financial function: controls State finances through budget, demands for grants and appropriation.
- Executive accountability: questions, debates, motions and committees keep the Council of Ministers accountable.
- Constituent role: participates in ratification of certain constitutional amendments affecting federal provisions.
- Electoral role: elected MLAs participate in the election of the President and Rajya Sabha members.
- Privilege and discipline: the House regulates its proceedings and protects its dignity through privileges under Article 194.

Governor and State Legislature

The Governor summons, prorogues and may dissolve the Assembly under Article 174; addresses the House; assents to Bills under Article 200; may reserve Bills for the President under Article 201; and may promulgate ordinances under Article 213 when the Legislature is not in session. Ordinarily these powers are exercised on ministerial advice.

Constitutional limitations

State law must remain within the State legislative field. It is subject to fundamental rights, repugnancy under Article 254, parliamentary laws on Concurrent List, and judicial review.

Leading case law: facts, issues and held

Nabam Rebia v. Deputy Speaker (2016)

Facts: The Arunachal Pradesh Governor advanced the Assembly session and fixed agenda without the aid and advice of the Council of Ministers.
Issues: Whether the Governor has independent power to disturb Assembly schedule and agenda.
Held: The Supreme Court held that the Governor must ordinarily act on ministerial advice and cannot enlarge discretion arbitrarily.
Principle: State legislative functioning must follow constitutional procedure.

Kihoto Hollohan v. Zachillhu (1992)

Facts: The Tenth Schedule affecting members of legislatures was challenged as anti-democratic and as excluding judicial review.
Issues: Whether the anti-defection adjudication by Speaker is constitutionally valid.
Held: The Court upheld the Schedule but preserved judicial review.
Principle: State legislative autonomy exists within constitutional supremacy.

Special Reference No. 1 of 1964 - Keshav Singh Case

Facts: The Uttar Pradesh Legislative Assembly detained Keshav Singh for contempt. When the High Court granted interim bail, the Assembly attempted to proceed against judges and the advocate.
Issues: Whether privilege could override habeas corpus and judicial functions.
Held: The Supreme Court held that legislative privilege is not above the Constitution and courts may examine legality of detention.
Principle: No organ of State is supreme over the Constitution.

Q5. Explain the powers of the President of India

Recall line

President = constitutional head of the Union; all powers are formally vested in him but ordinarily exercised on aid and advice.

Key provisions

Articles 52 to 78; Article 72; Articles 85, 111, 123; Articles 352, 356, 360; Articles 53, 74 and 75 are central.

Position of the President

The President is the head of the Union executive and the formal head of the State. Under Article 53, executive power of the Union is vested in the President, but under Article 74 that power is ordinarily exercised on the aid and advice of the Council of Ministers. Therefore, the President represents constitutional authority, continuity and dignity, while the Council of Ministers carries political responsibility.

Executive powers

The President appoints the Prime Minister, other ministers on the advice of the Prime Minister, Governors, Attorney General, Comptroller and Auditor General, judges of the Supreme Court and High Courts, Election Commissioners and other constitutional authorities. All executive action of the Union is taken in the name of the President.

Legislative powers

The President summons and prorogues Parliament, may dissolve the Lok Sabha, addresses Parliament, sends messages, assents to Bills, returns non-Money Bills for reconsideration, reserves certain matters and promulgates ordinances under Article 123 when Parliament is not in session.

Judicial powers

Under Article 72, the President may grant pardon, reprieve, respite, remission, suspension or commutation in cases involving Union law, court martial and death sentence.

Military, diplomatic and emergency powers

The President is Supreme Commander of the Defence Forces. Treaties and diplomatic representation are made in his name. Emergency powers include national emergency under Article 352, President Rule under Article 356 and financial emergency under Article 360.

Real limitation

The President is not an autocrat. In the parliamentary system, his powers are constitutional powers exercised through responsible government, subject to judicial review where constitutional limits are crossed.

Leading case law: facts, issues and held

Shamsher Singh v. State of Punjab (1974)

Facts: Orders terminating probationary judicial officers were issued in the name of the Governor/President. The officers argued that the constitutional head must personally decide.
Issues: Whether President/Governor satisfaction is personal or cabinet satisfaction.
Held: The Supreme Court held that the President and Governor are formal constitutional heads and act on ministerial advice except in narrow discretionary fields.
Principle: The President is head of State, not the real political executive.

Kehar Singh v. Union of India (1989)

Facts: After conviction in the Indira Gandhi assassination case, a mercy petition was submitted to the President and its rejection was questioned.
 Issues: Whether the President may examine merits while deciding mercy petitions and whether the court can review the decision.
 Held: The Supreme Court held that the President can examine the merits independently, but the exercise remains constitutional and not appellate in the ordinary judicial sense.
 Principle: Pardoning power is broad but must be exercised constitutionally.

S.R. Bommai v. Union of India (1994)

Facts: State governments were dismissed under Article 356 on reports of breakdown of constitutional machinery.
 Issues: Whether the President satisfaction under Article 356 is immune from judicial review.
 Held: The Court held that the proclamation is subject to judicial review and may be invalidated if based on irrelevant or mala fide material.
 Principle: Emergency power is constitutional power, not political licence.

Q6. Explain the judicial powers of the President of India

Recall line

Judicial power of President mainly means clemency under Article 72; it is a constitutional mercy power, not an ordinary appeal.

Key provisions

Article 72; related provisions: Articles 161, 53, 74; judicial review under Articles 32 and 226.

Nature of pardoning power

Article 72 gives the President power to grant pardons, reprieves, respites or remissions of punishment, or to suspend, remit or commute sentences. It applies in three broad situations: cases where punishment is by court martial; cases relating to offences against laws on matters within Union executive power; and all cases of death sentence.

Forms of clemency

- Pardon: completely removes the sentence and conviction consequences.
- Commutation: substitutes one form of punishment with a lighter form, such as death sentence into life imprisonment.
- Remission: reduces the period of sentence without changing its character.
- Respite: awards a lesser sentence because of special circumstances such as pregnancy or physical condition.
- Reprieve: temporary stay of execution, especially in death sentence cases.

Constitutional purpose

The power exists to correct possible judicial hardship, consider humanitarian factors, public policy, post-conviction conduct and broader circumstances that a court may not fully address. It is not a private favour; it is a constitutional safety valve.

Judicial review

Courts do not sit in appeal over the President decision, but they may review clemency decisions if they are mala fide, arbitrary, discriminatory, based on irrelevant material, made without considering relevant material, or affected by inordinate unexplained delay.

Leading case law: facts, issues and held

Kehar Singh v. Union of India (1989)

Facts: The mercy petition of Kehar Singh after conviction in the Indira Gandhi assassination case was rejected. It was argued that the President could not reconsider merits and that reasons were required.
 Issues: Whether the President may examine the merits of the case while considering mercy and the scope of judicial review.
 Held: The Court held that the President may examine the evidence and merits for clemency, but the power is not an appellate judicial power. Courts may review only on limited constitutional grounds.
 Principle: Article 72 is a constitutional mercy jurisdiction.

Epuru Sudhakar v. Government of Andhra Pradesh (2006)

Facts: Remission granted by the Governor was challenged as politically motivated and arbitrary.
 Issues: Whether clemency power under Article 161/72 is beyond judicial review.
 Held: The Supreme Court held that clemency can be reviewed for mala fides, arbitrariness, irrelevant considerations and non-application of mind.
 Principle: Mercy power is wide, not absolute.

Shatrughan Chauhan v. Union of India (2014)

Facts: Death row prisoners challenged execution after prolonged delay in disposal of mercy petitions and raised mental illness and solitary confinement concerns.
 Issues: Whether delay and supervening circumstances can justify commutation of death sentence.
 Held: The Supreme Court held that unexplained delay and relevant humanitarian factors may justify commutation.
 Principle: Human dignity under Article 21 informs clemency review.

Q7. Explain the ordinance making power of the President and Governor

Recall line Ordinance = temporary law made by constitutional executive during legislative recess, subject to legislative control and judicial review.

Key provisions Article 123 for President; Article 213 for Governor; Articles 74, 163, 213 proviso and democratic limits.

Meaning

An ordinance is a law made by the President or Governor when the legislature is not in session and circumstances require immediate action. It has the same force and effect as an Act, but it is temporary and must be placed before the legislature when it reassembles.

Conditions for President ordinance under Article 123

- Both Houses of Parliament, or one House where relevant, must not be in session.
- The President must be satisfied that circumstances exist requiring immediate action. In the constitutional sense, this satisfaction is based on ministerial advice.
- The ordinance must be within the legislative competence of Parliament and must not violate the Constitution.

Governor ordinance under Article 213

The Governor may promulgate ordinances when the State Legislature is not in session. However, where a Bill of similar content would require Presidential instructions or reservation, the Governor cannot promulgate the ordinance without instructions from the President.

Duration and legislative control

An ordinance must be laid before the legislature and ceases to operate six weeks after reassembly unless approved earlier. It may be withdrawn. Repeated re-promulgation to avoid legislative scrutiny is constitutionally improper.

Limitations

Ordinance power is not a parallel source of permanent legislation. It is an emergency legislative substitute, not a routine law-making method. It is subject to judicial review on grounds such as lack of legislative competence, violation of fundamental rights, mala fides, fraud on the Constitution and absence of real urgency in appropriate cases.

Leading case law: facts, issues and held

A.K. Roy v. Union of India (1982)

Facts: The National Security Ordinance and related preventive detention framework were challenged after ordinance-making power was used for serious liberty restrictions.
Issues: Whether ordinance-making power is legislative in nature and whether it is subject to constitutional limits.
Held: The Supreme Court accepted that an ordinance has legislative force but is subject to constitutional limitations.
Principle: An ordinance is law, but not above the Constitution.

D.C. Wadhwa v. State of Bihar (1987)

Facts: The State of Bihar repeatedly re-promulgated ordinances for years without placing them for proper legislative enactment.
Issues: Whether repeated re-promulgation of ordinances is permissible.
Held: The Supreme Court held that re-promulgation as a routine practice is a fraud on the Constitution because it bypasses the legislature.
Principle: The executive cannot replace the legislature by repeated ordinances.

Krishna Kumar Singh v. State of Bihar (2017)

Facts: Bihar ordinances were allowed to lapse and questions arose regarding rights and liabilities created during their operation and re-promulgation.
Issues: Whether re-promulgation is valid and whether ordinances create enduring rights after lapse.
Held: A seven-judge bench held that re-promulgation is generally unconstitutional unless exceptional circumstances exist; ordinances must be laid before the legislature.
Principle: Democratic accountability is the core limit on ordinance power.

Q8. Explain Anti-Defection Law under the Indian Constitution

Recall line

Anti-defection law protects political stability and party discipline, but must be balanced against democratic dissent and judicial review.

Key provisions

Tenth Schedule inserted by the 52nd Amendment, 1985; modified by the 91st Amendment, 2003; Articles 102(2), 191(2), 75(1B), 164(1B).

Background and object

The Anti-Defection Law was introduced to address frequent party-switching by legislators, popularly described as the Aaya Ram, Gaya Ram phenomenon. Its object is to preserve the mandate of voters, maintain government stability and discourage political corruption through office or money.

Grounds of disqualification

- Voluntarily giving up membership of the political party on whose ticket the member was elected.
- Voting or abstaining contrary to party whip without prior permission, unless condoned by the party within the prescribed time.
- Independent member joining a political party after election.
- Nominated member joining a political party after six months from taking seat.

Exceptions and amendment

Originally, split by one-third members was protected. The 91st Amendment removed the split exception and retained merger where at least two-thirds of members of the legislature party agree. The amendment also restricted ministerial office for defectors and attempted to reduce the incentive for defection.

Adjudicatory authority

The Speaker or Chairman decides disqualification. His decision is subject to judicial review. Courts generally do not interfere before the decision, but exceptional delay, mala fides or jurisdictional issues may justify intervention.

Criticism

The law protects stability but may weaken legislative deliberation because party whips can control even ordinary policy votes. The better view is that anti-defection should be applied strongly to confidence motions, budgets and core party mandate, but democratic debate should not be mechanically suppressed.

Leading case law: facts, issues and held

Kihoto Hollohan v. Zachillhu (1992)

Facts: The Tenth Schedule was challenged as violating democracy, free speech of legislators and basic structure, especially because the Speaker was made adjudicator and judicial review was restricted.
Issues: Whether the Tenth Schedule is valid and whether the Speaker decision can be made final beyond judicial review.
Held: The Supreme Court upheld the Schedule but struck down the bar on judicial review. The Speaker decision is reviewable after the decision on grounds such as mala fides, perversity and constitutional violation.
Principle: Anti-defection law is valid, but judicial review survives.

Ravi S. Naik v. Union of India (1994)

Facts: Members had not formally resigned from their party, but their conduct indicated political departure.
Issues: Whether voluntarily giving up membership requires a formal resignation.
Held: The Court held that giving up membership may be inferred from conduct; resignation is not the only proof.
Principle: Conduct can speak louder than resignation.

Rajendra Singh Rana v. Swami Prasad Maurya (2007)

Facts: MLAs claimed split/defection protection while their conduct showed support to another political formation.
Issues: Whether the Speaker decision ignoring material could stand.
Held: The Court held that the Speaker decision was invalid and the MLAs were liable to disqualification.
Principle: Anti-defection adjudication must examine real conduct and material facts.

Keisham Meghachandra Singh v. Speaker, Manipur Legislative Assembly (2020)

Facts: A disqualification petition remained pending before the Speaker for a prolonged period.
Issues: Whether delay by the Speaker can defeat the Tenth Schedule.
Held: The Supreme Court directed that such petitions should ordinarily be decided within three months.
Principle: Time matters because delayed justice can alter majority rule.

Q9. Write a note on the privileges of the members of Parliament

Recall line Privilege = institutional protection for Parliament, not personal immunity for misconduct.

Key provisions Article 105 for Parliament; Article 122; Article 361A; Article 194 for State Legislatures by analogy.

Meaning

Parliamentary privileges are special rights, immunities and powers enjoyed by each House, its members and committees so that Parliament may perform its functions without obstruction. The privilege is functional, not personal. It exists for the dignity and effectiveness of Parliament as a constitutional institution.

Individual privileges

- Freedom of speech in Parliament subject to the Constitution and rules of the House.
- Immunity from court proceedings for anything said or any vote given in Parliament or committee.
- Limited freedom from arrest in civil cases during session and reasonable periods before and after; no immunity from criminal arrest or preventive detention.
- Exemption from jury/witness attendance where it obstructs parliamentary duty.

Collective privileges

- Right of each House to regulate internal proceedings.
- Right to exclude strangers from proceedings.
- Right to control and prohibit publication of proceedings, especially expunged or secret matters.
- Right to punish breach of privilege or contempt by reprimand, admonition, suspension, expulsion or other constitutional action.

Privileges and Fundamental Rights

Privileges are not above the Constitution. Courts generally do not interfere with mere procedural irregularities because of Article 122, but they may review actions for illegality, unconstitutionality, mala fides, jurisdictional error or violation of fundamental rights. Article 361A protects substantially true publication of proceedings unless malicious and excludes secret sittings.

Exam conclusion The correct answer is balanced: privilege protects the process of Parliament, not misconduct by parliamentarians.

Leading case law: facts, issues and held

Raja Ram Pal v. Honble Speaker, Lok Sabha (2007)

Facts: MPs were expelled after the cash-for-queries sting operation showed alleged acceptance of money for asking questions.
 Issues: Whether Article 105(3) includes power to expel and whether courts are barred by Article 122.
 Held: The Court upheld expulsion power but held that judicial review remains for constitutional illegality, mala fides and lack of jurisdiction.
 Principle: Privilege is broad but constitutionally controlled.

K. Anandan Nambiar v. Chief Secretary, Government of Madras (1966)

Facts: Detained MPs argued that privilege entitled them to attend Parliament and vote despite preventive detention.
 Issues: Whether freedom from arrest covers preventive detention.
 Held: The Court held that privilege does not protect against criminal arrest or lawful preventive detention.
 Principle: Civil arrest protection is not criminal immunity.

Pandit M.S.M. Sharma v. Sri Krishna Sinha - Searchlight Case (1959)

Facts: The Searchlight newspaper published expunged parts of a Bihar Assembly speech and faced privilege action.
 Issues: Whether press freedom under Article 19(1)(a) protected publication of expunged proceedings.
 Held: The Court upheld the Assembly privilege to control publication of expunged material in that context.
 Principle: Publication of expunged proceedings is not automatically protected.

State of Kerala v. K. Ajith (2021)

Facts: MLAs were prosecuted for damaging public property inside the Kerala Assembly during protest.
 Issues: Whether vandalism inside the House is protected by legislative privilege.
 Held: The Court held that destruction of public property is not an essential legislative function and cannot claim privilege.
 Principle: Debate is protected; destruction is not.

Q10. Write a short note on Freedom of Speech under Articles 105(1) and 194(1)

Recall line Inside the House, legislative speech is protected to secure fearless debate; outside the House, ordinary law and constitutional limits apply.

Key provisions Articles 105(1), 105(2), 194(1), 194(2), 19(1)(a), 19(2), 361A.

Nature of the freedom

Article 105(1) declares freedom of speech in Parliament, and Article 194(1) gives similar protection in State Legislatures. This is not merely the ordinary citizen right under Article 19(1)(a). It is a special institutional freedom required for legislative deliberation, accountability and representative government.

Why it is wider than ordinary free speech

An MP or MLA must be able to criticise the executive, expose misconduct, ask uncomfortable questions, debate Bills and vote without fear of defamation suits or criminal complaints based on the legislative speech. Therefore, Articles 105(2) and 194(2) give immunity from court proceedings in respect of anything said or any vote given in the House or its committees.

Internal and external limits

The freedom is subject to the Constitution, rules of procedure, standing orders and control of the Speaker/Chairman. The remedy for improper speech inside the House is usually internal discipline, not court action. But independent conduct outside the House, unauthorised publication, bribery, violence or contempt of court is not automatically protected.

Article 361A

Article 361A protects substantially true reports of legislative proceedings unless the publication is malicious. It does not protect secret sittings. Thus, it balances legislative privilege with public knowledge and press freedom.

Leading case law: facts, issues and held

Tej Kiran Jain v. N. Sanjiva Reddy (1970)

Facts: During a Lok Sabha discussion, MPs allegedly made defamatory remarks about the Shankaracharya. Aggrieved persons filed a civil suit for damages.
Issues: Whether MPs can be sued for defamatory statements made during parliamentary proceedings and how to interpret "anything said" in Article 105(2).
Held: The Supreme Court held that the words "anything said" are wide. Statements made in Parliament are immune from court proceedings; propriety is for the House, not the civil court.
Principle: Inside Parliament, judicial immunity for speech is very broad.

Dr. Jatish Chandra Ghosh v. Hari Sadhan Mukherjee (1961)

Facts: A legislator published outside the House certain questions that had been disallowed by the Speaker. Defamation prosecution followed.
Issues: Whether Article 194 protects publication outside the House of disallowed questions.
Held: The Court held that privilege did not protect such outside publication when the questions had not become authorised proceedings.
Principle: Legislative speech privilege does not become a general publication licence.

Sita Soren v. Union of India (2024)

Facts: A legislator accused of taking a bribe connected with a vote claimed Article 194(2) immunity.
Issues: Whether bribery connected with a vote is protected by legislative immunity.
Held: A seven-judge bench held that bribery is not part of speech or vote and is complete on acceptance or agreement to accept illegal gratification.
Principle: Privilege protects legislative freedom, not sale of legislative power.

Q11. Explain the jurisdiction of the Supreme Court of India

Recall line Supreme Court jurisdiction = original + writ + appellate + special leave + advisory + review + curative + complete justice.

Key provisions Articles 32, 131, 132, 133, 134, 136, 137, 139A, 141, 142, 143 and 145.

Constitutional position

The Supreme Court is the apex constitutional court, guardian of fundamental rights, interpreter of the Constitution and final court of appeal. Its jurisdiction is designed to maintain constitutional supremacy, federal balance and uniformity of law.

Original jurisdiction - Article 131

The Supreme Court has original jurisdiction in disputes between the Union and States or between States, where the dispute involves a legal right. This is a federal jurisdiction and does not generally include purely political disputes.

Writ jurisdiction - Article 32

Article 32 allows a person to approach the Supreme Court directly for enforcement of fundamental rights. Dr. Ambedkar described Article 32 as the heart and soul of the Constitution.

Appellate jurisdiction

Articles 132, 133 and 134 provide constitutional, civil and criminal appellate jurisdiction from High Courts. Article 134A deals with certification. The Court also hears statutory appeals created by Parliament.

Special Leave Petition - Article 136

Article 136 gives the Supreme Court discretionary power to grant special leave from any judgment, decree, determination, sentence or order of any court or tribunal in India, except courts/tribunals under armed forces law. It is extraordinary and discretionary, not an ordinary appeal as of right.

Advisory, review and complete justice

Under Article 143 the President may seek advisory opinion. Under Article 137 the Court may review its judgments. Article 142 empowers it to pass orders necessary for complete justice. Article 141 makes law declared by the Supreme Court binding on all courts in India.

Leading case law: facts, issues and held

State of Karnataka v. Union of India (1977)

Facts: A dispute arose over Union action and commissions concerning State administration.
Issues: What is the scope of Article 131 federal original jurisdiction.
Held: The Court recognized that Article 131 covers disputes involving legal rights between federal units, not every political grievance.
Principle: Article 131 preserves federal legal balance.

In re Berubari Union (1960)

Facts: The President referred questions regarding implementation of an India-Pakistan agreement involving transfer of territory.
Issues: Whether territory could be ceded by executive action or constitutional amendment was necessary.
Held: The Supreme Court gave advisory opinion that cession of Indian territory required constitutional amendment.
Principle: Article 143 advisory jurisdiction clarifies constitutional doubts.

Pritam Singh v. State (1950)

Facts: The Court considered the nature of special leave under Article 136 in early constitutional practice.
Issues: Whether Article 136 creates ordinary appellate jurisdiction.
Held: The Court held that Article 136 is extraordinary discretionary power to be used sparingly.
Principle: SLP is not a routine third appeal.

Supreme Court Bar Association v. Union of India (1998)

Facts: The Court considered the limits of Article 142 in punishing an advocate.
Issues: Whether complete justice power can override substantive law.
Held: The Court held that Article 142 is wide but cannot be used to ignore express statutory or constitutional provisions.
Principle: Complete justice operates within constitutional boundaries.

Q12. What is writ jurisdiction of the Supreme Court and High Courts?

Recall line

Writ jurisdiction is the constitutional remedy mechanism: Article 32 enforces fundamental rights; Article 226 is wider and protects legal rights also.

Key provisions

Articles 32 and 226; writs: Habeas Corpus, Mandamus, Certiorari, Prohibition, Quo Warranto; Article 227 for supervision.

Meaning of writ jurisdiction

Writs are constitutional commands issued by superior courts to enforce rights and control public power. The five classic writs are habeas corpus, mandamus, certiorari, prohibition and quo warranto.

Article 32 - Supreme Court

Article 32 is itself a fundamental right and is available for enforcement of fundamental rights. The Supreme Court may issue directions, orders or writs. The scope is powerful but tied to fundamental rights.

Article 226 - High Courts

Article 226 is wider than Article 32 because High Courts may issue writs not only for fundamental rights but also for "any other purpose", meaning legal and statutory rights. High Courts are usually the first constitutional courts for factual and local administrative matters.

Five writs

- Habeas Corpus: commands production of a detained person to test legality of detention.
- Mandamus: commands performance of public or statutory duty.
- Certiorari: quashes orders of inferior courts/tribunals/authorities for jurisdictional error, violation of natural justice or error apparent.
- Prohibition: prevents an inferior court/tribunal from exceeding jurisdiction before final decision.
- Quo Warranto: questions the legal authority by which a person holds public office.

Self-imposed limitations

Courts may refuse writs where there is an effective alternative remedy, disputed facts needing trial, laches, suppression of material facts, private contractual disputes without public law element, or academic questions. These are rules of prudence, not absolute bars.

Leading case law: facts, issues and held

Bandhua Mukti Morcha v. Union of India (1984)

Facts: A public interest petition raised bonded labour and inhuman conditions in stone quarries.
Issues: Whether Article 32 procedure could be flexible for disadvantaged persons and whether letters/social action could trigger relief.
Held: The Supreme Court expanded procedural access and treated fundamental rights enforcement as remedial and participatory.
Principle: Writ jurisdiction is a tool of constitutional justice, not mere technical pleading.

L. Chandra Kumar v. Union of India (1997)

Facts: Tribunal provisions attempted to make tribunal decisions directly appealable to the Supreme Court and exclude High Court review.
Issues: Whether judicial review by High Courts under Articles 226/227 and Supreme Court under Article 32 can be excluded.
Held: The Court held that judicial review under Articles 32 and 226/227 is part of the basic structure and cannot be ousted.
Principle: Writ jurisdiction is a basic feature safeguard.

Whirlpool Corporation v. Registrar of Trade Marks (1998)

Facts: A writ petition was filed despite availability of alternate remedy.
Issues: When can High Court entertain a writ despite alternate remedy.
Held: The Court held that alternate remedy does not bar writ where fundamental rights are involved, natural justice is violated, jurisdiction is lacking or vires is challenged.
Principle: Alternative remedy is a rule of discretion, not a constitutional prohibition.

Q13. What are the powers and functions of High Courts?

Recall line

High Court = constitutional court of the State: writ court, appellate court, supervisory court, court of record and protector of legality.

Key provisions

Articles 214 to 231; Articles 226, 227, 228, 215, 217, 222; related procedural laws.

Constitutional status

Every State has a High Court under Article 214. A High Court is a constitutional court, court of record under Article 215 and the highest court within the State judicial hierarchy, subject to the appellate jurisdiction of the Supreme Court.

Writ jurisdiction under Article 226

This is the most important constitutional power of High Courts. It extends to fundamental rights and other legal rights. It covers administrative law, statutory duties, local authority action, service law, education, taxation and many other public law fields.

Superintendence under Article 227

High Courts supervise courts and tribunals within their territorial jurisdiction. This is not a routine appeal. It is used to keep subordinate courts within bounds of jurisdiction, correct grave dereliction of duty and maintain judicial discipline.

Appellate, revisional and original jurisdiction

High Courts hear civil and criminal appeals, revisions, references, election petitions where provided, company and commercial matters where assigned, and original civil jurisdiction in some chartered High Courts. They also transfer cases, frame rules and control subordinate judiciary.

Administrative control

High Courts control district judiciary under Articles 233 to 235, including posting, promotion, discipline and supervision of subordinate courts. This secures independence of the judiciary at the State level.

Limits

High Courts cannot act as routine appellate courts under writ jurisdiction. They normally respect alternative remedies, factual disputes and legislative policy unless constitutional or legal limits are crossed.

Leading case law: facts, issues and held

L. Chandra Kumar v. Union of India (1997)

Facts: Tribunalisation attempted to reduce the role of High Courts by excluding Articles 226/227 review over tribunal decisions.
Issues: Whether High Court judicial review can be excluded by constitutional amendment/statute.
Held: The Supreme Court held that judicial review by High Courts under Articles 226/227 is part of the basic structure and cannot be ousted.
Principle: High Courts are essential guardians of constitutional legality.

Surya Dev Rai v. Ram Chander Rai (2003)

Facts: A party invoked writ/supervisory jurisdiction against civil court orders.
Issues: What is the difference between certiorari under Article 226 and supervision under Article 227.
Held: The Court expanded supervisory correction, though later decisions narrowed parts of this approach.
Principle: Article 227 is supervisory, not a substitute for appeal.

Radhey Shyam v. Chhabi Nath (2015)

Facts: The issue was whether judicial orders of civil courts are amenable to writ jurisdiction under Article 226.
 Issues: Whether a writ of certiorari lies against civil court judicial orders.
 Held: The Supreme Court held that judicial orders of civil courts are not amenable to Article 226 writ jurisdiction; remedy lies under appeal/revision or Article 227 in appropriate cases.
 Principle: Maintain the distinction between writ power and supervisory power.

Q14. Explain the concept of Judicial Review

Recall line Judicial review = power of courts to test State action against the Constitution and invalidate unconstitutional action.

Key provisions Articles 13, 32, 226, 227, 131, 136, 137, 141, 142, 246, 254, 368; basic structure doctrine.

Meaning

Judicial review is the power of constitutional courts to examine the validity of legislative, executive and administrative action and to strike down or correct such action if it violates the Constitution or law. It is the practical method by which constitutional supremacy is maintained.

Types of judicial review

- Review of legislation: courts test whether law violates fundamental rights, legislative competence, federal distribution or basic structure.
- Review of executive action: courts test mala fides, arbitrariness, irrelevant considerations, proportionality, natural justice and statutory limits.
- Review of constitutional amendments: under Kesavananda, amendments cannot damage basic structure.

Why it is necessary

India has a written Constitution, limited government, fundamental rights and federal division of powers. Without judicial review, these limits would become political promises without legal remedy.

Not judicial supremacy

Judicial review does not mean courts govern the country. Courts do not ordinarily decide policy wisdom. They examine legality, constitutionality and process. Democratic policy belongs to the elected branches, but constitutional limits belong to the courts.

Leading case law: facts, issues and held

Kesavananda Bharati v. State of Kerala (1973)

Facts: A religious institution challenged land reform and constitutional amendments including the 24th, 25th and 29th Amendments.
 Issues: Whether Parliament amending power under Article 368 is unlimited.
 Held: The Supreme Court held that Parliament can amend any part of the Constitution but cannot destroy its basic structure.
 Principle: Judicial review protects the identity of the Constitution.

Minerva Mills v. Union of India (1980)

Facts: Amendments attempted to give primacy to Directive Principles and exclude judicial review of constitutional amendments.
 Issues: Whether unlimited amending power and exclusion of review are valid.
 Held: The Court held that limited amending power and judicial review are basic features. Harmony between Fundamental Rights and DPSPs is essential.
 Principle: Destroying judicial review destroys constitutionalism.

L. Chandra Kumar v. Union of India (1997)

Facts: Tribunal provisions attempted to exclude High Court review.
 Issues: Whether Articles 226/227 and 32 review is part of basic structure.
 Held: The Court held that judicial review by High Courts and Supreme Court is basic structure.
 Principle: Judicial review cannot be legislatively ousted.

I.R. Coelho v. State of Tamil Nadu (2007)

Facts: Laws placed in the Ninth Schedule after Kesavananda were challenged.
 Issues: Whether Ninth Schedule placement immunizes laws from basic structure review.
 Held: The Court held that post-24 April 1973 Ninth Schedule laws are subject to basic structure review if they damage fundamental rights forming part of basic structure.
 Principle: Constitutional immunization has constitutional limits.

Q15. Explain the concept of Judicial Activism

Recall line

Judicial activism = active constitutional role of courts to protect rights and accountability, especially where political branches fail; it must remain principled, not personal governance.

Key provisions

Articles 32, 226, 21, 14, 19; PIL jurisprudence; Article 142 in appropriate cases.

Meaning

Judicial activism refers to a proactive approach by courts in interpreting the Constitution and granting remedies to protect rights, control arbitrariness and fill gaps where governance failure affects constitutional values. It is often associated with public interest litigation, expanded interpretation of Article 21 and continuing mandamus.

Reasons for emergence in India

Judicial activism developed because of poverty, illiteracy, custodial violence, bonded labour, environmental harm, corruption and inability of ordinary citizens to access justice. Courts relaxed locus standi and procedure to allow public spirited persons to approach courts on behalf of affected groups.

Positive contributions

- Expanded Article 21 into rights to dignity, livelihood, environment, legal aid, speedy trial, privacy and fair procedure.
- Created PIL as an access-to-justice mechanism.
- Protected women, prisoners, workers, children and marginalized communities.
- Strengthened accountability in environmental and corruption matters.

Criticism and limits

Judicial activism becomes problematic if courts enter policy-making without legal standards, monitor administration indefinitely, or substitute judicial preferences for democratic choices. The legitimate boundary is constitutional principle, not judicial governance.

Leading case law: facts, issues and held

Hussainara Khatoon v. State of Bihar (1979)

Facts: A newspaper report revealed thousands of undertrial prisoners in Bihar jails for periods longer than possible sentences.
 Issues: Whether delayed trials and prolonged undertrial detention violate Article 21.
 Held: The Supreme Court recognized speedy trial as part of Article 21 and ordered relief.
 Principle: Activism opened prisons to constitutional scrutiny.

Vishaka v. State of Rajasthan (1997)

Facts: After the gang rape of social worker Bhanwari Devi, absence of a law against workplace sexual harassment was highlighted.
 Issues: Whether courts could frame guidelines to protect working women under Articles 14, 19 and 21 until legislation.
 Held: The Court issued Vishaka Guidelines based on constitutional rights and international norms, to operate until Parliament enacted law.
 Principle: Rights cannot wait indefinitely for legislation.

M.C. Mehta v. Union of India - Environmental Cases

Facts: Industrial pollution, Ganga pollution, vehicular emissions and hazardous industries came before the Court through public interest litigation.
 Issues: Whether courts can grant structural environmental remedies and develop liability standards.
 Held: The Court developed principles such as absolute liability and issued continuing directions for environmental protection.
 Principle: Activism translated Article 21 into environmental governance.

Vineet Narain v. Union of India (1998)

Facts: Investigation into the Hawala scandal exposed inertia and lack of independence of investigative agencies.
 Issues: Whether courts can issue directions to insulate investigation from political interference.
 Held: The Supreme Court issued institutional directions concerning CBI/CVC functioning until proper legislation.
 Principle: Judicial activism can strengthen accountability where executive inaction defeats rule of law.

Q16. What are the important grounds for Judicial Review?

Recall line Grounds of review = illegality, irrationality, procedural impropriety, proportionality, arbitrariness, mala fides, jurisdictional error and constitutional violation.

Key provisions Articles 13, 14, 19, 21, 32, 226, 246, 254, 300A; principles of administrative law and natural justice.

Grounds against legislation

- Lack of legislative competence: law made outside the field allotted by the Seventh Schedule.
- Violation of fundamental rights: especially Articles 14, 19, 21, 25, 300A where applicable.
- Repugnancy: State law inconsistent with Central law on Concurrent List under Article 254.
- Violation of basic structure: constitutional amendments damaging basic structure.
- Excessive delegation: essential legislative function delegated without policy/guidance.

Grounds against executive/administrative action

- Illegality: authority misunderstands law, acts beyond power or ignores mandatory conditions.
- Irrationality or Wednesbury unreasonableness: decision so unreasonable that no reasonable authority would make it.
- Procedural impropriety: violation of natural justice, mandatory procedure or fairness.
- Mala fides: power used for improper purpose, personal bias or political vendetta.

- Relevant/irrelevant considerations: decision based on irrelevant facts or ignoring relevant facts.
- Arbitrariness: State action lacking reason, fairness or non-discrimination under Article 14.
- Proportionality: restriction on rights must be suitable, necessary and balanced.

Practical approach

In an answer, first identify the nature of action: legislative, executive, quasi-judicial or constitutional amendment. Then apply the proper grounds. Do not mechanically apply all grounds to every case.

Leading case law: facts, issues and held

Tata Cellular v. Union of India (1994)

Facts: The award of telecom tender was challenged and the Court considered limits of review in government contracts.
Issues: What are grounds for judicial review in administrative decisions, especially tenders.
Held: The Court adopted grounds of illegality, irrationality and procedural impropriety, while cautioning courts not to act as appellate authorities over policy or tender merits.
Principle: Review the decision-making process, not the merits like an expert committee.

Maneka Gandhi v. Union of India (1978)

Facts: The petitioner passport was impounded without supplying reasons or hearing.
Issues: Whether “procedure established by law” under Article 21 can be arbitrary and whether natural justice applies.
Held: The Court held that procedure under Article 21 must be just, fair and reasonable, and Articles 14, 19 and 21 are interlinked.
Principle: Arbitrariness is constitutionally suspect.

Om Kumar v. Union of India (2001)

Facts: Administrative punishment and proportionality were examined in service law context.
Issues: When should courts apply proportionality and when Wednesbury review.
Held: The Court explained proportionality for fundamental rights restrictions and Wednesbury standards for many administrative matters.
Principle: Intensity of review depends on the right and context.

State of West Bengal v. Anwar Ali Sarkar (1952)

Facts: A special criminal court law allowed selective procedure without adequate guidance.
Issues: Whether classification and arbitrary procedure violate Article 14.
Held: The Court struck down arbitrary special procedure lacking reasonable classification.
Principle: Article 14 is a ground against arbitrary law.

Q17. Explain the principles of Natural Justice

Recall line

Natural justice = fair hearing + absence of bias + reasoned decision where rights/interests are affected.

Key provisions

Articles 14 and 21; administrative law; audi alteram partem; nemo judex in causa sua; speaking orders.

Meaning

Natural justice means basic fairness in decision-making. It applies when an authority takes a decision affecting rights, interests, reputation, liberty, property, employment or legitimate expectations. It is not a rigid formula; its content depends on the statute, context and consequences.

First principle: Nemo judex in causa sua

No person should be a judge in his own cause. This includes personal bias, pecuniary bias, official bias, subject-matter bias and likelihood of bias. The test is whether there is reasonable apprehension of bias in the mind of a reasonable person.

Second principle: Audi alteram partem

No person should be condemned unheard. This usually includes notice of the case, disclosure of material, reasonable opportunity to reply, right to present evidence, cross-examination where necessary and fair consideration by the authority.

Third principle: reasoned decision

A speaking order shows that the authority has applied its mind, enables appeal/review and promotes accountability. Reasons are especially important in quasi-judicial and rights-affecting administrative decisions.

Exceptions

Natural justice may be excluded or modified in urgent situations, national security, legislative action, academic evaluation, impracticability, confidentiality, or where hearing would make no difference. But courts interpret exclusions narrowly where serious civil consequences are involved.

Memory formula Nemo + Audi + Reasons = Fairness. Bias poisons the decision; hearing legitimizes the decision; reasons explain the decision.

Leading case law: facts, issues and held

A.K. Kraipak v. Union of India (1969)

Facts: A selection board for forest service included a candidate who was himself considered for selection. He participated in deliberations concerning other candidates.
Issues: Whether administrative decisions with civil consequences must follow natural justice and whether bias vitiated the process.
Held: The Supreme Court blurred the old rigid distinction between administrative and quasi-judicial action and held that natural justice applies to prevent miscarriage of justice.
Principle: Fairness applies wherever power affects rights/interests.

Maneka Gandhi v. Union of India (1978)

Facts: The passport of Maneka Gandhi was impounded in public interest without initially giving reasons or hearing.
Issues: Whether fair procedure and natural justice are part of Article 21.
Held: The Court held that procedure must be just, fair and reasonable, and natural justice is ordinarily required unless properly excluded.
Principle: Article 21 constitutionalized fair procedure.

Mohinder Singh Gill v. Chief Election Commissioner (1978)

Facts: The Election Commission cancelled a poll and later tried to justify the order by additional reasons in court.
Issues: Whether administrative orders must stand on reasons contained in the order and whether fairness applies to election decisions.
Held: The Court held that orders must be judged by reasons stated in them and cannot be supplemented later by affidavits.
Principle: A public order must speak for itself.

Swadeshi Cotton Mills v. Union of India (1981)

Facts: The government took over management of an industrial undertaking without prior hearing under Industries legislation.
Issues: Whether natural justice applies before takeover when statute is silent.
Held: The Court held that unless expressly or by necessary implication excluded, audi alteram partem is presumed where civil consequences occur.
Principle: Silence of statute usually does not silence fairness.

Q18. Explain the concept of Co-operative Federalism in India

Recall line Co-operative federalism = Union and States working together for constitutional governance, development and national unity.

Key provisions Articles 245-263, 246, 248, 249, 252, 253, 254, 256-257, 280; GST Council Article 279A; Inter-State Council Article 263.

Meaning

Co-operative federalism means that the Union and States function not as hostile rivals but as constitutional partners. India has a federal structure with a strong Centre, but governance in a diverse country requires consultation, coordination and shared decision-making.

Why India needs co-operative federalism

Subjects such as public health, education, environment, taxation, agriculture markets, disaster management, internal security and welfare schemes require both Union policy and State implementation. Neither level can govern effectively in isolation.

Constitutional mechanisms

- Legislative distribution through Union, State and Concurrent Lists.
- Concurrent List where both levels legislate, subject to repugnancy rules.
- Inter-State Council under Article 263 for coordination.
- Finance Commission under Article 280 for fiscal transfers.
- GST Council under Article 279A as a modern federal fiscal body.
- Zonal Councils, NITI Aayog and inter-governmental meetings as political/administrative mechanisms.

Co-operative and competitive federalism

Co-operative federalism emphasizes coordination; competitive federalism emphasizes healthy competition among States for investment, governance standards and development outcomes. Both must operate within constitutional equality and fairness.

Challenges

Centralization, misuse of Article 356, fiscal dependence, centrally sponsored schemes, Governor controversies and disputes over GST compensation can strain cooperative federalism. Judicial review and constitutional conventions become important safeguards.

Leading case law: facts, issues and held

S.R. Bommai v. Union of India (1994)

Facts: Several State governments were dismissed under Article 356, often in politically controversial circumstances.
Issues: Whether President Rule is judicially reviewable and how federalism limits Union power.
Held: The Supreme Court held that federalism is a basic feature, Article 356 is reviewable and majority must be tested on the floor of the Assembly.
Principle: Co-operative federalism cannot survive arbitrary dismissal of State governments.

State of Rajasthan v. Union of India (1977)

Facts: The Union advised certain opposition-ruled States to dissolve Assemblies after a change in national political mandate. States challenged Union pressure.
 Issues: What is the judicial role in Centre-State political disputes under Article 356 context.
 Held: The Court was cautious but recognized constitutional limits on Union action. Later Bommai strengthened review.
 Principle: Political federal disputes may still raise constitutional questions.

Government of NCT of Delhi v. Union of India (2018)

Facts: Disputes arose between the elected Delhi government and the Lieutenant Governor over administrative control.
 Issues: How constitutional functionaries should operate in a federal-democratic arrangement for Delhi.
 Held: The Court emphasized constitutional morality, collaborative federalism and that the LG should not act as an obstructionist except in constitutionally permitted matters.
 Principle: Federalism requires dialogue, not obstruction.

Union of India v. Mohit Minerals (2022)

Facts: The issue involved GST Council recommendations and tax on ocean freight.
 Issues: Whether GST Council recommendations are binding and what is the nature of Indian fiscal federalism under GST.
 Held: The Court held that GST Council recommendations have persuasive value and the GST structure reflects cooperative federalism.
 Principle: GST federalism is built on cooperation, not command alone.

Q19. Explain the legislative relationship between Centre and State

Recall line Legislative relationship = distribution of law-making power through Lists, territorial rules, repugnancy and special Union powers.

Key provisions Articles 245 to 255; Seventh Schedule; Articles 246, 246A, 248, 249, 250, 252, 253, 254; Article 368 for federal amendments.

Basic distribution

The Constitution distributes legislative power between Parliament and State Legislatures through Article 246 and the Seventh Schedule. Parliament legislates on the Union List; States legislate on the State List; both can legislate on the Concurrent List. Residuary power belongs to Parliament under Article 248 and Entry 97 of the Union List.

Territorial extent

Article 245 provides that Parliament may make laws for the whole or any part of India and may also make laws with extra-territorial operation. State Legislatures legislate for the whole or any part of the State.

Doctrines used by courts

- Pith and substance: determines the true nature of a law when it incidentally touches another field.
- Incidental encroachment: incidental overlap does not invalidate a law if its dominant subject is within competence.
- Colourable legislation: legislature cannot do indirectly what it cannot do directly.
- Repugnancy: under Article 254, Central law prevails over inconsistent State law on Concurrent List, unless State law has Presidential assent, subject to later Parliament law.
- Harmonious construction: entries are interpreted broadly and reconciled to avoid conflict.

Special situations where Parliament legislates on State subjects

Parliament may legislate on State List matters when Rajya Sabha passes a national interest resolution under Article 249; during national emergency under Article 250; when two or more States request under Article 252; to implement treaties under Article 253; and during President Rule under Article 356.

Constitutional character

The Indian model is federal with a unitary bias. The Centre has strong legislative powers, but States are not municipal bodies of the Union. Federalism is part of the basic structure and legislative entries must be interpreted to preserve both unity and State autonomy.

Leading case law: facts, issues and held

State of West Bengal v. Union of India (1963)

Facts: The Union Coal Bearing Areas law enabled acquisition of State-owned coal-bearing lands. West Bengal argued that the Union could not acquire State property without consent.
Issues: Whether Indian federalism gives States sovereign immunity against Union law.
Held: The Supreme Court held that Indian States are not sovereign in the sense of independent units; Parliament may legislate within its field even affecting State property.
Principle: Indian federalism is strong-Centre federalism, not compact sovereignty.

Hoechst Pharmaceuticals Ltd. v. State of Bihar (1983)

Facts: State tax legislation and Central price control framework created a conflict argument.
Issues: How to determine legislative competence and conflict between entries/laws.
Held: The Court applied pith and substance and held that incidental overlap does not invalidate a law within competence.
Principle: Look at the true nature of the law, not superficial overlap.

M. Karunanidhi v. Union of India (1979)

Facts: The question was whether a State law and Central law were repugnant.
Issues: When does Article 254 repugnancy arise.
Held: The Court laid down that repugnancy requires clear and direct inconsistency in the same field such that both laws cannot stand together.
Principle: Repugnancy is not presumed; it must be real and direct.

Zaverbhai Amaldas v. State of Bombay (1955)

Facts: A State amendment with Presidential assent was later affected by subsequent Parliamentary legislation in the same field.
Issues: Whether later Central law overrides earlier State law with Presidential assent.
Held: The Court held that Parliament can later override State law even if the State law earlier received Presidential assent.
Principle: Presidential assent protects State law only until Parliament speaks later.

Source Note and Verification Base

Primary source preference: The answers were prepared from the attached Constitutional Law II notes and the attached Important Questions PDF. Where the notes were brief, the answers were supplemented with standard constitutional doctrine and leading case law. The important questions were taken in the same sequence visible in the attached question PDF images.

- Constitution of India: Articles 52-78, 79-122, 123, 131-143, 168-213, 226-227, 245-255, 263, 279A, 352, 356, 360, 368 and the Tenth Schedule.
- Attached notes: Constitutional Law II_LT.pdf, especially Unit I to Unit III topics, President, Governor, Legislature, Privileges, Legislative Freedom of Speech, Anti-Defection, Supreme Court/High Courts, Federalism and Centre-State relations.
- Judgments used for verification and case cards include Shamsher Singh, U.N.R. Rao, S.R. Bommai, Kihoto Hollohan, Ravi S. Naik, Raja Ram Pal, M.S.M. Sharma, Keshav Singh Reference, Tej Kiran Jain, Sita Soren, D.C. Wadhwa, Krishna Kumar Singh, Kesavananda Bharati, Minerva Mills, L. Chandra Kumar, Maneka Gandhi, A.K. Kraipak, Vishaka, M.C. Mehta, Mohit Minerals and M. Karunanidhi.

**Final memory
line**

Constitutional Law II is best remembered through four balances: Executive versus Legislature, Legislature versus Judiciary, Centre versus State, and Power versus Rights.