



Constitutional Law-II

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PART-A

Short Answers

Pardoning Power of President.

The pardoning power of the President of India is derived from **Article 72 of the Constitution of India**, which gives the President the authority to grant pardons, reprieves, respites, or remissions of punishment, or to suspend, remit, or commute the sentence of any person convicted of an offense.

Relevant Provisions:

1. **Article 72** – *Power of the President to grant pardons, etc., and to suspend, remit, or commute sentences in certain cases:*
 - The President has the power to grant a pardon, reprieve, respite, or remission of punishment, or to suspend, remit, or commute the sentence of any person convicted of an offense:
 - **In all cases of punishment or sentence by a court martial.**
 - **In cases where the sentence is for an offense under a law relating to a matter to which the executive power of the Union extends.**
 - **In all cases of sentences by a court for an offense** where the conviction has been made, and the sentence is confirmed by a court.
2. **Nature of the Power:**
 - The pardoning power is essentially **executive in nature** and is not subject to judicial review, though in some cases, courts may review the exercise of such power if it is exercised arbitrarily or in a manner that violates constitutional principles.
 - This power is **not just a mercy power** but is intended to provide a check on the judicial system and serve as a safety net for cases where the punishment may be unduly harsh or unjust.
3. **Types of Clemency under Article 72:**
 - **Pardon:** Completely absolves the individual from punishment and also wipes out the offense.
 - **Reprieve:** A temporary delay of punishment, especially in cases of death sentences.
 - **Respite:** A reduction in the severity of punishment, especially on the grounds of special circumstances (such as pregnancy).
 - **Remission:** Reduction in the amount of sentence but not the legal character of the offense.
 - **Commutation:** Substitution of one form of punishment for another less severe one.

Judicial Interpretation:

The Supreme Court in **Epuru Sudhakar v. Government of Andhra Pradesh (2006)**, interpreted the scope of the President's pardoning power under Article 72. The Court emphasized that the power is to be exercised by the President on the advice of the Cabinet, and the power is not just to mitigate punishment but to rectify any miscarriage of justice.

The **Supreme Court** in **Maru Ram v. Union of India (1981)** also held that the exercise of the power under Article 72 should be based on constitutional principles and cannot be arbitrary or unreasoned.

Important Case Laws: Epuru Sudhakar v. Government of Andhra Pradesh (2006) – The Court examined the President’s power under Article 72 and held that it is exercisable in a discretionary manner in certain cases.

Conclusion: The President’s pardoning power is a significant constitutional tool, designed to ensure that the justice system remains fair and just. While it is an important executive power, its exercise is guided by principles of fairness, equity, and justice, making it a critical mechanism for protecting individual rights and correcting potential judicial errors.

Financial Bills.

In the Indian Constitution, a **Financial Bill** refers to a bill that deals with the imposition, regulation, or alteration of taxes, the allocation of government expenditure, or any other financial matters. The Constitution has distinct provisions regarding the types of financial bills, and the procedure for their introduction and passage in Parliament is regulated to ensure fiscal accountability and control.

Relevant Provisions:

1. **Article 110 – Definition of a Money Bill:**
 - Article 110 of the Constitution defines a **Money Bill** as a bill that exclusively deals with the following matters:
 - The **imposition, abolition, remission, alteration, or regulation of taxes.**
 - The **custody of the Consolidated Fund of India** or the **public accounts** of India.
 - The **payment of money into or the withdrawal of money from any such fund.**
 - The **appropriation of money out of the Consolidated Fund of India.**
 - The **receipt, custody, and use of money from loans or other forms of borrowing.**
 - A Money Bill can only be introduced in the **Lok Sabha** (Lower House) and must receive the **assent of the President** before it becomes law.
2. **Article 109 – Procedure for Introducing Financial Bills:**
 - A Money Bill can only be introduced in the **Lok Sabha** with the **recommendation of the President.**
 - The **Rajya Sabha (Council of States)** can only make suggestions on a Money Bill and has a **maximum period of 14 days** to do so.
 - The Lok Sabha is not bound by the recommendations of the Rajya Sabha and can pass the bill even if the Rajya Sabha does not approve or make suggestions.
3. **Article 111 – Assent to Money Bills:**
 - When a Money Bill is passed by both Houses of Parliament, it is sent to the **President for assent.** The President is required to give their assent to the bill, as there is no power to withhold assent.

Types of Financial Bills:

1. **Money Bills** (Article 110):
 - These are the most specific and limited type of financial bill, dealing with matters like taxes, loans, or appropriations from the Consolidated Fund of India. The key feature is that they cannot be introduced in the Rajya Sabha, and the Rajya Sabha has no veto power over them.
 - **Examples:** The annual **Finance Bill, Taxation Laws (Amendment) Bill**, etc.
2. **Financial Bills other than Money Bills** (Article 117):

- These are bills that deal with financial matters, but unlike Money Bills, they do not exclusively deal with the imposition or regulation of taxes or appropriations from the Consolidated Fund of India.
- Such bills may deal with matters like borrowing by the government or altering duties, but they do not qualify as Money Bills under Article 110.
- These can be introduced in either House of Parliament (Lok Sabha or Rajya Sabha) and require the **approval of both Houses** before being presented to the President for assent.
- **Examples:** Bills for the creation of new taxes, or bills that grant financial powers to particular authorities.

3. Appropriation Bills:

- These are a special category of financial bills that are presented to give legal authority to the government to draw money from the **Consolidated Fund of India** for the expenditure of the upcoming fiscal year.
- They are introduced every year after the Union Budget has been presented.

Conclusion: The **financial bills** are vital for the economic functioning of the government and ensure that Parliament has control over public finances. The distinction between **Money Bills** and other **Financial Bills** reflects the Constitution's framework for balancing the powers of the legislature in financial matters. The **President's role** in these bills primarily involves the formal assent process, while the **Lok Sabha's dominance** in financial matters reflects the people's elected representatives' role in managing national resources.

Independence of Judiciary and Impeachment of Supreme Court Judges.

The **independence of the judiciary** is one of the fundamental principles of the Indian Constitution. It ensures that the judiciary functions without any external influence, thus maintaining the rule of law and safeguarding individual rights. The **impeachment process** for Supreme Court judges is a mechanism to hold them accountable, but it reflects the delicate balance between judicial independence and accountability.

Independence of Judiciary:

The **independence of the judiciary** is a cornerstone of the **Indian Constitution** and is essential for maintaining a fair and impartial judicial system. It ensures that judges can make decisions free from any external pressures, be it from the executive, legislature, or other forms of interference.

Relevant Constitutional Provisions:

1. **Article 50** – *Separation of Judiciary from the Executive:*
 - Article 50 directs the State to take steps to separate the judiciary from the executive in the public services of the State. This provision emphasizes the need for judicial independence, ensuring that judicial functions are not subject to control or influence from the executive branch.
2. **Article 124(2)** – *Appointment of Judges of the Supreme Court:*
 - Judges of the Supreme Court are appointed by the President of India, but this power is exercised in consultation with the **Chief Justice of India (CJI)** and other senior judges. This method ensures judicial influence in the appointment process, preserving judicial independence.
3. **Article 217(1)** – *Appointment of High Court Judges:*
 - Similarly, judges of the High Courts are appointed by the President, with the **consultation of the Chief Justice of India**, ensuring a balance between the executive and judiciary in judicial appointments.

4. **Security of Tenure (Article 124(4)):**

- The judges of the Supreme Court hold office until they attain the age of 65 years, ensuring job security and protection from arbitrary removal or pressure.
- They can only be removed by an **address by both Houses of Parliament** on the grounds of proven **misbehaviour** or **incapacity**, as outlined in the impeachment process.

5. **Salary and Allowances (Article 125):**

- The salaries and allowances of judges are charged to the **Consolidated Fund of India** and cannot be diminished during their tenure. This ensures financial independence for the judiciary and prevents any influence from the executive.

Impeachment of Supreme Court Judges:

While judges of the Supreme Court enjoy **security of tenure** and are protected against arbitrary removal, the Constitution provides a detailed process for the **impeachment** of judges on grounds of **misbehaviour** or **incapacity**.

Grounds for Impeachment:

- **Misbehaviour:** Any conduct that is deemed improper or unethical by the judiciary or the legislature, such as corruption, bias, or a breach of judicial ethics.
- **Incapacity:** A judge who is unable to perform their duties due to physical or mental incapacity may be impeached.

Conclusion: The **independence of the judiciary** is one of the essential features of the Indian Constitution, ensuring that the judiciary remains free from external interference and can perform its duties impartially. This is supported by provisions like **security of tenure** for judges, their **financial independence**, and the **consultation process** in judicial appointments.

However, in cases of serious **misbehaviour** or **incapacity**, the judiciary can be held accountable through the **impeachment process**. While this process serves as a safeguard against judicial misconduct, it is deliberately designed to be rigorous and difficult to ensure that judicial independence is not undermined by political forces. The **impeachment process** is a critical mechanism for maintaining the credibility and integrity of the judiciary in India.

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Judicial Accountability.

Judicial accountability refers to the responsibility of judges to act in a manner that is consistent with the rule of law, ethical standards, and the principles of justice. While judicial independence is crucial, it must be balanced with accountability to ensure that judges do not misuse their power or violate public trust. The Indian Constitution provides various safeguards for judicial independence, but it also recognizes the need for judicial accountability in certain circumstances.

Constitutional and Legal Framework:

1. **Article 124 – Appointment and Removal of Judges:**
 - **Article 124(4)** provides that a judge of the Supreme Court can be removed from office by a process of **impeachment** for **misbehaviour** or **incapacity**. This is the formal mechanism for ensuring accountability, though it is a rigorous process.
 - Judicial accountability is enforced indirectly through this provision, as judges must be accountable for their actions, subject to scrutiny by the Parliament.
2. **Article 50 – Separation of Judiciary from the Executive:**
 - Article 50 emphasizes the separation of the judiciary from the executive. However, this does not mean that judges are free from accountability. Their actions can still be scrutinized for adherence to the law, even though they are not subject to direct influence from the executive.
3. **Article 217(1) – Appointment and Removal of High Court Judges:**
 - Similar to Supreme Court judges, High Court judges are appointed by the President but are subject to removal under specific conditions as laid down by Article 124. The process for their impeachment is the same, thus providing a framework for accountability.
4. **Judicial Standards and Accountability Bill (2010):**
 - The **Judicial Standards and Accountability Bill** was proposed to establish a formal framework for the accountability of judges, including setting standards for judicial conduct. Although the bill was not passed, it reflected an intention to formalize accountability mechanisms, such as the creation of a **National Judicial Oversight Committee** to receive complaints against judges.

Judicial Accountability and Judicial Independence:

The Indian judicial system is built on the principle of **judicial independence**, meaning that judges should be free to make decisions without any external pressure or influence. However, this independence must be balanced with accountability to prevent misuse of power.

Judicial Accountability in Action:

1. **Public Interest Litigation (PIL):**
 - PIL has been a tool for increasing judicial accountability, allowing the public to bring issues to court. It has been instrumental in expanding the scope of fundamental rights, but it has also raised concerns about judicial overreach and the boundaries of the judiciary's role.
2. **Transparency and Access to Information:**
 - Recent developments have increased the focus on judicial transparency, with initiatives such as the publication of **judicial decisions** and the use of **online portals** for the public to access court records. This allows for greater scrutiny of judicial actions, fostering a system of accountability.

Conclusion: Judicial accountability is essential for ensuring that judges uphold their duties with integrity and impartiality. While the Indian Constitution guarantees **judicial independence**, it also provides mechanisms for judicial accountability through **impeachment**, **disciplinary procedures**, and **judicial review**. Despite challenges such as transparency issues and limited enforcement of accountability, the evolving legal framework and increased public scrutiny are pushing for a more transparent and accountable judiciary.

Doctrine of Colourable Legislation.

The **Doctrine of Colourable Legislation** is a legal principle in constitutional law that prevents the legislature from doing indirectly what it cannot do directly. It means that if a legislative body enacts a

law that appears to be within its powers but is, in reality, designed to circumvent constitutional limitations, it will be deemed as an attempt to overstep its constitutional boundaries.

The doctrine is used by the courts to scrutinize laws that, on the face of it, appear to be within the scope of legislative authority but, in reality, seek to achieve a result that is beyond the legislative competence of the body. The courts will look beyond the form of the law and examine its substance to determine whether it violates the spirit of the Constitution.

Constitutional Context: The **Doctrine of Colourable Legislation** primarily arises in the context of **division of powers** between the **Centre** and the **States** under the **Indian Constitution**. This division is based on the **Union List**, **State List**, and **Concurrent List** in the **Seventh Schedule**.

- **Union List:** Matters on which only the Union Government can legislate.
- **State List:** Matters on which only State Legislatures can legislate.
- **Concurrent List:** Matters on which both the Union and State Legislatures can legislate.

If a legislature enacts a law on a subject that is outside its competence by disguising the law under a different subject in its list, it is said to be a case of **colourable legislation**. The courts are responsible for invalidating such laws.

Relevant Constitutional Provisions:

1. **Article 245 – Extent of Laws Made by Parliament and by the Legislatures of States:**
 - Article 245 provides the general framework for the legislative powers of Parliament and State Legislatures. It states that Parliament may make laws for the whole or any part of India, and the State Legislatures can make laws for their respective States. However, both must act within their respective legislative competencies as defined in the Seventh Schedule.
2. **Seventh Schedule – Distribution of Legislative Powers:**
 - The **Union List**, **State List**, and **Concurrent List** specify the areas in which the Union and State Legislatures can make laws. The doctrine of colourable legislation prevents a legislature from enacting laws in areas outside its domain, even if it does so by misrepresenting the nature of the law.

Application of the Doctrine:

1. **Disguised Legislation:**
 - If a legislature enacts a law that looks like it is within its powers but is intended to cover something that it has no authority over, courts will declare it as an exercise in **colourable legislation**.
 - **Example:** A State legislature enacting a law under the **State List**, which affects matters related to **trade and commerce** (a Union List matter), by using the argument that the law is related to “public health” (a matter in the State List). If the true intent is to regulate trade, the law may be struck down.
2. **Judicial Scrutiny:**
 - Courts will examine the **substance** of the law to determine whether it is an attempt to encroach on a matter outside the legislature’s jurisdiction. In doing so, the courts apply the **doctrine of colourable legislation** to prevent circumvention of constitutional limitations.
 - Courts may assess whether the **true nature** of the law, not just its form or title, falls within the legislative competence of the enacting body.

Conclusion: The **Doctrine of Colourable Legislation** serves to ensure that the legislative powers granted under the Constitution are not misused or circumvented. It prevents any legislature from enacting laws that appear to be within its competence but, in reality, seek to encroach on areas outside its authority. The doctrine protects the **federal structure** of India and ensures that the **Union List, State List, and Concurrent List** are respected by both the Union and State legislatures.

All India Services and Public Service Commissions.

The **All India Services** refer to the three major services in India that are common to both the Union and the States. These services are created by the Constitution of India to ensure administrative efficiency and coherence across the country. The **All India Services** are:

1. **Indian Administrative Service (IAS)**
2. **Indian Police Service (IPS)**
3. **Indian Forest Service (IFS)**

These services play a crucial role in the governance and administration of both the Union and State governments.

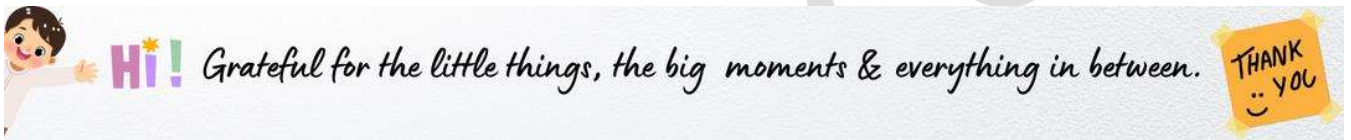
Constitutional Provisions Regarding All India Services:

1. **Article 312 – Creation of All India Services:**
 - Article 312 of the **Indian Constitution** grants Parliament the authority to create new All India Services by law. The creation of these services requires the approval of the Rajya Sabha (Council of States), the upper house of Parliament. This article allows the Union to legislate for services that are common to both the Union and the States.
 - The Union Public Service Commission (UPSC) is responsible for conducting examinations for the recruitment of candidates into the All India Services.
2. **Article 315 to 323 – Public Service Commissions:**
 - These articles deal with the **Union Public Service Commission (UPSC)** and **State Public Service Commissions (SPSCs)**, including their formation, functions, and powers. The UPSC is responsible for recruitment into the All India Services, and the State PSCs handle recruitment for state services.
3. **Article 312(1) – Power of Parliament to Create All India Services:**
 - This article empowers Parliament to create new All India Services, such as the IAS, IPS, and IFS, through a law passed by Parliament.
4. **Article 311 – Dismissal, Removal, or Reduction in Rank of Civil Servants:**
 - Article 311 of the Constitution provides protection to civil servants, including those in the All India Services, from arbitrary dismissal, removal, or reduction in rank. It requires that a civil servant be given an opportunity to be heard before such actions are taken, ensuring **procedural fairness**.
5. **Article 312(2) – Recruitment and Conditions of Service of All India Services:**
 - The conditions of service, such as pay, allowances, and other administrative matters, for the All India Services are prescribed by Parliament, and the Union Government has the authority to make rules governing the services.
6. **Article 321 – Power of the President to Extend the Functions of the Public Service Commissions:**
 - This article empowers the President of India to extend the functions of the UPSC to include matters related to recruitment and advice regarding services under the Union or State Government.

Importance of All India Services and Public Service Commissions:

1. **Merit-based Recruitment:** The system of All India Services and Public Service Commissions ensures that public servants are selected based on merit rather than political or personal considerations.
2. **Centralized Expertise:** All India Services provide a pool of highly skilled officers who can be deployed in various parts of the country, ensuring that the governance structure is well-equipped and professional at both the Union and State levels.
3. **Administrative Efficiency:** The All India Services contribute to uniformity in administration across India, facilitating effective governance, policy implementation, and coordination between the Union and States.
4. **Protection of Integrity:** The **constitutional protection** provided to the members of the All India Services and Public Service Commissions ensures that civil servants act impartially and are not susceptible to arbitrary actions by the executive.

Conclusion: The **All India Services** and **Public Service Commissions** are integral to the functioning of India's administrative system. They uphold the values of **meritocracy**, **efficiency**, and **independence** in government recruitment and administration. The Constitution of India provides a robust framework for the establishment, functioning, and protection of these services, ensuring that India's governance remains both dynamic and capable of meeting the challenges posed by a large, diverse, and rapidly evolving nation.



Features of Federal Constitution.

India is often described as a **federal** state, though it has a **unitary bias**. The Indian Constitution establishes a system of **federalism** with a strong central government, reflecting a **dual polity**—the Union and the States. This federal structure is designed to maintain the unity and integrity of India while allowing for regional diversity. The features of the federal constitution of India are shaped by the **historical context** of its creation, the need for central control, and the experience of British colonial rule.

Key Features of the Federal Constitution of India:

1. **Division of Powers (Three Lists)**
 - The **Seventh Schedule** of the Indian Constitution divides the legislative powers between the Union and the States into three categories:
 - **Union List** (List I): Subjects on which only the Union Parliament can legislate (e.g., defense, foreign affairs, railways).
 - **State List** (List II): Subjects on which only State Legislatures can legislate (e.g., police, public health, agriculture).
 - **Concurrent List** (List III): Subjects on which both the Union and the States can legislate (e.g., criminal law, marriage and divorce, bankruptcy).
 - This division is fundamental to the federal nature of the Constitution.
2. **Dual Government Structure**
 - The Constitution establishes a **dual polity**, which means there is a **central (Union) government** and **state governments**. Both have separate jurisdictions and functions.
 - The **Union government** deals with national matters, while **State governments** handle regional and local issues.
3. **Supremacy of the Constitution**

- The **Indian Constitution** is supreme, and all laws must conform to its provisions. The relationship between the Union and States is governed by the Constitution, and any law inconsistent with the Constitution can be challenged in courts.
 - The **Judiciary**, particularly the **Supreme Court of India**, plays a crucial role in interpreting the Constitution and resolving disputes between the Union and the States.
4. **Independent Judiciary**
- An independent and impartial judiciary is one of the defining features of India's federalism. The **Supreme Court** of India is the highest court of appeal and is vested with the power to resolve disputes between the Union and the States, and between States themselves.
 - The **Judiciary** also has the power of **judicial review** to ensure that legislative and executive actions do not violate the Constitution.
5. **Single Citizenship**
- Unlike many federal systems where citizens have dual citizenship (state and national), the Constitution of India provides for **single citizenship**. All citizens of India are **citizens of India**, and they do not hold separate state citizenships.
6. **Residual Powers**
- The **Union Parliament** has the power to legislate on any subject not mentioned in the Union, State, or Concurrent List. These are called the **residual powers** and are provided under **Article 248**. This power ensures that the Union government has the authority to handle unforeseen or new matters not contemplated by the Constitution.
7. **Flexibility and Unitary Bias**
- While the Indian Constitution provides for a federal structure, it also allows for flexibility. In times of national emergency, the Constitution adopts a **unitary system**. For instance, during an emergency declared under **Article 352**, the **Union government** assumes greater powers, overriding State governments.
 - This unitary bias is further evident in the **appointment of Governors** (Article 155), the **control over state finances** (e.g., the Union's power to dissolve State legislatures, the power to impose taxes across the nation), and the **supervisory role of the Union government** over State governments.
8. **Dispute Resolution Mechanism**
- The **Supreme Court of India** is vested with the authority to resolve disputes between the Union and States under **Article 131**. The Supreme Court can also hear disputes between States under the same article. This makes the judiciary the ultimate arbiter of federal disputes.
9. **Appointment of Governors**
- The **Governor** is the head of the State, but they are appointed by the President of India (Article 155). The Governor acts as a representative of the **Union government** at the State level, and this appointment by the President reflects the **unitary** element of the Constitution, ensuring central oversight in the states.
10. **Powers of the President**
- The **President of India** plays an important role in maintaining the federal structure. Under **Article 356**, the President can dissolve State legislatures and impose **President's Rule** in a State if the government in that State is unable to function according to the provisions of the Constitution. This power centralizes control during crises and emergencies, thus highlighting the unitary bias.
11. **Uniformity of Laws**
- The Constitution allows for the **uniformity of laws** throughout India, particularly in matters of national importance (e.g., criminal law, foreign relations). Even though the States have legislative powers, certain laws (like the **Indian Penal Code**) apply uniformly across the country.
12. **Financial Relations**

- The financial relations between the Union and the States are governed by the **Finance Commission** (Article 280). This body is responsible for recommending the distribution of financial resources between the Union and the States, ensuring that the States have sufficient resources to function independently.
- The Union has the power to impose taxes, but the **States** have significant revenue-sharing arrangements, particularly through **grants-in-aid** and the **Goods and Services Tax (GST)** framework.

13. Amendment Procedure

- The **Indian Constitution** provides for a **rigid and flexible** procedure for amendments, allowing changes to be made in the federal structure when necessary. Some provisions require a **simple majority**, while others require **special majorities** and the approval of States.

Conclusion: The **federal structure** in India is based on a **unique blend** of federalism and unitarism, which ensures the **unity and integrity** of the nation while accommodating the diversity of its regions. While the Indian Constitution establishes a federal framework through a clear **division of powers** and **dual governance**, it retains significant **central control**, particularly in times of crisis or emergency. This balance between **federalism** and **unitary bias** allows India to maintain both regional autonomy and national unity.



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State Emergency.

In India, the **State Emergency**, also referred to as **President's Rule**, is a provision under **Article 356** of the **Constitution of India**. It allows the Union Government to take control of a State if the President believes that the government of that State cannot function according to the provisions of the Constitution. This provision is a crucial mechanism for maintaining constitutional governance and ensuring the smooth functioning of the Union and State relations in situations of crisis or instability.

Constitutional Provisions Regarding State Emergency

1. Article 356 – President's Rule in States:

- **Article 356** of the Constitution allows the President to impose **President's Rule** in any State if the President is satisfied that the **government in the State cannot be carried on in accordance with the provisions of the Constitution**. This includes situations where there is a breakdown of constitutional machinery in a State, such as political instability, failure of governance, or the inability to form a responsible government.

Text of Article 356:

"If the President is satisfied that a situation has arisen in which the government of a State cannot be carried on in accordance with the provisions of this Constitution, the President may, by proclamation, assume to himself all or any of the functions of the government of the State and declare that the powers of the legislature of the State shall be exercisable by or under the authority of Parliament."

2. Conditions for Imposition of State Emergency:

- **Breakdown of Constitutional Machinery:** The primary condition for the imposition of **State Emergency** is the **failure of the constitutional machinery** in the State. This can be triggered by the following circumstances:
 - A **political crisis** where the State government is unable to function (e.g., due to a hung assembly or failure to form a government).
 - The State legislature is not able to perform its legislative functions.
 - There is **lawlessness** or **disturbance of public order** that the State government is unable to control.
 - A **failure of law and order** or governance, where the State cannot protect its citizens or maintain basic administrative functions.

3. Proclamation of President's Rule:

- **Article 356(1)** empowers the President to issue a **proclamation** declaring the imposition of President's Rule. The proclamation can be issued only after the President is satisfied that the situation in the State is such that the government cannot function according to the Constitution.
- The proclamation must be approved by both the **Houses of Parliament** (Lok Sabha and Rajya Sabha) within **two months** of its issuance, failing which the proclamation shall cease to have effect.

Article 356(3): "A proclamation issued under this article shall not be effective unless it has been approved by both Houses of Parliament within two months from the date of its issue."

4. Duration of State Emergency:

- Once President's Rule is imposed, it initially lasts for **six months** but can be extended by **six-month periods** indefinitely, as long as it continues to have the approval of **Parliament**.
- In cases where a **national emergency** is declared (under Article 352), President's Rule in a State can last for **one year** or more.

Article 356(4): "A proclamation under this article shall cease to operate at the expiration of six months unless it has been approved by the Parliament."

Conclusion: **State Emergency** (President's Rule) is a critical provision in the Indian Constitution that allows the Union Government to intervene in State governance during situations where the State cannot function according to constitutional requirements. While the provision is designed to maintain **constitutional order**, it has been historically controversial due to its potential for **political misuse**. The role of the **Supreme Court** in judicially reviewing its imposition ensures a safeguard against arbitrary use of this powerful provision. It remains a necessary tool to ensure that **democratic governance** prevails across all states and maintains the **unity and integrity** of the country.

Prorogation.

Prorogation is the **suspension of a session of Parliament** (either Lok Sabha or Rajya Sabha) without dissolving it. It is a constitutional process through which the President of India, on the advice of the **Prime Minister** and the **Council of Ministers**, terminates the current session of Parliament. However, prorogation does not dissolve Parliament entirely, and the members remain in office, with a subsequent session being convened later.

Constitutional Provisions Regarding Prorogation

1. Article 85 - Power of Prorogation:

- **Article 85** of the **Constitution of India** grants the **President of India** the authority to **prorogue** the **sessions of Parliament**.
- The President can exercise this power on the advice of the **Prime Minister** and the **Council of Ministers**. Prorogation marks the **end of a session**, but it does not end the life of the Parliament.
- The President may also dissolve the **Lok Sabha** (Lower House) at the end of its term or in cases where there is a failure to form a government after an election.

Text of Article 85:

"The President may from time to time prorogue the Houses of Parliament or dissolve the Lok Sabha."

2. Effect of Prorogation:

- **Suspension of proceedings:** Prorogation **suspends the proceedings** of both Houses of Parliament. Any **unfinished business** of the session, including bills, motions, and debates, is **postponed** to the next session.
- **No new business:** No new bills or motions can be introduced during the prorogation. However, once the Parliament reconvenes after prorogation, the **business** from the previous session can be resumed.
- **Duration of prorogation:** Prorogation lasts until the **next session of Parliament** is called by the President. The duration of prorogation is not fixed, and the President can prorogue the Houses at any time, usually after the completion of a **particular legislative agenda**.

3. Difference Between Prorogation and Dissolution:

- **Prorogation** differs from **dissolution**. Prorogation refers to the **suspension of a session**, whereas dissolution means the **end of the life of the Lok Sabha**, leading to general elections. Prorogation does not terminate the existence of Parliament, but dissolution results in the **election of a new Lok Sabha**.
- While prorogation suspends legislative proceedings, **dissolution** ends the current term of the Lok Sabha, and fresh elections are held.

Conclusion: Prorogation is a constitutional process that **suspends** the session of Parliament, temporarily halting its business, but it does not dissolve the legislative body itself. The **President**, acting on the advice of the **Council of Ministers**, exercises this power to regulate the legislative calendar and to temporarily conclude the ongoing proceedings in both Houses of Parliament. Though prorogation does not have the same consequences as dissolution, it serves as an essential tool for managing the affairs of Parliament. The decision to prorogue, like other executive powers, is largely political, with limited scope for judicial intervention, unless it contradicts the constitutional principles.

Comptroller and Auditor General of India.

The **Comptroller and Auditor General (CAG)** of India is an independent constitutional authority, primarily responsible for auditing the expenditure and revenue of the Government of India and state governments. The role of the CAG is vital for ensuring financial accountability and transparency in public administration. The CAG is a pivotal institution in India's **democratic setup**, ensuring that public funds are used efficiently and effectively.

Constitutional Provisions Regarding CAG

1. Article 148 - Comptroller and Auditor General of India:

- The office of the **Comptroller and Auditor General** is established under **Article 148** of the **Constitution of India**. The Constitution mandates that the CAG be appointed by the

President and hold office for a term of **six years** or until the age of **65 years**, whichever is earlier.

Text of Article 148: *"There shall be a Comptroller and Auditor-General of India who shall be appointed by the President and shall hold office until he attains the age of sixty-five years."*

2. Appointment of the CAG:

- The **President of India** appoints the CAG, who is generally an individual with extensive experience in finance and accounting, usually with a background in the Indian Administrative Services (IAS) or other related fields.
- The appointment process ensures that the CAG is a neutral body, free from the influence of political authorities, ensuring impartiality in its function.

3. Functions and Duties of the CAG:

- The primary function of the CAG is to **audit** the accounts of the **Union Government, State Governments**, and various **public sector undertakings** (PSUs) under both Union and State jurisdiction.
- The CAG has two main roles:
 1. **Comptroller:** Responsible for maintaining and managing the accounts of the government, overseeing the receipts and payments of government departments.
 2. **Auditor:** Ensures that the government's financial operations are conducted as per the law and are transparent, efficient, and accountable.

Some of the key duties of the CAG include:

- **Auditing Union and State government accounts:** Auditing the accounts of the central and state governments and ensuring that the financial management is accurate and legal.
- **Examining public expenditures:** Verifying whether public funds are spent properly and efficiently.
- **Reporting to the President and Parliament:** After auditing, the CAG submits reports on the accounts and financial management to the **President of India**, who then presents them to **Parliament**. These reports are crucial for lawmakers to scrutinize government expenditures.
- **Auditing Public Sector Undertakings (PSUs):** CAG audits the financial statements of public sector enterprises to ensure they comply with the relevant laws and accounting standards.

4. Independence of the CAG:

- **Article 148** ensures the independence of the **CAG** by making it a constitutional office, free from any interference by the government.
- The CAG can only be removed from office by an impeachment process, similar to the procedure for the removal of a **Supreme Court judge**, as outlined in **Article 124(4)**.
- The CAG is **not subject to control by the executive** and is accountable only to **Parliament**. This ensures the **accountability** of government financial management.

5. Power of the CAG:

- The CAG has the power to carry out audits of government accounts, including those of state governments and Union Territories. The CAG also has the authority to examine whether the **public money** has been used effectively.
- The CAG can issue recommendations for improving financial practices, as well as scrutinize any **misappropriation** of funds or failure to utilize resources efficiently.
- The CAG's audit reports are debated by the **Public Accounts Committee (PAC)**, a Parliamentary committee, which examines the reports and suggests corrective actions.

Conclusion: The **Comptroller and Auditor General of India (CAG)** serves as the guardian of public funds, ensuring **financial accountability** and **transparency** in the Indian governmental system. The **CAG** operates independently under the provisions of **Article 148** of the Constitution, which guarantees its autonomy and protection from external influence. Through its audit reports and recommendations, the CAG plays a critical role in maintaining the financial integrity of the Union and State governments, preventing **financial mismanagement** and **corruption**. Its work is fundamental to the **democratic functioning** of India, ensuring that public funds are used efficiently and for the benefit of the citizens.

Judicial Review.

Judicial review is the power of the judiciary to review the actions of the legislative and executive branches of the government to ensure they conform to the **Constitution of India**. This is a crucial aspect of India's **democratic setup**, acting as a **check and balance** on the power of the legislature and the executive. Judicial review ensures that any law or action that violates the Constitution or is inconsistent with its provisions can be invalidated by the judiciary.

Constitutional Basis of Judicial Review

1. Article 13 - Laws Inconsistent with or in Derogation of the Fundamental Rights:

- **Article 13** of the **Constitution of India** provides the basis for judicial review. It states that any **law** (whether made by Parliament or the State Legislature) that is inconsistent with or in derogation of **Fundamental Rights** shall be **void** to the extent of the inconsistency.

Text of Article 13(2): *"The State shall not make any law which takes away or abridges the rights conferred by Part III (Fundamental Rights) and any law made in contravention of this clause shall, to the extent of the contravention, be void."*

2. Article 32 - Right to Constitutional Remedies:

- **Article 32** provides the right to move the **Supreme Court** for the enforcement of **Fundamental Rights**. The Supreme Court's power under this article is integral to the judicial review process. It allows the Court to scrutinize laws and government actions that violate constitutional provisions, particularly **Fundamental Rights**.

Text of Article 32(1): *"The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed."*

3. Article 226 - High Courts' Power of Judicial Review:

- **Article 226** grants the High Courts the power to issue **writs** for the enforcement of Fundamental Rights and for any other purpose, including the review of legislative or executive actions. It gives the High Courts extensive power in judicial review within their territorial jurisdiction.

Text of Article 226: *"The High Courts shall have power to issue directions, orders, or writs... for the enforcement of any of the rights conferred by Part III (Fundamental Rights)."*

Judicial Review and Fundamental Rights

- The power of judicial review is crucial in safeguarding **Fundamental Rights**, as it allows the judiciary to strike down laws or actions that infringe upon these rights. **Article 13** serves as the safeguard, allowing courts to invalidate laws that violate these rights.
- The **Supreme Court**, through judicial review, has played an instrumental role in protecting civil liberties and upholding the rights of individuals against arbitrary laws and executive actions.

Limitations of Judicial Review

1. **Doctrine of Separation of Powers:** The judiciary is expected to respect the powers of the legislature and the executive. Judicial review should not encroach on the functions and powers of the other branches of government unless there is a clear constitutional violation.
2. **Parliamentary Sovereignty (within limits):** While judicial review allows the judiciary to strike down laws and executive actions, Parliament can amend the Constitution (except the basic structure). The power of judicial review does not extend to the determination of the wisdom or policy behind laws passed by Parliament.

Conclusion: Judicial review is a fundamental mechanism for maintaining the **rule of law** and **protecting constitutional values** in India. It allows the judiciary to ensure that the actions of the legislature and the executive comply with the **Constitution** and that **Fundamental Rights** are protected. Through judicial review, the judiciary plays a critical role in upholding **democracy**, **accountability**, and **transparency** in governance. Judicial review ensures that the government remains within the bounds of constitutional authority and does not violate the **basic structure** of the Constitution.

Writ of Habeas Corpus.

The writ of **Habeas Corpus** is one of the most important **constitutional remedies** provided under **Article 32** and **Article 226** of the **Indian Constitution**. It is a fundamental legal safeguard for the protection of individual liberty and is used to challenge unlawful detention or imprisonment.

The Latin term "**Habeas Corpus**" means "**you may have the body**". This writ is a judicial order requiring a person who is holding another person in custody to produce the detainee before the court, along with a valid reason for the detention. If the detention is found to be unlawful, the court may order the immediate release of the person.

Constitutional Provisions

1. Article 32 - Right to Constitutional Remedies:

- **Article 32** guarantees the right to move the **Supreme Court** for the enforcement of **Fundamental Rights**. The Supreme Court is empowered to issue various writs, including the **writ of Habeas Corpus**, for the protection of an individual's rights, particularly **personal liberty**.

Text of Article 32(2): *"The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto, and certiorari, or any of them, for the enforcement of any of the rights conferred by this Part."*

2. Article 226 - Power of High Courts to Issue Writs:

- **Article 226** empowers the **High Courts** to issue writs, including Habeas Corpus, for the enforcement of **Fundamental Rights** and for other purposes. This allows individuals to approach the High Courts for relief from unlawful detention.

Text of Article 226: *"Notwithstanding anything in Article 32, every High Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto, and certiorari."*

Scope and Functioning of the Writ of Habeas Corpus

1. Purpose of Habeas Corpus:

- The primary purpose of the **writ of Habeas Corpus** is to **safeguard personal liberty**. It ensures that no individual is detained unlawfully or without legal justification. The writ can be filed when a person is illegally detained by any authority, including the **police** or **government officials**.
- 2. **Who Can File a Habeas Corpus Petition?**
 - A writ of Habeas Corpus can be filed by the **detained person** themselves or by any other **person** on their behalf, including family members or friends. In cases of **illegal detention**, anyone with knowledge of the detention can file the petition.
- 3. **Procedure:**
 - Upon receiving the writ of Habeas Corpus, the person detaining the individual must bring the detainee to the court along with the **reason for detention**. The court will then examine whether the detention is lawful or not.
 - If the court finds the detention to be unlawful, it can order the **immediate release** of the detainee.
- 4. **Types of Detention:**
 - The writ of Habeas Corpus is generally used against **detention by the state or government authorities**, such as **police detention**, **preventive detention**, or detention under **unlawful custody**.
- 5. **Court's Role:**
 - The court's role is to ensure that no one is deprived of their **personal liberty** except according to **law**. The court has to determine whether the detention is justified by law and whether it has been carried out in accordance with the procedure established by law.

Role in Protecting Personal Liberty

The writ of Habeas Corpus plays a significant role in **preserving individual freedom** by preventing arbitrary detention. It acts as a **check on executive power**, ensuring that no individual can be **detained unlawfully** or without adequate justification. It provides individuals with a **remedy against illegal detention**, and courts can quickly intervene to secure their **release**.

Conclusion: The **writ of Habeas Corpus** is a cornerstone of the **Indian legal system**, ensuring the protection of **personal liberty** and **freedom**. It is a powerful judicial tool that allows individuals to challenge **illegal detentions** and protects citizens from arbitrary or unlawful actions by the state or other authorities. While there are exceptions, especially in cases of **preventive detention**, it remains a vital safeguard in India's **democratic framework**, ensuring that personal freedoms are not violated by the state.



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Federal State.

A **federal state** is a system of government in which two or more levels of government share control over the same geographical area. It divides the powers between the **central (national)** government and the **state governments**, and each level of government has its own area of authority. In a federal system, the **constitution** delineates the powers and functions of the different levels of government, ensuring that no one level becomes too powerful or overrides the other. India's **Constitution** establishes India as a **federal**

state, although it is not a purely federal system but rather a **quasi-federal** system, as it maintains a strong central government. The balance of power in India between the **Union** (Central Government) and the **States** (State Governments) is carefully structured in the **Constitution of India**.

Constitutional Basis of Federalism in India

1. Article 1 - Name and Territory of the Union:

- The **Constitution of India** begins by declaring that **India** shall be a **Union of States**. This is important because the term "**Union**" implies that the **Indian federation** is not based on an agreement between sovereign states, unlike other federations such as the United States. India's states are not sovereign and cannot secede from the Union.

Text of Article 1(1): "India, that is Bharat, shall be a Union of States."

2. Division of Powers – Union List, State List, and Concurrent List:

- The **Seventh Schedule** of the Indian Constitution outlines the division of powers between the Union and the States through three lists:
 - **Union List** (List I) – Matters on which only the **Union Parliament** can legislate.
 - **State List** (List II) – Matters on which only **State Legislatures** can legislate.
 - **Concurrent List** (List III) – Matters on which both the **Union Parliament** and **State Legislatures** can legislate.

The Union List contains subjects of national importance, such as **defense**, **foreign affairs**, and **currency**, while the State List deals with subjects of local and regional importance, such as **police**, **education**, and **agriculture**. The Concurrent List includes subjects where both levels of government have authority, such as **criminal law** and **marriage and divorce**.

3. Article 246 – Distribution of Legislative Powers:

- **Article 246** of the Indian Constitution lays down the powers of Parliament and State Legislatures, giving Parliament exclusive jurisdiction over matters in the Union List and shared jurisdiction over matters in the Concurrent List.

4. Article 248 – Residuary Powers:

- **Article 248** grants the Union Parliament the power to legislate on any subject not mentioned in any of the three lists (Union, State, or Concurrent). This ensures that the Union government has the ability to legislate on issues not foreseen by the Constitution.

5. Article 249 – Power of Parliament to Legislate on Matters in the State List:

- **Article 249** gives the Union Parliament the power to legislate on matters in the **State List** if the Rajya Sabha (Council of States) passes a resolution by a **resolution** requiring such legislation. This gives Parliament certain powers to interfere in state matters under specific circumstances.

6. Article 268 – Distribution of Taxes:

- The Constitution provides for a **division of taxes** between the Union and the States. The Union government collects certain taxes, such as **income tax**, while others, such as **sales tax** and **excise duties**, are collected by the States. There are also provisions for sharing certain taxes, such as **income tax** and **excise duties** (which are shared between the Union and the States).

Conclusion: India's **federal structure** is characterized by a strong central government that shares power with the states. The Constitution of India delineates the distribution of powers between the Union and the States, but also provides several mechanisms for the central government to exercise influence over the states. This **quasi-federal system** is designed to ensure national unity and integration, while also allowing for regional diversity and autonomy.

Doctrine of Pith and Substance.

The **Doctrine of Pith and Substance** is a principle of constitutional interpretation used in federal systems to determine the true nature or essence of a law or regulation when it appears to encroach upon matters in the exclusive domain of another level of government. This doctrine is primarily used in India to resolve conflicts between the **Union List** and the **State List** in the context of the **distribution of legislative powers** under the **Seventh Schedule** of the **Indian Constitution**.

The doctrine helps determine whether a law, though it may seem to fall within the jurisdiction of one legislature, actually addresses a matter that falls within the domain of another legislature. The law is tested on the **substance** of its content rather than its form or title.

Purpose and Meaning

The **pith** of a law refers to its **real or true nature** or **substance**. The **substance** of a law indicates its main objective, essence, or purpose. When there is a conflict between the Union and State laws due to overlapping subject matter, the doctrine helps decide which government can validly legislate on the matter by focusing on the **true character** of the law, rather than on its superficial aspects or the particular words used in its description.

Application of the Doctrine

1. Determining Legislative Competence:

- The doctrine is used when there is a **dispute between the Union and the States** over whether a law made by one of them falls within their respective legislative powers. The court examines the **substance** of the law to determine if it belongs to a particular list (Union List, State List, or Concurrent List).
- For example, if a State law appears to legislate on a matter in the **Union List**, the court will assess whether the law's primary objective is to address a matter in the **State List** (which is allowed) or in the **Union List** (which is prohibited).

2. Overlapping Subjects:

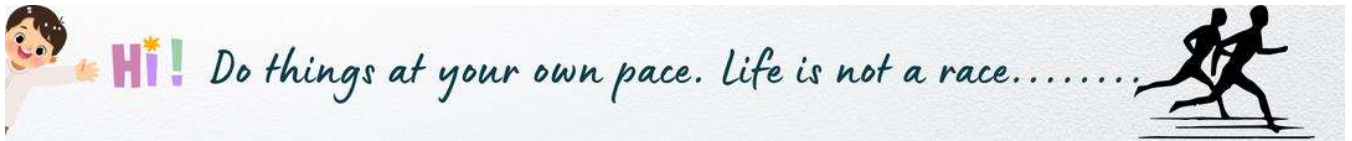
- The Indian Constitution's **Seventh Schedule** divides subjects into three lists: the **Union List**, **State List**, and **Concurrent List**. There are instances where a subject might overlap or seem to fall under both lists. In such cases, the **doctrine of pith and substance** is applied to determine the law's true nature.
- For instance, if a law made by a State legislature seems to deal with **trade and commerce** (which is in the **Union List**), but its real purpose is to regulate **public health** (a **State List** matter), then the law will be considered valid under the **State List**, as its **pith and substance** concerns public health rather than trade and commerce.

Doctrine of Pith and Substance and the Concurrent List

The **Concurrent List** includes subjects where both the Union and the State legislatures have concurrent jurisdiction. The **pith and substance** doctrine can also be applied here to determine the validity of legislation in cases where there is a conflict or overlap in laws made by both levels of government. If the **State law** appears to fall under the **Union's domain** in the Concurrent List, the court will assess its true character and determine whether the state has exceeded its jurisdiction.

If the **central law** conflicts with a **state law**, the **central law** prevails to the extent of the conflict under **Article 254** of the Constitution, but this does not affect the application of the doctrine of **pith and substance**, which is used to determine whether a particular law is validly enacted under the correct list.

Conclusion: The *Doctrine of Pith and Substance* is an important tool in determining the true nature of a law when it appears to fall within the jurisdiction of multiple lists. It ensures that laws are assessed based on their *substance* rather than their form, allowing for a more nuanced understanding of the law's objectives. This doctrine aids in resolving conflicts between the *Union and State* laws, preserving the federal structure while ensuring that the proper jurisdiction is maintained in matters of legislation.



Right to Property (Article 300-A).

Article 300-A of the **Constitution of India** provides for the **right to property** as a **constitutional right**. However, this right is not as comprehensive as it used to be, as it has undergone significant changes over time. The **Right to Property** was initially a fundamental right under **Article 31** but was later modified by the **44th Amendment Act of 1978**. Since then, it has been relegated to a **legal right** rather than a **fundamental right** under the Constitution.

Text of Article 300-A: *"No person shall be deprived of his property save by authority of law."*

This means that no individual can be deprived of their property unless there is a law that authorizes such deprivation. The law must be **just, reasonable, and in accordance with the procedure established by law**. The deprivation of property must be backed by a **law** and should not be arbitrary.

Historical Background

1. Right to Property as a Fundamental Right (Article 31):

- Initially, **Article 31** of the Indian Constitution guaranteed the **right to property** as a **fundamental right**. This provision protected individuals from **arbitrary deprivation of property** by the State. It provided that no person could be deprived of their property except by a law that follows the due procedure.
- The **State** could acquire private property for **public purpose** but had to follow the due process of law, including fair compensation.

2. 44th Amendment Act of 1978:

- The **44th Amendment Act of 1978** made a significant change to the right to property by **removing it from the list of fundamental rights** (i.e., from **Article 31**).
- **Article 31** was repealed, and **the right to property was moved to a legal right** under **Article 300-A**.
- As a result, the **right to property** is no longer a **fundamental right** and can no longer be enforced as such in a **court of law**. However, it is still a **constitutional right** that can be enforced through ordinary legal remedies.

3. Rationale Behind the Change:

- The rationale for removing the right to property from **fundamental rights** was to allow the government to have more flexibility in using **eminent domain** (the power of the State to take private property for public use) without facing frequent challenges in courts, particularly when acquiring property for public purposes such as land reforms, industrialization, and urban development.

Conclusion: **Article 300-A** provides protection against arbitrary deprivation of property, ensuring that individuals are not deprived of their property except by the authority of law.

- **The right to property** is a **legal right** under the Constitution of India, unlike other fundamental rights, which means it can only be enforced through regular courts.
- The **State** has the power to acquire property for **public purposes**, but this acquisition must be backed by law and should follow the principles of **justice, due process, and just compensation**.
- Despite being a **legal right**, the **right to property** is still a significant constitutional safeguard, but its protection is limited when compared to the fundamental rights under the Constitution.

This provides a broad understanding of **Article 300-A**, but the application of the right can be subject to specific laws and case law, which the courts interpret based on the **facts** of each case.

Effect of Anti Defection Law.

The **Anti-Defection Law** is a significant provision in the **Indian Constitution** that aims to curb political defections, maintain the stability of governments, and promote political discipline in India. This law was added to the Constitution through the **52nd Amendment Act of 1985**, also known as the **Tenth Schedule**, and it applies to both **Members of Parliament (MPs)** and **Members of Legislative Assemblies (MLAs)**.

The primary objective of the Anti-Defection Law is to prevent elected representatives from defecting from one political party to another after elections, thus undermining the democratic process. It discourages political instability caused by defections and encourages politicians to act in the interest of their parties and the people who elected them.

Constitutional Provisions

The **Anti-Defection Law** is enshrined in the **Tenth Schedule of the Indian Constitution**, which was introduced by the **52nd Amendment Act of 1985**. The key provisions of the **Tenth Schedule** are as follows:

1. **Disqualification of Members (Article 1 of the Tenth Schedule):**
 - **Article 1 of the Tenth Schedule** disqualifies MPs or MLAs if they:
 1. **Voluntarily give up membership** of the political party they were elected from, or
 2. **Join another party** after being elected, or
 3. **Vote or abstain from voting** contrary to the directions of the party leadership, except in cases where a **whip** is issued during a division in the legislature.
 - A legislator can be disqualified if they leave their political party or change party affiliation during their tenure, which is deemed as defection.
2. **Exceptions to Disqualification (Article 2 of the Tenth Schedule):**
 - A legislator is **not disqualified** if:
 1. They have been **expelled** from the party.
 2. They have been **merely suspended** from the party, and they do not join another party or group.
 3. They have **merged** their party with another political party (and at least two-thirds of the members of the original party agree to this merger).
3. **Decision on Disqualification:**
 - The decision regarding the disqualification of a member is made by the **Chairperson or Speaker** of the respective house (Lok Sabha, Rajya Sabha, or Legislative Assembly).
 - However, if the Speaker is from the party of the defector, there may be accusations of bias, and the courts may intervene if the disqualification process is not carried out fairly.
 - The **Judiciary** has the authority to review the decisions made by the Speaker or Chairman, ensuring that the disqualification process is not arbitrary or unconstitutional.
4. **Defections and Party Splits (Article 3 of the Tenth Schedule):**

- If a political party splits into two or more factions and a member joins a faction, the member will **not be disqualified** if the split involves at least **two-thirds** of the members of the party.
- This provision aims to address situations where genuine splits in a party occur, rather than the mere act of defecting for personal or political gain.

Conclusion: The **Anti-Defection Law** under the **Tenth Schedule** has played a crucial role in ensuring the **stability** and **integrity** of the political system in India. While it has been effective in curbing political defections and promoting party discipline, it has also raised concerns about the **limitation on legislative independence** and **freedom of association** for elected representatives. It remains a balancing act between maintaining political stability and preserving the democratic values of individual freedom and conscience in the political process.

Collective Responsibility.

Collective Responsibility is a fundamental concept in the **Indian Parliamentary system**, derived from the British system of parliamentary democracy. It refers to the collective accountability of the **Council of Ministers** to the **Lok Sabha (House of the People)** for all decisions and actions taken by the government. The principle is embodied in the **Constitution of India** and is a cornerstone of the functioning of the **executive branch** of government.

Key Features of Collective Responsibility

- 1. Responsibility of the Council of Ministers:**
 - The **Council of Ministers**, headed by the **Prime Minister**, is collectively responsible to the **Lok Sabha** (the lower house of Parliament) for all decisions made by the government.
 - This means that **all ministers**, whether they are Cabinet ministers, ministers of state, or deputy ministers, must take joint responsibility for the government's policies and actions. Even if individual ministers do not agree with a particular policy, they are obliged to support it publicly or resign if they do not.
- 2. Responsibility to the Lok Sabha:**
 - According to **Article 75(3)** of the **Constitution of India**, the Council of Ministers is **collectively responsible to the Lok Sabha**. The Lok Sabha can pass a **vote of no confidence** against the Council of Ministers, which would lead to the resignation of the entire council, including the Prime Minister.
 - This ensures that the **executive** (the government) is accountable to the **legislature**, specifically the elected representatives in the Lok Sabha, thereby reinforcing the **doctrine of separation of powers**.
- 3. Collective and Individual Responsibility:**
 - While **individual responsibility** exists for the actions and decisions of individual ministers, the doctrine of **collective responsibility** overrides it. This means that if a minister's actions or decisions lead to a crisis or controversy, the entire Cabinet is responsible for it.
 - If the government loses the confidence of the Lok Sabha, the entire **Council of Ministers** must resign, not just the minister directly responsible for the issue.
- 4. Cabinet Solidarity:**
 - Collective responsibility entails that there is **solidarity** among all ministers. They must publicly support all government decisions, even if they personally disagree with them. If a minister cannot support a decision or policy, they are expected to **resign** from the Cabinet.
 - This concept is meant to maintain the **unity** and **coherence** of the government, avoiding public disagreements or divisions among ministers.

5. Collective Decision-Making:

- Decisions taken by the government are typically made collectively by the **Cabinet**. Every decision is discussed and agreed upon by the entire Cabinet before being implemented, even if the responsibility for certain actions is delegated to specific ministers.
- The **Prime Minister** plays a critical role in facilitating these decisions, but the entire Cabinet remains collectively responsible for them.

Legal and Constitutional Basis

1. Article 75(3) of the Constitution of India:

- **Article 75(3)** stipulates that “**The Council of Ministers shall be collectively responsible to the Lok Sabha.**”
- This provision establishes the **constitutional foundation** for collective responsibility, ensuring that the **executive** (the government) remains answerable to the **legislature** (the Lok Sabha).

2. Role of the Prime Minister:

- The **Prime Minister** acts as the head of the government and is key to ensuring the principle of **collective responsibility** is maintained.
- The Prime Minister plays a central role in bringing together the views of different ministers, coordinating decisions, and ensuring that the Cabinet speaks with a unified voice.

3. No Confidence Motion:

- A **no-confidence motion** can be introduced in the **Lok Sabha** to express disapproval of the government’s policies or actions. If passed, it leads to the resignation of the **entire Council of Ministers**, including the Prime Minister.
- The **Lok Sabha** can hold the government accountable by demanding explanations, questioning ministers, and passing resolutions or motions against it.

Conclusion: **Collective Responsibility** is a key feature of the **Indian parliamentary system**, ensuring that the **Council of Ministers** is accountable to the **Lok Sabha** for its actions. This principle maintains government **stability**, promotes **accountability**, and fosters **unity** among ministers. It upholds the idea that a government’s policies and decisions must reflect a collective consensus, and if the government fails to maintain the confidence of the **Lok Sabha**, it must resign in its entirety. Through this system, the Indian democratic structure ensures that the executive branch remains in check and accountable to the legislature and, ultimately, to the people of India.

Curative Petition

A **Curative Petition** is a legal remedy in the Indian legal system that allows a party to seek review of a judgment passed by the **Supreme Court of India**. It is an exceptional and rare form of judicial review that is entertained after the dismissal of a **Review Petition** and aims to address gross errors or injustices in the earlier decisions of the court. This provision serves as a safeguard against **miscarriage of justice** and is aimed at preventing **misuse of the judicial process**.

Constitutional and Legal Basis

1. Article 137 of the Constitution of India:

- The **Constitution of India** provides for the power of the **Supreme Court** to review its judgments under **Article 137**. The Article grants the Supreme Court the authority to review its own judgments or orders.

2. Judicial Interpretation and Guidelines:

- The **Curative Petition** mechanism has evolved through judicial pronouncements and is not explicitly mentioned in the Constitution or statutory law. It was formulated in response to the need for providing a remedy in cases where the **Review Petition** has been dismissed.
- The concept was developed by the **Supreme Court** itself in the landmark case of **Rupa Ashok Hurra v. Ashok Hurra (2002)**. The Supreme Court ruled that there exists a need for a mechanism to correct **erroneous decisions** that may have resulted in injustice.

Conditions for Filing a Curative Petition

1. Dismissal of Review Petition:

- A **Curative Petition** can be filed only after a **Review Petition** has been dismissed. If the Review Petition is rejected, the petitioner may approach the court with a **Curative Petition** seeking rectification of the judgment.

2. Exceptional Circumstances:

- A curative petition is entertained only in exceptional circumstances, where there has been a **gross miscarriage of justice** or the judgment involves **error on the face of the record**.

3. Violation of Principles of Natural Justice:

- If the **principles of natural justice** have been violated during the decision-making process, such as lack of proper hearing or non-consideration of material evidence, a curative petition may be filed.

4. Violation of Fundamental Rights:

- If the judgment in question has resulted in the violation of the petitioner's **fundamental rights** under the **Constitution of India**, a curative petition may be appropriate.

5. Specially Defined Grounds:

- The **Supreme Court** has set certain criteria for admitting curative petitions. These include the need to demonstrate that there has been an error so significant that continuing with the judgment would lead to **grave injustice**.

Procedure for Filing a Curative Petition

1. Filing the Petition:

- A **Curative Petition** is filed in the **Supreme Court** through the **Secretary-General of the Court**. It must be filed with a specific prayer to review and set aside the earlier judgment.

2. Recommendation of Senior Judges:

- The **Curative Petition** is first placed before a **Bench of Judges**, including **senior judges** of the Supreme Court. Generally, a **three-judge bench** is formed to consider whether the petition warrants further examination. If the Bench finds merit in the petition, it is then referred to a larger **five-judge bench** for a final hearing.

3. Court's Discretion:

- The decision to entertain a curative petition is entirely at the **discretion of the Supreme Court**. The Court is not obligated to entertain every curative petition and will consider only those petitions that meet the exceptional criteria outlined by the Court.

4. No Oral Hearing:

- A **curative petition** is decided based on the written submissions and documents presented before the Court. There is generally no oral hearing unless the Court decides to proceed with one based on the merits of the petition.

Conclusion: A **Curative Petition** serves as a last resort mechanism to correct **grievous errors** or **miscarriages of justice** by the **Supreme Court of India**. It is a rare and exceptional remedy, invoked only when a **Review Petition** has been dismissed, and there is a need to prevent **injustice**. While the procedure is highly restrictive, it plays an essential role in ensuring that justice is not denied due to judicial errors or oversight. The guidelines established by the Supreme Court in the **Rupa Ashok Hurra case**

have provided the foundation for curative petitions in India, ensuring that even the highest court is accountable for grave errors.



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Doctrine of Repugnancy.

The **Doctrine of Repugnancy** is a constitutional principle that addresses the conflict between central and state laws in a federal system. In India, this doctrine plays a significant role in determining whether state laws are inconsistent with or repugnant to central laws. It ensures that in case of a conflict, the law passed by the central legislature prevails, especially when both laws cover the same subject matter.

Constitutional Basis

The **Doctrine of Repugnancy** is derived from **Article 254** of the **Constitution of India**, which deals with the **relationship between central and state laws** when they are inconsistent with each other.

Article 254(1):

- **Article 254(1)** states that "If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which is applicable to that State, then, the law made by Parliament shall prevail."
 - This means that if a state law conflicts with a central law, the central law prevails, and the state law becomes **void to the extent of the repugnancy**.

Article 254(2):

- **Article 254(2)** allows for a state law to prevail over a central law if:
 - The state law has received **President's assent**.
 - The law is inconsistent with a central law only in specific cases where it is applicable to the state in question.
 - The state law can override the central law in that particular state once the President's assent is obtained, which grants it legal validity despite the conflict.

Understanding the Doctrine

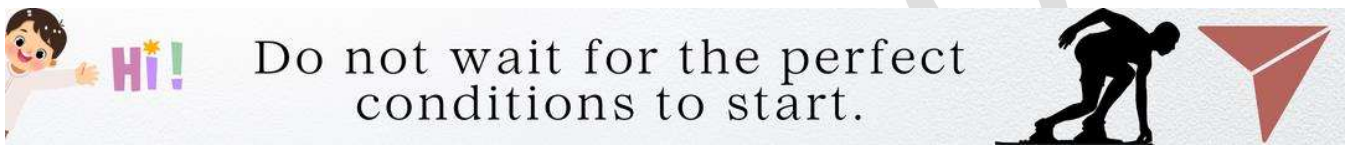
The **Doctrine of Repugnancy** addresses situations where the **central and state legislations** on the same matter are inconsistent. The Constitution provides for a solution by declaring that central law takes precedence over state law when there is a conflict, unless the state law has received presidential assent. This doctrine ensures that there is no legal chaos in the federal system by providing a mechanism to resolve conflicts between state and central laws.

Conditions for the Doctrine to Apply

1. **Conflict between Central and State Laws:**

- The central and state laws must be on the same subject matter.
 - The laws must be **inconsistent** with each other. For example, if a central law prohibits something, and a state law permits it, the central law will prevail.
2. **Extent of Repugnancy:**
- **Repugnancy** occurs when a state law is inconsistent with a central law, either in terms of subject matter or principles.
 - If there is **no direct inconsistency**, the doctrine does not apply.
3. **President's Assent (Article 254(2)):**
- A state law can override a central law if the **President of India** gives his assent to it. Without the assent, the central law will prevail.

Conclusion: The **Doctrine of Repugnancy** ensures that in a federal system like India, where both central and state legislatures can make laws on subjects in the **Union List** or **Concurrent List**, conflicts between their respective laws are resolved with central law taking precedence in case of inconsistency. The doctrine supports the **supremacy of central law** in certain situations, while also allowing states the possibility to override central laws with **presidential assent**. This balance of power is crucial for maintaining harmony and avoiding legal conflicts in the country's complex federal structure.



Doctrine of Pleasure.

The **Doctrine of Pleasure** is a fundamental principle in the **Indian Constitution** that grants the **President of India** or the **Governor of a State** the power to remove certain officials from office at their pleasure, meaning that they can be dismissed at any time without assigning a reason, as long as it is not in violation of any specific constitutional or legal provisions.

The Doctrine of Pleasure primarily applies to the relationship between the **Executive and Government officials**, and it has significant implications for the functioning of the government in India, particularly concerning the **removal** of public servants, particularly those in high offices.

Constitutional Basis

The **Doctrine of Pleasure** is derived from **Article 310** of the **Constitution of India**, which deals with the tenure of office of persons serving the **Union Government** and **State Governments**.

Article 310 of the Constitution:

- **Article 310(1):** "Except as otherwise provided by this Constitution, every person who is a member of a civil service of the Union or of a civil service of a State holds office during the pleasure of the President or the Governor of the State, as the case may be."
 - This clause provides that officials who are members of the **civil services** (both at the central and state levels) hold their office "**at the pleasure**" of the President or Governor. In other words, their tenure is not fixed and can be terminated at any time without cause or notice, subject to constitutional exceptions.
- **Article 310(2):** "Nothing in this article shall apply to the office of a judge of a High Court or of the Supreme Court."
 - The Doctrine of Pleasure does **not apply** to the judges of the **Supreme Court** and **High Courts** as they enjoy security of tenure under **Article 124** (for Supreme Court judges) and

Article 217 (for High Court judges). These judges can only be removed through **impeachment** proceedings.

Key Elements of the Doctrine of Pleasure

1. **Tenure at the Pleasure of the President or Governor:**
 - According to Article 310, the term "pleasure" implies that the President or the Governor can remove certain officials at any time without providing reasons or cause.
2. **Scope of Application:**
 - The Doctrine of Pleasure applies primarily to **civil servants, members of the civil services**, and other similar positions under the Government of India or the State Governments. This includes **Indian Administrative Service (IAS)** officers, **Indian Police Service (IPS)** officers, and other **all-India services** personnel.
3. **Limits on the Doctrine:**
 - The doctrine does not apply universally to all public offices. For instance, **judges of the Supreme Court and High Courts**, as well as the **Attorney General of India**, are not subject to this doctrine.
 - Similarly, certain statutory conditions or protections may limit the power of removal, such as the **Comptroller and Auditor General** or members of **Election Commissions**, whose removal is governed by separate provisions in the Constitution.

Conclusion: The **Doctrine of Pleasure** is a crucial principle in the **Indian Constitution** that allows the **President or Governor** to dismiss certain officials at will. While it ensures the **executive's control** over civil servants, it also provides **checks and balances** to prevent arbitrary dismissal. The doctrine is essential for maintaining the **accountability and efficiency** of public servants, but it must be exercised in a manner consistent with the **rule of law, natural justice**, and constitutional provisions to avoid misuse.

Veto power of President.

The **Veto Power** of the President of India refers to the authority vested in the **President** to withhold their assent to a bill passed by the **Parliament**, or to delay its enactment. This power is a reflection of the President's role as the **constitutional head of the state** and ensures a system of checks and balances within the **Indian Parliament**.

The **Veto Power** is not absolute, and the President's action in this regard is guided by the **Constitution of India**, which outlines specific procedures and types of vetoes available to the President.

Constitutional Basis

The Veto Power is primarily derived from **Article 111** of the **Constitution of India**. Article 111 lays down the procedure that the President must follow in relation to bills passed by both Houses of Parliament.

Article 111 of the Constitution:

- **Article 111** states that when a bill is presented to the President after being passed by both the Houses of Parliament, the President may either:
 - **Give assent** to the bill, which means the bill becomes a law.
 - **Withhold assent** to the bill.
 - **Return the bill** (except for money bills) for reconsideration by Parliament.

Thus, the President has the option to either approve the bill, withhold approval, or send it back to Parliament.

Types of Veto Power

1. Absolute Veto:

- This refers to the **complete rejection** of a bill by the President, where they refuse to give their assent to the bill, and no further action is taken on it.
- The **Absolute Veto** is rarely exercised in practice but may occur in cases where the President feels that a bill is unconstitutional, illegal, or against the **public interest**.
- **Example:** If the President receives a bill that has been passed by the Parliament but finds that it violates the Constitution or undermines fundamental rights, they may withhold their assent.

2. Suspensive Veto:

- This type of veto allows the President to **delay** the enactment of a bill by withholding assent temporarily. It is also known as a **qualified veto**.
- The bill is sent back to Parliament with a request for reconsideration. The **suspensive veto** gives the Parliament a chance to review the bill and may result in amendments before it is passed again.
- If the bill is passed again by both Houses of Parliament, the President must give their assent, regardless of their initial reservations. Thus, this veto is **suspensive** in nature, as it only delays the process but does not permanently prevent the bill from becoming law.
- **Example:** If the President has reservations regarding a bill, they may return it to Parliament for reconsideration under **Article 111**.

3. Pocket Veto:

- The **pocket veto** occurs when the **President** neither approves nor rejects a bill but simply **delays action on the bill**. The President may withhold their assent for an indefinite period, effectively putting the bill "on hold."
- This veto is not explicitly mentioned in the Constitution but is exercised in practice, where the President may choose to delay the bill without formally rejecting it.
- **Example:** The President may withhold their decision on a bill if they wish to see the public reaction or require additional time for consideration.

4. Conditional Veto:

- The President may also return a bill with a **request for reconsideration** or a **recommendation for amendments**. This is often referred to as a **conditional veto**, where the President suggests changes to the bill, but the ultimate decision is left to Parliament.
- This veto is used as a tool to ensure that legislation conforms to constitutional principles or reflects national interests, though it cannot directly impose changes on the bill.
- **Example:** A bill may be returned to Parliament with the suggestion that it be amended in a particular section to ensure consistency with constitutional provisions or to improve its provisions.

Conclusion: The **Veto Power** of the President of India is a crucial aspect of the **Indian Constitution** that allows the **President to reject, delay, or return** bills passed by Parliament under specific conditions. It serves as a check on legislative actions and ensures that legislation aligns with the Constitution and public welfare. However, this power is not absolute and is subject to certain limitations, especially in the case of **money bills**. Through judicial interpretation, the scope and limits of this power have been defined, ensuring that it is used judiciously and in accordance with constitutional principles.



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Ordinance.

An **Ordinance** is a temporary law promulgated by the **President of India** when Parliament is not in session. The power to issue an ordinance is vested in the President under **Article 123** of the **Constitution of India**. This provision allows the President to legislate on urgent matters in situations where immediate action is required and the normal legislative process cannot be followed due to Parliament not being in session.

The ordinance is a temporary measure and can be promulgated only on the recommendation of the **Union Cabinet**, which advises the President to issue such an order. While an ordinance has the same effect as an act of Parliament, it must be approved by Parliament within **six weeks** of its reassembly, or it will cease to operate.

Constitutional Basis

The power of the President to issue ordinances is outlined in **Article 123** of the Indian Constitution:

- **Article 123(1):** "If at any time, except when both Houses of Parliament are in session, the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require."
- **Article 123(2):** The ordinance must be laid before Parliament when it reassembles, and it must be approved within **six weeks**. If not approved, the ordinance ceases to be in force.
- **Article 123(3):** An ordinance promulgated by the President has the **same force** as an Act of Parliament, but it is a temporary law.

Key Features of Ordinance

1. **Temporary Nature:**
 - An ordinance is a **temporary law** and must be approved by Parliament within **six weeks** of its reassembly. If not approved, the ordinance ceases to have any effect.
 - The President's power to issue ordinances is essentially designed to address urgent situations but is not meant to be used as a regular legislative tool.
2. **Conditions for Issuing an Ordinance:**
 - The **President** can promulgate an ordinance only when **both Houses of Parliament are not in session**.
 - There must be an **emergency** or **urgent need** to make laws on a particular subject, where immediate legislative action is required.
 - The **President** must be satisfied that circumstances necessitate immediate action.
3. **Power of the President:**
 - The power to issue ordinances is a **discretionary power** of the President. However, the ordinance can only be issued on the advice of the **Council of Ministers**, headed by the **Prime Minister**.
 - The President cannot issue ordinances at their discretion, without the Cabinet's advice, as per the **principle of collective responsibility** laid down in **Article 75(3)**.

4. Approval by Parliament:

- The ordinance must be presented before both Houses of Parliament when they reassemble, and it must be approved by **both Houses** within six weeks, or it will automatically cease to operate.
- If Parliament does not pass a resolution disapproving the ordinance, it will become a permanent law.
- Parliament can also modify or amend an ordinance through the usual legislative process.

5. Limitations on Ordinance Power:

- The President's power to issue ordinances is not absolute. The ordinance must be consistent with the **Constitution** and cannot be used to amend the Constitution or make laws that are specifically prohibited by the Constitution.
- The **ordinance power** cannot be used to **bypass** the legislative process regularly, as it is meant for extraordinary situations.

Conclusion: The **Ordinance Power** of the President of India is an important tool for the **executive** to address urgent legislative matters when Parliament is not in session. While it is a powerful instrument that allows for quick action, it is meant to be a **temporary measure** and should not be used as a substitute for regular legislative processes. The ordinance must be approved by Parliament within **six weeks**, and it is subject to judicial review if it is issued in violation of constitutional principles. As such, the ordinance power must be exercised responsibly and in accordance with the **constitutional framework**.

Promissory Estoppel.

Promissory estoppel is a doctrine in contract law that prevents a party from going back on a promise, even in the absence of a formal contract, if the other party has reasonably relied on that promise to their detriment. This principle ensures fairness and justice by upholding promises that induce action or forbearance, particularly when it would be unjust to allow a party to renege on a promise that has been relied upon.

Constitutional and Legal Basis

The doctrine of **promissory estoppel** is not explicitly mentioned in Indian law, but it has been developed through judicial decisions. It is grounded in the principles of **equity** and **justice**, where the court enforces a promise made by one party to another, even without a formal contract, to prevent the promise from causing injustice or undue hardship to the promisee.

Judicial Interpretation and Application in India

The doctrine of **promissory estoppel** has been recognized and applied by the **Indian judiciary** through various judgments, the most significant being **Union of India v. Anglo Afghan Agencies (1968)** and **Motilal Padampat Sugar Mills Co. Ltd. v. State of Uttar Pradesh (1979)**.

1. Union of India v. Anglo Afghan Agencies (1968):

This case is one of the earliest in India to apply the principle of promissory estoppel. In this case, the court ruled that if a party, by their conduct or representations, makes a promise to another party, and the latter relies on that promise to their detriment, the promise becomes binding, even if there is no formal contract. The **Government of India** had issued a promise that no excise duty would be imposed on certain goods, but later, the government sought to impose the duty. The court upheld the doctrine of promissory estoppel, stating that once a party has induced another to take action based on a promise, it would be unjust to allow the first party to break that promise.

Key Elements of Promissory Estoppel

The principle of **promissory estoppel** has several key elements, which must be established for the doctrine to be invoked:

1. A Clear and Definite Promise:

- There must be a clear and unequivocal promise made by the promisor (the party making the promise). The promise does not necessarily have to be formalized in a written contract, but it should be made with the intention to induce action or forbearance from the promisee.

2. Reliance by the Promisee:

- The promisee must have relied on the promise made. The reliance must be **reasonable** and must lead to some **detriment** or **change in position** on the part of the promisee. It is the promisee's reliance on the promise that makes the doctrine applicable.

3. Detrimental Reliance:

- The reliance on the promise must result in a detriment to the promisee. This could include spending money, taking action, or refraining from taking action based on the promise.

4. Injustice or Unfairness if the Promise is Not Enforced:

- There must be an element of **unfairness** or **injustice** in allowing the promisor to resile from their promise. If the promisee has changed their position based on the promise, it would be unjust to allow the promisor to deny or withdraw the promise.

5. Equitable Doctrine:

- **Promissory estoppel** is an equitable remedy and operates in **good faith**. The court will use its discretionary power to apply the doctrine, ensuring fairness and justice. It is not applied if doing so would result in an inequitable situation.

Illustrative Example:

- **Case Study:** Suppose a company promises to provide financial support to an individual who is looking to build a new business. The individual, relying on this promise, invests significant resources and gives up another opportunity. Later, the company decides to withdraw its promise and refuses to offer the promised financial support. In such a case, the individual may invoke **promissory estoppel**, claiming that they relied on the company's promise to their detriment, and it would be unjust for the company to retract its promise after the individual has made significant changes based on it.

Conclusion: The doctrine of **promissory estoppel** is an important principle in **Indian contract law**, ensuring that a party cannot back out of a promise if the other party has reasonably relied on that promise to their detriment. It upholds **equity** and **fairness** by preventing unjust outcomes, particularly in situations where reliance on the promise has led to a significant change in position. Although it is a powerful tool, it is applied carefully by courts, considering the elements of **fairness**, **justice**, and **reasonableness** in each case.



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Basic Structure theory.

The **Basic Structure Doctrine** is a judicial principle in Indian constitutional law that asserts that certain fundamental features of the Constitution of India cannot be altered or amended by the Parliament, even under its wide powers granted by **Article 368**. This doctrine was developed by the **Supreme Court of India** to protect the core values and principles of the Constitution from changes that may undermine its foundational structure.

The doctrine holds that while Parliament has the power to amend the Constitution, this power is not absolute and is limited by the **basic structure** of the Constitution. The basic structure includes certain essential features or principles that cannot be altered or destroyed by any constitutional amendment.

Origin of the Basic Structure Doctrine

The **Basic Structure Doctrine** was first articulated in the landmark case of **Kesavananda Bharati v. State of Kerala (1973)**. This case is considered one of the most significant judgments in Indian constitutional law, as it marked the birth of the doctrine. The case was a reference on the question of whether Parliament could alter or amend any part of the Constitution, including its fundamental features.

In a **majority judgment** delivered by **Sikri C.J.** (Chief Justice), the Supreme Court ruled that **Parliament** can amend the Constitution under **Article 368**, but it cannot alter or destroy its **basic structure**. This judgment laid down the foundation of the doctrine that has since been applied in various other cases.

Constitutional Basis

- **Article 368** of the **Constitution of India** grants Parliament the power to amend the Constitution. It reads:
 - *“Power of Parliament to amend the Constitution and procedure therefor.”*
 - Article 368 provides Parliament with the authority to amend the Constitution but does not specify any limitation or exception to the scope of this power.

The **Kesavananda Bharati** case, however, held that while Parliament has the power to amend the Constitution, such amendments cannot alter the **basic structure** of the Constitution. This interpretation of Article 368 effectively limits the power of Parliament.

Key Features of the Basic Structure Doctrine

The **basic structure** of the Constitution is not explicitly defined, and its exact content has evolved through judicial decisions. The **Supreme Court** has, however, outlined several features that are considered to form part of the Constitution's basic structure. Some of these features are as follows:

1. *Supremacy of the Constitution*
2. *Democratic Republic*
3. *Secularism*
4. *Judicial Review*
5. *Separation of Powers*
6. *Federalism*
7. *Fundamental Rights*
8. *Rule of Law*
9. *Parliamentary System of Government*
10. *Free and Fair Elections*

Conclusion: The **Basic Structure Doctrine** is a cornerstone of Indian constitutional law that ensures the preservation of the essential features of the **Constitution of India**. It places an important check on

Parliament's power to amend the Constitution, safeguarding principles like **democracy, federalism, judicial review, secularism, and fundamental rights**. The doctrine continues to shape Indian constitutional law, serving as a protective mechanism against any amendments that may distort or undermine the constitutional framework.

Size of the Ministry.

The **size of the Ministry** refers to the number of ministers appointed by the Prime Minister to form the **Council of Ministers** in the Indian government. The size of the Ministry is a significant factor in the functioning of the executive branch of the government, as it determines how many individuals will hold key positions and influence policy decisions.

Constitutional and Legal Provisions

The **Indian Constitution** does not prescribe a specific limit on the number of ministers in the Ministry. However, the Constitution provides a framework for the appointment and role of ministers in **Article 74** and **Article 75**:

1. **Article 74: Council of Ministers to aid and advise the President:**
 - This article outlines that the Council of Ministers, headed by the Prime Minister, is responsible for advising the President in the exercise of his functions. The Council of Ministers must have the confidence of the Lok Sabha, and the President appoints the ministers based on the advice of the Prime Minister.
2. **Article 75: Other provisions as to Ministers:**
 - Article 75(1) specifies that the Prime Minister is appointed by the President, and other ministers are appointed by the President on the advice of the Prime Minister. The Constitution allows the Prime Minister to determine the size and composition of the Ministry based on political considerations.
3. **Article 75(2): Oath of office and secrecy:**
 - This article requires ministers to take an oath of office and secrecy before assuming their roles.
4. **Article 75(3): Collective Responsibility:**
 - This principle holds that the Council of Ministers is collectively responsible to the Lok Sabha. If the Council of Ministers loses the confidence of the Lok Sabha, all ministers must resign.

Limits on the Size of the Ministry

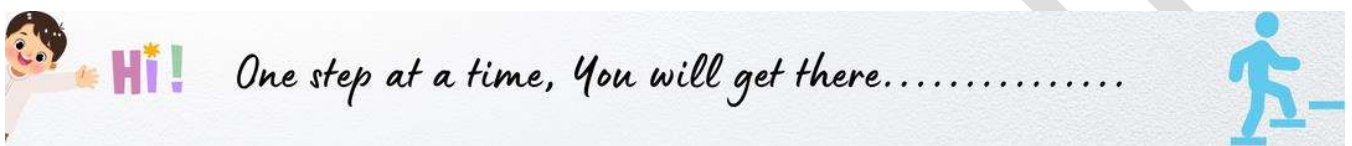
While the Constitution does not set a fixed number of ministers, there are certain statutory provisions and conventions that regulate the size of the Ministry:

1. **The 91st Amendment Act of 2003:**
 - The **91st Amendment Act**, 2003, introduced a key limitation on the size of the Council of Ministers, specifically limiting the number of ministers in the Ministry.
 - **Article 75(1A)** was inserted by the 91st Amendment to specify that the total number of **ministers** (including the Prime Minister) in the **Council of Ministers** cannot exceed **15% of the total strength of the Lok Sabha**. The total strength of the Lok Sabha currently is **545**, so the Council of Ministers can have a maximum of **81 members** (15% of 545). This includes all types of ministers—**Cabinet Ministers, Ministers of State, and Deputy Ministers**.

Key Features of the 91st Amendment:

- **Limit of 15%:** As mentioned, the Council of Ministers cannot exceed 15% of the total strength of the Lok Sabha.
- **Restriction on Defections:** The Amendment also introduced a **restriction on defection**, whereby a legislator who is appointed as a minister must not be disqualified under the **Anti-Defection Law** (Tenth Schedule). If a minister defects, they lose their seat in the Cabinet.

Conclusion: While the Constitution of India does not prescribe a specific size for the Ministry, the **91st Amendment Act of 2003** limits the number of ministers to **15% of the total strength of the Lok Sabha** (currently 81 members). The Prime Minister, however, has significant discretion in determining the structure and composition of the Ministry. The size of the Ministry is influenced by political factors, coalition dynamics, and the need for regional or community representation. However, there are ongoing debates about the optimal size of the Ministry, balancing political representation with efficiency in governance.



Vicarious Liability.

Vicarious liability is a legal doctrine that holds one person liable for the actions of another, based on the relationship between them. In Indian law, this principle typically applies in situations where an employer is held responsible for the actions of their employee, performed within the scope of their employment. The term "vicarious" means "substitute" or "on behalf of," indicating that the responsibility is transferred from the wrongdoer to a third party.

Legal Basis and Origin

Vicarious liability is not explicitly mentioned in the **Indian Penal Code (IPC)** or the **Indian Contract Act**, but it is recognized as a common law principle. The doctrine is primarily applied in the law of **torts** and **criminal law**, and its application is closely tied to the **relationship of master and servant**, or **employer and employee**.

1. The Indian Contract Act, 1872:

- Section 239 of the **Indian Contract Act, 1872**, outlines the concept of **agent** and **principal**, where the principal is liable for the acts of the agent performed within the scope of their authority. This principle is related to vicarious liability in contractual matters.

2. Law of Torts:

- Vicarious liability is most commonly applied in the context of torts. The **tort** is a civil wrong, and the employer is held liable for the torts committed by the employee during the course of employment.

Key Principles of Vicarious Liability

1. Existence of a Relationship of Master and Servant:

- The core requirement for vicarious liability is the relationship between the wrongdoer (employee) and the person to be held liable (employer). For vicarious liability to apply, there must be an **employer-employee** relationship or a **master-servant** relationship, where the employee is under the authority and control of the employer.

2. Act Committed in the Course of Employment:

- Vicarious liability arises when the employee commits the wrongful act **in the course of employment** or within the scope of their duties. If the employee acts outside the scope of employment, the employer may not be held liable. For example, if an employee commits a crime or tort while acting on their own, unrelated to their duties, the employer may not be vicariously liable.
3. **Wrongful Act:**
- The act must be a **wrongful act**, meaning it can be a **tort** (such as negligence, defamation, assault) or a **crime**. In the case of torts, the employer may be required to compensate the injured party for damages. If the wrongful act is also a crime, the employer may be liable for damages caused by the criminal act, depending on the situation.

Application of Vicarious Liability in Indian Law

Vicarious liability is most commonly applied in cases of torts and certain criminal acts. Some of the key applications are:

1. **Vicarious Liability in Tort:**

- **Master and Servant:** Under the law of torts, an employer can be vicariously liable for the torts committed by an employee during the course of employment. This includes negligent acts, trespasses, and even intentional torts in some cases.
- **Case Law:** In **State of Rajasthan v. Vidhyawati (1962)**, the Supreme Court held that the **State** could be vicariously liable for the actions of a government driver who caused an accident while driving a government vehicle, even though the driver was acting negligently.

2. **Vicarious Liability in Criminal Law:**

- In certain criminal acts committed by an employee, the employer can be held vicariously liable. However, this is not always the case, and **criminal liability** is usually personal. In **Section 149 of the IPC**, it is stated that if a group of people commits an offense, everyone can be held **vicariously liable** if they are acting in concert.
- However, the **employer** can be held criminally liable in certain cases, especially when they are directly or indirectly involved in the commission of the crime. For example, under the **Factories Act**, an employer may be vicariously liable for violations of safety regulations by employees.

3. **Vicarious Liability in Case of Independent Contractors:**

- Normally, vicarious liability applies in the employer-employee relationship. However, in certain cases, an employer can be held liable for the acts of an independent contractor if the act was done on behalf of the employer and the employer had control over the activity.
- For example, if an employer hires a contractor for a job that involves a **high degree of risk**, and the contractor commits a tort or negligent act during the course of the job, the employer may still be held vicariously liable.

Conclusion: Vicarious liability is a key principle of **tort law** in India, ensuring that employers or principals are held accountable for the wrongful acts committed by their employees or agents during the course of employment. This doctrine reinforces the idea of responsibility and accountability in organizations, ensuring that individuals and entities that benefit from the actions of others also bear the consequences of any wrongful conduct that occurs in the course of business or employment. However, there are exceptions and limitations to the application of vicarious liability, especially when acts are outside the scope of employment or are intentional torts.



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Part B

Long Answer Questions

Discuss the constitutional status of the President of India, in the light of Article 74 of the Constitution.

The **President of India** is the ceremonial head of the state and represents the unity and integrity of the nation. The President holds a position of great importance in the Indian polity as the apex figure of the executive, legislature, and judiciary, though the role is largely symbolic and ceremonial. The true executive authority, however, lies in the **Council of Ministers**, headed by the **Prime Minister**, who effectively governs the country.

Article 74 of the **Constitution of India** deals with the role and functions of the President in relation to the **Council of Ministers** and is pivotal in understanding the President's status under the Indian Constitution.

Text of Article 74

Article 74(1) states: *“There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions.”*

Article 74(2) states: *“The President shall act in accordance with the advice of the Council of Ministers, except in cases where he is required by the Constitution to act in his discretion.”*

Thus, the Constitution gives a dual role to the President – on one hand, as a ceremonial figurehead, and on the other, as a constitutional agent who exercises executive power under the advice of the Council of Ministers.

Constitutional Role of the President:

The Indian President's role is modeled largely on the **Westminster system** of parliamentary government. However, it is critical to understand that the President is expected to act on the advice of the **Council of Ministers**, which is headed by the **Prime Minister**, in most matters, as prescribed by Article 74. This provision signifies the principle of **ministerial responsibility** in a parliamentary democracy.

1. Ceremonial Head of the State:

- The President is the nominal head of the state and is invested with certain powers, including the power to issue ordinances, promulgate laws, and appoint judges, but these actions are taken only **on the advice of the Council of Ministers**.
- For example, under **Article 123**, the President can promulgate ordinances when Parliament is not in session, but this can only be done on the recommendation of the Council of Ministers.

2. Executive Power:

- Executive power in India is vested in the President, but it is to be exercised **on the advice of the Council of Ministers**, according to Article 74. The President appoints the Prime Minister and other ministers, but the appointments are based on the recommendation of the ruling party or coalition.
 - The President's functions are carried out in a manner similar to that of a constitutional monarch. Though technically the President is the head of the executive, in practice, it is the **Council of Ministers** led by the **Prime Minister** that holds and exercises executive power.
3. **Constitutional Monarch in Practice:**
- The role of the President of India is largely symbolic. The President acts in accordance with the advice of the Prime Minister and the Cabinet, which signifies the idea of **collective responsibility** to the **Lok Sabha** (House of the People). For instance, the President must sign bills passed by Parliament before they become law, but the President's refusal to do so is rare and generally only occurs in extraordinary circumstances.

Doctrine of 'Aid and Advice' under Article 74:

- **Aid and Advice:** Article 74(1) mandates that the President shall act according to the advice of the Council of Ministers. This indicates that the **real political power** lies with the Prime Minister and the Cabinet rather than the President.
- The **President's powers** are essentially exercised by the Cabinet, and this is in line with the **parliamentary system of government** adopted by India. The President's role is restricted to being a constitutional figurehead while the real decision-making process occurs within the Council of Ministers.

Discretionary Powers of the President:

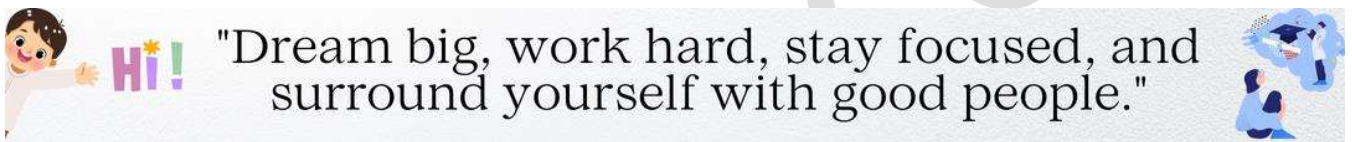
Although Article 74(1) generally binds the President to the advice of the Council of Ministers, there are certain **discretionary powers** granted to the President by the Constitution. These powers, however, are limited and must be exercised in specific circumstances. These include:

1. **Appointment of Prime Minister** (Article 75):
 - The President has the discretion to appoint a **Prime Minister**. If no party or coalition has a clear majority in the Lok Sabha following general elections, the President can use discretion to appoint a Prime Minister from among the members of the Lok Sabha.
2. **Dissolution of Lok Sabha** (Article 83):
 - The President has the power to dissolve the **Lok Sabha**, but this must be done on the advice of the Prime Minister. The President has limited discretion in this matter, as it is generally a formality carried out according to the government's advice.
3. **Proclamation of Emergency** (Article 352):
 - The President can declare a national emergency under Article 352, but this power is exercised only upon the advice of the Cabinet. However, the President has the discretion to review the Cabinet's advice if it does not have a majority or appears invalid.
4. **Discretion in Certain Judicial Matters:**
 - The President also has certain discretionary powers in relation to the judiciary, such as **appointing judges to the Supreme Court and High Courts** under **Article 124** and **Article 217**, though the appointments are typically made in consultation with the judiciary.
5. **Use of Veto Power** (Article 111):
 - The President has the power to withhold assent to bills under **Article 111** of the Constitution. However, this power is rarely exercised, as it is considered the prerogative of the legislature to pass laws. The President usually acts on the advice of the Cabinet in matters of assent to legislation.

Case Law on Article 74:

1. **K. K. Verma v. Union of India (1955):** In this case, the **Supreme Court** reinforced the principle that the President must act in accordance with the advice of the Prime Minister and the Council of Ministers in the normal course. The Court emphasized that the President cannot reject the advice of the Cabinet without valid constitutional grounds.
2. **Shamsher Singh v. State of Punjab (1974):** The **Supreme Court** in this case held that the President, while exercising executive powers, must act on the advice of the Council of Ministers headed by the Prime Minister. The Court ruled that the President's discretion is limited and should be exercised only in exceptional circumstances where the Constitution mandates such action.

Conclusion: In conclusion, **Article 74** of the Constitution places the President of India in a largely ceremonial role with respect to the executive functions of the government. The President is required to act according to the advice of the **Council of Ministers**, headed by the **Prime Minister**, in most circumstances. The doctrine of **ministerial responsibility** ensures that the true executive power rests with the Cabinet, and the President's powers are exercised on their advice. However, the President does possess certain discretionary powers in exceptional cases, as specifically outlined in the Constitution. These provisions reflect the nature of India's **parliamentary democracy**, wherein the executive is collectively responsible to the legislature, and the President's role is primarily formal and symbolic in nature.



Explain the necessity of Independence of Judiciary. How is it maintained in India?

The **independence of the judiciary** is a fundamental principle of democratic governance. It ensures that the judiciary is free from influence or control by the executive and legislative branches of government, enabling it to function impartially and uphold the rule of law. In India, as in other democratic nations, the **independence of the judiciary** is vital to maintain a balance of power between the different branches of government and to safeguard the fundamental rights of the citizens.

Necessity of Judicial Independence:

1. **Upholding the Rule of Law:**
 - The **rule of law** is a cornerstone of a democracy. It dictates that laws should govern the country, and no individual or institution, including the government, is above the law. The judiciary, as the interpreter of laws, must be independent to impartially apply the law without fear, favor, or influence. Judicial independence ensures that laws are enforced fairly and consistently, regardless of political pressures or public opinion.
2. **Protection of Fundamental Rights:**
 - An independent judiciary is essential for the **protection of fundamental rights** guaranteed under the **Constitution of India**. If the judiciary is not free from executive or legislative interference, there is a risk that the rights of individuals may be trampled upon by the government or political forces. The judiciary must have the freedom to review laws and executive actions to ensure that they do not violate fundamental rights, as enshrined in **Part III of the Constitution**.
3. **Preventing Abuse of Power:**
 - **Separation of powers** is a basic feature of the Indian Constitution. The executive and legislature must be kept in check by an independent judiciary to prevent abuse of power. The judiciary has the power to review and strike down unconstitutional laws or executive

actions. Without judicial independence, the legislature or the executive could become unchecked, leading to **tyranny or authoritarianism**.

4. Ensuring Justice and Fairness:

- The judiciary must be able to administer justice without any external influence. If judges are influenced by political or executive pressure, the judicial process could be compromised, and justice could be denied to citizens. Judicial independence is essential to ensure that judges can make decisions based on their **interpretation of the law** and the **facts of each case**, rather than any external influence or personal bias.

5. Public Confidence in the Legal System:

- **Public confidence** in the judiciary and the legal system is central to the functioning of a democracy. If citizens believe that the judiciary is independent, they are more likely to trust its decisions. The perception of fairness and impartiality of the judicial system helps maintain the integrity of the legal system.

How Judicial Independence is Maintained in India:

The **Indian Constitution** provides several safeguards to maintain the independence of the judiciary. These provisions are designed to ensure that the judiciary remains free from external pressures and can function without undue influence from the executive or legislature.

1. Security of Tenure of Judges:

- **Article 124(2)** of the Constitution guarantees that judges of the Supreme Court can only be removed through a **process of impeachment**, which requires a **two-thirds majority** in both houses of Parliament. Similarly, **Article 217** provides that judges of the High Courts can only be removed in the same manner.
- This protection ensures that judges cannot be removed at the whim of the government or legislature. Their **security of tenure** allows them to make decisions based on the law, rather than being concerned about losing their position if they pass judgment against the government or political interests.

2. Control Over Their Own Salary and Conditions of Service:

- **Article 125** of the Constitution guarantees that the salaries and allowances of judges of the Supreme Court are charged on the **Consolidated Fund of India** and cannot be varied to their disadvantage after their appointment. The same applies to **High Court judges** under **Article 221**. The salaries of judges cannot be reduced by the government during their tenure, ensuring that financial considerations do not influence their decisions.
- Furthermore, their conditions of service, such as retirement age and other benefits, are determined by Parliament and cannot be altered to the disadvantage of the judges while they are in office.

3. Appointment Process:

- The **appointment of judges** to the Supreme Court and High Courts is designed to ensure that the judiciary remains independent from political influences. Judges of the Supreme Court are appointed by the President under **Article 124(2)**, in consultation with the Chief Justice of India and other senior judges of the Supreme Court. Similarly, High Court judges are appointed by the President under **Article 217**, in consultation with the Chief Justice of India, the Governor of the state, and the Chief Justice of the High Court.
- The **Collegium System**, which emerged through judicial decisions, is an important feature of the appointment process. Under this system, senior judges of the Supreme Court (a body of judges

called the **Collegium**) make recommendations for judicial appointments, which minimizes political interference in the selection process.

4. Power of Judicial Review:

- One of the most important features that ensures judicial independence in India is the **power of judicial review**. This allows the judiciary to review laws passed by the legislature and executive actions to ensure that they are in compliance with the Constitution.
- Under **Article 13**, the courts have the authority to strike down any law that is inconsistent with the Constitution. This acts as a powerful check on the other branches of government and ensures that they do not overstep their constitutional boundaries.

5. Impeachment Procedure:

- Judges of the Supreme Court and High Courts can only be removed through the **impeachment process** outlined in **Article 124(4)** and **Article 217(1)**. The process is deliberately rigorous to prevent arbitrary removal of judges. A judge can be removed only on the grounds of **proven misbehavior or incapacity**, and the process requires a two-thirds majority in both houses of Parliament.
- This strict procedure prevents the executive from using political pressures to remove judges who may be passing judgments contrary to the government's interests.

6. Judicial Discipline and Accountability:

- While judicial independence is essential, **judicial accountability** is also necessary. In India, the judiciary is accountable to the people through various mechanisms, including public scrutiny, media coverage, and the **Public Interest Litigation (PIL)** process. The judiciary's actions are reviewed by the people and the legislature through the process of judicial review.
- However, the independence of judges is maintained through internal disciplinary mechanisms. The **Supreme Court** has a **Judicial Conduct** committee that can inquire into complaints of misconduct by judges, ensuring that judges remain accountable for their actions.

7. Separation of Powers:

- The Constitution explicitly establishes a **separation of powers** between the executive, legislature, and judiciary. This principle ensures that no one branch of government has undue influence over the others, and it strengthens judicial independence.
- **Article 50** of the Constitution mandates that the State shall take steps to separate the judiciary from the executive. This separation ensures that the executive cannot interfere in the judicial process and that judges remain free to make decisions based solely on law and facts.

Conclusion: The **independence of the judiciary** is essential for the functioning of a democracy, and it acts as a safeguard for individual rights, justice, and the rule of law. In India, the judiciary is independent due to constitutional provisions such as **security of tenure**, **impeachment procedures**, and the **power of judicial review**, alongside a robust **appointment process**. While challenges exist, the structure laid down by the Constitution helps ensure that the judiciary remains an independent and impartial institution, upholding the principles of justice and democracy.



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Enumerate the safeguards available to the civil servants under the Constitution of India.

Or

Explain the constitutional safeguards available to Civil Servants.

Safeguards Available to Civil Servants under the Constitution of India

Civil servants in India play a vital role in the administration of the country. They work in various governmental departments and are expected to execute government policies impartially and efficiently. To ensure that civil servants perform their duties without fear or favor, the Constitution of India provides several safeguards. These safeguards are meant to protect civil servants from arbitrary actions and to ensure their independence, stability, and integrity in service.

1. Security of Tenure (Article 311)

One of the most important safeguards available to civil servants is **security of tenure**. This is enshrined under **Article 311 of the Constitution**, which provides protection against dismissal, removal, or reduction in rank without following a proper procedure.

Provisions of Article 311:

- **Sub-Article 1:** No civil servant shall be dismissed or removed by an authority subordinate to the authority that appointed them. This ensures that the dismissal or removal of civil servants is handled by the appropriate authority.
- **Sub-Article 2:** A civil servant cannot be dismissed or removed without being given an opportunity to show cause against the action proposed. This provision guarantees the **right to a fair hearing** and prevents arbitrary action.
- **Sub-Article 3:** It permits the dismissal of civil servants on certain grounds without following the procedure outlined in sub-Article 2 in cases where there is a **criminal conviction** or **prejudicial conduct**. However, this must be done with approval from the President.

This provision is vital in maintaining the **independence of the civil services** and protects civil servants from political or arbitrary dismissal.

2. Protection Against Arbitrary Dismissal (Article 310)

Article 310 of the Constitution deals with the relationship between civil servants and the government. It provides that:

- Civil servants hold office at the pleasure of the President of India (for central government employees) or the Governor (for state government employees). This means that while civil servants may be removed at the discretion of the government, the **procedure for such removal** is constrained by **Article 311**.

- However, this **doctrine of pleasure** does not give the government arbitrary power to dismiss civil servants without just cause or following due process.

3. Fundamental Rights (Part III of the Constitution)

Civil servants, like all citizens of India, are entitled to the protection of their **fundamental rights** under **Part III** of the Constitution. Some of these rights are particularly relevant to civil servants:

- **Right to Equality (Article 14):** Civil servants are entitled to equal treatment before the law and protection against discriminatory practices in their appointment, promotion, and service conditions. The state cannot show favor to one civil servant over another on grounds such as caste, religion, or political affiliation.
- **Right to Freedom of Speech (Article 19):** While civil servants are expected to adhere to strict codes of conduct regarding their official duties, they still enjoy **freedom of speech** to express opinions on matters of public importance, provided that such expression does not conflict with the duties and responsibilities of their position.
- **Right to Life and Personal Liberty (Article 21):** Civil servants cannot be deprived of their **life or personal liberty** except according to procedure established by law. This includes protection from arbitrary arrest or detention.

4. Conditions of Service and Pay (Article 309)

Article 309 provides that Parliament or State legislatures can prescribe conditions of service for civil servants, including their **pay, promotion, and other service conditions**. However, the **conditions must be reasonable** and cannot be arbitrary or unjust. This protection prevents civil servants from being subjected to unfair or discriminatory service conditions.

5. Protection from Retroactive Punishment (Article 20)

Article 20 of the Constitution ensures that no person, including civil servants, shall be **punished** for an offense that was not a crime at the time it was committed (**ex post facto law**). Additionally, no person can be **prosecuted or punished more than once** for the same offense (**double jeopardy**). This provision ensures that civil servants are not subjected to **retroactive penal action** or **punished multiple times** for the same alleged offense.

6. Right to Form Associations (Article 19(1)(c))

Under **Article 19(1)(c)**, civil servants, like other citizens, have the **right to form associations or unions**. This ensures that civil servants can collectively represent their interests and engage in **discussions regarding their conditions of service**. However, they must not engage in activities that undermine the **discipline** and **impartiality** required by their position.

7. Appeal and Review Mechanism

In case of disciplinary actions or grievances, civil servants have access to **administrative review mechanisms**. Civil servants can file **appeals** to higher authorities or the **President of India** if they believe that their rights or service conditions have been violated. The **Union Public Service Commission (UPSC)**, **State Public Service Commissions (SPSCs)**, and other administrative bodies play a role in addressing grievances related to promotions, transfers, and disciplinary matters.

8. Protection from Political Influence: While civil servants are required to maintain political neutrality in their duties, the Constitution provides safeguards against undue political influence in their

appointments and service conditions. Civil servants cannot be coerced into following political dictates, as they are supposed to serve the government of the day impartially and efficiently. This ensures that the civil services maintain their credibility and perform their functions without bias.

9. Judicial Review:

Decisions regarding civil servants' service conditions, including their dismissal or disciplinary action, can be subject to **judicial review** under **Article 32 and Article 226** of the Constitution. The **Supreme Court** and **High Courts** can examine whether such decisions are **arbitrary, illegal, or violate fundamental rights**. Civil servants can approach the courts if they believe that their rights under the Constitution have been violated.

10. Guarantees in the Context of the All India Services

The **All India Services** (IAS, IPS, IFS) are a special category of civil services that operate at both the central and state levels. The Constitution provides specific safeguards for these services:

- **Article 312** provides for the creation of All India Services, ensuring that these services operate independently of the political influences of any particular state or central government.
- **Article 311(2)** ensures that members of the All India Services cannot be dismissed or reduced in rank except through due process, including the opportunity to defend themselves.

Conclusion: The Constitution of India provides a robust framework of **safeguards** to protect civil servants from arbitrary actions and to ensure that they perform their duties with integrity, fairness, and without external influence. The **security of tenure, protection from arbitrary dismissal, right to appeal, fundamental rights, and judicial review** are key elements that safeguard the independence and well-being of civil servants. These protections ensure that civil servants can carry out their duties effectively and impartially, contributing to the proper functioning of the administrative machinery of the state.



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Discuss the evolution of the Basic structure theory in India.

Or

Analyse the evolution and application 'Basic Structure' theory in the context of Constitutional Amendments.

The **Basic Structure Doctrine** is a significant and groundbreaking principle in Indian constitutional law. It originated through judicial interpretations and has evolved into one of the most important doctrines that limits the power of Parliament to amend the Constitution. This doctrine asserts that while Parliament has wide powers to amend the Constitution, it cannot alter its **"basic structure"** or fundamental features. The concept of **Basic Structure** was developed by the judiciary in response to legislative attempts to alter or undermine the foundational principles of the Constitution, such as democracy, rule of law, and judicial independence.

1. Early Constitutional Amendments and the Rise of the Doctrine

The evolution of the Basic Structure Doctrine can be traced back to the early years of India's independence, when the Constitution was relatively new, and there were attempts to amend its provisions. Initially, Parliament's power to amend the Constitution was believed to be unlimited, as outlined in **Article 368**. However, this view started to change as constitutional amendments began to challenge core principles and features of the Constitution.

The First Constitutional Amendment (1951):

The **First Constitutional Amendment Act** was passed to amend the Constitution in 1951. This amendment introduced changes to the right to property, thereby imposing reasonable restrictions. While this was a legitimate exercise of Parliament's power under **Article 368**, the move triggered debates about the extent to which Parliament could amend fundamental rights.

The Second Constitutional Amendment (1952):

This amendment dealt with the representation of States in Parliament. Even though these amendments were not directly related to the Basic Structure doctrine, they began to raise concerns about whether the amending power of Parliament was limitless.

2. Kesavananda Bharati v. State of Kerala (1973): The Landmark Judgment that Formulated the Basic Structure Doctrine

The **Kesavananda Bharati v. State of Kerala (1973)** case is widely regarded as the landmark judgment that gave birth to the Basic Structure Doctrine. The case revolved around the validity of the **24th Amendment (1971)** and the extent of Parliament's power to amend the Constitution, particularly with regard to the **fundamental rights** under **Part III**.

Background:

In the early 1970s, Parliament had passed several constitutional amendments that altered fundamental rights, particularly with respect to property rights. The Kerala government had passed a law to impose restrictions on property rights, which was challenged by **Kesavananda Bharati**, a religious leader, on the grounds that such laws violated his fundamental rights.

The Judgment:

The **Supreme Court**, in a historic 13-judge bench judgment, upheld the power of Parliament to amend the Constitution under **Article 368** but ruled that this power was not **unlimited**. A majority of the judges concluded that while Parliament could amend any part of the Constitution, it could not alter the **"basic structure"** of the Constitution.

The Court, through this ruling, emphasized that the **basic structure** of the Constitution could not be changed even through a constitutional amendment. The concept of **"basic structure"** was left to judicial interpretation, with the Court recognizing certain features that could not be altered, including:

- *Republican and democratic form of government*
- *Secularism*
- *Separation of powers*
- *Federal character of the Constitution*
- *Judicial review*

- *Fundamental rights (to an extent)*

This judgment effectively marked a **shift in Indian constitutional jurisprudence** and limited the powers of Parliament, ensuring that constitutional amendments do not dilute the Constitution's core values.

3. Further Development in Subsequent Cases

After the **Kesavananda Bharati** case, the **Basic Structure Doctrine** continued to evolve through various rulings, and its scope was further expanded by the Supreme Court in subsequent judgments.

Indira Gandhi v. Raj Narain (1975):

The **Indira Gandhi v. Raj Narain** case, decided during the **Emergency (1975-77)**, was another important case that discussed the Basic Structure doctrine. The Court emphasized that the democratic structure of the Constitution was part of its basic structure, and that even laws passed under **emergency powers** could not violate the core principles of democracy.

Minerva Mills v. Union of India (1980):

In this case, the Supreme Court reinforced the **Kesavananda Bharati** ruling, stating that **fundamental rights** were an essential part of the Constitution's basic structure. The Court struck down parts of the **42nd Amendment Act (1976)** that attempted to curtail the balance between fundamental rights and Directive Principles of State Policy, affirming that the **basic structure** could not be amended to destroy this balance.

Waman Rao v. Union of India (1981):

This case reaffirmed the **Kesavananda Bharati** judgment and clarified that any amendment to the Constitution which **violates the basic structure** would be invalid. The Court held that the Basic Structure doctrine applies not only to amendments made after the **Kesavananda Bharati** judgment but also to earlier amendments.

Bennett Coleman & Co. v. Union of India (1973):

In the context of **freedom of speech** under **Article 19(1)(a)**, the Supreme Court held that certain provisions of the Constitution, such as **freedom of speech and expression**, are part of the **basic structure** and cannot be abridged by constitutional amendments.

4. Importance and Impact of the Basic Structure Doctrine

The **Basic Structure Doctrine** is crucial in maintaining the **constitutional integrity** of India. It serves as a **check on the amending power** of Parliament, preventing any government or legislature from undermining the Constitution's fundamental principles.

- **Ensuring Balance:** The doctrine ensures that the Constitution cannot be altered in ways that might disrupt the delicate balance between its various provisions, particularly between fundamental rights, governance structures, and directive principles.
- **Preventing Authoritarianism:** By protecting the **basic structure**, the doctrine also safeguards the Constitution from potential attempts by any government to introduce **authoritarian amendments** that may concentrate power or violate democracy.

- **Judicial Independence:** The doctrine has strengthened the role of the judiciary as the guardian of the Constitution, empowering the courts to ensure that no amendment violates the core features of the Constitution.

Conclusion: The evolution of the **Basic Structure Doctrine** represents a unique feature of Indian constitutional law. It was born out of the **Kesavananda Bharati** case in 1973 and has been further developed in subsequent judgments. The doctrine serves to protect the **core values** of the Indian Constitution, ensuring that the Constitution's fundamental features cannot be altered, even by a **constitutional amendment**. This has played a critical role in maintaining the **democratic fabric** of India and ensuring that the Constitution remains relevant and effective in protecting the rights and freedoms of its citizens.

Explain the Pardoning powers of the President and the Governor under the Constitution of India.

The **pardoning powers** vested in the **President of India** and the **Governor of States** are significant constitutional provisions that provide a mechanism for mercy in the judicial process. These powers, while ensuring justice is served, allow for leniency in certain cases where punishment may be excessive or where other humanitarian considerations, such as rehabilitation, are taken into account. The powers to grant pardons, reprieves, respites, or remissions serve as a safeguard against the miscarriage of justice.

The **pardon** powers are outlined in **Article 72** for the President and **Article 161** for the Governor. These articles grant them the authority to extend mercy in specific cases, usually upon the recommendation of the relevant authorities, and are considered a part of the **executive function** rather than the judicial function.

1. Pardoning Power of the President of India (Article 72)

Article 72 of the Indian Constitution deals with the President's power to grant pardons, reprieves, respites, or remissions of punishment, or to suspend, remit, or commute the sentence of any person convicted of an offense.

Scope of Pardoning Power under Article 72:

The President has the power to:

- **Grant a pardon:** This is the most extreme form of clemency, which forgives the punishment imposed by the court and may also remove the conviction.
- **Grant a reprieve:** This refers to the temporary suspension of the execution of a sentence, especially in the case of a death sentence, to allow time for re-evaluation or the consideration of a pardon.
- **Grant a respite:** This refers to the reduction of the punishment temporarily, usually on grounds of special circumstances (e.g., the health of the convict).
- **Grant a remission:** This refers to reducing the severity of the punishment without changing the character of the sentence (e.g., reducing the number of years in prison).
- **Commuting a sentence:** The power to commute involves substituting a less severe form of punishment for a more severe one, such as changing the death sentence to life imprisonment.

Circumstances in Which Pardoning Powers Can Be Used:

- The President's power is often exercised in cases of **death sentences** or cases where the punishment is disproportionate or unjust.
- **Article 72** applies to persons convicted under both **Central** and **State laws**.

- The President can use the pardoning power **even after conviction** by the courts, and the decision is entirely within the discretion of the President. However, this is often exercised on the advice of the **Council of Ministers**.

Types of Cases in Which Pardoning Powers May Be Used:

- **Death Sentence:** The President has the power to grant pardon in cases where the death penalty has been imposed, as seen in several instances where the President has commuted the death sentence to life imprisonment.
- **Federal Cases:** The President's power is exercised with respect to **Central law** offenses or in cases tried by the **military court**.
- **Judicial Review:** While the President has vast powers, the exercise of these powers is **not subject to judicial review**. However, it is exercised based on the advice of the **Government** (Council of Ministers).

Case Law on Pardoning Power of the President:

- **Maru Ram v. Union of India (1981):** The Supreme Court upheld the President's discretion to grant clemency in cases involving death sentences. It clarified that the President has to act in accordance with the **advice of the government** but can still use their discretion to pardon.
- **Epuru Sudhakar v. Govt. of Andhra Pradesh (2006):** The Court laid down that **judicial review** is not available to question the President's exercise of pardoning powers unless the exercise is **malafide** or discriminatory.

2. Pardoning Power of the Governor of a State (Article 161)

Article 161 of the Indian Constitution grants the Governor of each State similar powers as the President, but with a few important distinctions. The Governor's powers are exercisable only with respect to offenses that are under **State law** or within the jurisdiction of the State.

Scope of Pardoning Power under Article 161:

- **Granting a pardon:** Just like the President, the Governor can grant a full pardon and remove both the punishment and the conviction.
- **Granting a reprieve:** This refers to a temporary stay of the execution of the sentence, similar to the President's power.
- **Granting a respite:** This may involve reducing the severity of the punishment temporarily, such as by reducing the length of a prison sentence.
- **Granting remission:** This involves reducing the sentence, such as shortening the duration of imprisonment without changing the nature of the offense.
- **Commuting the sentence:** The Governor has the authority to change the nature of the punishment, for instance, reducing a life sentence to a shorter term of imprisonment.

Key Features of the Governor's Pardoning Power:

- **State Law Jurisdiction:** The Governor can only exercise these powers for offenses committed under **State laws** or offenses within the purview of **State jurisdiction**.
- **Discretionary Power:** Like the President, the Governor has the **discretionary power** to exercise clemency, but typically, it is exercised on the advice of the State government.
- **Not Available for Certain Offenses:** The Governor cannot use the pardoning powers in cases of **conviction under military law** (which falls under the jurisdiction of the President) or for offenses related to **Central laws**.

Cases on Governor's Pardoning Power:

- **Shankar Kisanrao v. State of Maharashtra (1991):** The Supreme Court ruled that the Governor's pardoning powers could not be used arbitrarily, and the exercise of power had to be done with **reasonable justification**.

3. Difference Between the Pardoning Powers of the President and the Governor

While both the **President** and the **Governor** have similar clemency powers, there are some important distinctions:

- **Scope of Powers:** The President's pardoning power is applicable to offenses under both **Central and State laws**, while the Governor's power is restricted to offenses under **State laws**.
- **Jurisdiction:** The President can pardon **military offenses**, but the Governor cannot.
- **Appointing Authority:** The President's pardoning power is exercised at the **national level**, while the Governor's powers are confined to the **respective State**.

4. Pardoning Powers and the Principle of Rule of Law

The pardoning powers of the President and the Governor are guided by the principle of **mercy** in the criminal justice system, allowing for leniency, justice, and rehabilitation. However, these powers must be exercised judiciously, taking into account public interest, the severity of the offense, and the reform potential of the convict. The exercise of this power, while broad, should be balanced by **due process**, and should not undermine the **rule of law**.

Conclusion: The pardoning powers of the **President** and the **Governor** under **Articles 72 and 161** of the Constitution of India are significant constitutional mechanisms that provide an opportunity for clemency in cases of judicial punishment. While both the President and the Governor have similar powers to grant pardons, reprieves, and commutations, the extent of their jurisdiction and the types of cases in which they can exercise these powers differ. These powers are essential for the **administration of justice** and the **upholding of mercy** within the legal system, but they must be used with great care to maintain public faith in the rule of law and the judicial system.

"The Constitution of India makes provisions in order to mitigate the rigidity that arises in the division of administrative powers between the Centre and the State"

The Constitution of India establishes a **federal system** of governance, with a clear division of powers between the **Centre** and the **States**. This division of administrative powers is crucial for maintaining a balance between a strong central authority and autonomous state administrations. However, unlike many federal systems that have a rigid distribution of powers, the Indian Constitution incorporates certain provisions designed to mitigate the rigidity of this division, allowing for **flexibility** and **adaptability** in the functioning of the Union-State relationship.

1. Nature of Indian Federalism: A Quasi-Federal System

The Indian Constitution is often described as a **"quasi-federal"** system, where the balance between the central government (the Union) and the state governments is not equal but tilted in favor of the Union. The Constitution incorporates federal principles while allowing flexibility in the functioning of the system, particularly through provisions that can adjust to changing circumstances.

2. The Union and State List (Seventh Schedule)

The **Seventh Schedule** of the Indian Constitution provides for a detailed division of administrative powers and responsibilities between the Centre and the States under three distinct lists:

- **Union List** (List I): Contains subjects on which only the **Central government** can legislate. These subjects typically concern national issues, such as defense, foreign affairs, and interstate trade.
- **State List** (List II): Contains subjects on which only the **State governments** can legislate. These subjects typically relate to local matters like police, agriculture, and health.
- **Concurrent List** (List III): Contains subjects on which both the **Centre** and the **States** can legislate. These include areas like criminal law, marriage and divorce, bankruptcy, and education.

This division, while detailed, does not create a **rigid separation** of powers, as it allows certain mechanisms to ensure smooth coordination between the Centre and the States.

3. Flexibility in the Division of Powers

While the Constitution provides a broad framework for the division of powers, it incorporates provisions that mitigate the rigidity of this structure and allow for the **flexibility** necessary for a **dynamic federal system**. The following provisions enable this adaptability:

a) Residuary Powers (Article 248):

Article 248 grants the **Union Parliament** the power to legislate on any matter that is not specifically mentioned in the Union, State, or Concurrent List. This provision allows the **Centre** to legislate on matters of national importance that may arise unexpectedly or that were not anticipated at the time of the Constitution's framing. This mitigates the rigidity in the federal structure by providing the **Centre** with a mechanism to respond to new challenges.

- **Example:** The Parliament has exercised its residuary powers in the past to legislate on subjects like cybercrimes or issues related to technology, which were not foreseen at the time of the Constitution's framing.

b) Union's Power to Override State Laws (Article 254):

Article 254 provides that in the event of a **conflict** between a **Central law** and a **State law** on a subject in the Concurrent List, the **Central law** will prevail. However, if the **State legislature** enacts a law that is inconsistent with the **Central law**, it will be deemed void unless the law is reserved for the President's assent, and the President gives assent to it.

- This provision allows for flexibility in cases where the Centre and State enact laws on the same subject but is designed to ensure that the **Central government's policy objectives** can be implemented effectively, even in areas of concurrent jurisdiction.

c) Presidential Assent (Article 254):

The President's power to grant assent to State laws is another important aspect that mitigates the rigidity between the Centre and the States. Article 254 (2) provides that if a **State law** conflicts with a **Central law** in the Concurrent List, the State law can still be enforced if it receives **President's assent**.

- This provision ensures that the President can play a role in balancing Centre-State conflicts, enabling the central government to override state laws that may not align with national interests, while also providing a mechanism for states to have laws passed with the President's approval.

d) Proclamation of Emergency (Article 352-360):

The **proclamation of an emergency** can significantly alter the division of powers between the Centre and the States. During a **national emergency** under Article 352, the **Central government** can assume full control over matters in the State List, thereby suspending the regular division of powers.

- **Example:** During the **Emergency (1975-77)**, the Centre assumed greater control over the States and could legislate on matters in the State List. This extraordinary power allows the federal system to respond to grave national threats without the usual constraints.

e) Inter-State Council (Article 263):

Article 263 of the Constitution allows the **President** to establish an **Inter-State Council** to promote coordination and resolve disputes between the Centre and the States. This body serves as a platform to discuss important issues and ensure smooth functioning of the federal system.

- The Inter-State Council is tasked with **advising the President** on matters of national interest that may affect the States, fostering cooperation and preventing unnecessary conflicts between the Union and the States.

f) Cooperative Federalism and Financial Relations (Article 280):

The **Finance Commission** under Article 280 is established to recommend the distribution of financial resources between the Centre and the States. The **Finance Commission** plays a vital role in mitigating the rigidity between the Centre and the States by ensuring that the financial needs of the States are met, thereby promoting **cooperative federalism**.

- **Example:** The Finance Commission recommends grants and resources to the States, ensuring that the States have sufficient funds for their administration and development, thus fostering a spirit of cooperation.

Conclusion: The Constitution of India, while establishing a clear division of powers between the **Centre** and the **States**, provides several provisions to **mitigate the rigidity** inherent in a federal structure. The system is designed to allow **flexibility** in dealing with unforeseen circumstances, ensuring that both the Union and the States can operate effectively while maintaining national unity and integrity.

Through mechanisms like **residuary powers**, **Presidential assent**, **emergency powers**, and the establishment of institutions like the **Inter-State Council**, the Constitution provides a framework for **cooperative federalism** that balances the needs of both levels of government. This ensures that the federal structure is not only dynamic but also adaptable to the changing needs of the country, allowing India to effectively navigate the challenges of governance in a diverse and evolving society.



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The Constitution of India is federal. in times of peace and unitary in times of emergency – Comment.

The Indian Constitution is a unique document that blends both **federal** and **unitary** features. It establishes a **federal system** of government in normal times, where power is shared between the **Centre** and the **States**. However, during periods of national crisis or emergency, the Constitution assumes a **unitary** character, giving greater power to the **Centre** to deal with the situation effectively.

This hybrid nature of the Indian Constitution has been acknowledged by scholars and judges as being "**federal in normal times and unitary in times of emergency**". This flexibility allows the Constitution to maintain the federal framework in times of peace while providing for a strong central authority during times of national crises, ensuring stability, unity, and efficient governance.

1. Federal Nature of the Indian Constitution

A **federal** system of government generally refers to a political structure in which power is divided between a central authority (the **Union government**) and **state governments**. This division is intended to ensure a balance between national governance and regional autonomy.

India's Constitution reflects the federal structure through various provisions:

a) Division of Powers (Seventh Schedule):

- The **Seventh Schedule** divides the subjects of legislation into three lists:
 - **Union List (List I)**: Subjects on which only the **Union government** can legislate, such as defense, foreign affairs, and nuclear energy.
 - **State List (List II)**: Subjects on which only the **State governments** can legislate, such as police, public health, and agriculture.
 - **Concurrent List (List III)**: Subjects on which both the **Centre** and the **States** can legislate, such as criminal law, marriage and divorce, and education.

This division ensures that the **States** have their own sphere of legislative competence, while the **Centre** deals with matters of national concern.

b) Independent Judiciary:

The Indian judiciary, under **Articles 124-147**, is independent and acts as the final arbiter in resolving disputes between the Centre and the States. The judiciary has the power of **judicial review** to ensure that both levels of government operate within their constitutional powers.

c) Bicameral Legislature:

The Indian Parliament consists of two houses – the **Lok Sabha** (House of the People) and the **Rajya Sabha** (Council of States). The **Rajya Sabha** represents the **States**, and any legislation affecting the States must be passed by the Rajya Sabha, ensuring their participation in the legislative process.

d) Finance Commission (Article 280):

The **Finance Commission** ensures a fair and equitable distribution of financial resources between the Centre and the States. It recommends the allocation of taxes and other resources, which is a key feature of a federal structure, where both levels of government share revenue.

e) Dual Polity:

India has a dual polity, i.e., a Central Government and State Governments, each with their own executives, legislatures, and judiciaries. This system allows the states to maintain their autonomy in various matters while participating in national governance.

2. Unitary Nature of the Indian Constitution in Times of Emergency

While the Constitution is predominantly **federal**, it also provides for a **unitary** system in exceptional circumstances, particularly during emergencies, to ensure that the government can act decisively and maintain national unity and integrity.

a) Proclamation of Emergency (Articles 352-360):

The **President of India** has the power to declare an emergency under **Article 352** in cases of war, external aggression, or armed rebellion. During a national emergency, the Constitution's **unitary** features come to the fore. Key provisions of the emergency regime include:

- **Centralization of Power:** During an emergency, the Centre assumes greater control over all matters in the State List. The Central government can legislate on any matter that was originally under the State's jurisdiction.
- **Suspension of Fundamental Rights:** The President can also suspend certain Fundamental Rights under Article 359. This curtails the autonomy of individuals, giving more power to the government to act swiftly in the face of a national crisis.
- **Extended Executive Powers:** The President can issue ordinances under Article 123 or can even direct the Governor of States to act in a manner that aligns with national interests, undermining the usual federal principles of local autonomy.
- **Central Control over Financial Resources:** During an emergency, the Centre can control the financial administration of the States. The States may lose control over their financial resources, and the Centre can assume powers to allocate resources as needed to address the crisis.

b) State Emergency (Article 356):

A **President's Rule** (under Article 356) may be imposed in a state if the President believes that the governance in the state cannot be carried out according to the provisions of the Constitution. This provision centralizes authority in the hands of the Union government. The **State Legislature** is either dissolved or suspended, and the **Governor** administers the state on behalf of the President.

c) Legislative Powers of the Parliament:

Under Article 249, during an emergency, the Parliament is empowered to legislate on matters in the State List if it is necessary to maintain national unity or address an emergency situation. This represents a shift towards centralization, overriding the typical division of powers in normal times.

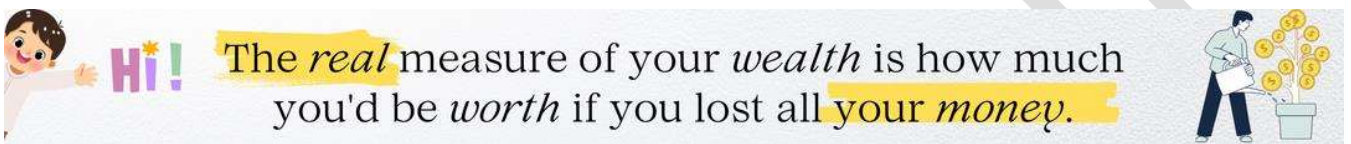
3. Reasons for the Unit-ary Features During Emergencies

The unitary nature of the Indian Constitution during emergencies ensures that the Centre has the necessary powers to deal with extraordinary situations and maintain national security, unity, and integrity. The framers of the Constitution recognized that in times of war, external aggression, or internal disturbances, it may be impossible for a divided or decentralized government to act effectively. Therefore, the Constitution provides for the concentration of powers in the Centre to safeguard the nation.

- **Emergency Powers:** These provisions allow the government to respond swiftly and decisively to **national crises**, avoiding delays that might occur in a strictly federal system.

- **Preventing Fragmentation:** During times of unrest or emergency, the unitary character prevents regional disruptions or separations, thus ensuring that the **unity of India** is preserved at all costs.
- **Central Leadership:** The **Central government**, with its better resources, military strength, and coordinated policy mechanisms, is better equipped to address emergencies, whether internal or external.

Conclusion: In times of peace, India functions as a **federal** country with a division of powers between the Centre and the States. This federal structure ensures a system of checks and balances, regional autonomy, and shared governance. However, the Constitution also incorporates certain **unitary features** that come into play during **emergencies**. These features allow the **Centre** to centralize authority and make decisions efficiently in times of national crisis, ensuring **national unity** and the **integrity of the state**. The Indian Constitution's ability to oscillate between federalism in normal times and unitary governance in emergencies is one of its most distinguishing characteristics, allowing it to be both adaptable and robust in the face of challenges.



Explain the relation between the President and the Union Council Ministers.

The President of India is the constitutional head of state, but in practice, the office of the Prime Minister and the Union Council of Ministers holds real executive power. The President, while theoretically vested with all executive powers, acts as a ceremonial figurehead, and the day-to-day governance of the country is carried out by the Union Council of Ministers, headed by the Prime Minister. The relationship between the President and the Union Council of Ministers is thus defined by the Constitution of India, specifically under Article 74, and is reflective of the parliamentary system of government adopted by India.

1. Constitutional Basis of the Relationship

The relationship between the President and the Union Council of Ministers is outlined primarily under **Article 74** of the Constitution. According to this Article:

- **Article 74(1):** "There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions."
- **Article 74(2):** "The President shall act in accordance with the advice of the Council of Ministers, except in cases where the Constitution provides otherwise."

This relationship is thus rooted in the **doctrine of collective responsibility** and the principle of the **cabinet system of government**.

2. The President's Role: A Constitutional Head of State

The **President of India** is the formal head of the **executive**, and as such, many executive actions are taken in the name of the President. However, the real power and responsibility lie with the **Union Council of Ministers**. The President's powers are largely **ceremonial**, with actual decision-making authority vested in the Council of Ministers.

The key duties and functions of the President in relation to the Union Council of Ministers include:

a) Appointment of the Prime Minister and Council of Ministers:

- The President appoints the **Prime Minister** of India, who is the leader of the largest party or coalition in the **Lok Sabha** (Lower House of Parliament).
- The President also appoints the members of the **Union Council of Ministers**, which includes **Cabinet Ministers**, **Ministers of State**, and **Deputy Ministers**, based on the advice of the Prime Minister.

b) Formal Approval of Executive Decisions:

- All executive actions are taken in the name of the President, but they are carried out based on the advice of the **Prime Minister and the Union Council of Ministers**. The **President** is required to give **formal assent** to laws passed by Parliament, sign official documents, and make appointments.

c) Exercise of Powers on the Advice of the Council:

- The President's powers, whether in matters of appointments, declarations, or ordinances, are exercised on the **advice** of the **Council of Ministers**, as mandated by Article 74. The President cannot act independently or contrary to the advice given by the Council, except in cases where the Constitution specifically requires independent action (e.g., discretion in **dissolving the Lok Sabha**, **appointing the Prime Minister** in certain situations).

3. The Role of the Prime Minister and the Council of Ministers

While the President formally holds executive authority, in practice, it is the **Prime Minister** and the **Union Council of Ministers** who exercise the real powers of governance.

a) Collective Responsibility:

- The **Union Council of Ministers** is collectively responsible to the **Lok Sabha** (House of the People). This means that if the Lok Sabha passes a vote of no confidence against the Council of Ministers, the entire Council, including the Prime Minister, must resign.
- The **President** must act in accordance with the advice of the Council of Ministers, and the principle of **collective responsibility** ensures that all decisions made by the Council of Ministers are collectively binding.

b) Advice to the President:

- The **Union Council of Ministers**, led by the **Prime Minister**, advises the President on all matters of governance. The advice provided by the Council is binding on the President under Article 74. For example, the President must act on the advice regarding the promulgation of **ordinances**, **dissolution of the Lok Sabha**, **appointments**, and the **reorganization of states**.

c) The Prime Minister's Role:

- The **Prime Minister** is the leader of the Union Council of Ministers and is the principal advisor to the President. As per Article 78 of the Constitution, the Prime Minister has the responsibility to keep the President informed about all decisions of the Council and matters of **administrative policy**.
- The Prime Minister's advice holds significant weight, as the President is bound to follow it on almost all matters, unless the Constitution expressly allows the President to act otherwise. The **Prime Minister** represents the government and acts as a key figure in formulating the **policy framework** of the government.

4. Limits of the President's Discretionary Power

While the President's role is largely ceremonial and they are bound to act on the advice of the **Union Council of Ministers**, there are certain limited occasions where the **President may exercise discretion**. These include:

a) Appointment of the Prime Minister:

- In the case of a **hung parliament**, where no party has a clear majority, the President has the discretion to appoint a **Prime Minister** who is likely to command the confidence of the **Lok Sabha**. This has been seen in the case of **Nehru** in 1947 and **V.P. Singh** in 1989.

b) Dissolution of the Lok Sabha: The **President** has the discretion to dissolve the **Lok Sabha** upon the advice of the **Prime Minister**. However, in the case of **non-advice** or a **disputed government**, the President can refuse to dissolve the House until the **Prime Minister** proves their majority.

c) Decision on the Appointment of Governors: The **President** also has discretionary power in appointing **Governors** for states, although they usually act on the advice of the Union Council of Ministers.

d) In cases of Constitutional Crisis:

- In extraordinary circumstances, such as a **coalition government breaking down**, or when a **vote of no confidence** is moved in the **Lok Sabha**, the **President** may act at their discretion in resolving the political crisis, although they generally seek the advice of the Union Council of Ministers.

Conclusion: The relationship between the **President of India** and the **Union Council of Ministers** is primarily based on the principle of **parliamentary democracy**, where executive authority rests with the **Council of Ministers** headed by the **Prime Minister**, but is formally exercised in the name of the **President**. The **President** acts on the **advice** of the Council, and the **Prime Minister**, as head of the Council, serves as the principal advisor to the President. While the President's role is largely ceremonial, they retain certain discretionary powers in exceptional situations, but these powers are rarely exercised. The overall structure ensures that the government operates smoothly while maintaining the constitutional balance between the **Head of State** and the **Executive**.



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Make a critical analysis of the Supreme Court Judgment in "Supreme Court Advocates on Record Association V. Union of India" (2015, SC) in the context of challenge to the NJAC Act.

In the landmark judgment of **Supreme Court Advocates-on-Record Association v. Union of India** (2015), the **Supreme Court** declared the **National Judicial Appointments Commission Act, 2014 (NJAC Act)** as **unconstitutional** and void, striking down the provisions of the Act and the 99th Constitutional Amendment which sought to replace the existing system of judicial appointments with the

NJAC. The judgment has significant implications on the relationship between the judiciary and the executive, particularly in the context of judicial appointments in India.

1. Background of the Case

The **National Judicial Appointments Commission (NJAC)** was established through the **99th Amendment to the Constitution** of India and the **NJAC Act, 2014**. The aim of the NJAC was to reform the process of judicial appointments, especially to the **Supreme Court** and **High Courts**, by replacing the **collegium system** that had been in place since the **second judges case** (1993). The NJAC proposed a six-member body composed of the **Chief Justice of India (CJI)**, two senior-most judges of the Supreme Court, the **Law Minister**, and two **eminent persons** chosen by the Prime Minister, the CJI, and the Leader of the Opposition.

The **collegium system**, where a group of senior judges selected their colleagues without the involvement of the executive, had been criticized for lack of transparency, accountability, and possible favoritism. The **NJAC** was introduced as a reform to make the selection process more inclusive and transparent.

However, the **Supreme Court Advocates-on-Record Association** challenged the NJAC Act, arguing that it violated the **independence of the judiciary**, a basic feature of the **Indian Constitution**, and that it undermined the primacy of the judiciary in the matter of judicial appointments.

2. Majority Judgment of the Supreme Court (2015)

In a **4:1 majority decision**, the Supreme Court struck down the **NJAC Act** and the **99th Constitutional Amendment** as unconstitutional. The judgment was delivered by **Justice Khehar**, with a strong dissent from **Justice Chelameswar**.

Key Highlights of the Majority Judgment:

- **Violation of Judicial Independence:** The majority held that the **NJAC** infringed on the **independence of the judiciary**, which is a **basic feature** of the Constitution. The Court emphasized that the power of judicial appointments must remain primarily with the judiciary to preserve its independence from political or executive influence. It was contended that the inclusion of **two eminent persons** and the presence of **executive members** (the **Law Minister**) in the NJAC gave excessive control to the executive, undermining the autonomy of the judiciary.
- **Constitutional Balance of Power:** The judgment recognized that while the **executive** and **judiciary** must collaborate in judicial appointments, the **primacy of the judiciary** must be maintained in a system that balances the independence of the judiciary and the accountability of its members. The **collegium system**, though imperfect, had been designed with this balance in mind and had evolved over the years to ensure the judiciary's independence.
- **Doctrine of Basic Structure:** The **doctrine of basic structure** was central to the Court's reasoning. The majority reaffirmed the view that **judicial independence** is a basic structure of the Constitution, which cannot be altered or diluted by any **amendment** to the Constitution. The Court held that the 99th Amendment, which sought to give the **executive** a greater role in judicial appointments, violated this principle and was thus **unconstitutional**.
- **The Role of the Executive:** While agreeing that the executive should have some role in judicial appointments, the Court maintained that any such role should not infringe on the **judicial independence** guaranteed under the Constitution. The **collegium system** thus remained as the mechanism for the appointment and transfer of judges.
- **Reaffirmation of the Collegium System:** Despite criticisms and calls for reform, the Court upheld the **collegium system**, interpreting it as an integral part of the Constitution. The judgment

stressed that while there were flaws in the system, the solution lay in reforms within the judiciary, not in compromising its independence.

3. The Dissenting Opinion of Justice Chelameswar

Justice Chelameswar dissented with the majority opinion and expressed concerns over the continued existence of the **collegium system**. He highlighted several issues, such as:

- **Lack of Transparency and Accountability:** Justice Chelameswar pointed out that the **collegium system** had been criticized for its lack of **transparency** and **accountability**. He argued that the **executive role** in the judicial appointments process was necessary to ensure checks and balances and to prevent the system from being monopolized by the judiciary.
- **Support for the NJAC:** Justice Chelameswar expressed his belief that the **NJAC** would have been a more balanced and transparent approach to judicial appointments, with the participation of **elected representatives** and other **eminent persons**. He opined that it would help reduce the influence of the judiciary in its own appointments.
- **Not a Violation of Judicial Independence:** In his view, the **NJAC** would not have undermined judicial independence but instead **enhance transparency** and **public confidence** in the judicial system.

4. Analysis of the Judgment

1. **Protection of Judicial Independence:** The judgment underscores the paramount importance of **judicial independence**, which is critical to maintaining the rule of law and ensuring that judges are free from political pressures.
2. **Constitutional Fidelity:** The judgment reaffirms the **basic structure doctrine**, protecting the core principles of the Constitution, and prevents any alteration that could affect the independence of the judiciary.
3. **Judicial Oversight:** The decision preserves the **judicial supremacy** in judicial appointments, which is crucial for maintaining the separation of powers and ensuring that the judiciary functions independently of political influence.

Criticism and Challenges:

1. **Imperfect Collegium System:** The **collegium system** has faced criticism over the years for its **lack of transparency**, potential **nepotism**, and the absence of checks and balances. Despite these issues, the Court has upheld it without addressing the practical concerns of reform.
2. **Need for Reform:** The judgment, while protecting judicial independence, fails to provide a clear solution to the flaws inherent in the **collegium system**. Critics argue that **reforms within the judiciary**—such as enhancing transparency and accountability—are necessary, but these were not sufficiently addressed in the judgment.
3. **Potential Executive Overreach:** The **dissenting opinion** raises an important point about the **excessive concentration of power** in the judiciary under the collegium system. A more balanced approach, involving the **executive**, could help reduce the risk of judicial overreach.
4. **Future Possibilities:** While the **NJAC Act** was struck down, the Court left open the possibility for **reforms** in the judicial appointments process, and the **executive** could still play a role, provided it does not infringe on the judiciary's independence.

Conclusion: The judgment in Supreme Court Advocates-on-Record Association v. Union of India (2015) represents a significant moment in the debate over judicial appointments in India. It reflects the judiciary's commitment to safeguarding its independence but also leaves unresolved questions about the transparency and accountability of the collegium system. The judgment underscores the importance of maintaining the

delicate balance between the judiciary's autonomy and the executive's role in governance. However, the decision also highlights the need for ongoing reform to address the imperfections in the existing system, ensuring that the judicial appointments process is both independent and transparent.

Explain the recent trends in relation to the tortious liability of the State.

The concept of **tortious liability of the State** has evolved significantly over the years, reflecting changes in the relationship between the State and individuals. Traditionally, the **State** enjoyed sovereign immunity, meaning it was not liable for torts committed by its employees or organs, based on the premise that the State could not be sued in its own courts. However, over time, the **Indian judiciary** has recognized the need to hold the State accountable for its actions and omissions that cause harm to individuals, leading to a shift in this approach.

The tortious liability of the State, in contemporary India, is now an important aspect of public law, influenced by constitutional principles, judicial precedents, and international law. This shift reflects a more modern understanding of governance, where the State's actions are subject to legal scrutiny and accountability.

1. Evolution of the Doctrine of Sovereign Immunity

Historically, under **English law**, the principle of **sovereign immunity** (derived from the **Maxim "The King can do no wrong"**) governed the State's immunity from tortious liability. The **Indian law** initially followed this principle, where the **State** was immune from suit in tort for acts done in its sovereign capacity. However, this doctrine has been modified over time due to the increasing demand for accountability and justice, especially in cases where citizens have been harmed due to the actions of the **State** or its instrumentalities.

2. The Governmental vs. Non-Governmental Functions Dichotomy

The question of whether the **State** is liable in tort depends on whether the act in question was performed as part of its **sovereign functions** or in a **non-sovereign capacity**.

- **Sovereign Functions:** Acts performed by the State in its sovereign capacity (such as **defense, administration of justice, and maintenance of law and order**) were traditionally considered immune from liability.
- **Non-Sovereign Functions:** The State's actions in a **commercial or private capacity**, such as **providing services, entering into contracts**, or engaging in activities that can be carried out by private individuals, are **justiciable**, and the State may be liable for any torts committed in the course of such actions.

3. Landmark Judicial Precedents

The Indian judiciary has played a pivotal role in developing the tortious liability of the State through **judicial activism**. A few landmark judgments have been instrumental in shaping the current understanding:

a) **Kasturi Lal v. State of Uttar Pradesh (1965)**

In this case, the Supreme Court held that the **State** could not be held liable for the actions of its **police officers** in the course of their duties unless the act was performed outside the scope of their official duties. The case reinforced the **sovereign immunity doctrine**, stating that acts done by the State in a **sovereign or governmental** capacity would not attract tortious liability.

b) Chairman, Railway Board v. Chandrima Das (2000)

In this landmark case, the Supreme Court held that the **State** could be held liable for tortious acts of its employees or agents, even in cases of **rape** committed by the police in the course of their duties. The Court ruled that the **State** could not be absolved of responsibility simply because the act was committed by an individual in the course of official duties, thereby recognizing that **State accountability** extends to **human rights violations** and **constitutional torts**.

4. Public Liability and Negligence

Another significant trend is the **State's liability in negligence**, particularly when it engages in activities that affect public welfare. For example, the **State's liability for accidents** caused by poorly maintained public infrastructure, such as roads, railways, and buildings, has been increasingly recognized by the courts. The **State**, like any other entity, has a duty of care to ensure the safety of its citizens when they engage with public services or infrastructure.

a) Tortious Liability for Negligence:

In cases where the **State** acts negligently in the performance of its functions, such as in the **maintenance of public roads, railway safety, or health services**, the courts have held the **State liable** for torts committed as a result of such negligence. In **State of Rajasthan v. Vidhyawati (1962)**, the Supreme Court held the **State** liable for **negligence** when its vehicle ran over a person.

5. Governmental Accountability and Accountability Mechanisms

The recent trends also reflect a growing emphasis on **accountability mechanisms** for the **State** and its agencies. Courts have consistently held that the **State** cannot use the defense of **sovereign immunity** to shield itself from tort liability when it fails in its duty to protect the **rights** and **interests** of its citizens. The **Indian Government** has also initiated steps to establish mechanisms that can address grievances arising from administrative actions, such as **Ombudsman offices** and **public grievance redressal systems**.

Conclusion: In conclusion, the **tortious liability of the State** in India has evolved significantly, moving from the traditional doctrine of **sovereign immunity** to a more modern understanding that emphasizes **accountability, transparency, and protection of individual rights**. The judiciary has been proactive in expanding the State's liability, especially in cases involving **violations of fundamental rights** and **human rights violations**. Despite the challenges in balancing **sovereign functions** with the need for **governmental accountability**, the trend indicates that the **State** will be increasingly held liable for its actions, particularly when it causes harm to individuals or breaches constitutional obligations. The growing recognition of **constitutional torts, negligence, and the duty of care** signifies an ongoing transformation in the approach to State liability in India.

What are parliamentary privileges? Is it subject to judicial review?

The concept of **parliamentary privileges** refers to certain special rights, immunities, and protections granted to **Members of Parliament (MPs)** and **State Legislators** to ensure the effective functioning of legislative bodies. These privileges are essential to preserve the **independence of the legislature** and protect its functioning from interference by external entities, such as the executive or judiciary. However, the scope and nature of these privileges have often been a subject of debate, especially in the context of judicial review.

1. Legal Framework and Definition of Parliamentary Privileges

Parliamentary privileges are mentioned in **Article 105** of the **Constitution of India** for the Parliament and **Article 194** for the **State Legislatures**. Both these articles grant certain **special powers** to the Members of Parliament and State Legislative Assemblies, enabling them to carry out their legislative functions without fear of external interference.

Article 105 of the Constitution (Parliamentary Privileges):

- Article 105(1) grants members of Parliament **freedom of speech** in Parliament, similar to the immunity enjoyed by members of the House of Commons in the United Kingdom. The members cannot be **prosecuted or sued** for anything said or done in the course of their duties in Parliament.
- Article 105(2) empowers the Parliament to **regulate its own proceedings**, discipline its members, and make rules regarding the conduct of its business.
- Article 105(3) extends the **privilege of immunity** from legal proceedings concerning **anything said or done in Parliament**.

Article 194 of the Constitution (State Legislative Privileges):

- This article grants similar privileges to the **State Legislators** as those granted to the Members of Parliament under Article 105.
- Members of the State Legislatures enjoy **immunity** for statements made in the course of their legislative duties, and the respective Assemblies have the power to **regulate their own procedures** and **discipline members**.

2. Nature and Scope of Parliamentary Privileges

The privileges conferred on **Members of Parliament** and **Legislators** serve several purposes:

a) Freedom of Speech in Parliament

- One of the most important privileges is the **freedom of speech** enjoyed by legislators within the legislative chambers. This privilege ensures that **members can speak freely** during debates without the fear of legal consequences such as defamation or contempt of court.

b) Immunity from Judicial Interference

- Members of Parliament and State Legislatures enjoy **immunity from legal action** for anything said or done in the course of their official duties in the legislature. This immunity is intended to ensure that **members can perform their legislative functions without fear** of being sued or prosecuted.

c) Power to Regulate Internal Procedures

- The privilege includes the power of each House to **regulate its own internal procedures**, such as discipline of members, the **format of debates**, and the **allocation of time for discussions**. This ensures that the legislature can operate independently of the executive and judiciary.

d) Right to Punish Contempt

- The legislature has the **right to punish for contempt** of the House. This includes individuals or entities that obstruct or disrespect the functioning of the House or its members. The legislature can impose penalties for such acts, which can include **imprisonment or fines**.

3. Judicial Review of Parliamentary Privileges

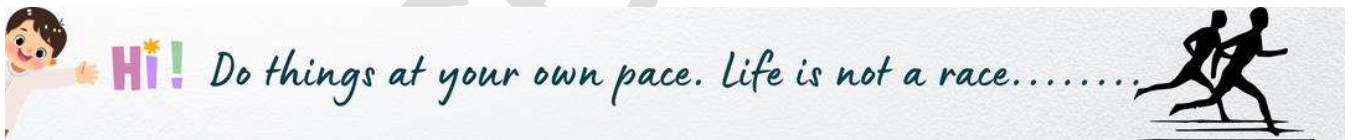
The issue of whether **parliamentary privileges** are subject to **judicial review** has been a matter of significant debate in India. While the **Constitution** grants Parliament certain privileges, it does not explicitly grant it **complete immunity** from judicial scrutiny. The question of judicial review of parliamentary privileges has been addressed in several landmark judgments by the Supreme Court.

a) Judicial Review and Article 105/194

While the Constitution provides broad immunities and powers to the legislature in **Article 105** and **Article 194**, the question arises whether these powers are **absolute** or subject to judicial review. Judicial review refers to the power of courts to examine whether the actions of the **legislature** or **executive** are consistent with the Constitution.

The **Supreme Court** of India has **clearly stated** that **parliamentary privileges** are **not immune from judicial review**. However, judicial review is limited to ensuring that these privileges do not violate the **fundamental rights** of individuals, especially **Article 14 (Right to Equality)**, **Article 19 (Freedom of Speech)**, and **Article 21 (Right to Life and Personal Liberty)**.

Conclusion: In conclusion, **parliamentary privileges** are essential to the functioning of a democratic legislature, as they protect the **independence of Parliament** and **State Legislatures**. However, these privileges are **not absolute**, and the judiciary has the power to **review** their exercise. Judicial review of parliamentary privileges is primarily concerned with ensuring that the privileges do not infringe upon **fundamental rights** guaranteed under the Constitution. Courts have repeatedly emphasized the **balance** between **legislative independence** and **individual rights**, recognizing that while parliamentary privileges are necessary for legislative efficiency and autonomy, they cannot be exercised in a manner that violates the Constitution or **constitutional rights**. Therefore, while parliamentary privileges are an essential part of the functioning of the Indian democratic system, they are subject to **judicial review** when they infringe upon the rights guaranteed by the Constitution.



In the light of judicial interpretations substantiate the stipulation that the trade, commerce and intercourse throughout India shall be free.

The **freedom of trade and commerce** is one of the core principles enshrined in the **Constitution of India**. **Article 301** of the **Constitution** explicitly provides that **trade, commerce, and intercourse** throughout India shall be **free**. This provision seeks to promote the economic integration of the country by eliminating barriers to trade and commerce between the states and fostering a unified market. However, this freedom is not absolute, and there are certain reasonable restrictions that can be imposed under specific circumstances, subject to the provisions of the Constitution.

1. Constitutional Framework

Article 301 of the Constitution is the foundational provision for the freedom of trade, commerce, and intercourse in India. It states:

"Subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free."

This provision ensures that the citizens of India have the **right to carry on trade or business** without any hindrance in any part of the country. It reflects the need for a **common market** in India, one of the fundamental objectives of the framers of the Constitution. The essence of this provision is to create a system where the **economic boundaries between states** are eliminated, fostering the movement of goods, services, and capital freely across the country.

Article 302 to Article 305 of the Constitution are also relevant as they provide the conditions under which certain restrictions can be placed on trade and commerce. These provisions allow the Union and State to impose restrictions in certain circumstances, such as:

- **Article 302:** This grants the **Union Government** the power to impose restrictions on trade and commerce in the public interest, like imposing **taxes or regulations**.
- **Article 303:** Prohibits discrimination in trade and commerce between states, but allows for certain exceptions in the interest of public order, morality, and welfare.
- **Article 304:** Allows states to impose reasonable restrictions for the welfare of the public, such as restrictions on the import or export of goods.
- **Article 305:** Provides that the laws in force at the commencement of the Constitution regarding trade and commerce will continue to be effective.

2. Judicial Interpretations and Key Supreme Court Rulings

The **Supreme Court of India** has played a pivotal role in interpreting **Article 301** and has further elaborated on the scope, limitations, and the meaning of **free trade** across the country. Through various judgments, the Court has clarified the balance between **freedom of trade** and **reasonable restrictions**.

a) The "Freedom of Trade" as a Fundamental Right

In the landmark case of **State of Rajasthan v. G. Chawla (1959)**, the Supreme Court held that **Article 301** guarantees the **freedom of trade, commerce, and intercourse** not only within the states but also between the states. The Court emphasized that **economic unity** is a key principle in ensuring that the states do not impose laws or regulations that **disrupt the flow of trade** across state borders.

b) Restrictions on Trade: Constitutionality and Reasonableness

While **Article 301** guarantees the freedom of trade, it is not absolute. The Constitution allows for certain **reasonable restrictions** under specific conditions. The Supreme Court, in **** Atiabari Tea Co. v. State of Assam (1961)****, explained the circumstances under which **restrictions on trade** could be imposed. In this case, the Court examined the validity of **taxation laws** enacted by a state that imposed restrictions on trade under the guise of protecting public welfare.

The Court held that **any restriction on trade must not be arbitrary** or excessive and must be **reasonable** in relation to the **public interest**. It emphasized that the restriction should only be imposed in the **interest of public health, morality, or the welfare of the state**, and that **trade cannot be unduly obstructed**.

c) Impact of the Constitutional Amendments on Trade Freedom

The **Constitutional amendments** related to trade and commerce have also been subject to judicial scrutiny. **The 46th Amendment (1982)** and **the 101st Amendment (2016)**, which dealt with the Goods and Services Tax (GST), sought to simplify the complex tax system that existed between states and the Union. These amendments were seen as reinforcing the notion of **free trade** across the country by implementing a **single tax system**, thereby eliminating barriers to interstate trade that previously existed due to state-specific taxes and levies.

In **West Bengal v. Kesoram Industries Ltd. (2004)**, the Supreme Court interpreted the powers of the states to impose taxes and restrictions. The Court observed that the Constitution recognizes the need for **certain restrictions** on the freedom of trade and commerce, such as for maintaining the **welfare of the public**. However, any such restrictions must not **unduly hinder the free flow of trade** and must be carefully framed to balance both the interests of states and the central goal of an **integrated market**.

d) Economic Reforms and Liberalization

In recent decades, the Indian economy has undergone significant **liberalization** and **economic reforms**, which have contributed to greater integration and free flow of goods and services. **The 1991 economic reforms**, which were aimed at liberalizing India's economy, emphasized creating a **unified market** for goods and services. The **reduction of state-imposed barriers**, such as **license raj** and **state-specific taxes**, has strengthened the principles laid down in **Article 301** by facilitating the movement of goods, services, and capital.

Conclusion: The freedom of trade, commerce, and intercourse throughout India, as enshrined in Article 301 of the Constitution, is a cornerstone of India's economic unity and integration. The Supreme Court has consistently interpreted this freedom as a vital part of the economic and political framework of the country. At the same time, it has acknowledged that this freedom is not absolute and can be subject to reasonable restrictions in the interest of public welfare. Through its judicial interpretations, the Supreme Court has balanced the need for economic integration with the necessity of state-specific regulations that serve public interests such as taxation, health, environment, and social welfare. However, the key principle upheld by the Court is that such restrictions must not be arbitrary or discriminatory, and must not undermine the constitutional objective of a free and unified market.

As India continues to evolve as a global economic power, the interpretation of Article 301 will remain crucial in ensuring that trade and commerce continue to flourish in a free, fair, and integrated manner across the country, while balancing the legitimate interests of individual states.



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Explain the powers, privileges and immunities of legislatures in India.

The **powers, privileges, and immunities** of the **legislatures** in India are an integral part of the **democratic system** and serve to uphold the **independence** and **efficiency** of the legislative process. These powers, privileges, and immunities are essential for the **smooth functioning** of the legislature and to safeguard the **freedom of speech** and **debate** within the Parliament and State Legislatures. They also ensure that **lawmakers** are not unduly influenced or obstructed in their roles.

1. Constitutional Provisions Regarding Powers and Privileges

The powers, privileges, and immunities of the Parliament and the State Legislatures are governed by Article 105 and Article 194 of the Constitution of India. These articles specifically deal with the powers and privileges of the Parliament (Article 105) and State Legislatures (Article 194), while also outlining the immunities afforded to members of the legislature in the course of their functions.

Article 105 - Powers and Privileges of the Parliament

Article 105 deals with the **powers and privileges** of **Members of Parliament (MPs)** and **Parliament** itself. It specifies the following:

- **Freedom of Speech:** Members of Parliament enjoy **freedom of speech** within Parliament. This freedom is protected and cannot be questioned outside Parliament. This immunity enables MPs to speak freely without the risk of facing civil or criminal proceedings for statements made during parliamentary proceedings (except in cases of **defamation, contempt of court, or incitement to violence**).
- **Immunity from Legal Proceedings:** No **civil or criminal proceedings** can be initiated against a member of Parliament for any statement made in the course of their legislative functions, including speeches, motions, questions, or reports. This immunity applies only to the **proceedings within Parliament**.
- **Control Over Internal Affairs:** Parliament has the authority to make rules to regulate its own **proceedings and discipline**. The **House** has the power to expel members, punish for **contempt**, and maintain order within its chambers.
- **Power to Regulate its Own Proceedings:** Parliament has the right to determine its own procedure for conducting debates, introducing bills, and passing resolutions. It can also regulate the **attendance and conduct** of its members.

Article 194 - Powers and Privileges of the State Legislatures

Article 194 extends similar powers and privileges to the State Legislatures as Article 105 does to Parliament. It specifically states:

- **Freedom of Speech:** Members of a State Legislature have the same **freedom of speech** within the legislature as Members of Parliament, meaning they are protected from legal actions for their **speech and debate** within the legislative assembly.
- **Immunity from Legal Action:** Similar to MPs, members of the State Legislature are also immune from **legal action** for any speech made within the legislature. This allows members to express themselves freely without the fear of facing civil or criminal proceedings based on their remarks.
- **Privileges and Immunities of the Legislature:** The legislature of a state has the **right to regulate** its own proceedings and decide on issues such as **disqualification** of members and **disciplinary actions** against unruly behavior. This includes the **power to hold its members accountable** for conduct that undermines the dignity and authority of the legislature.

2. Specific Powers and Privileges

Apart from these general provisions, **specific powers and privileges** that relate to the functioning of the legislature in India include:

a) Right to Regulate Internal Matters

Both the **Parliament** and **State Legislatures** have the right to regulate their own **internal affairs**, such as the conduct of debates, discussions, and the passage of bills. They also possess the **exclusive right** to determine how their members should behave within the chambers. For example, if a member disrupts proceedings, the Speaker or Chairman has the authority to **suspend or expel** the member.

b) Right to Punish for Contempt

The legislatures have the power to **punish for contempt** that occurs within the precincts of the legislature. **Contempt of the legislature** can occur if any person, including a legislator, disrupts the proceedings or shows disrespect towards the authority of the house, its rules, or its members.

c) Power to Enforce Attendance and Adjournment

The legislature has the power to **enforce the attendance** of its members and also has the right to **adjourn or prorogue** its sessions, thus controlling the timetable and agenda of the legislative proceedings.

d) Power to Issue Writs

The legislature also has the power to issue **writs** to compel attendance, enforce obedience, and ensure compliance with its orders, although this is not an inherent or widely invoked power. The **Speaker of the House** or the **Chairman of the Council of States** plays a crucial role in ensuring that legislative orders are followed.

3. Immunities of Legislators

In addition to the **freedom of speech** within the legislative assembly, legislators also enjoy certain **immunities** that provide them with protection from legal actions in certain circumstances.

a) Immunity from Arrest

Members of Parliament or State Legislatures enjoy **immunity from arrest** in civil matters while Parliament or the State Legislature is in session, provided the arrest is not related to a **serious criminal charge**. This ensures that the work of the legislature is not hindered by the distraction of personal legal disputes.

b) Immunity from Jurisdiction of Courts in Certain Matters

The **Courts** do not have the authority to question the proceedings of the legislature under ordinary legal processes. Courts cannot **interfere** with the conduct of debates, bills, or other matters being deliberated within the legislature. This immunity is necessary for maintaining the **separation of powers** and upholding the **autonomy** of the legislature.

Conclusion: The powers, privileges, and immunities of the legislatures in India are essential for ensuring the independence and effectiveness of legislative functions. The Constitution provides broad powers to Members of Parliament and State Legislators to speak freely, regulate their proceedings, and protect themselves from legal action in the course of their duties. However, these powers are not absolute and are subject to constitutional limitations to ensure that the legislative process does not infringe upon the fundamental rights of individuals or violate the rule of law. Through judicial interpretations, the Supreme Court has clarified that while legislative privileges are important for maintaining the dignity of the legislature, they cannot be used as a tool for unrestricted power. The legislature, like all branches of the government, must function within the framework of the Constitution, ensuring that its privileges are exercised in accordance with democratic principles and constitutional values.

Discuss the jurisdiction of the Supreme Court of India.

The **Supreme Court of India** is the apex judicial authority in the country, entrusted with the task of ensuring the **rule of law** and safeguarding the **Constitution**. It plays a pivotal role in interpreting the Constitution, protecting fundamental rights, and ensuring justice in various domains. The jurisdiction of

the Supreme Court is defined under **Article 131 to Article 136** of the **Constitution of India** and is divided into several categories, each serving a distinct constitutional function.

1. Original Jurisdiction

The **original jurisdiction** of the Supreme Court refers to the authority to hear cases that are brought directly to it without going through lower courts. The **Constitution** provides specific cases under which the Supreme Court can exercise this jurisdiction.

- **Article 131** of the Constitution grants the Supreme Court exclusive jurisdiction in disputes between:
 - The **Government of India** and one or more states; or
 - **Between two or more states.**

This jurisdiction is important because it provides a forum for resolving disputes regarding the division of powers between the **Centre** and the **States**, as well as disputes between **States** on matters of constitutional interpretation or conflict.

- The types of cases that fall under original jurisdiction include:
 - Disputes concerning the **boundaries** between states.
 - Disputes over the **distribution of resources** (e.g., water, taxes).
 - Conflicts relating to the **interpretation of the Constitution** between the Centre and the States.

In this capacity, the Supreme Court acts as the **arbiter** in inter-governmental disputes and ensures that the federal structure of India is maintained.

2. Appellate Jurisdiction

The **appellate jurisdiction** of the Supreme Court refers to its authority to hear appeals from lower courts, including **High Courts** and **tribunals**. The appellate jurisdiction is derived primarily from **Articles 132 to 136** of the Constitution, which provide the framework for various types of appeals to the Supreme Court.

a) Constitutional Matters (Article 132)

- Under **Article 132**, the Supreme Court has appellate jurisdiction in cases involving the interpretation of the **Constitution**.
- If any party is aggrieved by a judgment of the **High Court** involving a constitutional question, an appeal can be made directly to the Supreme Court. This jurisdiction ensures that constitutional matters, which may have wide implications, receive the highest level of judicial scrutiny.

b) Civil and Criminal Matters (Article 133 & Article 134)

- **Article 133** allows for an appeal to the Supreme Court in civil matters if the High Court certifies that the case involves a **substantial question of law** of general importance. The **Supreme Court** has the discretion to admit such appeals.
- **Article 134** allows appeals from criminal cases if the **High Court** has imposed a **death sentence** or made a decision of significant legal importance.

c) Special Leave to Appeal (Article 136)

- **Article 136** provides the Supreme Court with the power to grant **special leave to appeal** against any judgment, order, or decree of any **court or tribunal** in the country, except military courts. This is one of the most important powers of the Court, as it allows it to intervene in cases of significant public or legal importance, even if they do not strictly fall under the constitutional or statutory categories for appeal.
 - The Court's decision to grant or reject special leave is at its discretion and is used to ensure that only matters of **public importance** or those raising **substantial questions of law** are brought before it.

3. Advisory Jurisdiction

The **advisory jurisdiction** of the Supreme Court is provided under **Article 143** of the Constitution. It empowers the President of India to refer any matter of public or legal importance to the Supreme Court for its **opinion**. The Supreme Court is not obliged to issue a judgment or a ruling, but can offer its **advice** based on its interpretation of the law.

- **Article 143(1)** allows the President to seek the Court's opinion on any question of law or fact, whether or not the issue is pending in any court or tribunal.
- For example, the President may refer a question regarding the **validity of laws**, the **interpretation of treaties**, or any **constitutional issues** to the Supreme Court for its **guidance**.
- However, the advisory jurisdiction does not have the force of a binding judgment. It is non-binding in nature, and the President is free to act according to his or her own judgment after receiving the Court's advice.

4. Writ Jurisdiction

Under **Article 32** of the Constitution, the Supreme Court has the power to issue **writs** for the enforcement of **fundamental rights**. This jurisdiction is one of the most significant powers of the Supreme Court, as it allows citizens to approach the apex court directly if their fundamental rights are violated.

The writs that can be issued by the Supreme Court under Article 32 are:

- **Habeas Corpus:** To secure the release of a person who is unlawfully detained.
- **Mandamus:** To command a public official or authority to perform a duty that is legally required.
- **Prohibition:** To stop an inferior court or tribunal from exceeding its jurisdiction.
- **Certiorari:** To quash a decision made by an inferior court or tribunal when it has acted outside its jurisdiction.
- **Quo Warranto:** To question the legality of a person's claim to a public office.

This jurisdiction is a vital means of protecting the **fundamental rights** of citizens, ensuring that any unlawful act or decision by the state can be swiftly addressed by the highest court in the land.

5. Review Jurisdiction

The **review jurisdiction** of the Supreme Court is provided under **Article 137** of the Constitution. It allows the Supreme Court to review its own judgments or orders, but only on limited grounds. A review petition can be filed if there is:

- **Discovery of new evidence** that was not available at the time of the original judgment.
- **Manifest error** in the judgment, such as an error of law or a misinterpretation of facts.

The Court's power to review ensures that justice is done in cases where errors may have been made, providing a **mechanism for correcting mistakes** in its decisions. However, the review is limited and does not allow for an appeal.

Conclusion: The **jurisdiction of the Supreme Court of India** is vast and multifaceted, covering a wide range of constitutional and legal matters. It serves as the **guardian of the Constitution**, a final arbiter in disputes, and the protector of **fundamental rights**. Through its **original, appellate, advisory, and writ** jurisdiction, it ensures that justice is delivered impartially and effectively. The Supreme Court's role as the **final interpreter of the law** in India is indispensable for maintaining the rule of law and upholding democratic values in the country.

Discuss the impact of National Emergency with special reference to Fundamental Rights.

A **National Emergency** in India is a situation declared by the President under **Article 352** of the **Constitution of India** when the security of the nation or any part thereof is threatened due to war, external aggression, or armed rebellion. This provision provides the government with exceptional powers to address extraordinary circumstances that threaten the sovereignty, integrity, or security of India. The declaration of a National Emergency has significant implications, particularly concerning **Fundamental Rights** guaranteed by **Part III** of the Constitution. The effects on fundamental rights depend on the scope and the specific provisions under which the emergency is declared.

1. Nature of National Emergency (Article 352)

A National Emergency is proclaimed by the **President** when he/she is satisfied that the security of India or any part of it is threatened by war, external aggression, or armed rebellion. Such a declaration triggers specific provisions for the alteration of normal governance in India. The Constitution permits the suspension of certain rights and confers additional powers upon the Central Government during the emergency.

- **Article 352** allows for the imposition of a National Emergency when the President believes there is a **grave threat** to national security.
- The proclamation must be approved by both **Houses of Parliament** within one month. Initially, the emergency can be imposed for **six months**, but it can be extended indefinitely with parliamentary approval every six months.

Once a National Emergency is declared, the powers of the Centre are significantly enhanced, and it can take direct control over states' affairs.

2. Suspension of Fundamental Rights under National Emergency

The declaration of a National Emergency results in a direct impact on the fundamental rights of the citizens, especially those that are provided under **Part III** of the Constitution. However, it is important to note that the suspension of fundamental rights depends on the type of emergency declared.

a) Suspension of Right to Move the Court (Article 32)

One of the most significant effects of a National Emergency is the **suspension of the right to move the Supreme Court** under **Article 32** for the enforcement of fundamental rights. **Article 32** guarantees citizens the right to approach the Supreme Court for the protection of their fundamental rights, but during a National Emergency, this right can be suspended by the **President**.

- The **right to approach the Supreme Court** for the enforcement of fundamental rights can be suspended by the President, meaning individuals cannot directly seek judicial remedies for violations of fundamental rights.

This suspension is not automatic and can be invoked by the President under **Article 359** of the Constitution, which empowers the President to suspend the enforcement of certain fundamental rights during a National Emergency.

b) Suspension of Fundamental Rights under Article 359

- **Article 359** empowers the President to suspend the **enforcement of all or any** of the fundamental rights guaranteed by **Part III** of the Constitution except the rights under **Article 20** (Protection in respect of conviction for offenses) and **Article 21** (Protection of life and personal liberty).
- However, this suspension is limited, meaning that certain fundamental rights are immune to suspension during a National Emergency. These include:
 - **Article 20:** Protection against **ex post facto laws, double jeopardy, and self-incrimination.**
 - **Article 21:** Protection of the **right to life and personal liberty.** This means that even during a National Emergency, no person can be deprived of life or liberty except according to the procedure established by law.

In practice, when a National Emergency is imposed, the **rights under Articles 19** (which include freedom of speech, expression, assembly, association, movement, residence, and profession) can be **suspended**, thus limiting the civil liberties of citizens. The suspension of **Article 19** is a significant consequence of a National Emergency because it impacts the very essence of individual freedom.

3. Changes in the Scope of Fundamental Rights during National Emergency

a) Article 19 – Suspension of Rights during Emergency

- Freedom of speech and expression,
- Freedom to assemble peacefully,
- Freedom to form associations,
- Freedom to move freely,
- Freedom to reside and settle in any part of India,
- Freedom to practice any profession.

However, **Article 19** is **suspended** during a National Emergency. This means that the **freedom of movement, freedom of assembly**, and other rights under **Article 19** can be curtailed, and the government can impose restrictions, including:

- Imposing **curfew**,
- **Censorship of media**,
- **Ban on public gatherings**, and
- **Restriction on communication.**

These measures are intended to safeguard national security, but they significantly restrict personal freedoms during such times.

b) Article 21 – Right to Life and Personal Liberty

While **Article 21** guarantees the right to **life** and **personal liberty**, it remains operational during a National Emergency. Even during such times, no person can be deprived of their life or personal liberty except through **due process of law**.

- The **right to life** includes the right to **personal liberty**, which means that actions like **arbitrary detention** or **custodial violence** are prohibited. However, the government can take actions that may limit individual liberty if done **according to law**.
- For example, preventive detention laws can be invoked, which allow authorities to detain individuals without trial for certain periods under the **Preventive Detention Act**. This power can be used more liberally during a National Emergency.

c) Article 22 – Protection against Arrest and Detention

- **Article 22** provides protection against arbitrary arrest and detention, but during a National Emergency, the **maximum detention period** without trial can be extended to **three months** without obtaining the opinion of an Advisory Board.
- Preventive detention can also be extended for up to **one year**, which curtails the **right to challenge** detention or arrest.

Conclusion: The declaration of a National Emergency profoundly affects the fundamental rights of citizens, particularly the freedoms under Article 19. Although certain rights can be suspended, Articles 20 and 21 remain largely protected, ensuring that the right to life and protection against arbitrary detention are not fully compromised. While the powers of the Centre are enhanced, the judicial system remains a key check on the use of these powers. The impact of a National Emergency requires a delicate balance between national security and the preservation of civil liberties.

PART-C

Note: There is no standard solution for any type of problem in Part C, as law students we have different perspectives and interpretation so we need to focus on the Draft, Section, Articles to support your discussion.

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'X', Accompany which was registered in England was a partner in a firm in India. The Indian income tax authorities sought to tax the entire income made by the company whether the levy of tax is valid? Decide with the help of decided case laws.

'X' was a Government servant holding a substantive post of a clerk. He was promoted. Subsequently, he was reverted to his substantive post on the ground of unsatisfactory work. X challenged the validity of the order on the ground that he reduced in rank without giving a reasonable opportunity under the Constitution. Decide with the help of case law.

X, an editor of a newspaper published a statement of an MLA in the course of business of the House in the morning session. In the evening session, the statement is expunged by the Speaker of the legislative House, whether the editor was guilty for such press statement or not? Decide.

The Prime Minister of India wants to appoint a famous scientist who is not a member of Parliament as Cabinet Minister for Science and Technology. Is it permissible?

Mr. R was kept in jail for a period more than his punishment even after the completion of sentence he was not released because of the negligence and callous attitude of the Government. Advice Mr. R.

A High Court judge was alleged to have amassed huge properties and disproportionate to his known sources of income. What are the options available before the Chief Justice of that High Court and Chief Justice of Supreme Court to take action against such Judge?

A Government employee was suspended on the ground of indiscipline. He challenged the same on the ground that he was not given any notice before such suspension as mandate under Art 311 of the Constitution. Is his contention correct? Explain.

Refugees from Nepal came to India in lakhs and want to settle. They filed a Writ in the Supreme Court of India under Art 32 of the Indian Constitution that they have a right to settle in India - Decide.

The Speaker of Lok Sabha expelled 20 members for receiving money for raising questions in the house on behalf of vested interests. They challenged the expulsion before the Supreme Court. Decide.

A State Government issued several ordinances continuously on the same subject without introducing a regular Bill in the State Legislature. Decide the Constitutional validity of such practice.

A State has issues with its neighbouring state regarding the sharing of the waters of a river flowing across both the States. What is the constitutional mechanism to resolve the said dispute? Explain.

All the 150 public servants working in a Government department were dismissed from service, as most of them participated in a Dharna cum Gherao Programme. No inquiry was conducted on the ground of impracticability. Discuss the validity of such dismissal.

A Poisonous gas leaked from a fertilizer company and caused serious health problems to the Nearby residents of that locality. Can they file a Writ petition? Advice.

A High Court judge was alleged to have amassed huge properties and disproportionate to his known sources of income. What are the options available before the Chief Justice of that High Court and Chief justice of Supreme Court to take action against such Judge?

A Government employee was suspended on the ground of indiscipline. He challenged the same On the ground that he was not given any notice before such suspension as mandate under Art 311 of the Constitution. Is his contention correct? Explain.

Refugees from Nepal came to India in lakhs and want to settle. They filed a Writ in the Supreme Court of India under Art 32 of the Indian Constitution that they have a right to settle in India- Decide.

A. State Governor issued successive ordinances on the same subject, on the advice of the Cabinet and after the lapse of each ordinance. The State Government did not introduce any bill to replace such ordinance. Decide its validity.

A. person, unhappy with the judgment in an appeal decided by a High cour., made personal allegations against the judges of the Bench. Decide whether such action invites contempt of court, with reasons.

A. Government department allowed the confiscation of certain perishable goods under a statute, but failed either to preserve them or to sell them at market value, during the pendency of litigation. Consequently all such goods got perished. Later the owner of the goods won the case and claimed compensation. Is he entitled to it? Decide.

A. constitutional amendment was made to make India 'non-socialist republic'. Does such amendment violate the basic structure of the constitution? Decide with reasons.

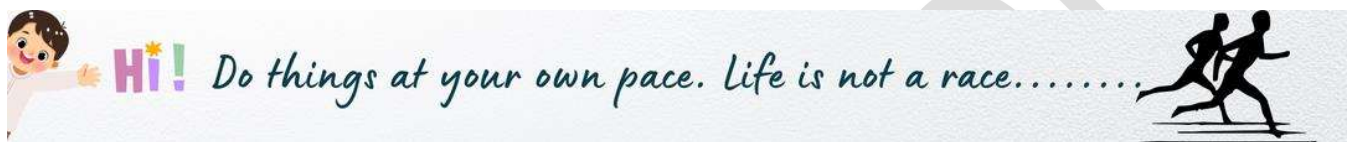


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