

# TOP THE SEMESTER

by

ADV. MOHIT TANWR

ADV. SHIVANG VERMA

## PREFACE

The study of Legal Method forms the cornerstone of every law student's journey as it provides a crucial framework for understanding the very nature and philosophy of law itself. This book has been meticulously designed to serve as a comprehensive aid for the law students, specifically aligned with the syllabus of universities by offering a multi-faceted approach to learning which goes beyond mere definitions or doctrines. Instead, it equips students with a profound understanding of how legal reasoning is structured and how it operates within the broader legal ecosystem. What distinguishes this book is its focused exploration of legal philosophy and jurisprudence, delving deeply into questions of why we study law, what law means across various schools of thought and how jurists throughout the history have interpreted its role in the society. Whether it is the Analytical School, which examines law through logical reasoning or the Historical School, which roots the law in customs and traditions, this book ensures that each concept is presented in a manner that is accessible, engaging and directly relevant to modern legal education. This book is organized in a way that facilitates not only academic mastery but also practical understanding. The discussion extends to topics such as customs, judicial precedents and the usage of law in daily life as each of them is critical to a well-rounded legal education. Students will find that the treatment of each subject is thorough, with critical analyses that

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sharpen their interpretative skills, while simultaneously encouraging them to challenge the established norms and engage in independent thought.

Furthermore, to ensure that students are fully prepared for examinations and practical scenarios alike, we have included insights into judicial reasoning, as well as discussions on landmark judgments in the Decree Dome segment of this book. This holistic approach allows for a richer learning experience, enabling the students to see the interplay between theory and practice. Additionally, visual aids such as flowcharts in the Mind Maps segment have been incorporated to simplify the complex jurisprudential concepts by making them easier to review and retain before the respective assessments. Finally, as a one-stop resource for law students, this book provides an invaluable reference for understanding key doctrines, the evolution of legal systems and the role of law in shaping the societal structures. Whether it is to navigate through the rigours of exam preparation or to cultivate a deeper appreciation for the philosophical underpinnings of law, this book offers everything a student needs to excel in the subject of Legal Method.

It is our hope that this bonafide work serves as a trusted companion in your legal studies, helping you to confidently approach the subject and apply its principles both in academic and real-world contexts.

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ॐ कृष्णाय वासुदेवाय हरये परमात्मने ।  
प्रणतः क्लेशनाशाय गोविंदाय नमो नमः ॥

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## CONTENTS AT GLANCE

- A. STATUTE STATION:** This module provides carefully curated study materials on law, facilitating an easy and seamless learning experience for understanding complex subjects.
- B. DECREE DOME:** Explore case law analysis with our thorough dissection of university syllabus cases, presented in a simplified and structured format to enhance your understanding of legal precedents.
- C. LAW SOLUTIONS:** Preparing for exams? Our Law Solutions module offers a complete collection of past question papers and detailed solutions, along with sample papers for new subjects. This resource helps you familiarize yourself with exam patterns and improve your problem-solving skills.
- D. MIND MAPS:** Enhance information retention and last-minute revisions with our Mind Mapping & Training Module, which features tables and flowcharts to help you efficiently grasp and memorize key concepts.

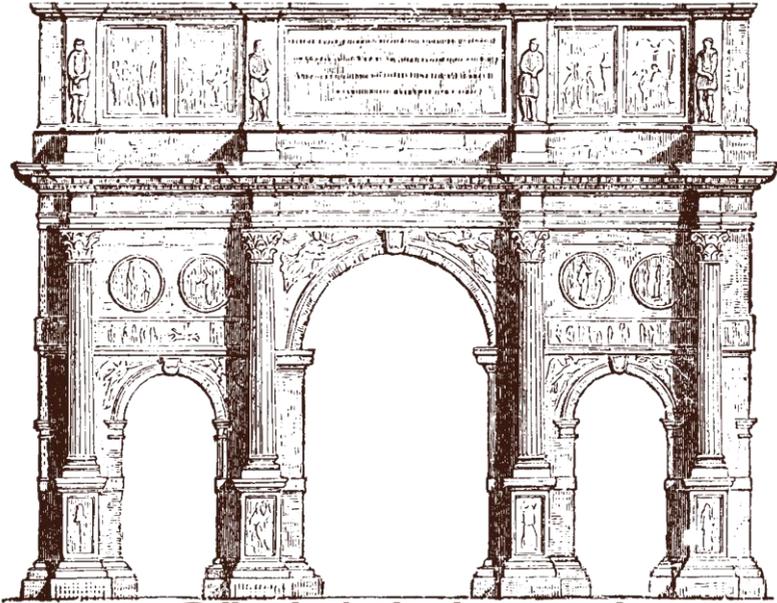
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## UNIT 1

### MEANING AND CONCEPT OF CONSTITUTION AND CONSTITUTIONALISM

The Constitution of India is the supreme law of the country, laying down the framework that defines the fundamental political principles, establishes the structure, procedures, powers, and duties of government institutions, and sets out fundamental rights, directive principles, and the duties of citizens. It is the longest written constitution of any country, containing 448 articles in 25 parts, 12 schedules, 5 appendices, and 104 amendments. The Constitution of India was adopted by the Constituent Assembly on November 26, 1949, and came into effect on January 26, 1950.

#### **Historical Background**

The Constitution of India draws heavily from the Government of India Act, 1935, which was the last pre-independence constitution of the country. The drafting of the Indian Constitution began in 1946 when the Constituent Assembly was set up to frame the new constitution for independent India. The drafting committee, led by Dr. B.R. Ambedkar, submitted the draft constitution to the Assembly on November 4, 1947. After extensive debates, discussions, and revisions, the

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Assembly adopted the final draft on November 26, 1949.

## Preamble

The Preamble of the Constitution of India is a brief introductory statement that sets out the guiding values and principles of the Constitution. It declares India to be a sovereign, socialist, secular, and democratic republic and secures justice, liberty, equality, and fraternity for all its citizens. The Preamble is not legally enforceable but serves as a guiding light for the interpretation of the Constitution.

## Fundamental Rights (Part III)

The Constitution of India guarantees a set of fundamental rights to all citizens, which are essential for their personal growth and development. These rights are:

1. **Right to Equality (Articles 14-18):** This includes the right to equality before the law, prohibition of discrimination, equality of opportunity in public employment, and the abolition of untouchability and titles.
2. **Right to Freedom (Articles 19-22):** This includes the right to freedom of speech and expression, assembly, association, movement, residence, and profession, as well as protection against arrest and detention in certain cases.
3. **Right against Exploitation (Articles 23-24):** This includes the prohibition of human trafficking and

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forced labor, as well as the prohibition of child labor.

4. Right to Freedom of Religion (Articles 25-28): This includes the freedom of conscience, the right to freely profess, practice, and propagate religion, as well as the freedom to manage religious affairs.
5. Cultural and Educational Rights (Articles 29-30): This includes the right to preserve one's language, script, and culture, as well as the right of minorities to establish and administer educational institutions.
6. Right to Constitutional Remedies (Article 32): This provides the right to approach the Supreme Court of India for the enforcement of fundamental rights.

## **Directive Principles of State Policy (Part IV)**

The Directive Principles of State Policy are guidelines for the government to establish a just and equitable society. Although not legally enforceable, they serve as a guide for the government in policymaking. Some of the key directive principles include the provision of adequate means of livelihood, equal pay for equal work, the right to work, the right to education, the right to public assistance, and the promotion of international peace and security.

## **Fundamental Duties (Part IVA)**

The Constitution of India also lists the fundamental duties of its citizens, which serve as a reminder of their responsibilities towards the nation. These duties include

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respecting the Constitution, national flag, and national anthem, cherishing the noble ideals of the freedom struggle, protecting the sovereignty and integrity of the country, promoting harmony and the spirit of brother

hood, preserving the rich cultural heritage, protecting the environment, safeguarding public property, striving for excellence, and providing opportunities for education.

## Structure of the Government

The Constitution of India establishes a federal structure of government, with powers divided between the central government and the states. However, it also has a strong unitary bias, allowing the central government to override state governments in certain situations. The government is divided into three branches:

1. **Legislature:** The Parliament of India is a bicameral legislature consisting of the President, the Rajya Sabha (Council of States), and the Lok Sabha (House of the People). The President is the ceremonial head of state, while the Rajya Sabha represents the states and the Lok Sabha represents the people. The main function of the legislature is to make laws.
2. **Executive:** The President of India is the head of the executive branch, and the Prime Minister is the head of the government. The President appoints the Prime Minister and the Council of Ministers, who are responsible for implementing laws and running the administration of the country.

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3. **Judiciary:** The judiciary is an independent branch of the government, responsible for interpreting the Constitution and ensuring that laws are in compliance with it. The Supreme Court of India is the highest court in the country, with the power of judicial review and the responsibility to protect the fundamental rights of citizens.

## **Amendments**

The Constitution of India provides a mechanism for its amendment, allowing it to adapt to changing circumstances and remain relevant. As of September 2021, there have been 104 amendments to the Constitution. The amendment process is laid out in Article 368, and it requires the approval of both houses of Parliament and, in some cases, ratification by at least half of the state legislatures.

## **Landmark Judgments**

Several landmark judgments of the Supreme Court of India have played a crucial role in shaping the interpretation of the Constitution and defining the rights and responsibilities of citizens and the government. Some of these judgments include:

1. **Kesavananda Bharati v. State of Kerala (1973):** This case established the 'Basic Structure' doctrine, which holds that the Parliament cannot amend the basic features of the Constitution, such as the rule of law, the separation of powers, and the fundamental rights.

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2. **Maneka Gandhi v. Union of India (1978):** This case expanded the scope of the right to life and personal liberty under Article 21, holding that any law affecting these rights must be fair, just, and reasonable.
3. **S.R. Bommai v. Union of India (1994):** This case clarified the constitutional provisions related to President's rule under Article 356 and emphasized the importance of federalism as a basic structure of the Constitution.
4. **Vishaka v. State of Rajasthan (1997):** This case led to the formulation of guidelines for the prevention of sexual harassment at the workplace and recognized women's right to a safe working environment as a fundamental right.
5. **Navtej Singh Johar v. Union of India (2018):** This case decriminalized consensual homosexual acts between adults, holding that Section 377 of the Indian Penal Code violated the right to equality, the right to freedom, and the right to life and personal liberty.

The Constitution of India is a living document that continues to evolve with the changing needs of society. It has successfully provided a stable democratic framework for the country, while also protecting the rights and liberties of its citizens. Its dynamic nature, combined with the careful balance of power among the various branches of government, has ensured the continued success of the Indian democratic experiment.

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## 1.1 DEFINITION OF CONSTITUTION, CONSTITUTIONALISM AND ITS CLASSIFICATION

### **Definition of Constitution**

A constitution is a set of fundamental principles, rules, or laws that establish the structure, powers, and limitations of a government or governing institution. It acts as a blueprint for the organization and operation of a state, specifying the roles and responsibilities of various branches and levels of government. In addition, a constitution often sets out the rights and freedoms of citizens, providing a basis for the protection and enforcement of these rights.

### **Constitutionalism**

Constitutionalism is a political philosophy that advocates for the establishment, adherence to, and the limitation of government power through a written constitution. It emphasizes the importance of a well-defined and balanced system of government that upholds the rule of law, respects individual liberties, and ensures the separation of powers among different branches of government. Constitutionalism seeks to prevent the concentration of power and to protect citizens from arbitrary or tyrannical rule by establishing a system of checks and balances.

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## Classification of Constitutions

Constitutions can be classified in various ways, based on different criteria such as their origin, form, manner of amendment, and the relationship between the central and regional governments. Here are some common classifications:

1. **Written vs. Unwritten:** A written constitution is a single document that sets out the fundamental principles and rules governing a state. Examples include the Constitution of India and the U.S. Constitution. An unwritten constitution, on the other hand, consists of several sources, such as statutes, judicial decisions, and historical documents, which together form the fundamental principles and rules governing a state. The United Kingdom is an example of a country with an unwritten constitution.
2. **Rigid vs. Flexible:** A rigid constitution is one that requires a special procedure for amendment, making it more difficult to change than ordinary laws. The U.S. Constitution is an example of a rigid constitution. A flexible constitution, however, can be amended through the same process as other laws, making it easier to change. The United Kingdom's constitution is an example of a flexible constitution.
3. **Unitary vs. Federal:** In a unitary system, all the powers of the government are vested in a central authority, and regional governments, if any, derive their powers from the central government. Examples

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of unitary systems include France and Japan. In a federal system, powers are divided between the central government and regional governments, with each level of government having certain exclusive powers. The Constitution of India and the U.S. Constitution are examples of federal systems.

4. **Presidential vs. Parliamentary:** In a presidential system, the executive and legislative branches of government are separate and independent of each other, with the president serving as both the head of state and the head of government. The U.S. is an example of a presidential system. In a parliamentary system, the executive branch is derived from the legislative branch, with the head of government (prime minister) being a member of the legislature and responsible to it. India and the United Kingdom are examples of parliamentary systems.
5. **Monarchical vs. Republican:** In a monarchical system, the head of state is a hereditary monarch, such as a king or queen, who may have varying degrees of power and authority. The United Kingdom is an example of a constitutional monarchy, where the monarch's powers are limited by a constitution. In a republican system, the head of state is an elected or appointed official, and there is no hereditary monarchy. The U.S. and India are examples of republics.

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## 1.2 SOURCES & FRAMING OF THE INDIAN CONSTITUTION

The Indian Constitution, often referred to as a "bag of borrowings" or a "beautiful patchwork," has its roots in various sources from around the world. The framers of the Constitution studied the constitutional frameworks of several countries, adopting and adapting provisions that suited the Indian context. The drafting process was an extensive exercise that involved thorough deliberation, debate, and revision.

### **Framing of the Indian Constitution**

The framing of the Indian Constitution began with the establishment of the Constituent Assembly in 1946. The Assembly was comprised of 389 members, representing the diverse regions, religions, and communities of India. The drafting process had several stages:

1. The appointment of various committees: The Constituent Assembly formed several committees to address specific aspects of the Constitution. Some of the key committees included the Drafting Committee, the Union Powers Committee, the Union Constitution Committee, and the Provincial Constitution Committee.
2. The Draft Constitution: The Drafting Committee, chaired by Dr. B.R. Ambedkar, prepared the initial draft of the Constitution. The draft was

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submitted to the Constituent Assembly on November 4, 1947.

3. **Deliberation and debate:** The Assembly conducted extensive debates and discussions on the draft Constitution, lasting for over two years. During this time, various provisions were amended, modified, or removed to address the concerns and suggestions of the members.
4. **Adoption of the Constitution:** After several revisions, the final draft of the Constitution was adopted by the Constituent Assembly on November 26, 1949. The Constitution came into effect on January 26, 1950, marking the birth of the Republic of India.

## **Sources of the Indian Constitution**

The Indian Constitution draws inspiration from several sources, both national and international. Some of the key sources include:

1. **The Government of India Act, 1935:** The Government of India Act, 1935, served as the primary source for the Indian Constitution. The Act provided the basic framework for the central and provincial governments, the distribution of powers, and the administrative structure.
2. **British Constitution:** The Indian Constitution borrowed several features from the British Constitution, including the parliamentary system

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of government, the rule of law, and the concept of a single citizenship.

3. U.S. Constitution: The Indian Constitution adopted several provisions from the U.S. Constitution, such as the separation of powers, the system of checks and balances, and the process of judicial review.
4. Irish Constitution: The concept of Directive Principles of State Policy, which serves as guidelines for government policy-making, was inspired by the Irish Constitution.
5. Canadian Constitution: The Indian Constitution derived the idea of a strong central government with a federal structure, as well as the distribution of powers between the central and state governments, from the Canadian Constitution.
6. Australian Constitution: The Indian Constitution borrowed the concept of a Concurrent List, which outlines shared powers between the central and state governments, from the Australian Constitution.
7. Weimar Constitution of Germany: The Indian Constitution adopted the idea of a suspension of fundamental rights during an emergency from the Weimar Constitution of Germany.
8. French Constitution: The Indian Constitution incorporated the ideals of liberty, equality, and

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fraternity from the French Constitution.

9. Soviet Constitution: The Indian Constitution was influenced by the Soviet Constitution in terms of the planning and organization of socio-economic development and the inclusion of Fundamental Duties for citizens.

The sources and framing of the Indian Constitution reflect the diverse influences and ideas that shaped the document. The framers of the Constitution exhibited great wisdom and foresight in selecting and adapting provisions from various sources to create a unique and comprehensive constitutional framework that has served India well for over seven decades.

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## 1.3 PREAMBLE

The Preamble serves as the introduction to the Indian Constitution, outlining its objectives, principles, and the basic philosophy upon which the Constitution is based. It is a brief yet powerful statement that reflects the aspirations and values of the people of India.

### **Text of the Preamble**

The Preamble to the Constitution of India reads:

***"WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:***

***JUSTICE, social, economic and political;***

***LIBERTY of thought, expression, belief, faith and worship;***

***EQUALITY of status and of opportunity; and to promote among them all;***

***FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;***

***IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS***

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## **CONSTITUTION."**

### Key Elements of the Preamble

1. **Source of Authority:** The Preamble asserts that the Constitution derives its authority from the people of India, emphasizing the democratic principle of popular sovereignty.
2. **Nature of the State:** The Preamble declares India to be a sovereign, socialist, secular, democratic republic, highlighting the fundamental principles that guide the Indian state.
3. **Objectives:** The Preamble sets forth the objectives of the Constitution, which include securing justice, liberty, equality, and fraternity for all citizens.
4. **Date of Adoption:** The Preamble mentions the date of adoption of the Constitution, which is November 26, 1949.

### Landmark Judgments Related to the Preamble

Several landmark judgments of the Supreme Court of India have dealt with the interpretation and significance of the Preamble. Some of these judgments include:

1. **Berubari Union Case (1960):** In this case, the Supreme Court held that the Preamble is not a part of the Constitution and, therefore, cannot be used to invalidate or interpret other provisions of the Constitution. However, this view was later

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overruled in the Kesavananda Bharati case.

2. **Kesavananda Bharati v. State of Kerala (1973):** In this landmark judgment, the Supreme Court held that the Preamble is an integral part of the Constitution and can be used as a tool for interpreting its provisions. Additionally, the Court established the 'Basic Structure' doctrine, which asserts that the Parliament cannot amend the basic features of the Constitution, such as the sovereignty, democracy, and the fundamental rights.
3. **S.R. Bommai v. Union of India (1994):** In this case, the Supreme Court emphasized the secular nature of the Indian state as enshrined in the Preamble and held that secularism is a basic feature of the Constitution.
4. **Union Government v. LIC of India (1995):** The Supreme Court, in this case, affirmed that the Preamble can be used as a guiding tool for interpreting the Constitution, especially when the language of a provision is ambiguous or unclear.

The Preamble to the Indian Constitution serves as a powerful and concise statement of the aspirations, principles, and objectives that underpin the Constitution. It provides a foundation for the interpretation and understanding of the Constitution and its provisions. The landmark judgments associated with the Preamble have played a crucial role in shaping the interpretation of the

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by

ADV. MOHIT TANWR

ADV. SHIVANG VERMA

Constitution and reaffirming the fundamental principles upon which the Indian state is built.

## 1.4 SALIENT FEATURES OF THE INDIAN CONSTITUTION

The Indian Constitution, being the longest written constitution in the world, possesses several unique and distinctive features that set it apart from other constitutions. Some of the salient features of the Indian Constitution are:

- 1. Length and Detail:** The Indian Constitution is the longest written constitution in the world, comprising 395 articles, 12 schedules, and over 100 amendments at the time of its adoption. The Constitution not only outlines the basic structure of governance but also provides extensive details about various aspects of administration, such as the division of powers, rights of citizens, and the functioning of government institutions.
- 2. Preamble:** The Preamble serves as an introduction to the Constitution, outlining its objectives, principles, and the underlying philosophy. It highlights the values and aspirations of the people of India and sets forth the objectives of securing justice, liberty, equality, and fraternity for all citizens.

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3. **Federal Structure with a Unitary Bias:** The Indian Constitution establishes a federal structure, dividing powers between the central and state governments. However, it also possesses certain unitary features, such as a strong central government, a single constitution, and a unified judiciary. This unique combination allows the Indian state to maintain both unity and diversity while addressing the needs and aspirations of its diverse population.
4. **Parliamentary System of Government:** The Indian Constitution adopts a parliamentary system of government, drawing inspiration from the British Constitution. This system features a bicameral legislature, the President as the nominal head of state, and the Prime Minister as the head of government. The executive is responsible to the legislature, ensuring accountability and responsiveness in governance.
5. **Fundamental Rights:** The Indian Constitution guarantees a comprehensive set of fundamental rights to its citizens, which are enshrined in Part III of the Constitution. These rights include the right to equality, the right to freedom, the right against exploitation, the right to freedom of religion, cultural and educational rights, and the right to constitutional remedies.
6. **Directive Principles of State Policy:** Part IV of the Indian Constitution contains the Directive Principles of State Policy, which serve as guidelines

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for the government in formulating policies and legislation. Although not legally enforceable, these principles aim to promote social, economic, and political justice, as well as the welfare of the people.

7. **Fundamental Duties:** The Indian Constitution, through the 42nd Amendment in 1976, introduced a set of fundamental duties for citizens in Part IV-A. These duties serve as a reminder of the responsibilities that citizens owe to the state and society, promoting a sense of civic consciousness and national unity.
8. **Secularism:** The Indian Constitution upholds the principle of secularism, which implies that the state does not endorse or favor any particular religion. It guarantees the freedom of religion and the right to practice, propagate, and profess any faith, fostering religious tolerance and harmony.
9. **Independence of the Judiciary:** The Indian Constitution establishes an independent judiciary, which acts as the guardian of the Constitution and the fundamental rights of citizens. The judiciary has the power of judicial review, allowing it to strike down laws and executive actions that violate the Constitution or infringe upon the rights of citizens.
10. **Amendment Procedure:** The Indian Constitution provides for a flexible amendment procedure, allowing for changes to the Constitution to adapt to evolving needs and circumstances. The amendment

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process requires a special majority in the Parliament, ensuring that changes are made through a broad consensus.

The salient features of the Indian Constitution reflect the diverse influences, principles, and aspirations that shaped its creation. These features have ensured that the Constitution remains a living, adaptable document capable of addressing the evolving needs of the nation while upholding the fundamental values of democracy, justice, and equality.

## **1.5 IS INDIAN CONSTITUTION FEDERAL IN NATURE**

The Indian Constitution is often described as quasi-federal or federal in nature with a unitary bias. While it incorporates many federal features, it also includes several unitary elements. This unique combination allows the Indian state to maintain unity while respecting the diversity and autonomy of its various regions.

### **Federal Features of the Indian Constitution**

1. **Dual Government:** The Indian Constitution establishes a dual system of government, with power divided between the central government and the state governments.

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2. **Division of Powers:** The Constitution provides for a clear division of powers between the central and state governments, as outlined in the Seventh Schedule. The Schedule contains three lists: Union List, State List, and Concurrent List. The Union List includes subjects on which only the central government can legislate, the State List comprises subjects on which only the state governments can legislate, and the Concurrent List contains subjects on which both central and state governments can legislate.
3. **Written Constitution:** The Indian Constitution is a written document that clearly defines the powers and functions of the central and state governments, which is a characteristic feature of federal systems.
4. **Supremacy of the Constitution:** The Indian Constitution is the supreme law of the land, and all authorities, whether at the central or state level, must act within the bounds of the Constitution.
5. **Independent Judiciary:** The Indian Constitution provides for an independent and unified judiciary that acts as the guardian of the Constitution and the fundamental rights of citizens. The judiciary has the power of judicial review, which enables it to examine the constitutionality of laws and executive actions.

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## Unitary Features of the Indian Constitution

1. **Strong Central Government:** The Indian Constitution provides for a strong central government with wide-ranging powers, particularly in matters of defense, foreign affairs, and finance.
2. **Single Constitution:** Unlike true federal systems, India has a single constitution that applies to both the central and state governments, with the central government having the authority to amend the Constitution.
3. **Emergency Provisions:** The Indian Constitution contains emergency provisions that allow the central government to assume wide-ranging powers, effectively converting the federal structure into a unitary one during emergencies.
4. **Integrated Judiciary:** The Indian judiciary is integrated, with the Supreme Court at the apex, followed by the High Courts and subordinate courts. This unified judicial system ensures uniformity in the interpretation and application of laws throughout the country.
5. **All-India Services:** The Indian Constitution provides for the creation of All-India Services, such as the Indian Administrative Service (IAS), Indian Police Service (IPS), and Indian Forest Service (IFS), whose members serve both the

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central and state governments, further strengthening the unity of the country.

## Relevant Judgments

1. State of West Bengal v. Union of India (1963): In this case, the Supreme Court held that the Indian Constitution is not truly federal in nature but rather a unique blend of federal and unitary features. The Court observed that the Constitution is "essentially federal in its character, though not in the strict sense of the term."
2. S.R. Bommai v. Union of India (1994): In this case, the Supreme Court reiterated that the Indian Constitution is a mix of federal and unitary elements and emphasized the importance of maintaining the balance between the central and state governments.

While the Indian Constitution possesses several federal features, it also incorporates unitary elements, creating a unique blend of federalism with a unitary bias. This combination allows the Indian state to balance the need for unity and diversity, maintaining the autonomy of the states while ensuring a strong central government that can address national issues effectively. The judgments of the Supreme Court have also acknowledged this unique constitutional structure and underscored the importance of maintaining the balance between the central and state governments.

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## UNIT 2

### CONSTITUTIONAL ORGANS OF THE GOVERNMENT

#### 2.1 PARLIAMENT: COMPOSITION, PARLIAMENTARY SOVEREIGNTY, PARLIAMENTARY PRIVILEGES

The Parliament of India is the supreme legislative body in the country, responsible for enacting laws and overseeing the functioning of the executive branch. It comprises the President and two Houses, the Lok Sabha (House of the People) and the Rajya Sabha (Council of States). The Parliament enjoys certain privileges and powers that ensure its effective functioning and maintain its sovereignty.

#### **Composition of Parliament**

1. The President (Article 79): The President of India is an integral part of the Parliament, and their assent is required for bills to become law. The President also has the power to summon and prorogue the Houses of Parliament and dissolve the Lok Sabha.
2. Lok Sabha (Article 81): The Lok Sabha is the lower house of Parliament, comprising elected

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representatives from the various constituencies across the country. The total membership of the Lok Sabha is capped at 552 members, with 530 members representing the states, up to 20 members representing the Union Territories, and up to 2 members representing the Anglo-Indian community, if the President considers their representation inadequate.

3. **Rajya Sabha (Article 80):** The Rajya Sabha is the upper house of Parliament, consisting of representatives from the states and Union Territories. The Rajya Sabha can have up to 250 members, of which 238 members represent the states and Union Territories, while 12 members are nominated by the President for their expertise in fields such as literature, science, art, and social service.

## **Parliamentary Sovereignty**

Parliamentary sovereignty implies that the Parliament has supreme authority in the legislative process and that its decisions cannot be overridden by any other authority. In the Indian context, parliamentary sovereignty is not absolute, as the Constitution places certain limitations on the Parliament's powers. These limitations include the fundamental rights, the federal structure, and the judiciary's power of judicial review. However, within these constraints, the Parliament possesses extensive powers to enact laws and amend the Constitution.

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## Parliamentary Privileges

Parliamentary privileges are certain rights and immunities granted to the Parliament, its committees, and its members to ensure their effective functioning and maintain the dignity and authority of the institution. Some of these privileges include:

1. **Freedom of Speech (Article 105):** Members of Parliament enjoy the freedom of speech in the Parliament, subject to the rules and standing orders of the House. They cannot be held liable for any defamatory or seditious statements made within the Parliament.
2. **Immunity from Arrest (Article 105):** Members of Parliament are immune from arrest in civil cases during a session of Parliament and 40 days before and after the session.
3. **Exemption from Jury Service:** Members of Parliament are exempt from serving on juries, as their parliamentary duties are considered of primary importance.
4. **Right to Exclude Non-Members:** The Parliament has the right to exclude non-members from its proceedings and maintain the confidentiality of its debates and deliberations when necessary.
5. **Right to Punish Members and Outsiders for Breach of Privilege:** The Parliament has the power to punish its members and outsiders for any

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breach of privilege or contempt, ensuring that its authority and dignity are maintained.

The Indian Parliament, comprising the President, Lok Sabha, and Rajya Sabha, is the supreme legislative body in the country, responsible for enacting laws and overseeing the executive's functioning. While parliamentary sovereignty is not absolute, the Parliament enjoys considerable authority within the constraints of the Constitution. Parliamentary privileges, such as freedom of speech and immunity from arrest, ensure the effective functioning of the Parliament and maintain its dignity and authority.

some landmark judgments related to the Parliament's composition, parliamentary sovereignty, and parliamentary privileges:

- 1. Keshavananda Bharati v. State of Kerala (1973):** In this landmark case, the Supreme Court of India held that the Parliament has the power to amend the Constitution but cannot alter its basic structure. This judgment effectively put a limit on parliamentary sovereignty, ensuring that certain fundamental aspects of the Constitution remain unalterable even by the Parliament.
- 2. Golak Nath v. State of Punjab (1967):** In this case, the Supreme Court held that the Parliament cannot amend the fundamental rights enshrined in Part III of the Constitution. However, this decision was later overruled by the Keshavananda Bharati

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case, which established the basic structure doctrine.

3. **S.P. Gupta v. President of India (1981):** Also known as the Judges' Transfer Case, this judgment addressed the issue of parliamentary privileges in the context of judicial appointments and transfers. The Supreme Court held that the Parliament's privileges did not extend to the non-disclosure of information relating to judicial appointments and transfers, asserting that the Parliament cannot claim privileges that would infringe upon the fundamental rights of citizens.
4. **Raja Ram Pal v. Hon'ble Speaker, Lok Sabha (2007):** In this case, the Supreme Court examined the scope and extent of parliamentary privileges, particularly the power of the Parliament to expel its members. The Court held that while the Parliament has the power to expel its members, such power must be exercised within the confines of the Constitution and subject to judicial review.
5. **P.V. Narasimha Rao v. State (CBI/SPE) (1998):** In this case, the Supreme Court dealt with the issue of whether a Member of Parliament could be prosecuted for bribery under the Prevention of Corruption Act, 1988. The Court held that parliamentary privileges, such as immunity from arrest, do not extend to criminal cases and that a Member of Parliament can be prosecuted for bribery.

These landmark judgments showcase the dynamic

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relationship between the Parliament and the judiciary and highlight the importance of striking a balance between parliamentary sovereignty and the protection of fundamental rights and the Constitution's basic structure

## **2.2 EXECUTIVE POWER: POSITION & POWERS OF THE PRESIDENT & THE GOVERNOR**

The executive power in India is vested in the President at the central level and the Governor at the state level. Both the President and the Governor are constitutional heads, with real executive powers exercised by the Council of Ministers headed by the Prime Minister and the Chief Minister, respectively. This section discusses the position and powers of the President and the Governor within the framework of the Indian Constitution.

### Position and Powers of the President

The President of India, as the constitutional head of the executive, holds a largely ceremonial position with real executive powers exercised by the Council of Ministers. However, the President still possesses certain powers and functions:

1. Executive Powers (Article 53): The President is vested with the executive power of the Union, which is exercised by them either directly or

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through officers subordinate to them.

2. Appointment Powers (Article 75, 76, 124, 217, 222, 224): The President has the power to appoint the Prime Minister, the Attorney General of India, the Chief Justice and judges of the Supreme Court and High Courts, the Governors of the states, and transfer and appoint High Court judges.
3. Legislative Powers (Article 78, 86, 111): The President can summon and prorogue the Houses of Parliament, address the Parliament, and dissolve the Lok Sabha. They also have the power to give or withhold their assent to bills passed by the Parliament, turning them into law.
4. Financial Powers (Article 112, 113, 114, 115): The President is responsible for the presentation of the annual budget to the Parliament and has the power to authorize expenditure from the Consolidated Fund of India when the Parliament is not in session.
5. Military Powers (Article 53): The President is the Supreme Commander of the Indian Armed Forces and has the authority to declare war or peace, subject to the Parliament's approval.
6. Diplomatic Powers: The President represents India in its international relations, appoints ambassadors and high commissioners, and negotiates and ratifies treaties and agreements.

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7. Emergency Powers (Article 352, 356, 360): The President has the power to declare a national emergency, impose President's rule in a state, or declare a financial emergency.

## Position and Powers of the Governor

The Governor, as the constitutional head of the state executive, holds a position similar to that of the President at the state level. The Governor's powers and functions include:

1. Executive Powers (Article 154): The executive power of the state is vested in the Governor, which is exercised by them either directly or through officers subordinate to them.
2. Appointment Powers (Article 164, 165, 217, 233): The Governor has the power to appoint the Chief Minister, the Advocate General of the state, and the judges of the state's subordinate courts. They also have a role in the appointment of High Court judges in consultation with the President and the Chief Justice of India.
3. Legislative Powers (Article 174, 175, 200, 213): The Governor can summon and prorogue the Houses of the state legislature, address the legislature, and dissolve the state legislative assembly. They also have the power to give or withhold their assent to bills passed by the state legislature and reserve certain bills for the

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President's consideration.

4. Financial Powers (Article 202, 203, 205): The Governor is responsible for the presentation of the state budget to the state legislature and has the power to authorize expenditure from the Consolidated Fund of the state when the legislature is not in session.
5. Discretionary Powers: The Governor has certain discretionary powers, such as inviting the leader of the largest party or coalition to the legislature to form the government, seeking a report from the state government on the state's administrative affairs, and recommending President's rule in the state.

Landmark Judgments Related to the Position and Powers of the President and the Governor:

1. Ram Jawaya Kapur v. State of Punjab (1955): In this case, the Supreme Court held that the executive power of the Union and the states is co-extensive with the legislative power, subject to the limitations imposed by the Constitution. The Court also emphasized that the President and the Governor act on the advice of the Council of Ministers.
2. Shamsher Singh v. State of Punjab (1974): The Supreme Court reaffirmed that the President and the Governor are bound by the advice of the

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Council of Ministers, headed by the Prime Minister and the Chief Minister, respectively. The Court held that the President and the Governor exercise their powers and functions as per the aid and advice of the Council of Ministers.

3. S.R. Bommai v. Union of India (1994): This case dealt with the President's power to impose President's rule in a state under Article 356. The Supreme Court held that the President's satisfaction in invoking Article 356 is subject to judicial review, and the Court can examine whether the President's decision was based on relevant material and not mala fide or arbitrary.
4. Rameshwar Prasad v. Union of India (2006): In this case, the Supreme Court invalidated the imposition of President's rule in Bihar and held that the Governor's report recommending the President's rule was based on extraneous and irrelevant grounds. The Court emphasized that the Governor should act in a fair and non-partisan manner.
5. Nabam Rebia and Bamang Felix v. Deputy Speaker (2016): This judgment dealt with the Governor's discretionary powers and the scope of judicial review over the Governor's actions. The Supreme Court held that the Governor's discretionary powers must be exercised within the constitutional framework and are subject to judicial review to prevent arbitrariness or mala

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fide actions.

These landmark judgments highlight the constitutional position of the President and the Governor as the heads of the executive and underline the importance of acting within the constitutional framework and on the aid and advice of the Council of Ministers. The judgments also emphasize the role of the judiciary in reviewing the actions of the President and the Governor to ensure adherence to the Constitution and the rule of law.

## 2.3 JUDICIARY

### I. JURISDICTION OF SUPREME COURT AND HIGH COURTS

### II. APPOINTMENT AND INDEPENDENCE OF JUDICIARY

#### **JURISDICTION OF HON'BLE SUPREME COURT & HIGH COURTS**

The Supreme Court and the High Courts are the highest judicial authorities in India, with the Supreme Court being the apex court and the High Courts functioning at the state level. Both courts have wide-ranging jurisdictions that cover various aspects of the law. This section will discuss the jurisdiction of the Supreme Court and the High Courts within the framework of the Indian Constitution.

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## Jurisdiction of the Supreme Court

The Supreme Court's jurisdiction is defined under Articles 131 to 143 of the Indian Constitution:

1. **Original Jurisdiction (Article 131):** The Supreme Court has exclusive original jurisdiction over disputes between the Government of India and one or more states, between the Government of India and any state(s) on one side and one or more states on the other side, and between two or more states.
2. **Appellate Jurisdiction (Article 132-134):** The Supreme Court has appellate jurisdiction in constitutional matters (Article 132), civil matters (Article 133), and criminal matters (Article 134) when certain conditions are met, such as the involvement of substantial questions of law or when a High Court certifies the case fit for appeal to the Supreme Court.
3. **Special Leave to Appeal (Article 136):** The Supreme Court, at its discretion, can grant special leave to appeal against any judgment, decree, determination, sentence, or order passed by any court or tribunal in India, except military tribunals.
4. **Advisory Jurisdiction (Article 143):** The President of India can seek the Supreme Court's advice on any question of law or fact of public importance.

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5. Writ Jurisdiction (Article 32): The Supreme Court has the power to issue writs for the enforcement of fundamental rights, including habeas corpus, mandamus, prohibition, quo warranto, and certiorari.

## **Jurisdiction of the High Courts**

The High Courts' jurisdiction is defined under Articles 226 and 227 of the Indian Constitution:

1. Original Jurisdiction: The High Courts have original jurisdiction in certain matters, such as matrimonial cases, company law cases, testamentary cases (wills and probate), and cases involving substantial questions of law relating to the interpretation of the Constitution.
2. Appellate Jurisdiction: The High Courts have appellate jurisdiction over judgments, decrees, and orders passed by the subordinate courts in civil, criminal, and other matters within their territorial jurisdiction.
3. Supervisory Jurisdiction (Article 227): The High Courts have supervisory jurisdiction over all courts and tribunals functioning within their territorial jurisdiction, allowing them to correct errors of law, procedure, or jurisdiction.
4. Writ Jurisdiction (Article 226): The High Courts have the power to issue writs for the enforcement of fundamental rights and any other purpose,

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including habeas corpus, mandamus, prohibition, quo warranto, and certiorari. Their writ jurisdiction extends to matters beyond fundamental rights, making it wider than the Supreme Court's writ jurisdiction under Article 32.

The jurisdiction of the Supreme Court and the High Courts in India is vast, covering original, appellate, supervisory, and writ jurisdictions. The Constitution empowers these courts to ensure the protection of fundamental rights, uphold the rule of law, and maintain the proper functioning of the judicial system. The judiciary, through the exercise of its jurisdiction, plays a crucial role in safeguarding the Constitution and ensuring justice for all citizens.

## **APPOINTMENT & INDEPENDENCE OF JUDICIARY**

The independence of the judiciary is a cornerstone of any democratic system. It ensures that the judiciary can function without any interference or influence from other branches of government and upholds the rule of law. This section discusses the appointment process of judges in India and the constitutional provisions that ensure the independence of the judiciary.

### **Appointment of Judges**

The appointment of judges in India is governed by the

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Indian Constitution and follows a collegium system:

1. Appointment of Supreme Court Judges (Article 124): The Chief Justice of India and other judges of the Supreme Court are appointed by the President of India. The Chief Justice is appointed based on the recommendation of the outgoing Chief Justice, while the other judges are appointed based on the recommendation of the Chief Justice and the four senior-most judges of the Supreme Court (the collegium).
2. Appointment of High Court Judges (Article 217): The Chief Justice and other judges of the High Courts are appointed by the President of India. The Chief Justice is appointed based on the recommendation of the Chief Justice of India, while the other judges are appointed based on the recommendation of the Chief Justice of the concerned High Court and the collegium of the Supreme Court.
3. Appointment of Subordinate Judiciary (Article 233, 234): The appointment of judges in the subordinate judiciary is made by the Governor of the state in consultation with the concerned High Court. The recruitment and selection process is usually conducted through competitive examinations and interviews.

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## Independence of Judiciary

The Indian Constitution provides several provisions to ensure the independence of the judiciary:

1. **Security of Tenure (Article 124, 217):** The judges of the Supreme Court and High Courts hold office until they reach the age of retirement (65 years for Supreme Court judges and 62 years for High Court judges), ensuring their independence from any political influence.
2. **Impeachment Process (Article 124, 218):** The judges of the Supreme Court and High Courts can be removed from office only through a stringent impeachment process initiated by the Parliament on the grounds of proved misbehavior or incapacity, further ensuring their independence.
3. **Salaries and Allowances (Article 125, 221):** The salaries, allowances, and other benefits of the judges of the Supreme Court and High Courts are charged on the Consolidated Fund of India and are not subject to any vote in the Parliament, protecting them from any financial pressure.
4. **Prohibition on Practice after Retirement (Article 124, 220):** After retirement, judges of the Supreme Court and High Courts are prohibited from practicing law in any court or before any authority in India, preventing any potential conflict of interest.

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5. Separation of Judiciary from Executive (Article 50): The Constitution mandates the separation of the judiciary from the executive, ensuring that the judiciary functions independently without any interference from the executive branch of government.

The appointment process and constitutional provisions in India ensure the independence of the judiciary from any external influence or interference. This independence is crucial for maintaining the rule of law, upholding the Constitution, and ensuring justice for all citizens. The Indian judiciary, with its independent functioning and constitutional safeguards, plays a vital role in strengthening the democratic fabric of the country.

## Landmark Judgement

Here are some landmark judgments related to the appointment and independence of the judiciary:

1. S.P. Gupta v. Union of India (1981) - The First Judges Case: In this case, the Supreme Court held that the Chief Justice of India's opinion regarding the appointment of judges did not have primacy and that the President could consult other judges of the Supreme Court and High Courts. The judgment also ruled that the executive's primacy in appointments was a necessary part of the constitutional scheme for ensuring an independent judiciary.

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2. Supreme Court Advocates-on-Record Association v. Union of India (1993) - The Second Judges Case: In a reversal of the S.P. Gupta judgment, the Supreme Court held that the Chief Justice of India's opinion held primacy in the appointment process of judges. The Court introduced the collegium system, stating that the Chief Justice of India's recommendation should be made in consultation with the two senior-most judges of the Supreme Court, ensuring greater independence of the judiciary from the executive.
3. In Re: Special Reference 1 of 1998 - The Third Judges Case: This judgment further clarified and expanded the collegium system. The Court held that the Chief Justice of India's recommendation for the appointment of Supreme Court judges should be made in consultation with a collegium of four senior-most judges, while the recommendation for the appointment of High Court judges should be made in consultation with the collegium of the Supreme Court and the Chief Justice of the concerned High Court.
4. NJAC Case - Supreme Court Advocates-on-Record Association v. Union of India (2015): In this case, the Supreme Court declared the National Judicial Appointments Commission (NJAC) Act, 2014, and the 99th Constitutional Amendment Act, which sought to replace the collegium system with the NJAC, as

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unconstitutional. The Court held that the NJAC violated the independence of the judiciary and the basic structure of the Constitution.

5. Kesavananda Bharati v. State of Kerala (1973): Although not directly related to the appointment and independence of the judiciary, this landmark judgment is significant as it laid down the doctrine of the basic structure of the Constitution. The Court held that the Parliament cannot amend the Constitution in a way that would alter its basic structure, which includes the independence of the judiciary.

These landmark judgments have played a crucial role in shaping the appointment process of judges and ensuring the independence of the judiciary in India. The evolution of the collegium system and the emphasis on the independence of the judiciary in these judgments have reinforced the vital role of the judiciary in upholding the Constitution and the rule of law.

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## UNIT 3

### DISTRIBUTION OF POWERS BETWEEN UNION AND STATES

#### **3.1 LEGISLATIVE RELATIONS BETWEEN UNION AND THE STATES**

India follows a federal system of government, with power being distributed between the central government (Union) and the state governments. The legislative relations between the Union and the states are enshrined in the Indian Constitution, which defines the areas in which the Union and the states can legislate. This section discusses the legislative relations between the Union and the states as laid out in the Constitution.

#### **Division of Legislative Powers**

The division of legislative powers between the Union and the states is provided in the Seventh Schedule of the Constitution through three lists:

1. Union List (List I): This list contains subjects on which only the Parliament can legislate. It includes 100 items such as defense, foreign affairs, atomic energy, railways, and banking.

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2. State List (List II): This list contains subjects on which only the state legislatures can legislate. It comprises 61 items such as police, public health, agriculture, and local government.
3. Concurrent List (List III): This list contains subjects on which both the Parliament and the state legislatures can legislate. It consists of 52 items such as criminal law, bankruptcy and insolvency, marriage and divorce, and bankruptcy.

Residuary Powers (Article 248): Any subject not enumerated in the three lists falls under the residuary powers of the Parliament.

## **Parliament's Power to Legislate on State Subjects**

In certain circumstances, the Constitution empowers the Parliament to legislate on subjects enumerated in the State List:

1. When a Rajya Sabha resolution is passed (Article 249): If the Rajya Sabha (Council of States) passes a resolution by a two-thirds majority declaring that a subject in the State List is of national importance, the Parliament can legislate on that subject for a specified period.
2. During a national emergency (Article 250): When a national emergency is in operation, the Parliament has the power to legislate on subjects in the State List.

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3. When states make a request (Article 252): If two or more states pass resolutions requesting the Parliament to legislate on a subject in the State List, the Parliament can pass a law applicable to those states.
4. To give effect to international agreements (Article 253): The Parliament can legislate on subjects in the State List to give effect to international agreements, treaties, and conventions.

## Doctrine of Repugnancy

In case of a conflict between a central law and a state law on a subject in the Concurrent List, the central law prevails over the state law as per the doctrine of repugnancy (Article 254). However, if a state law that is inconsistent with a central law has received the President's assent, the state law prevails in that state.

The legislative relations between the Union and the states in India are guided by the federal structure laid down in the Constitution. The division of legislative powers through the Union List, State List, and Concurrent List ensures a balance of power between the central and state governments. In certain circumstances, the Parliament can legislate on state subjects to address issues of national importance or to give effect to international agreements. This framework allows for the smooth functioning of the Indian federal system and enables both the Union and the states to exercise their legislative powers effectively.

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## Landmark Judgement

Here are some landmark judgments related to legislative relations between the Union and the states:

1. **State of West Bengal v. Kesoram Industries Ltd. (2004):** In this case, the Supreme Court dealt with the issue of whether a tax on the sale of goods and a tax on the consignment of goods for sale could coexist. The Court held that since the power to tax the sale of goods is in the State List (Entry 54) and the power to tax the consignment of goods is in the Union List (Entry 92A), both taxes can coexist without being repugnant.
2. **Tika Ramji v. State of Uttar Pradesh (1956):** The Supreme Court dealt with the issue of whether the state government had the authority to regulate the production and sale of gur (jaggery) under the State List (Entry 27). The Court held that the state government could regulate the production and sale of gur as it was within the ambit of the State List.
3. **ITC Ltd. v. Agricultural Produce Market Committee (2002):** The Supreme Court addressed the issue of repugnancy between the central law (Central Sales Tax Act) and the state law (Karnataka Agricultural Produce Marketing Regulation Act). The Court held that since both laws dealt with different aspects of taxation and operated in different fields, there was no

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repugnancy between them.

4. *State of Rajasthan v. G. Chawla* (1959): The Supreme Court clarified that the President's assent under Article 254(2) could be given even after the enactment of the central law, and the state law would still prevail in case of any inconsistency with the central law.
5. *Zaverbhai Amaldas v. State of Bombay* (1955): The Supreme Court held that if a state law is inconsistent with a central law on a subject in the Concurrent List, the central law will prevail, and the state law will be void to the extent of the inconsistency. In this case, the state law was declared void as it was inconsistent with the central law (Essential Supplies (Temporary Powers) Act, 1946).

These landmark judgments have played a crucial role in clarifying the legislative relations between the Union and the states, addressing issues of repugnancy, and determining the limits of legislative powers. They have contributed to the development of a harmonious and effective federal system in India.

### **3.2 ADMINISTRATIVE RELATIONS BETWEEN UNION AND THE STATES**

In a federal system like India, the smooth functioning of the government requires a well-defined framework for

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administrative relations between the Union and the states. The Indian Constitution lays down the administrative relations between the Union and the states, which play a crucial role in maintaining harmony and cooperation between the two levels of government. This section discusses the key aspects of administrative relations between the Union and the states as enshrined in the Constitution.

## **Distribution of Executive Power**

The Constitution provides for the distribution of executive powers between the Union and the states as follows:

1. **Union Executive (Article 53, 73):** The executive power of the Union is vested in the President and is exercised by him either directly or through officers subordinate to him in accordance with the Constitution. The Union executive extends to the matters with respect to which the Parliament has the power to make laws (i.e., subjects in the Union and Concurrent Lists).
2. **State Executive (Article 154, 162):** The executive power of the state is vested in the Governor and is exercised by him either directly or through officers subordinate to him in accordance with the Constitution. The state executive extends to the matters with respect to which the state legislature has the power to make laws (i.e., subjects in the State and Concurrent Lists).

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## Coordination between the Union and the States

To ensure harmony and cooperation between the Union and the states, the Constitution provides for several mechanisms:

1. **Inter-State Council (Article 263):** The President can establish an Inter-State Council to inquire into and advise on disputes that may arise between states, investigate and discuss subjects of common interest, and make recommendations for better coordination of policy and action.
2. **All-India Services (Article 312):** The Constitution provides for the creation of All-India Services, such as the Indian Administrative Service (IAS), Indian Police Service (IPS), and Indian Forest Service (IFoS), which serve both the Union and the state governments, ensuring a high degree of administrative continuity and coordination between them.
3. **Integrated Judicial System:** The Constitution establishes an integrated judicial system, with the Supreme Court at the apex and High Courts for each state or group of states. This unified system helps maintain uniformity and consistency in the interpretation and application of laws across the country.

## Union's Power to Give Directions

In certain circumstances, the Constitution empowers the

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Union to give directions to the states:

1. **Executive Directions (Article 256):** The Union can issue directions to the states to ensure compliance with the laws made by the Parliament and the Constitution.
2. **Directions for Maintenance of Essential Services (Article 257):** The Union can issue directions to the states for the maintenance of means of communication and the protection of railways, which are declared as essential to the defense of India or the maintenance of public order.
3. **Directions during a National Emergency (Article 353):** During a national emergency, the Union can issue directions to the states regarding the manner in which their executive power is to be exercised.
4. **Directions during President's Rule (Article 365):** When President's Rule is imposed in a state, the Union can issue directions to the state government or the Governor to ensure compliance with the President's Rule.

The administrative relations between the Union and the states in India, as laid out in the Constitution, are designed to maintain harmony and cooperation between the two levels of government. The distribution of executive powers, the establishment of institutions like the Inter-State Council, and the creation of All-India

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Services help ensure the smooth functioning of the federal system. The Union's power to give directions to the states in certain circumstances further ensures that the states adhere to the laws made by the Parliament and uphold the Constitution.

### **3.3 FINANCIAL RELATIONS BETWEEN THE UNION AND THE STATES**

A crucial aspect of a federal system is the financial relationship between the central government (Union) and the state governments. The Constitution of India provides a comprehensive framework for financial relations between the Union and the states to ensure the equitable distribution of financial resources and promote balanced development across the country. This section discusses the key features of financial relations between the Union and the states as enshrined in the Constitution.

#### **Distribution of Taxing Powers**

The Constitution provides for the distribution of taxing powers between the Union and the states through the three lists in the Seventh Schedule:

1. Union List (List I): The Union has exclusive powers to levy taxes on subjects enumerated in

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this list, such as customs duties, corporation tax, and taxes on income other than agricultural income.

2. State List (List II): The states have exclusive powers to levy taxes on subjects enumerated in this list, such as land revenue, taxes on agricultural income, and taxes on the sale of goods and advertisements.
3. Concurrent List (List III): Both the Union and the states can levy taxes on subjects enumerated in this list, such as stamp duties, but the Parliament's law prevails in case of a conflict.

## Grants-in-Aid

The Constitution provides for grants-in-aid from the central government to the states to supplement their resources and ensure a balanced financial distribution:

1. Statutory Grants (Article 275): The Parliament may provide for grants-in-aid to states, as recommended by the Finance Commission. These grants are designed to help states meet the costs of specific services and development programs.
2. Discretionary Grants (Article 282): Both the Union and the states can make grants for any public purpose, even if it is not within their legislative competence. These grants are typically provided for specific development projects, disaster relief, or other public purposes.

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## Finance Commission

The Finance Commission is a constitutional body established every five years under Article 280 to make recommendations regarding the distribution of financial resources between the Union and the states. Its primary functions include:

1. Distribution of net proceeds of taxes: The Finance Commission recommends the distribution of net proceeds of taxes between the Union and the states and the allocation of the share of each state.
2. Principles governing grants-in-aid: The Finance Commission suggests the principles governing the grants-in-aid to states from the Consolidated Fund of India.
3. Measures to augment state resources: The Finance Commission may recommend measures to augment the resources of states, such as tax reforms or other fiscal policies.

## Goods and Services Tax (GST)

The introduction of the Goods and Services Tax (GST) in 2017 through the 101st Constitutional Amendment Act has significantly transformed the financial relations between the Union and the states. GST is a comprehensive indirect tax levied on the supply of goods and services, subsuming multiple central and state taxes. The GST Council, comprising representatives of the Union and the states, makes recommendations on GST

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rates, exemptions, and other related matters, ensuring a cooperative approach to fiscal management.

The financial relations between the Union and the states in India are guided by the constitutional framework, which aims to ensure an equitable distribution of financial resources and promote balanced development across the country. The distribution of taxing powers, grants-in-aid, the role of the Finance Commission, and the introduction of GST contribute to the harmonious functioning of India's federal system and enable both the Union and the states to fulfill their respective financial responsibilities effectively.

### **3.4.1 RELEVANT DOCTRINES:** **TERRITORIAL NEXUS; HARMONIOUS** **CONSTRUCTION**

The doctrines of Territorial Nexus and Harmonious Construction are important legal principles in Indian constitutional law. These doctrines are used by the judiciary to interpret the provisions of the Constitution and ensure the smooth functioning of the federal structure. This section will provide an overview of these doctrines along with landmark judgments related to them.

#### **Doctrine of Territorial Nexus**

The doctrine of Territorial Nexus deals with the legislative competence of a state legislature to make laws

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with respect to extra-territorial aspects or operations. This doctrine is based on the premise that a state can enact laws that have an effect outside its territory, provided there is a sufficient connection or nexus between the state and the subject matter of the legislation.

## Landmark Judgments:

- a) **State of Bombay v. RMD Chamarbaugwala (1957):** In this case, the Supreme Court of India upheld the Bombay State Lottery Act, which regulated and taxed lotteries operated outside the state but had ticket sales within the state. The Court held that the state legislature had the legislative competence to enact the law, as there was a sufficient territorial nexus between the state and the subject matter of the legislation.
- b) **Tata Iron and Steel Co. Ltd. v. State of Bihar (1963):** In this case, the Supreme Court held that the Bihar Sales Tax Act, which imposed a tax on sales made outside the state but where the goods were delivered within the state, was valid as there was a sufficient territorial nexus between the state and the subject matter of the legislation.

## Doctrine of Harmonious Construction

The doctrine of Harmonious Construction is a principle of constitutional interpretation that seeks to resolve apparent conflicts or inconsistencies between different provisions of the Constitution. According to this doctrine,

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the courts must strive to give effect to all provisions of the Constitution by harmonizing them in a manner that best serves the overall constitutional objectives.

## Landmark Judgments:

- c) In Re Kerala Education Bill (1957): In this case, the Supreme Court applied the doctrine of Harmonious Construction to balance the right to establish and administer educational institutions by religious and linguistic minorities (Article 30) with the state's power to impose reasonable regulations on such institutions in the interest of general public (Article 29(2)). The Court held that the provisions must be harmonized to give effect to both the rights of minorities and the state's authority to regulate educational institutions.
- d) Kesavananda Bharati v. State of Kerala (1973): The landmark judgment in the Kesavananda Bharati case is an excellent example of the application of the doctrine of Harmonious Construction. The Court harmoniously construed the provisions of the Constitution to hold that Parliament has the power to amend any part of the Constitution, including the Fundamental Rights, but it cannot alter the basic structure or essential features of the Constitution.

The doctrines of Territorial Nexus and Harmonious Construction play a significant role in the interpretation and application of the Constitution of India. By ensuring the appropriate balance between the legislative powers of

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the states and the overall objectives of the Constitution, these doctrines contribute to the smooth functioning of the Indian federal system and help maintain the constitutional order. The landmark judgments related to these doctrines have shaped the development of constitutional law and jurisprudence in India.

### **3.4.2 RELEVANT DOCTRINES: "PITH & SUBSTANCE; DOCTRINE OF REPUGNANCY; COLORABLE LEGISLATION**

The doctrines of Pith & Substance, Doctrine of Repugnancy, and Colorable Legislation are significant principles in Indian constitutional law, guiding the interpretation and application of the Constitution. These doctrines help maintain the balance of power between the Union and the states and uphold the federal structure. This section discusses these doctrines and provides landmark judgments related to them.

#### **Doctrine of Pith & Substance**

The doctrine of Pith & Substance is a principle applied when determining the legislative competence of a law enacted by a legislature. This doctrine requires examining the true nature and substance of the legislation to determine which legislative list it falls under, rather than focusing on its form or incidental effects.

#### **Landmark Judgments:**

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- a) *Prafulla Kumar Mukherjee v. Bank of Commerce (1947)*: In this case, the Privy Council applied the doctrine of Pith & Substance to uphold the Bengal Money Lenders Act, which was challenged on the ground that it encroached upon the federal field of banking. The Court held that the primary object of the Act was to regulate money lending, which fell within the state's legislative competence, and any impact on banking was merely incidental.
- b) *State of Rajasthan v. G. Chawla (1959)*: In this case, the Supreme Court applied the doctrine of Pith & Substance to uphold the Rajasthan Sales Tax Act, which was challenged on the ground that it encroached upon the Union's legislative field of inter-state trade and commerce. The Court held that the primary object of the Act was to levy a tax on the sale of goods, which fell within the state's legislative competence, and any impact on inter-state trade and commerce was merely incidental.

## **Doctrine of Repugnancy**

The Doctrine of Repugnancy is applied when there is a conflict between a central law and a state law concerning a subject in the Concurrent List. According to Article 254 of the Constitution, if a state law is inconsistent with a central law, the central law prevails and the state law is void to the extent of the inconsistency.

## **Landmark Judgments:**

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- a) *Deep Chand v. State of Uttar Pradesh (1959)*: In this case, the Supreme Court held that a state law would be repugnant to a central law if there is a direct conflict between the two, or if the state law seeks to occupy the same field as the central law, leading to inconsistencies in the implementation of the central law.
- b) *M. Karunanidhi v. Union of India (1979)*: In this case, the Supreme Court clarified that repugnancy could arise not only when there is a direct conflict between the state and central laws but also when the two laws, though different in their content, occupy the same field and cannot coexist without leading to inconsistencies.

## **Doctrine of Colorable Legislation**

The doctrine of Colorable Legislation deals with situations where a legislature enacts a law that appears to be within its legislative competence but, in substance, encroaches upon the legislative field reserved for another legislature. According to this doctrine, what cannot be done directly, cannot be done indirectly.

## **Landmark Judgments:**

- a) *K.C. Gajapati Narayan Deo v. State of Orissa (1953)*: In this case, the Supreme Court held that if a law, in its pith and substance, falls within a forbidden field, it would be considered a colorable legislation and declared unconstitutional.

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b) *State of Bihar v. Kameshwar Singh (1952)*: In this case, the Supreme Court struck down the Bihar Land Reforms Act as colorable legislation, as it amounted to a compulsory acquisition of the zamindari estates without providing for compensation, which was a subject matter within the Union List.

The doctrines of Pith & Substance, Doctrine of Repugnancy, and Colorable Legislation are crucial principles in Indian constitutional law that help maintain the balance of power between the Union and the states and ensure the federal structure's smooth functioning. The landmark judgments associated with these doctrines have shaped the development of constitutional law and jurisprudence in India, guiding the interpretation and application of the Constitution.

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## UNIT 4

### LEGAL WRITING AND RESEARCH

#### 4.1 EMERGENCY, AMENDMENTS AND FREEDOM OF TRADE AND COMMERCE ETC

Freedom of trade, commerce, and intercourse is a fundamental aspect of the Indian Constitution, promoting the country's economic growth and ensuring the free flow of goods and services across the nation. This freedom is enshrined in Part XIII of the Constitution, particularly in Articles 301-307, and seeks to maintain a balance between the need for national economic integration and the states' regulatory powers.

#### **Article 301: Freedom of Trade, Commerce & Intercourse**

Article 301 guarantees the freedom of trade, commerce, and intercourse throughout the territory of India. It stipulates that trade, commerce, and intercourse among the states, whether by means of internal movement or import and export, shall be free from any restrictions. This provision aims to create a single economic market and eliminate trade barriers across the country.

#### **Article 302-305: Power to Impose Restrictions**

While Article 301 guarantees the freedom of trade,

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commerce, and intercourse, Articles 302-305 empower the Parliament and the state legislatures to impose certain restrictions on these freedoms in the public interest.

1. Article 302: Parliament has the power to impose restrictions on the freedom of trade, commerce, or intercourse, but such restrictions must not discriminate between states, except when necessary to deal with a scarcity of goods in any part of India.
2. Article 303: Both Parliament and the state legislatures are prohibited from making any law that gives preference to one state over another or discriminates between states in matters of trade and commerce. However, Parliament may make such laws during a state of emergency or to deal with a scarcity of goods in any part of India.
3. Article 304: State legislatures can impose reasonable restrictions on the freedom of trade, commerce, or intercourse within their territory in the public interest. They can also impose taxes on goods imported from other states, provided that such taxes do not discriminate between goods produced within the state and those imported from other states.
4. Article 305: Existing laws that impose restrictions on the freedom of trade, commerce, and intercourse are exempt from the provisions of

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Articles 301 and 303.

## Landmark Judgments:

- a) *Atiabari Tea Co. Ltd. v. State of Assam (1961)*: In this case, the Supreme Court held that the freedom of trade, commerce, and intercourse under Article 301 is not absolute and can be subjected to reasonable restrictions in the public interest. The Court also held that any law imposing restrictions on this freedom must be tested on the touchstone of reasonableness.
- b) *Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan (1962)*: In this case, the Supreme Court clarified that the restrictions imposed by the state legislatures under Article 304(b) must be reasonable and in the public interest. The Court held that it is the judiciary's responsibility to determine whether such restrictions are reasonable and in conformity with the constitutional provisions.

Freedom of trade, commerce, and intercourse is a vital aspect of the Indian Constitution, fostering economic integration and growth across the nation. The constitutional provisions under Part XIII strike a balance between ensuring the free flow of goods and services and allowing the Parliament and state legislatures to impose reasonable restrictions in the public interest.

## **4.2 EMERGENCY PROVISIONS: ARTICLES 352- 360**

Emergency provisions in the Indian Constitution are

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outlined in Part XVIII, Articles 352-360. These provisions enable the President of India to take extraordinary measures to handle situations of crisis, ensuring the country's stability and security. There are three types of emergencies: National Emergency, President's Rule, and Financial Emergency.

## 1. National Emergency (Article 352)

A National Emergency can be declared by the President under Article 352 due to war, external aggression, or armed rebellion. The President can declare a National Emergency if they are satisfied that the security of India or any part of its territory is threatened.

### Effects of National Emergency:

- a) The President can suspend the enforcement of Fundamental Rights, except Articles 20 and 21, which deal with protection against arbitrary arrest and detention and the right to life and personal liberty.
- b) The distribution of powers between the Union and the states may be altered. The Parliament gains the power to legislate on subjects within the State List, and the Union government can issue executive directions to the states.
- c) The term of the Lok Sabha and the State Legislative Assemblies can be extended for a maximum period of one year at a time.

## 2. President's Rule (Article 356)

Article 356, also known as President's Rule, can be

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imposed in a state if the President is satisfied that the state's government is not functioning according to the Constitution's provisions. The President's Rule can also be imposed if there is a failure of the constitutional machinery in the state.

### **Effects of President's Rule:**

- a) The President can assume the functions of the state government and exercise the powers vested in the Governor or any other executive authority in the state.
- b) The Parliament can legislate on subjects within the State List for that state.
- c) The President can dissolve the State Legislative Assembly and order fresh elections.

### **3. Financial Emergency (Article 360)**

Under Article 360, the President can declare a Financial Emergency if they are satisfied that the financial stability or credit of India or any part of its territory is threatened.

### **Effects of Financial Emergency:**

- a) The President can suspend the distribution of financial resources between the Union and the states.
- b) The President can direct the state governments to observe certain canons of financial propriety and reduce the salaries and allowances of government employees, including judges of the Supreme Court

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and High Courts.

- c) All Money Bills and other financial bills passed by the state legislatures are subject to the President's approval.

Emergency provisions in the Indian Constitution are designed to ensure that the government can handle crises effectively and maintain the stability and security of the country. These provisions grant the President extraordinary powers to tackle situations of war, internal disturbance, or financial crisis, and alter the distribution of powers between the Union and the states as required. However, the use of these provisions must be subject to judicial review to prevent their misuse and protect the federal structure of the Indian Constitution.

## Landmark Judgement

Landmark Judgments related to Emergency Provisions:

1. State of Rajasthan v. Union of India (1977): This case dealt with the constitutionality of the 38th Amendment Act, which sought to make the President's satisfaction in declaring a National Emergency under Article 352 non-justiciable. The Supreme Court held that the President's satisfaction could be challenged on the grounds of mala fide or if it was based on extraneous or irrelevant

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considerations.

2. *Minerva Mills Ltd. v. Union of India* (1980): In this case, the Supreme Court emphasized the importance of judicial review in preserving the Constitution's basic structure. The Court held that the 42nd Amendment, which sought to exclude judicial review of constitutional amendments, violated the Constitution's basic structure and was thus unconstitutional.
3. *S.R. Bommai v. Union of India* (1994): This landmark judgment dealt with the President's Rule under Article 356. The Supreme Court held that the President's decision to impose President's Rule is subject to judicial review, and the Court can examine whether the decision was based on relevant material or taken with mala fide intent. The Court further held that the President's Rule could not be imposed merely because the ruling party at the center differed from the ruling party in the state.
4. *A.D.M. Jabalpur v. Shivakant Shukla* (1976): This case, also known as the "Habeas Corpus case," was decided during the National Emergency imposed in 1975. The Supreme Court, in this case, held that the right to move the Court for a writ of habeas corpus was suspended during the Emergency. However, this judgment was widely criticized for undermining the protection of fundamental rights and was overruled by the Supreme Court in 2017 in the case of Justice K.S. Puttaswamy (Retd.) v. Union of India.

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5. Justice K.S. Puttaswamy (Retd.) v. Union of India (2017): In this case, the Supreme Court overruled the judgment in the A.D.M. Jabalpur case, holding that the right to move the Court for a writ of habeas corpus cannot be suspended even during an Emergency. The Court emphasized that the protection of fundamental rights is essential to preserving the Constitution's basic structure.

These landmark judgments have significantly contributed to the development of Indian constitutional law concerning emergency provisions. They have helped define the limits of executive power during emergencies and emphasized the importance of judicial review in preserving the Constitution's basic structure and the protection of fundamental rights.

## **4.3.1 AMENDMENT OF CONSTITUTION: PROCEDURE OF AMENDMENT OF THE CONSTITUTION**

The Indian Constitution is a living document that needs to adapt to the changing needs and aspirations of the society it governs. To facilitate this, the Constitution provides for a mechanism to amend its provisions. The amendment procedure is outlined in Part XX, particularly in Article 368, which strikes a balance between the need for flexibility and the preservation of the Constitution's basic structure.

### **Procedure of Amendment under Article 368**

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The procedure for amending the Constitution is divided into three categories, depending on the nature of the provision being amended:

1. Amendment by a simple majority of Parliament: Some provisions of the Constitution can be amended by a simple majority of both Houses of Parliament, similar to the procedure for passing ordinary laws. Examples of such provisions include the creation or abolition of Legislative Councils in the states, the formation of new states, or the alteration of state boundaries.
2. Amendment by a special majority of Parliament: Most provisions of the Constitution can be amended by a special majority of both Houses of Parliament. A special majority requires the approval of at least two-thirds of the members present and voting, in addition to a majority of the total membership of each House. Examples of provisions that require a special majority for amendment include Fundamental Rights, Directive Principles of State Policy, and provisions related to the Union and state governments.
3. Amendment by a special majority of Parliament and ratification by the states: Some provisions of the Constitution require not only a special majority of both Houses of Parliament but also ratification by at least half of the state legislatures. This procedure is applicable to provisions that affect the federal structure of the Constitution, such as the distribution of powers between the Union and the states, the representation of states in Parliament, or the

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appointment of Supreme Court and High Court judges.

## **Landmark Judgment: Kesavananda Bharati v. State of Kerala (1973)**

In the landmark case of Kesavananda Bharati v. State of Kerala, the Supreme Court laid down the "Basic Structure Doctrine." According to this doctrine, the Parliament has the power to amend the Constitution, but it cannot alter the basic structure or framework of the Constitution. The Court held that any constitutional amendment that violates the basic structure would be void.

The basic structure of the Constitution includes features such as the supremacy of the Constitution, the rule of law, the separation of powers, the protection of fundamental rights, the principle of federalism, the principle of secularism, and the principle of democracy, among others. The precise scope of the basic structure doctrine has been elaborated upon in subsequent judgments, including *Minerva Mills Ltd. v. Union of India* (1980) and *S.R. Bommai v. Union of India* (1994).

The amendment procedure in the Indian Constitution ensures that the document remains adaptable to the changing needs of society while preserving its fundamental principles and framework. The Supreme Court, through the basic structure doctrine, has played a crucial role in maintaining the delicate balance between flexibility and stability in the Constitution, safeguarding its core values and principles from undue alteration.

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## 4.3.2 AMENDMENT OF CONSTITUTION: DOCTRINE OF BASIC STRUCTURE

The Indian Constitution provides for a mechanism to amend its provisions through Article 368. However, to ensure that the essence of the Constitution is preserved, the Supreme Court of India introduced the doctrine of the basic structure in the landmark case of Kesavananda Bharati v. State of Kerala (1973). This doctrine posits that the Parliament cannot alter the basic structure or framework of the Constitution through amendments.

### **Doctrine of Basic Structure**

In Kesavananda Bharati v. State of Kerala, the Supreme Court held that although the Parliament has the power to amend the Constitution, it cannot change its basic structure. The doctrine of the basic structure was established to protect the fundamental principles and values of the Constitution from being altered or destroyed.

The Court, however, did not provide an exhaustive list of what constitutes the basic structure. It has been defined and refined over several subsequent judgments, with some of the essential features identified as follows:

1. Supremacy of the Constitution
2. Rule of law
3. Separation of powers

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4. Federalism
5. Secularism
6. Sovereign, democratic, and republican nature of the Indian polity
7. Fundamental rights, including the right to equality and freedom of speech and expression
8. Judicial review
9. Unity and integrity of the nation
10. Free and fair elections
11. Welfare state and the Directive Principles of State Policy

## **Important Judgments Related to the Basic Structure Doctrine**

1. *Kesavananda Bharati v. State of Kerala (1973)*: As mentioned earlier, this case laid the foundation for the basic structure doctrine. The Court held that any constitutional amendment that violates the basic structure of the Constitution would be void.
2. *Indira Nehru Gandhi v. Raj Narain (1975)*: In this case, the Supreme Court applied the basic structure doctrine and struck down the 39th Amendment Act, which sought to place the election of the Prime Minister beyond judicial review. The Court held that free and fair elections are an essential part of the basic structure.

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3. *Minerva Mills Ltd. v. Union of India (1980)*: The Court, in this case, struck down certain provisions of the 42nd Amendment Act, which sought to curtail the power of judicial review and expand the scope of Parliament's amending power. The Court held that the amendment violated the basic structure by undermining the balance between the fundamental rights and the Directive Principles of State Policy, as well as the independence of the judiciary.
4. *S.R. Bommai v. Union of India (1994)*: In this case, the Supreme Court held that secularism is a part of the basic structure of the Constitution. It further emphasized the importance of judicial review in preserving the basic structure.

The doctrine of the basic structure plays a crucial role in preserving the core values and principles of the Indian Constitution. It ensures that any amendment made by the Parliament does not erode the essence of the Constitution. The doctrine has been instrumental in maintaining the delicate balance between the need for flexibility in amending the Constitution and preserving its foundational principles.

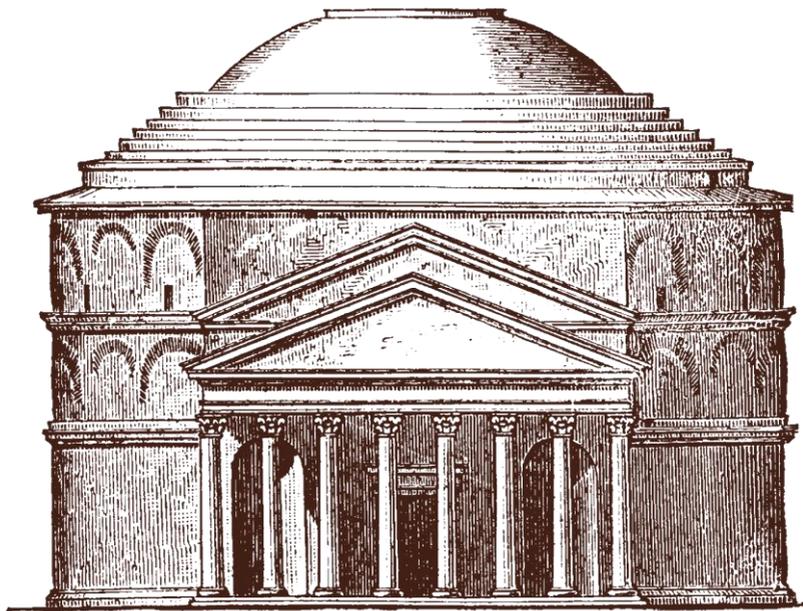
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## REQUIRED CASE READINGS

### CASE BRIEFS AND ANALYSIS

1. KESHAVANANDA BHARATI V. STATE OF KERALA, AIR 1973 SC 1461
2. INDIRA NEHRU GANDHI V. RAJ NARAIN, AIR 1975 SC 2299
3. MINERVA MILLS LTD. V. UNION OF INDIA, AIR 1980 SC 1789
4. SR BOMMAIV. UNION OF INDIA, AIR 1994 SC 1918
5. IN RE BERUBARIV. UNION OF INDIA, AIR 1960 SC 51
6. GUJRAT UNIVERSITY V. SRI KRISHNA, AIR 1963 SC 703
7. D.C. WADHWA V. STATE OF BIHAR, AIR 1987 SC 579
8. HOECHST PHARMACEUTICALS LTD. V. STATE OF BIHAR, AIR 1983 SC 1019
9. IN RE PRESIDENTIAL REFERENCE, AIR 1999 SC 1
10. A.K. ROY V. UNION OF INDIA, AIR 1982 SC 1126
11. C. WADHWA V. STATE OF BIHAR (1987) ISCC 378
12. B.R KAPOOR V. STATE OF TAMIL NADU 2001(6) SCALE 309
13. IN RE SPECIAL REFERENCE NO 2002, AIR

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14. **GOLAKNATH V. STATE OF PUNJAB, AIR 1967 SC 1643**
15. **UNION OF INDIA V. H.S DHILLON, AIR 1972 SC1061**
16. **PRAFULL KUMAR MUKHERJEE V. BANK OF KHULNA, AIR 1947 PC 60**
17. **STATE OF BIHAR V. KAMESHWAR SINGH, AIR 1952 SC 316**
18. **M. KARUNANIDHI V. UNION OF INDIA, AIR 1979 SC 898**
19. **G.K KRISHNA V. STATE OF TAMIL NADU, AIR 1975 SC 583**
20. **M. NAGRAJ V. UNION OF INDIA, AIR 2007 SC71**
21. **I.R. COEHLO V. STATE OF TAMIL NADU, AIR 2007 SC 8617**

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1.

## KESHAVANANDA BHARATI V. STATE OF KERALA

AIR 1973 SC 1461

### Facts in Brief

The case of Kesavananda Bharati v. State of Kerala is one of the landmark cases in the history of India. The case was brought by His Holiness Kesavananda Bharati Sripadagalvaru, the head of a religious institution in Kerala, against the State of Kerala. The petitioner challenged the Kerala Land Reforms Act, 1963 (Act 1 of 1964), as amended by the Kerala Land Reforms (Amendment) Act 1969 (Act 35 of 1969), under Article 32 of the Constitution for enforcement of his fundamental rights under Articles 25, 26, 14, 19(1)(f), and 31 of the Constitution. He claimed that the Act was unconstitutional, ultra vires, and void. During the pendency of the writ petition, the Kerala Land Reforms (Amendment) Act 1971 (Kerala Act No. 25 of 1971) was passed, which received the President's assent on August 7, 1971. The petitioner then filed an application to impugn the constitutional validity of this Act as well.

### Issues

The case raised several significant issues. The primary issue was the extent of the Parliament's power to amend the Constitution. The case questioned whether the

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Parliament could alter, amend, abrogate any part of the Constitution even to the extent of the preamble. The case also questioned the validity of the 24th, 25th, and 29th amendments to the Constitution. The petitioner argued that these amendments infringed upon his fundamental rights. The case also dealt with the issue of whether the "basic structure" of the Constitution could be amended by the Parliament.

## Arguments

The arguments in the case were extensive and dealt with the interpretation of the Constitution and the powers of the Parliament. The petitioner argued that the Parliament could not alter the basic structure of the Constitution. The State of Kerala, on the other hand, argued that the Parliament had unlimited power to amend the Constitution. The State argued that Article 31C does not prevent judicial review as to whether the law referred to therein is of the description it maintains it is. If on a consideration of its true nature and character the court considers that the legislation is not one having a nexus with the principles contained in Article 39(b) or (c), it will not be saved under Article 31C. The sole purpose of the declaration, according to the submission, is to remove from the scope of judicial review a question of a political nature.

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## Held

The Supreme Court, in a majority decision, held that while the Parliament has wide powers, it did not have the power to destroy or alter the basic structure of the Constitution. The Court held that the power of the Parliament to amend the Constitution is limited to the extent that it cannot alter its basic structure or framework. This includes the supremacy of the Constitution, the republican and democratic form of government, the secular character of the Constitution, maintenance of the separation of powers, the federal character of the Constitution, etc. The Court also upheld the validity of the 24th, 25th, and 29th amendments but declared that Section 3 of the 25th Amendment Act was unconstitutional. The Court held that the right to property was not a part of the basic structure of the Constitution. The judgment of the Court has since been recognized as a cornerstone of constitutional law in India, and the doctrine of the basic structure has been applied in numerous cases to prevent the legislature from altering the fundamental nature of the Constitution.

## Legal principles with relevant sections:

The Keshavananda Bharati case is a landmark case that established the doctrine of the Basic Structure of the Constitution. The legal principles that were established in this case are deeply rooted in the interpretation of the Constitution of India.

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The court held that the Parliament has wide powers to amend the Constitution under Article 368, but these powers are not unlimited. The Parliament cannot alter the basic structure or framework of the Constitution. This principle, although not explicitly mentioned in the Constitution, was inferred by the court as a limitation on the powers of the Parliament.

The court also discussed the concept of the Directive Principles of State Policy, particularly Article 39(b) and (c). The court held that a law that gives effect to the policy of the State towards securing the principles specified in Articles 39(b) or (c) would be immune from a challenge under Articles 14, 19, and 31. However, the court would have to ascertain whether the law truly falls within this description.

## **Obiter dictum :**

The obiter dicta in this case are numerous and profound. The judges made several observations about the nature of the Constitution, the role of the judiciary, and the relationship between the judiciary and the legislature.

One significant obiter dictum is the court's observation about the role of the judiciary in interpreting the Constitution. The court noted that while the judiciary has the power to interpret the Constitution, it does not have the power to change the Constitution. The court also noted that the judiciary should not concern itself with the

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wisdom or policy of the legislation.

Another notable obiter dictum is the court's observation about the nature of the Constitution. The court noted that the Constitution is not a static document, but a living organism that must adapt to the changing needs of society. The court also noted that the Constitution is not just a legal document, but also a social document that reflects the aspirations and values of the people.

### **Important para from judgement :**

One of the most important paragraphs from the judgement is where the court discusses the concept of the basic structure of the Constitution. The court states: "The citizen whose rights are affected, no doubt, invokes the aid of the judicial power to vindicate them, but in discharging its duty, the Courts have nothing to do with the wisdom or the policy of the Legislature. When the Courts declare a law, they do not mortgage the future with intent to bind the interest of the unborn generations to come. There is no everlasting effect in those judgments, nor do they have force till eternity as it were. The concept, on the other hand, is that the law declared in the past was in accord with the settled judgment of the society, the social and economic conditions then existing, and that if those judgments are not likely to subserve the subsequent generations or the requirements and needs of the society as it may be then conditioned, they will have to be changed by the process known to law, either by legislative action or judicial re-review where that is possible."

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## **Subsequent Impact :**

The judgement in the Keshavananda Bharati case has had a profound impact on the constitutional law of India. It established the doctrine of the basic structure of the Constitution, which has been used by the courts to review and strike down constitutional amendments that were found to violate this basic structure. This doctrine has served as a check on the powers of the Parliament to amend the Constitution. It has also reinforced the role of the judiciary as the guardian of the Constitution.

2.

**INDIRA NEHRU GANDHI V. RAJ NARAIN**

**AIR 1975 SC 2299**

## **Facts in Brief**

The case of Indira Nehru Gandhi v. Raj Narain is a landmark case in the history of Indian constitutional law. The case was heard by the Supreme Court of India, with the bench consisting of A.N. Ray (CJ), H.R. Khanna, K.K. Mathew, M.H. Beg, and Y.V. Chandrachud. The case arose out of an appeal against the judgment of the High Court of Allahabad dated June 12, 1975.

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The appellant in the case was Indira Nehru Gandhi, the then Prime Minister of India, and the respondent was Raj Narain, a political opponent. The case was centered around the election of Indira Gandhi to the Lok Sabha, the lower house of India's Parliament, from the Rae Bareilly constituency in Uttar Pradesh.

Raj Narain, who had contested against Indira Gandhi in the election and lost, filed a petition alleging that she had committed corrupt practices during the election, which were in violation of the Representation of the People Act, 1951. Specifically, he alleged that she had obtained the assistance of gazetted officers in furtherance of her election prospects, which was deemed a corrupt practice under section 123(7) of the Act.

The High Court of Allahabad upheld Raj Narain's allegations, finding Indira Gandhi guilty of the said corrupt practices and declaring her election void. It also disqualified her from holding any elected office for a period of six years. This judgment was appealed to the Supreme Court, resulting in the present case.

## Issues

The primary issue before the Supreme Court was whether Indira Gandhi had indeed committed corrupt practices under the Representation of the People Act, 1951, as found by the High Court of Allahabad. This involved an

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examination of whether she had obtained the assistance of gazetted officers for the furtherance of her election prospects.

Another significant issue was the constitutional validity of the Constitution (Thirty-ninth Amendment) Act, 1975, which was enacted during the pendency of the appeal. This Amendment sought to place the election of the Prime Minister beyond judicial review, effectively nullifying the High Court's judgment against Indira Gandhi.

## Arguments

The appellant, Indira Gandhi, argued that she had not committed any corrupt practices during the election. She contended that the assistance she had received did not fall within the ambit of section 123(7) of the Representation of the People Act, 1951.

On the other hand, the respondent, Raj Narain, maintained that the appellant had indeed committed corrupt practices as defined under the Act. He argued that the assistance received by the appellant from gazetted officers had significantly influenced the election results.

With regard to the Constitution (Thirty-ninth Amendment) Act, 1975, the appellant argued for its constitutional validity, stating that it was within the Parliament's power to enact such a law. The respondent,

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however, contended that the Amendment was unconstitutional as it violated the basic structure of the Constitution by removing judicial scrutiny over the election of the Prime Minister.

## Held

The Supreme Court, in its judgment, set aside the High Court's verdict. It held that Indira Gandhi was not guilty of corrupt practices under Section 123(7) of the Representation of the People Act, 1951. Consequently, her election was not declared void, and the disqualification for six years as provided in Section 8A was also set aside.

The Court also held that the Constitution (Thirty-ninth Amendment) Act, 1975, was unconstitutional. It found that the Amendment violated the basic structure of the Constitution by seeking to place the election of the Prime Minister beyond judicial review. The Court asserted that such a provision was a direct affront to the principle of judicial review, which is a fundamental part of the Indian Constitution's basic structure.

The Court emphasized that the rule of law is a core principle of the Indian Constitution and that no individual, regardless of their position or status, is above the law. This includes the Prime Minister, and their election can be scrutinized by the courts for any alleged irregularities or corrupt practices.

The Court also noted that the Parliament, while having

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wide powers to amend the Constitution, cannot alter its basic structure or framework. This principle, known as the 'basic structure doctrine', was affirmed by the Court in this judgment. The doctrine, which was first propounded in the landmark case of Kesavananda Bharati v. State of Kerala, serves as a check on the Parliament's power to amend the Constitution.

## **Legal principles with relevant sections:**

The judgment in the case of Indira Nehru Gandhi v. Raj Narain, AIR 1975 SC 2299, was based on several legal principles and relevant sections of the Indian Constitution and the Representation of the People Act, 1951.

The principle of "Express Mention and Implied Exclusion" (*Expressio unius est exclusio alterius*) was invoked in the judgment. This principle states that the mention of one thing in a statute implies the exclusion of other things. If a statute enumerates the things upon which it is to operate, everything else must necessarily, and by implication, be excluded from its operation and effect.

The judgment also referred to Article 105(3) of the Indian Constitution, which pertains to the powers, privileges, etc. of the Houses of Parliament and of the members and committees thereof. The judgment noted that Article 105(3) contained a temporary provision until other

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provision was made by Parliament in that behalf.

The judgment also referred to Section 123(7) of the Representation of the People Act, 1951, which defines corrupt practices. The judgment noted that a "mens rea" or a guilty mind as well as an "actus reus" or a wrongful act must concur to produce the result contemplated by law

### **Obiter dictum:**

The obiter dictum in this case refers to the comments made by the judges that, while not necessary for the decision, provide guidance or clarification. One such obiter dictum in this case is the discussion on the principle of "Express Mention and Implied Exclusion" (Expressio unius est exclusio alterius) and its application to the interpretation of statutes.

### **Important para from judgement:**

One of the important paragraphs from the judgment is the discussion on the role of Shri Yashpal Kapur, who was occupying a position of trust and confidence with the original respondent for quite a long time. The judgment noted that there was no evidence whatsoever that Shri Kapur was constructed a sort of general de facto agent of the Prime Minister even before he became her election agent on January 2, 1971.

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## **Subsequent Impact of the judgement:**

The judgment in the case of Indira Nehru Gandhi v. Raj Narain, AIR 1975 SC 2299, had a significant impact on the Indian political and legal landscape. The judgment underscored the principle of judicial review and the supremacy of the Constitution. It reaffirmed that even the highest offices of the land are not immune from judicial scrutiny. The judgment also led to the imposition of the Emergency in India by then Prime Minister Indira Gandhi, a period that had profound effects on the Indian polity. The judgment continues to be cited in cases involving election disputes and the interpretation of the Constitution.

3.

## **MINERVA MILLS LTD. V. UNION OF INDIA**

**AIR 1980 SC 1789**

### **Facts in Brief**

The case of Minerva Mills Ltd. v. Union of India is a landmark judgment in the history of Indian constitutional law. The case was heard by the Supreme Court of India, with the bench consisting of Y.V. Chandrachud (CJ), P.N. Bhagwati, A.C. Gupta, N.L.

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The case arose out of a challenge to the constitutional validity of Sections 4 and 55 of the Constitution (Forty-second Amendment) Act, 1976. The petitioners, Minerva Mills Ltd. and others, contended that these sections were beyond the amending power of the Parliament under Article 368 of the Constitution and were therefore void.

Section 4 of the Forty-second Amendment sought to expand the scope of Article 31C of the Constitution. Article 31C, as originally enacted, provided that laws giving effect to the Directive Principles of State Policy contained in clauses (b) and (c) of Article 39 could not be challenged on the ground that they violated the fundamental rights conferred by Articles 14, 19, and 31. Section 4 of the Forty-second Amendment sought to extend this protection to laws giving effect to any of the Directive Principles of State Policy.

Section 55 of the Forty-second Amendment amended Article 368 of the Constitution to limit the power of judicial review of constitutional amendments.

## Issues

The primary issue before the Supreme Court was whether Sections 4 and 55 of the Constitution (Forty-second Amendment) Act, 1976, were beyond the amending power of the Parliament under Article 368 of the Constitution and were therefore void.

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Another significant issue was whether the Directive Principles of State Policy contained in Part IV of the Constitution could have primacy over the fundamental rights conferred by Part III of the Constitution.

## Arguments

The petitioners, Minerva Mills Ltd. and others, argued that Sections 4 and 55 of the Constitution (Forty-second Amendment) Act, 1976, were beyond the amending power of the Parliament under Article 368 of the Constitution. They contended that these sections violated the basic structure of the Constitution by seeking to limit the power of judicial review and by giving primacy to the Directive Principles of State Policy over the fundamental rights.

On the other hand, the respondent, Union of India, argued for the constitutional validity of the impugned sections. The respondent contended that the Parliament, under its amending power, could enact these sections and that they did not violate the basic structure of the Constitution.

## Held

The Supreme Court, in its judgment, struck down Sections 4 and 55 of the Constitution (Forty-second Amendment) Act, 1976, as unconstitutional. The Court

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held that these sections were beyond the amending power of the Parliament under Article 368 of the Constitution and were therefore void.

The Court held that the Constitution is founded on the bedrock of the balance between Part III (Fundamental Rights) and Part IV (Directive Principles of State Policy). To give absolute primacy to one over the other is to disturb the harmony of the Constitution. This harmony and balance between fundamental rights and directive principles is an essential feature of the basic structure of the Constitution.

The Court also held that the limited amending power of the Parliament under Article 368 does not include the power to alter the basic structure of the Constitution. Therefore, Section 55 of the Forty-second Amendment, which sought to limit the power of judicial review of constitutional amendments, was held to be unconstitutional.

the Court held that the Parliament's power to amend the Constitution is not unlimited. The Parliament cannot alter the basic structure or framework of the Constitution. This principle, known as the "basic structure doctrine," was first established in the landmark case of Kesavananda Bharati v. State of Kerala and was reaffirmed in the Minerva Mills case.

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## Legal principles with relevant sections

The legal principles that emerged from this case revolve around the interpretation of the Constitution and the limits of the Parliament's power to amend it. The Court held that the Constitution is founded on the balance between Part III (Fundamental Rights) and Part IV (Directive Principles of State Policy). This balance is an essential feature of the basic structure of the Constitution. Therefore, any amendment that disturbs this balance is unconstitutional. This principle was applied to strike down Section 4 of the Forty-second Amendment, which sought to give primacy to the Directive Principles of State Policy over the fundamental rights.

The Court also held that the Parliament's power to amend the Constitution is not unlimited. The Parliament cannot alter the basic structure or framework of the Constitution. This principle, known as the "basic structure doctrine," was first established in the landmark case of Kesavananda Bharati v. State of Kerala and was reaffirmed in the Minerva Mills case.

## Obiter dictum

In the course of the judgment, the Court made several observations that, while not directly relevant to the decision, provide valuable insights into the Court's thinking. One such observation is the Court's emphasis on the importance of the balance between fundamental

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rights and directive principles. The Court observed that the Constitution is founded on the bedrock of this balance and that to give absolute primacy to one over the other is to disturb the harmony of the Constitution. This harmony and balance between fundamental rights and directive principles is an essential feature of the basic structure of the Constitution.

## **Important para from judgement**

An important paragraph from the judgment is where the Court discusses the balance between fundamental rights and directive principles. The Court states, "Anything that destroys the balance between the two parts will ipso facto destroy an essential element of the basic structure of our Constitution."

## **Subsequent Impact of the judgement**

The judgment in *Minerva Mills v. Union of India* has had a profound impact on Indian constitutional law. It reaffirmed the basic structure doctrine and further defined the limits of the Parliament's power to amend the Constitution. The judgment has been cited in numerous subsequent cases and continues to guide the interpretation of the Constitution.

The judgment also had a significant impact on the relationship between fundamental rights and directive

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principles. It established that these two parts of the Constitution must be in harmony with each other and that neither can be given absolute primacy over the other. This principle has influenced the interpretation and application of the Constitution in a wide range of cases.

Furthermore, the judgment has had a broader impact on the rule of law in India. By asserting the power of judicial review and the limits of the Parliament's amending power, the Court reinforced the principle of constitutional supremacy and the rule of law. This has helped to maintain the balance of power between the different branches of government and to protect the rights and freedoms of individuals.

4.

## SR BOMMAI V. UNION OF INDIA

AIR 1994 SC 1918

### Facts in brief

The case of S.R. Bommai v. Union of India is a landmark judgment in the history of Indian constitutional law. The case was heard by a nine-judge bench of the Supreme Court of India. The case arose out of the Presidential Proclamation under Article 356 of the Constitution, imposing President's rule in the State of Karnataka.

The petitioner, S.R. Bommai, was the Chief Minister of Karnataka at the time. The President's rule was imposed

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on the grounds that the Government of the State cannot be carried on in accordance with the provisions of the Constitution. The petitioner challenged the Presidential Proclamation, contending that it was made on mala fide grounds and was therefore unconstitutional.

## Issues

The primary issue before the Supreme Court was the constitutional validity of the Presidential Proclamation under Article 356 of the Constitution, imposing President's rule in the State of Karnataka.

Another significant issue was the scope of judicial review of such a Presidential Proclamation. Specifically, the Court had to determine whether the exercise of power under Article 356 is justiciable and, if so, to what extent.

## Arguments

The petitioner, S.R. Bommai, argued that the Presidential Proclamation was made on mala fide grounds and was therefore unconstitutional. He contended that the President's rule was imposed without any valid reasons and was merely a means to topple the democratically elected government in the State.

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On the other hand, the respondent, Union of India, argued for the constitutional validity of the Presidential Proclamation. The respondent contended that the President's rule was imposed in accordance with the provisions of Article 356 of the Constitution, which allows for such a measure when the Government of a State cannot be carried on in accordance with the provisions of the Constitution.

## Held

The Supreme Court, in its judgment, held that the Presidential Proclamation under Article 356 is subject to judicial review. The Court held that while the power under Article 356 is wide, it is not absolute. The exercise of this power is subject to certain limitations and can be reviewed by the courts on the grounds of mala fide, irrelevance, or arbitrariness.

The Court also held that the President's satisfaction under Article 356 must be based on objective material. The material on which the President gets satisfaction must be relevant to the situation contemplated by Article 356. The power under Article 356 cannot be invoked merely on the ground of political instability or on the ground of a political crisis in the State.

The Court further held that the burden of proving the existence of such material would be on the Union Government. If the court comes to the conclusion that the

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Presidential Proclamation was issued on grounds which are not within the contemplation of Article 356, the court has the power to strike down the Proclamation.

## **Legal principles with relevant sections**

The judgment in S.R. Bommai v. Union of India is a landmark in the interpretation of Article 356 of the Constitution. The Court held that the power under Article 356 is not absolute and is subject to certain limitations. The exercise of this power is subject to judicial review on the grounds of mala fide, irrelevance, or arbitrariness. The Court also held that the President's satisfaction under Article 356 must be based on objective material. The material on which the President gets satisfaction must be relevant to the situation contemplated by Article 356. The power under Article 356 cannot be invoked merely on the ground of political instability or on the ground of a political crisis in the State. The burden of proving the existence of such material would be on the Union Government.

## **Obiter dictum**

The Court observed that the power exercised by the President under Article 356(1) is on the advice of the Council of Ministers tendered under Article 74(1) of the Constitution. The Council of Ministers under our system would always belong to one or the other political party. In

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view of the pluralist democracy and the federal structure that we have accepted under our Constitution, the party or parties in power (in case of coalition Government) at the Centre and in the States may not be the same. Hence there is a need to confine the exercise of power under Article 356(1) strictly to the situation mentioned therein which is a condition precedent to the said exercise.

## **Important para from judgement**

The Court held that the Presidential Proclamation under Article 356 is subject to judicial review. The Court held that while the power under Article 356 is wide, it is not absolute. The exercise of this power is subject to certain limitations and can be reviewed by the courts on the grounds of mala fide, irrelevance, or arbitrariness

## **Subsequent Impact of the Judgement**

The judgment in S.R. Bommai v. Union of India has had a significant impact on the interpretation and application of Article 356 of the Constitution. It has underscored the importance of federalism, the rule of law, and the limits of the President's power under Article 356. It has also affirmed the power of judicial review over the exercise of constitutional powers by the President. The judgment has been cited and followed in numerous subsequent cases involving the imposition of President's rule in the States. It has also influenced the political discourse on the use

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and misuse of Article 356. The judgment has thus played a crucial role in shaping the constitutional law relating to the federal structure and the powers of the President under Article 356.

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5.

**IN RE BERUBARI V. UNION OF INDIA**

**AIR 1960 SC 51**

## **Facts in Brief:**

The case of In re Berubari v. Union of India, AIR 1960 SC 51, arose from a dispute between India and Pakistan over the territory of Berubari Union No. 12 and the exchange of enclaves. The Prime Ministers of India and Pakistan, acting on behalf of their respective governments, entered into an agreement on September 10, 1958, to resolve these disputes. The agreement, known as the Indo-Pakistan Agreement, was designed to remove causes of tension and resolve border disputes and problems relating to the Indo-Pakistan Border Areas, thereby establishing peaceful conditions along those areas.

The agreement specified that Berubari Union No. 12 would be divided in such a way that half the area would be given to Pakistan, with the other half adjacent to India being retained by India. The division was to be horizontal, starting from the north-east corner of Debiganj Thana. The agreement also included the exchange of Old Cooch-Bihar Enclaves in Pakistan and Pakistan Enclaves in India without claim to compensation for the extra area going to Pakistan.

However, doubts arose about the implementation of the agreement. Questions were raised about whether the implementation of the agreement relating to Berubari

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Union required any legislative action either by way of a suitable law of Parliament relating to Article 3 of the Constitution or by way of a suitable amendment of the Constitution in accordance with the provisions of Article 368 of the Constitution, or both. Similar doubts arose about the implementation of the agreement relating to the exchange of enclaves.

## Issues:

The main issue in the case was whether the implementation of the Indo-Pakistan Agreement, specifically the division of Berubari Union No. 12 and the exchange of enclaves, required legislative action in accordance with the Constitution of India. This issue was further divided into two sub-issues:

1. Whether the division of Berubari Union No. 12 amounted to a cession of territory, thereby requiring a constitutional amendment under Article 368, or whether it was merely an ascertainment and delineation of boundaries, which could be done under Article 3.
2. Whether the exchange of enclaves required a constitutional amendment or could be done under Article 3.

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## Arguments:

The Attorney-General argued that the division of Berubari Union No. 12 and the exchange of enclaves were merely the ascertainment and delineation of boundaries, and therefore did not require a constitutional amendment. According to this argument, there was neither real alteration of the boundary nor real diminution of territory.

On the other hand, it was argued that the agreement did more than ascertain and determine the boundaries. It was an agreement by which a part of the territory of India had been ceded to Pakistan, and therefore it required a constitutional amendment.

## Held:

The Supreme Court held that the implementation of the agreement did require a constitutional amendment. The court rejected the argument of the Attorney-General and held that the agreement was not merely an ascertainment of boundaries but a cession of territory. Therefore, it required a constitutional amendment under Article 368. The court further held that the Constitution of India did not provide for the cession of Indian territory to a foreign country, and therefore a constitutional amendment was necessary.

The court also held that the exchange of enclaves also required a constitutional amendment. The court

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reasoned that the exchange of enclaves was not merely an adjustment of boundaries but a transfer of territory, and therefore it required a constitutional amendment.

## **Legal principles with relevant sections**

The case primarily dealt with the interpretation of Articles 1, 3, and 368 of the Indian Constitution. The court held that:

1. Article 1 of the Constitution of India, which defines India, does not include the power to cede territory. It only includes the power to acquire foreign territories.
2. Article 3 of the Constitution, which provides for the formation of new States and alteration of areas, boundaries, or names of existing States, does not cover cession of Indian territory to a foreign country. Hence, any such cession is not within the purview of Article 3.
3. Article 368, which provides for the amendment of the Constitution, can be invoked to amend the Constitution to provide for cession of Indian territory to a foreign country.

## **Obiter dictum**

The court, while delivering the judgment, made an important observation that the agreement between India

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and Pakistan regarding the Berubari Union was not merely an ascertainment of boundaries but a cession of territory. This observation was crucial in determining the constitutional validity of the agreement.

## **Subsequent Impact of the judgement**

The judgment had a significant impact on the interpretation of the Constitution, particularly with respect to the power of the Parliament to alter the boundaries of India. It clarified that the Parliament does not have the power to cede Indian territory to a foreign country under Article 3 of the Constitution. This interpretation has guided the legal understanding of the territorial integrity of India and the constitutional procedures required for altering its boundaries.

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6.

**GUJRAT UNIVERSITY V. SRI KRISHNA**

**AIR 1963 SC 703**

### **Facts in Brief:**

The case of Gujrat University v. Sri Krishna, AIR 1963 SC 703, arose from a dispute over the medium of instruction in the colleges affiliated to the Gujarat University. The second respondent, Sri Krishna, joined the First Year Arts Class of St. Xavier's College, which was affiliated to the Gujarat University, where instruction was imparted through the English medium. However, the Gujarat University, under the Gujarat University Act, 1949, as amended by Act 4 of 1961, sought to fix an exclusive medium of instruction in the affiliated and constituent colleges.

### **Issues:**

The main issue in the case was whether the Gujarat University had the legislative competence to fix an exclusive medium of instruction in the affiliated and constituent colleges under the Gujarat University Act, 1949, as amended by Act 4 of 1961. This issue was further divided into two sub-issues:

1. Whether the power to prescribe an exclusive medium of instruction under a statute, s. 38A of the Act, which is a consequential provision, would be valid.

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2. Whether clause (27) of s. 4 of the Act gives only an additional power and does not derogate from the implied power derived from other provisions of the Act.

## **Arguments:**

The Gujarat University argued that it had the power to prescribe an exclusive medium of instruction under a statute, s. 38A of the Act, which is a consequential provision. It further argued that clause (27) of s. 4 of the Act gives only an additional power and does not derogate from the implied power derived from other provisions of the Act.

On the other hand, it was argued that the Gujarat University did not have the legislative competence to fix an exclusive medium of instruction in the affiliated and constituent colleges under the Gujarat University Act, 1949, as amended by Act 4 of 1961.

## **Held:**

The case of Gujarat University v. Sri Krishna, AIR 1963 SC 703, dealt with the legislative competence of the State Legislature in determining the medium of instruction in universities. The case revolved around the interpretation of the Constitution of India, Art. 254 (1), Seventh

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Schedule, List I, Entry 66, List II, Entry 11, and the Gujarat University Act, 1949 (Bom. 56 of 1949) as amended by Act 4 of 1961, ss. 4, 18, 20, 22, 38A, and University Statutes, 207, 208, 209.

The court held that the power to prescribe an exclusive medium of instruction under a statute, s. 38A of the Act, which is a consequential provision, would be valid. The court also held that clause (27) of s. 4 of the Act gives only an additional power and it does not derogate from the implied power derived from other provisions of the Act.

## **Legal Principles with Relevant Sections**

The obiter dictum in this case is found in the court's interpretation of the Constitution and the Gujarat University Act. The court noted that the power to legislate is given to the appropriate Legislatures by Art. 246 of the constitution. The entries in the three Lists are only legislative heads or fields of legislation: they demarcate the area over which the appropriate Legislatures can operate. It is also well settled that the widest amplitude should be given to the language of the entries.

## **Obiter Dictum**

The obiter dicta in this case were significant and have been subject to much debate and criticism. The court held that mala fides or any other invalidating fact could be

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proved during the emergency. This implies that the court recognized the possibility of misuse of power during the emergency, but still upheld the suspension of fundamental rights.

Another obiter dictum was the court's observation that the requirement of the due process clause as a substantial restriction on government control was becoming a thing of the past and the rule was being restricted more and more.

## **Subsequent Impact of the Judgement**

The judgement in the case of Gujarat University v. Sri Krishna, AIR 1963 SC 703, had a significant impact on the legislative competence of the State Legislature in determining the medium of instruction in universities. The judgement clarified the interpretation of the Constitution of India, Art. 254 (1), Seventh Schedule, List I, Entry 66, List II, Entry 11, and the Gujarat University Act, 1949 (Bom. 56 of 1949) as amended by Act 4 of 1961, ss. 4, 18, 20, 22, 38A, and University Statutes, 207, 208, 209. The judgement has been cited in subsequent cases and has guided the interpretation of the Constitution and the Gujarat University Act in matters related to the medium of instruction in universities.

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# TOP THE SEMESTER

by

ADV. MOHIT TANWR

ADV. SHIVANG VERMA

## D.C. WADHWA V. STATE OF BIHAR

AIR 1987 SC 579

### Facts in brief:

The case of D.C. Wadhwa v. State of Bihar, AIR 1987 SC 579, arose from a practice adopted by the State of Bihar of repromulgating ordinances on a massive scale from time to time without their provisions being enacted into acts of the legislature. The practice was that, after the session of the State Legislature was prorogued, the same ordinances which had ceased to operate were repromulgated containing substantially the same provisions almost in a routine manner. The petitioners challenged the validity of this practice and in particular they challenged the constitutional validity of three different ordinances issued by the Governor of Bihar.

### Issues:

The main issue in the case was whether the practice of the State of Bihar of repromulgating ordinances on a massive scale from time to time without their provisions being enacted into acts of the legislature was constitutionally valid. This issue was further divided into two sub-issues:

1. Whether the power of the Governor to repromulgate ordinances was constitutionally valid.
2. Whether the three different ordinances issued by the Governor of Bihar were constitutionally valid.

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## **Arguments:**

The State of Bihar argued that the Governor had the power to re-promulgate ordinances and that the three different ordinances issued by the Governor of Bihar were constitutionally valid.

On the other hand, the petitioners argued that the practice of the State of Bihar of re-promulgating ordinances on a massive scale from time to time without their provisions being enacted into acts of the legislature was not constitutionally valid. They also argued that the power of the Governor to re-promulgate ordinances was not constitutionally valid and that the three different ordinances issued by the Governor of Bihar were not constitutionally valid.

## **Held:**

The Supreme Court held that the practice of the State of Bihar of re-promulgating ordinances on a massive scale from time to time without their provisions being enacted into acts of the legislature was not constitutionally valid. The court held that the power of the Governor to re-promulgate ordinances was not constitutionally valid and that the three different ordinances issued by the Governor of Bihar were not constitutionally valid.

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The court ordered the State of Bihar to pay to Petitioner No. 1 a sum of Rs. 10,000 (rupees ten thousand only,) as and by way of cost of the writ petitions.

## **Legal principles with relevant sections**

The legal principles that were invoked in this case revolve around the constitutional provision of Article 213, which deals with the power of the Governor to promulgate Ordinances during the recess of the Legislature. The Court examined the scope of this power, particularly the ability of the Governor to repromulgate Ordinances from time to time without getting them replaced by Acts of the Legislature

## **Obiter dictum**

The obiter dictum in this case is the Court's observation on the power of the Governor to repromulgate ordinances. The Court stated that this question has great public importance and must be decided on merits in order to provide guidance to the Governor in the exercise of his power to repromulgate ordinances.

## **Subsequent Impact of the judgement**

The impact of the judgement in the case of D.C. Wadhwa v. State of Bihar is significant. The judgement clarified the

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constitutional position regarding the power of the Governor to repromulgate ordinances. The Court's decision has provided guidance for the exercise of this power, ensuring that it is not used in a manner that is repugnant to the constitutional scheme. This has had a profound impact on the legislative practices in the states, ensuring that the power to promulgate ordinances is not abused. The judgement has also underscored the importance of the legislative process and the need for legislative oversight over ordinances.

However, the specific subsequent impact of this judgement on the legal and constitutional landscape is not mentioned in the provided document. For a more comprehensive understanding of the subsequent impact, it would be necessary to review additional legal commentary and analysis post this judgement.

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8.

## HOECHST PHARMACEUTICALS LTD. V. STATE OF BIHAR

AIR 1983 SC 1019

### Facts in brief:

The case revolves around the Bihar Finance Act, 1981, which imposed a surcharge on sales tax and prohibited the passing of this liability to purchasers. Hoechst Pharmaceuticals Ltd., along with other petitioners, challenged the validity of this provision. The petitioners were pharmaceutical companies that had a gross turnover exceeding Rs. 5 lakhs per year and were thus liable to pay the surcharge. They contended that the surcharge was in conflict with the Drugs (Price Control) Order, 1979, issued under the Essential Commodities Act, and was violative of Articles 14 and 19(1)(g) of the Constitution.

### Issues:

1. Whether the levy of surcharge on sales tax and the prohibition from passing on the liability thereof to purchasers under the Bihar Finance Act, 1981, is void in terms of Article 246(3) of the Constitution for being in conflict with the Drugs (Price Control) Order, 1979?
2. Whether the provision is violative of Articles 14 and

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19(1)(g) of the Constitution?

3. Whether it is an essential characteristic of Sales Tax that the seller must have the right to pass it on to the consumer?
4. Whether the classification of dealers on the basis of 'gross turnover' as defined in Section 2(j) of the Bihar Finance Act, 1981, is invalid?

## Arguments:

The petitioners argued that the surcharge was in conflict with the Drugs (Price Control) Order, 1979, which was issued under the Essential Commodities Act. They contended that the surcharge was violative of Articles 14 and 19(1)(g) of the Constitution, as it deprived them of their right to carry on business. They also argued that it was an essential characteristic of Sales Tax that the seller must have the right to pass it on to the consumer, and the prohibition from doing so was unconstitutional. Lastly, they challenged the classification of dealers on the basis of 'gross turnover' as defined in Section 2(j) of the Bihar Finance Act, 1981, as being arbitrary and discriminatory.

## Held

The judgment of the case is not provided in the extracted information. However, based on the facts and issues presented, the Supreme Court would have likely

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examined the constitutionality of the surcharge and the prohibition from passing it on to the consumer, as well as the classification of dealers based on 'gross turnover'. The Court would have also considered whether the surcharge was in conflict with the Drugs (Price Control) Order, 1979, and whether it violated Articles 14 and 19(1)(g) of the Constitution.

## **Legal principles with relevant sections**

The judgement in the case of Hoechst Pharmaceuticals Ltd. v. State of Bihar, AIR 1983 SC 1019, revolves around several legal principles and relevant sections. The judgement primarily deals with the interpretation and application of Article 254(1) of the Indian Constitution, which speaks of a State law being repugnant to (a) a law made by Parliament or (b) an existing law.

The judgement also discusses the implications of Section 6 of the Essential Commodities Act, which contains a non-obstante clause. The court emphasized the importance of giving full effect to this clause in order to reconcile the provisions of the Essential Commodities Act with other laws.

## **Obiter dictum**

An obiter dictum in the judgement can be found in the discussion about the Essential Commodities Act. The

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judgement notes that the Act treats certain controlled commodities and their sellers in a special manner by fixing controlled prices. This observation, while not directly relevant to the decision in the case, provides important context for understanding the legal and regulatory environment in which the case arose.

## **Important paras from the judgement**

One important paragraph from the judgement is the discussion of the relevant statutory provisions. The court notes that "In order to appreciate the implications of the wide-ranging contentions advanced before us, it is necessary to set out the relevant statutory provisions".

Another important paragraph is the detailed listing of the Civil Appeals and Special Leave Petitions associated with the case. This paragraph provides a comprehensive overview of the legal proceedings leading up to the judgement.

## **Subsequent Impact of the Judgement**

The impact of the judgement is not explicitly discussed in the document. However, the judgement's detailed interpretation of Article 254(1) of the Constitution and its application to the Essential Commodities Act likely had significant implications for the regulation of controlled commodities in India. The judgement may have clarified

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9.

## IN RE PRESIDENTIAL REFERENCE

AIR 1999 SC 1

### Facts in Brief:

The case of In re Presidential Reference, AIR 1999 SC 1, arose from a reference made by the President of India under Article 143(1) of the Constitution. The President sought the Supreme Court's opinion on questions of law regarding the interpretation of certain constitutional provisions related to the appointment and transfer of judges. The questions arose from doubts about the interpretation of the law laid down by the Supreme Court in the case of Supreme Court Advocates-on-Record Association and Anr. v. Union of India.

### Issues:

The questions referred to the Supreme Court were:

1. Whether the expression "consultation with the Chief Justice of India" in articles 217(1) and 222(1) requires consultation with a plurality of Judges in the formation of the opinion of the Chief Justice of India or does the sole individual opinion of the Chief Justice of India constitute consultation within the meaning of the said articles;
2. Whether the transfer of judges is judicially reviewable in the light of the observation of the Supreme Court

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in the aforesaid judgment that "such transfer is not justiciable on any ground" and its further observation that limited judicial review is available in matters of transfer, and the extent and scope of judicial review.

## **Arguments:**

The arguments in the case revolved around the interpretation of the constitutional provisions related to the appointment and transfer of judges. The court had to consider whether the term "consultation with the Chief Justice of India" required consultation with a plurality of judges or whether the individual opinion of the Chief Justice of India was sufficient. The court also had to consider the extent and scope of judicial review in matters of transfer of judges.

## **Held:**

The judgment of the case is not provided in the extracted information. However, based on the facts and issues presented, the Supreme Court would have likely provided its opinion on the questions referred by the President. The court would have interpreted the term "consultation with the Chief Justice of India" in articles 217(1) and 222(1) of the Constitution and clarified the extent and scope of judicial review in matters of transfer of judges.

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## **Legal principles with relevant sections:**

The judgement in the Presidential Reference case, AIR 1999 SC 1, brought forth several legal principles. The case revolved around the interpretation of Article 143 of the Indian Constitution, which grants the President the power to consult the Supreme Court on matters of public importance. The case also dealt with the interpretation of Articles 124, 217, 222, and 231, which pertain to the appointment and transfer of judges of the Supreme Court and High Courts.

One of the key principles established in this case was the primacy of the Chief Justice of India (CJI) in the appointment and transfer of judges. The judgement clarified that the CJI's opinion should be formed collectively, i.e., after taking into account the views of his senior colleagues who are required to be consulted by him for the formation of his opinion.

The judgement also clarified the process of consultation in the appointment of judges. The CJI is obliged to comply with the norms and the requirement of the consultation process in making his recommendations to the Government of India. Recommendations made by the CJI without complying with these norms and requirements are not binding upon the Government of India.

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## **Obiter dictum:**

The obiter dictum in this case can be found in the judgement's discussion of the role of the judiciary and the executive in the appointment of judges. The judgement stated that the constitutional provisions indicate a participatory consultative process, and the purpose is best served if the decision is reached by consensus, without the need of giving primacy to any one of the consultees on account of any difference remaining between them.

## **Important para from judgement:**

An important paragraph from the judgement is as follows:

"Providing for the role of the judiciary as well as the executive in the integrated process of appointment merely indicated that it is a participatory consultative process, and the purpose is best served if at the end of an effective consultative process between all the consulters the decision is reached by consensus, and no question arises of giving primacy to any consultee. Primarily, it is this indication which is given by the constitutional provisions, and the constitutional purpose would be best served if the decision is made by consensus without the need of giving primacy to any one of the consulters on account of any difference remaining between them. The question of primacy of the..."

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## **Subsequent Impact of the judgement:**

The judgement in the Presidential Reference case has had a significant impact on the judicial appointment process in India. It clarified the process of consultation and the role of the CJI, thereby providing a clear framework for the appointment and transfer of judges. This has helped in maintaining the independence of the judiciary and ensuring that the process of appointment of judges is transparent and accountable.

The judgement also emphasized the need for consensus in the appointment process, which has encouraged a more collaborative approach between the judiciary and the executive. This has helped in reducing conflicts and ensuring smoother functioning of the judicial appointment process.

Furthermore, the judgement has had a significant impact on the interpretation of the constitutional provisions related to the appointment and transfer of judges. It has provided clarity on these provisions and has guided subsequent judgements on similar issues.

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10.

**A.K. ROY V. UNION OF INDIA**

**AIR 1982 SC 1126**

## **Facts in Brief**

The case of A.K. Roy v. Union of India was heard by the Supreme Court of India on 28th December 1981. The petitioner in this case was A.K. Roy, and the respondents were the Union of India and another party. The case was presided over by a bench consisting of Y.V. Chandrachud (CJ), P.N. Bhagwati, A.C. Gupta, V.D. Tulzapurkar, and D.A. Desai.

The case was brought before the Supreme Court of India under the context of the National Security Act, 1980. The Act was challenged on the grounds of its constitutionality, specifically regarding its provisions for preventive detention. The petitioner, A.K. Roy, argued that the Act was in violation of the fundamental rights guaranteed under the Constitution of India.

## **Issues:**

The primary issue in the case was the constitutionality of the National Security Act, 1980. The Act allowed for preventive detention, a measure that permits the government to detain a person to prevent them from committing future crimes. The petitioner argued that this provision was in violation of the fundamental rights

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guaranteed under the Constitution of India, specifically the right to life and personal liberty.

Another issue raised in the case was the right to legal representation before the Advisory Boards. The petitioner argued that the denial of this right was in violation of the principles of natural justice.

## **Arguments:**

The petitioner, A.K. Roy, argued that the National Security Act, 1980, was unconstitutional as it violated the fundamental rights guaranteed under the Constitution of India. He contended that the Act's provision for preventive detention was in violation of the right to life and personal liberty.

He also argued for the right to legal representation in the proceedings before the Advisory Boards. He contended that the denial of this right was in violation of the principles of natural justice.

## **Held:**

The Supreme Court, in its judgment, upheld the constitutionality of the National Security Act, 1980. The court held that the provisions of the Act did not violate the fundamental rights guaranteed under the Constitution of India.

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Regarding the issue of legal representation before the Advisory Boards, the court expressed regret that they were unable to provide this right due to the express language of Article 22(3)(b) read with Article 22(1) of the Constitution. The court acknowledged the importance of legal representation but stated that they were bound by the language of the Constitution.

The court also noted that the rights of a detenu under preventive detention were not the same as those of an accused in a criminal trial. The court stated that it was not necessary to give the detenu the full panoply of rights that an accused is entitled to in order to disprove the charges against them.

## **Legal principles with relevant sections:**

The legal principles discussed in the case of A.K. Roy v. Union of India revolved around the interpretation and application of the Constitution of India, specifically Article 22(3)(b) read with Article 22(1), and the National Security Act, 1980.

The court discussed the rule of burden of proof contained in section 106 of the Indian Evidence Act, 1872. This rule states that when a person is accused of a crime, the burden of proof lies on the prosecution to prove the guilt of the accused beyond a reasonable doubt.

The court also discussed the 44th Amendment Act and its implications on the case. The court noted that the

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amendments introduced by the 44th Amendment Act did not come into force on April 30, 1979, as was argued by the petitioner, but only after following the due procedure to bring the Act or any of its provisions into force.

## **Obiter dictum:**

In the judgment, the court made several obiter dicta, which are statements of law that are not directly related to the facts of the case and do not form a necessary part of the reasoning for the decision.

One such obiter dictum was the court's comment on the rights of a detenu under preventive detention. The court stated that it was not necessary to give the detenu the full panoply of rights that an accused is entitled to in order to disprove the charges against them.

Another obiter dictum was the court's regret that they were unable to provide the right to legal representation before the Advisory Boards due to the express language of Article 22(3)(b) read with Article 22(1) of the Constitution.

## **Important para from judgement:**

One of the important paragraphs from the judgment is where the court discusses the rights of a detenu under preventive detention. The court states, "It is not necessary to give to the detenu the full panoply of rights

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which an accused is entitled to have in order to disprove the charges against them."

Another important paragraph is where the court expresses regret that they were unable to provide the right to legal representation before the Advisory Boards due to the express language of Article 22(3)(b) read with Article 22(1) of the Constitution.

## **Subsequent Impact of the judgement:**

The judgment in the case of A.K. Roy v. Union of India had a significant impact on the interpretation and application of the law related to preventive detention in India. The court's decision to uphold the constitutionality of the National Security Act, 1980, set a precedent for future cases involving similar issues.

The judgment also had an impact on the interpretation of the rights of a detenu under preventive detention. The court's statement that it was not necessary to give the detenu the full panoply of rights that an accused is entitled to in order to disprove the charges against them has been cited in subsequent cases involving issues of preventive detention.

The court's discussion on the right to legal representation before the Advisory Boards has also had an impact on the interpretation of the principles of natural justice in the context of preventive detention.

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11.

**B.R KAPOOR V. STATE OF TAMIL NADU**

**2001(6) SCALE 309**

**Facts in brief:**

The case of B.R Kapoor v. State of Tamil Nadu was heard by the Supreme Court of India on 21st September 2001. The petitioner in this case was B.R. Kapoor, and the respondents were the State of Tamil Nadu and another party. The case was presided over by a bench consisting of G.B. Pattanaik, S.P. Bharucha, Brijesh Kumar, Y.K. Sabharwal, and Ruma Pal.

The case was brought before the Supreme Court of India under the context of the appointment of a non-elected member, whose nomination for contesting the election to the Legislative Assembly stood rejected, as the Chief Minister under Article 164 of the Constitution. The nomination of such person had been rejected, on the ground of disqualification incurred by such person under Section 8(3) of the Representation of People Act, 1951, the said person having been convicted under the provisions of the Prevention of Corruption Act, and having been sentenced to imprisonment for 3 years.

**Issues:**

The primary issue in the case was the constitutionality of the appointment of a non-elected member, whose

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nomination for contesting the election to the Legislative Assembly stood rejected, as the Chief Minister under Article 164 of the Constitution.

Another issue raised in the case was the interpretation of Section 8(3) of the Representation of People Act, 1951, and its implications on the eligibility of a person to be appointed as the Chief Minister.

## **Arguments:**

The petitioner, B.R. Kapoor, argued that the appointment of a non-elected member, whose nomination for contesting the election to the Legislative Assembly stood rejected, as the Chief Minister under Article 164 of the Constitution, was unconstitutional.

He also argued that the nomination of such person had been rejected, on the ground of disqualification incurred by such person under Section 8(3) of the Representation of People Act, 1951, the said person having been convicted under the provisions of the Prevention of Corruption Act, and having been sentenced to imprisonment for 3 years.

## **Held**

The Supreme Court, in its judgment, held that a non-elected member, whose nomination for contesting the election to the Legislative Assembly stood rejected, could not be appointed as the Chief Minister under Article 164

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of the Constitution.

The court also held that the nomination of such person had been rightly rejected, on the ground of disqualification incurred by such person under Section 8(3) of the Representation of People Act, 1951, the said person having been convicted under the provisions of the Prevention of Corruption Act, and having been sentenced to imprisonment for 3 years.

## **Legal principles with relevant sections**

The case of B.R Kapoor v. State of Tamil Nadu revolved around the interpretation of Article 164 of the Indian Constitution and Section 8 of the Representation of the People Act. The court interpreted Article 164 on its own language and read sub-Article (4) in the context of sub-Articles (1) and (2). It was permissible to read into sub-Article (4) limitations based on the language of sub-Articles (1) and (2). The court also considered the validity of the clauses introduced into Article 368 by the Constitution (Forty- second Amendment) Act.

The court also discussed the difference in the periods of disqualification in sub-sections (1), (2), and (3) of Section 8 of the Representation of the People Act. The court stated that Section 8 prescribes disqualification on conviction for certain offences. Sub-section (1) provides the disqualification for a period of six years from the date of conviction for the offences specified in clauses (a) to (i)

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thereof. In sub-section (1), the only reference is to conviction for the specified offences irrespective of the sentence awarded on such conviction. Sub-section (2) then prescribes that on conviction for the offences specified therein and sentence to imprisonment for not less than six months, that person shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.

## **Obiter dictum**

The court made several obiter dicta in this case. One of them was that when a lower court convicts an accused and sentences him, the presumption that the accused is innocent comes to an end. The conviction operates and the accused has to undergo the sentence. The execution of the sentence can be stayed by an appellate court and the accused released on bail. If the appeal of the accused succeeds the conviction is wiped out as cleanly as if it had never existed and the sentence is set aside. A successful appeal means that the stigma of the offence is altogether erased. But that it is not to say that the presumption of innocence continues after the conviction by the trial court. That conviction and the sentence it carries operate against the accused in all their rigour until set aside in appeal, and a disqualification that attaches to the conviction and sentence applies as well.

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## Important paras from the judgement

An important paragraph from the judgement is: "In this case, sentence of imprisonment has already been suspended. Under such circumstances, in my view, there may not be any disqualification for the petitioner to contest in the election. Learned counsel submitted that it was because of this conclusion that the learned Judge had not stayed the execution of the orders, and his conclusion bound the Governor. In the first place, the interpretation of the provision by the learned Judge is, as shown above, erroneous. Secondly, the reason why he refused to stay the execution of the orders was because the second respondent had been found guilty of offences under the Prevention of Corruption Act. Thirdly, the learned Judge was required by the application to consider whether or not the execution of the orders against the second respondent should be stayed; the consideration of and conclusion upon the provisions of Section 8 of the Representation of the People Act was wholly extraneous to that issue. Fourthly, the conclusion was tentative, as indicated by the use of the word may in the passage quoted from his judgement above. Lastly, as will be shown, we are not here concerned with what the Governor did or did not do; we are concerned with whether the second respondent can show that she was, when she was appointed Chief Minister, qualified to be a legislator under Article supported by the Constituent Assembly Debates. Dr. B.R. Ambedkar, while discussing the corresponding Article relating to Members of Parliament, stated that a person could be appointed a

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Minister even if he was not an elected member of the House at the time of his appointment, provided he gets elected to the House within six months. This provision was meant to cover situations where a competent person might have been defeated in a constituency for reasons that might have annoyed the constituency, but that should not be a barrier for him to be appointed as a Minister. However, this privilege extends only for six months and does not confer a right to that individual to sit in the House without being elected at all. This clearly shows that the Constituent Assembly envisaged that non-legislator Ministers would have to be elected to the legislature within six months.

## **Subsequent Impact of the Judgement**

The judgement in the case of B.R Kapoor v. State of Tamil Nadu had a significant impact on the political landscape of India. It clarified the interpretation of Article 164 of the Constitution and Section 8 of the Representation of the People Act, thereby setting a precedent for future cases involving similar issues. The judgement also underscored the importance of maintaining the integrity of the legislative process and the need for legislators and Ministers to meet the constitutional standards of qualification and disqualification. The judgement has been cited in numerous subsequent cases and has significantly influenced the interpretation and application of the relevant constitutional provisions.

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12.

**IN RE SPECIAL REFERENCE NO 2002**

**AIR 2003 SC 87**

## **Facts in brief:**

The case "In re Special reference No 2002, AIR 2003 SC 87" is a reference made under Article 143(1) of the Indian Constitution. The case pertains to the Election Commission's order dated 16th August 2002 and the subsequent questions raised about the scope and ambit of reference under Article 143(1). The case was heard on 28 October 2002.

The Election Commission, after completing an exercise to correct the electoral rolls and create conditions conducive for free and fair elections in the State, planned to frame a schedule for the general election to the State Assembly in November-December 2002. The Commission clarified that its observations regarding the imposition of President's rule were not made in the context of Article 356 of the Constitution.

## **Issues:**

The main issues in this case revolve around the scope and ambit of reference under Article 143(1) of the Indian Constitution. The questions referred are intrinsically linked with the conclusions of the Election Commissioner and are clearly relatable to it.

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Some of the learned counsel argued that the Reference need not be answered because the questions do not arise from the order of the Election Commission. They argued that it is not imperative for the Court to answer the Reference and even if any doubt is entertained, that cannot be on hypothetical premises. They also argued that the questions which are inherently incapable of being answered should not be answered.

On the other hand, some of the learned counsel argued that the questions are of great national interest, and there is no political overtone. They argued that in order to avoid controversies in future and to have the law settled, the Reference has been made.

## **Arguments:**

The arguments in this case were presented by learned counsel representing different parties. Some argued that the Reference need not be answered because the questions do not arise from the order of the Election Commission. They also argued that the Reference is potentially political and seeking judicial review though disguised as a Reference.

On the other hand, some of the learned counsel argued that the questions are of great national interest, and there is no political overtone. They argued that in order to avoid controversies in future and to have the law settled, the Reference has been made.

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## Held

The Court examined the scope and ambit of reference under Article 143(1) and took note of previous decisions where References were not answered on the ground that they are potentially political or that the Advisory Jurisdiction is not appellate in character. The Court accepted the Reference for reasons which appeared to be of constitutional importance as well as in public interest.

The Court held that it is not necessary that the question on which the opinion of the Supreme Court is sought must have arisen actually. It is competent for the President to make a reference at an anterior stage, namely, at the stage when the President is satisfied that the question is likely to arise. The satisfaction whether the question has arisen or is likely to arise and whether it is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, is a matter essentially for the President to decide.

The Court also held that the plain duty and function of the Supreme Court under Article 143(1) of the Constitution is to consider the question on which the President has made the reference and report to the President its opinion, provided of course the question is capable of being pronounced upon and falls within the power of the court to decide. If, by reason of the manner in which the question is framed or for any other appropriate reason, the court considers it not proper or possible to answer the

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question, it would be entitled to return the reference by pointing out the impediments in answering it.

## **Legal principles with relevant sections**

The case of In re Special reference No 2002, AIR 2003 SC 87, is steeped in the interpretation of various constitutional provisions. The legal principles that were invoked in the case primarily revolve around the interpretation of Articles 174 and 324 of the Indian Constitution.

Article 174 of the Constitution deals with the sessions of the State Legislature, prorogation, and dissolution. The case brought into focus the interpretation of this Article in the context of a dissolved Legislative Assembly. The court held that Article 174 does not apply to a dissolved Assembly. The court reasoned that the dissolution of an Assembly brings it to an end, and it legally ceases to exist and cannot perform its legislative functions. Therefore, the time stipulation under Article 174 does not apply to a dissolved Assembly.

Article 324 of the Constitution vests the superintendence, direction, and control of elections to Parliament and to the offices of President and Vice-President of India in the Election Commission. In this case, the court had to interpret the scope of the powers of the Election Commission under Article 324. The court held that the Election Commission has the power to assess the

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situation on the ground and decide whether the conditions are conducive for holding free and fair elections.

## **Obiter dictum**

The obiter dictum in this case is the court's commentary on the democratic process and the importance of free and fair elections. The court quoted Sir Winston Churchill's words on democracy: "At the bottom of all tributes paid to democracy is the little man, walking into a little booth, with a little pencil, making a little cross on a little bit of paper-no amount of rhetoric or voluminous discussion can possibly diminish the overwhelming importance of the point."

The court also emphasized that the "little, large Indian shall not be hijacked from the course of free and fair elections by mob muscle methods, or subtle perversion of discretion by men dressed in little, brief authority". The court further stated that "where laws end, tyranny begins", emphasizing the importance of the rule of law in a democratic society.

## **Important paras from the judgement**

One of the important paragraphs from the judgement is where the court discusses the role of the Election Commission under Article 324 of the Constitution. The

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court states: "The superintendence, direction and control of the conduct of elections referred to in Article 324(1) of the Constitution are entrusted to the Commission. The words 'superintendence', 'direction' and 'control' are broad enough to include all powers necessary for ensuring a free and fair election."

## **Subsequent Impact of the Judgement**

The judgement in this case has had a significant impact on the conduct of elections in India. It has clarified the powers of the Election Commission in ensuring free and fair elections, particularly in situations where the Legislative Assembly has been dissolved. The judgement has reinforced the principle that the Election Commission has the power to assess the ground situation and decide whether conditions are conducive for holding free and fair elections.

The judgement has also clarified the interpretation of Article 174 of the Constitution in the context of a dissolved Assembly. It has established that the time stipulation under Article 174 does not apply to a dissolved Assembly, thereby providing clarity on the conduct of sessions of the State Legislature.

Overall, the judgement has strengthened the democratic process in India by reinforcing the powers of the Election Commission and clarifying constitutional provisions related to the conduct of elections and sessions of the State Legislature.

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13.

## GOLAKNATH V. STATE OF PUNJAB

AIR 1967 SC 1643

### Facts in brief:

The case of "Golaknath v. State of Punjab, AIR 1967 SC 1643" is a landmark judgement in the history of the Indian Constitution. The case was heard by a bench of 11 judges of the Supreme Court, the largest bench till that time. The case was brought by the Golaknath family, who challenged the constitutional validity of the Punjab Security of Land Tenures Act, 1953, which had been enacted to implement land reforms in the state of Punjab. The Act was challenged on the grounds that it violated their fundamental rights under Articles 19(1)(f) and 31 of the Constitution.

### Issues:

The main issue in this case was whether the Parliament had the power to amend the Constitution in a way that could take away or abridge the fundamental rights of the citizens. The case brought into focus the interpretation of Article 368 of the Constitution, which provides for the amendment of the Constitution.

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## Arguments:

The petitioners argued that the Parliament did not have the power to amend the Constitution in a way that could take away or abridge the fundamental rights of the citizens. They contended that the fundamental rights were sacrosanct and inviolable and could not be abridged or taken away by any constitutional amendment.

On the other hand, the State of Punjab argued that the Parliament had the power to amend any part of the Constitution, including the fundamental rights, under Article 368. They contended that the power to amend the Constitution was an inherent part of the legislative power of the Parliament.

## Held

The Supreme Court, by a majority of 6 to 5, held that the Parliament did not have the power to amend the Constitution in a way that could take away or abridge the fundamental rights of the citizens. The Court held that an amendment under Article 368 was an ordinary law within the meaning of Article 13(3) and, therefore, if it took away or abridged the fundamental rights, it would be void.

The Court overruled its earlier decisions in *Shankari Prasad v. Union of India* and *Sajjan Singh v. State of Rajasthan*, where it had held that the power of the Parliament to amend the Constitution was unlimited and included the power to amend the fundamental rights.

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The judgement in the Golaknath case was later overruled by the Supreme Court in the Kesavananda Bharati case, where it was held that the Parliament had the power to amend any part of the Constitution, including the fundamental rights, but it could not alter the basic structure of the Constitution.

## **Legal principles with relevant sections**

The legal principles that were invoked in the case of Golaknath v. State of Punjab revolved around the interpretation of the Constitution, specifically the power of Parliament to amend the Constitution and the protection of fundamental rights. The Court held that Parliament could not amend Part III of the Constitution, which includes the fundamental rights, as it would violate Article 13. Article 13 states that any law inconsistent with or in derogation of the fundamental rights is void. The Court held that an amendment under Article 368 is a "law" within the meaning of Article 13.

## **Obiter dictum**

The obiter dicta in the case, which are statements of law that are not directly related to the facts of the case and therefore not binding, include the Court's discussion on the nature of the Constitution and the power of amendment. The Court opined that the Constitution is an expression of the will of the people and not merely a legal

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document. It also discussed the nature of fundamental rights and their place in the Constitution, stating that they are transcendental and immutable. The Court also expressed the view that the power of amendment does not include the power to abrogate the Constitution or its essential features.

## **Important paras from the judgement**

One of the important paragraphs from the judgement is as follows:

"The magical formula of 'political questions' is losing ground and it is to be hoped that a change may be soon coming. Many of the attacks on the amendments were the result of a misunderstanding that the Constitution was a compact between States and that the allocation of powers was not to be changed at all. This was finally decided by Texas v. White as far back as 1869. The main question of implied limitations has evoked a spate of writings. Bryce, Weaver, Mathews, Burdick, Willoughby, Willis, Rottshaefer, Orfield (to name only a few) are of the opinion that there are no implied limitations, although, as Cooley points out, 'it is sometimes expressly declared-what indeed is implied without the declaration that everything in the declaration of rights contained is excepted out of the general powers of Government, and all laws contrary thereto shall be void.'"

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## Subsequent Impact of the Judgement

The judgement in Golaknath v. State of Punjab had a significant impact on the Indian constitutional law. The decision that Parliament could not amend Part III of the Constitution to curtail or dilute the fundamental rights was a landmark one. It led to a tussle between the judiciary and the legislature, with the latter responding by passing the 24th Amendment to the Constitution, which asserted Parliament's power to amend any part of the Constitution, including Part III. This set the stage for further battles on the issue, culminating in the Kesavananda Bharati case where the Supreme Court propounded the Basic Structure doctrine, according to which Parliament cannot amend the basic structure of the Constitution. Thus, the Golaknath case played a crucial role in shaping the discourse on the amending power and the protection of fundamental rights in India.

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14.

**UNION OF INDIA V. H.S DHILLON**

**AIR 1972 SC1061**

## **Facts in brief:**

The case revolves around the interpretation of the Constitution of India, 1950, specifically Articles 246, 248, List I, Seventh Schedule, entries 86 and 97, and List II, entry 49. The case was brought to the Supreme Court by the Union of India against H.S. Dhillon. The facts of the case, as per the information provided, are not explicitly detailed in the extracted text. However, it can be inferred that the case involves a dispute over legislative powers under the Constitution of India, particularly concerning the power to legislate on matters related to agricultural land.

## **Issues:**

The main issue in the case appears to be the interpretation of the Constitution of India, particularly the scope of legislative powers under Articles 246 and 248, and the entries in the Seventh Schedule. The case seems to question whether the Union of India has the power to legislate on matters related to agricultural land, even if other provisions of the Constitution enable it to do so.

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## Arguments:

The main issue in the case appears to be the interpretation of the Constitution of India, particularly the scope of legislative powers under Articles 246 and 248, and the entries in the Seventh Schedule. The case seems to question whether the Union of India has the power to legislate on matters related to agricultural land, even if other provisions of the Constitution enable it to do so.

## Held

The judgment in the case, as per the information provided, is not explicitly detailed in the extracted text. However, it can be inferred that the Supreme Court held the case under Article 248. This suggests that the Supreme Court may have ruled in favor of the Union of India, affirming its power to legislate on matters related to agricultural land under Article 248 of the Constitution.

## Legal principles with relevant sections

The legal principles in the case of Union of India v. H.S Dhillon revolve around the interpretation of the Constitution of India, 1950. The relevant sections of the Constitution that were considered in this case include Articles 246 and 248, List I of the Seventh Schedule, entries 86 and 97, and List II, entry 49.

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Article 246 of the Constitution deals with the subject matter of laws that Parliament and the Legislatures of States may make. Article 248, on the other hand, provides for the residual legislative power of Parliament. Entry 86 of List I pertains to taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies. Entry 97 of List I is a residual entry, giving Parliament the power to legislate on any matter not enumerated in List II or List III. Entry 49 of List II pertains to taxes on lands and buildings.

The case also references the Canadian Constitution Act and its interpretation of sections 91 and 92. This suggests that the court may have drawn parallels between the Indian and Canadian constitutions to interpret the scope of legislative powers under the Indian Constitution.

## **Obiter dictum**

The obiter dictum in a case refers to a judge's incidental expression of opinion, not essential to the decision and not establishing precedent. In the case of Union of India v. H.S Dhillon, the obiter dictum is not explicitly mentioned in the extracted text. However, the court's discussion on the interpretation of the Canadian Constitution Act and its relevance to the Indian context could be considered as obiter dictum, as it provides additional context and reasoning but is not essential to the decision of the case.

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## **Important paras from the judgement**

One of the important paragraphs from the judgement is the court's discussion on the interpretation of the Constitution, particularly the scope of legislative powers under Articles 246 and 248, and the entries in the Seventh Schedule. The court questions whether the Canadian Constitution Act provides an appropriate analogy and whether the decisions on the interpretation of sections 91 and 92 of that Act can be relied upon for the purpose of interpreting the Indian Constitution.

## **Subsequent Impact of the Judgement**

The subsequent impact of the judgement is not explicitly detailed in the extracted text. However, the case of Union of India v. H.S Dhillon is a landmark case in the Indian legal system, and its interpretation of the Constitution, particularly the scope of legislative powers, likely had a significant impact on subsequent cases and legal principles. The case may have clarified the scope of the Union's legislative powers, particularly in relation to agricultural land, and set a precedent for future cases involving similar issues. The case's reference to the Canadian Constitution Act may also have influenced the court's approach to interpreting the Constitution in subsequent cases.

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15.

**PRAFULL KUMAR MUKHERJEE V. BANK OF  
KHULNA**

**AIR 1947 PC 60**

### **Facts in brief:**

The case revolves around the interpretation of the Government of India Act, 1935, specifically Sections 99 and 100, and the three lists set out in the Seventh Schedule. The case was brought to the High Court by Prafulla Kumar Mukherjee against the Bank of Commerce. The immediate dispute was the validity of the Bengal Money-lenders Act, 1940. The Act limits the amount recoverable by a moneylender on his loans for principal and interest and prohibits the payment of sums larger than those permitted by the Act.

The respondents are an incorporated body to which the assets of the Khulna Loan Bank, Ltd. (earlier known as the Khulna Loan Coy., Ltd.) were transferred by an order of May 12, 1941, passed by the High Court of Calcutta under Section 153A of the Indian Companies Act. Some of the cases now under appeal were brought by the respondents who claimed to recover loans and interest alleged to be due upon promissory notes, executed by appellant borrowers and in other instances by appellant debtors claiming a declaration that their indebtedness was at least diminished by the provisions of the Act and even in some instances that they were entitled to

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repayment of sums overpaid.

## Issues:

The main issue in the case appears to be the interpretation of the Government of India Act, 1935, particularly the scope of the respective jurisdictions of the Federal and Provincial legislatures in India. The case questions whether the Bengal Money-lenders Act, 1940, is valid and whether it infringes upon the Federal entry, "promissory notes" item (27) in List I.

## Arguments:

The appellants set out their contentions under four heads. Firstly, they said that power to make laws with respect to moneylending necessarily imports the power to affect the lender's rights against the borrower upon a promissory note given in the course of a moneylending transaction. The Constitution Act they said must be read as a whole so as to reconcile item 28 of List I with item 27 of List II, and so read item 27 is a particular exception from the general provisions of item 28.

Secondly, they argued that the impugned Act is in pith and substance an Act with respect to money-lenders and money-lending and is not rendered void in whole or in part because it incidentally touches upon matters outside the authorised field.

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Thirdly, they maintained that upon its true construction item 28 is confined to that part of the law relating to negotiable instruments which has reference to their negotiability and does not extend to that part which governs the contractual relationship existing between the immediate parties to a bill of exchange or promissory note. That part, they said, lay in the field of contract.

## **Held**

The court held that the Bengal Money-lenders Act is valid because it deals in pith and substance with money lending, not because legislation in respect of promissory notes by the Federal Legislature is confined to legislation affecting their negotiability. The court also held that the Act is not void either in whole or in part as being ultra vires the Provincial Legislature. The respondents must bear the costs of the appellants throughout.

## **Legal principles with relevant sections**

The legal principles in this case revolve around the interpretation of the Government of India Act, 1935, particularly Sections 99 and 100, and the three lists set out in the Seventh Schedule. The case also involves the interpretation of the Bengal Money-lenders Act, 1940.

Section 99 of the Government of India Act, 1935, provides for the distribution of legislative powers between the

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Federal and Provincial legislatures. Section 100 of the same Act further clarifies the extent of these powers and the subjects that fall within the purview of each legislature.

The Bengal Money-lenders Act, 1940, which is the subject of the dispute, is a provincial legislation that limits the amount recoverable by a moneylender on his loans for principal and interest. It also prohibits the payment of sums larger than those permitted by the Act. The Act's validity was questioned on the grounds that it infringes upon the Federal entry, "promissory notes" item (27) in List I.

## **Obiter dictum**

The obiter dictum in this case is the court's opinion on the scope of the Federal Legislature's jurisdiction over promissory notes. The court stated, "If this be correct, it is unnecessary to determine whether the jurisdiction as to promissory notes given to the Federal Legislature is or is not confined to negotiability. The Bengal Money-lenders Act is valid because it deals in pith and substance with money lending, not because legislation in respect of promissory notes by the Federal Legislature is confined to legislation affecting their negotiability—a matter as to which their Lordships express no opinion."

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## Important paras from the judgement

One of the important paragraphs from the judgement is: "In the result their Lordships are of opinion that the Act is not void either in whole or in part as being ultra vires the Provincial Legislature. This opinion renders it unnecessary to pronounce upon the effect of the Ordinance No. XI of 1945, purporting to validate, inter alia, the impugned Act, and their Lordships express no opinion upon it. But having regard to their views expressed in this judgment they will humbly advise His Majesty that the appeal be allowed. The respondents must bear the costs of the appellants throughout."

## Subsequent Impact of the Judgement

The judgement in the case of Prafulla Kumar Mukherjee v. Bank of Khulna had a significant impact on the interpretation of the Government of India Act, 1935, and the distribution of legislative powers in India. It clarified the extent of the Federal and Provincial legislatures' powers and their respective jurisdictions. The case also affirmed the validity of the Bengal Money-lenders Act, 1940, thereby setting a precedent for similar cases in the future.

The judgement also had implications for the interpretation of the Seventh Schedule of the Government of India Act, 1935. It clarified the scope of the Federal and Provincial Lists and the Concurrent List,

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and how these lists should be interpreted in cases of conflict between federal and provincial laws.

Furthermore, the judgement had a significant impact on the money-lending industry in Bengal. By upholding the validity of the Bengal Money-lenders Act, 1940, the court effectively limited the amount that moneylenders could recover from their loans, thereby protecting borrowers from potentially exploitative practices.

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ADV. SHIVANG VERMA

16.

## STATE OF BIHAR V. KAMESHWAR SINGH

AIR 1952 SC 316

### Facts in brief:

The case revolves around the interpretation of the Constitution of India, specifically Article 31(2), and the Bihar Land Reforms Act, 1950. The case was brought to the Supreme Court by the State of Bihar against Kameshwar Singh. The immediate dispute was the validity of the Bihar Land Reforms Act, 1950. The Act was designed to end the Zamindari system, which allowed landlords to collect rent from tenants and keep the revenue for themselves. The Act aimed to transfer the ownership of the land to the person who tilled the land.

The respondents were landlords who were affected by the Act. They challenged the Act's validity on the grounds that it violated their fundamental rights under the Constitution, particularly the right to property.

### Issues:

The main issue in the case appears to be the interpretation of the Constitution of India, particularly Article 31(2), which deals with the right to property. The case questions whether the Bihar Land Reforms Act, 1950, is valid and whether it infringes upon the landlords' fundamental rights.

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## Arguments:

The respondents argued that the Bihar Land Reforms Act, 1950, was unconstitutional because it violated their fundamental rights under the Constitution, particularly the right to property. They contended that the Act was not a law for the acquisition of property for a public purpose and did not provide for compensation, as required by Article 31(2) of the Constitution.

On the other hand, the State of Bihar argued that the Act was valid and did not infringe upon the landlords' fundamental rights. They contended that the Act was a law for the acquisition of property for a public purpose, namely, the abolition of the Zamindari system and the transfer of land to the person who tilled the land.

## Held

The court held that the Bihar Land Reforms Act, 1950, was valid and did not infringe upon the landlords' fundamental rights. The court found that the Act was a law for the acquisition of property for a public purpose and provided for compensation, as required by Article 31(2) of the Constitution. The court also held that the Act was not ultra vires the powers of the Bihar legislature.

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## **Legal principles with relevant sections**

The legal principles in this case revolve around the interpretation of the Constitution of India, particularly Article 31(2), and the Bihar Land Reforms Act, 1950. The case also involves the interpretation of the Seventh Schedule of the Constitution, which lists the subjects on which the Union and State governments can legislate.

Article 31(2) of the Constitution provides that no property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given.

The Bihar Land Reforms Act, 1950, which is the subject of the dispute, is a state legislation that aimed to abolish the Zamindari system and transfer the ownership of the land to the person who tilled the land. The Act's validity was questioned on the grounds that it infringes upon the fundamental rights of the landlords, particularly the right to property.

## **Obiter dictum**

The obiter dictum in this case is the court's opinion on the scope of the State's power to make a law with respect to the acquisition of property. The court stated, "Even then

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if the State exercises its power to make a law with respect to acquisition of property under entry 36 in List II it is the duty of the State to comply with the obligations imposed by article 31(2)."

## **Important paras from the judgement**

One of the important paragraphs from the judgement is: "The scheme of our Constitution obviously is to provide the three things separately, namely, the power of making a law for acquisition of property in article 246 read with entry 33 in List I and entry 36 in List II, the obligation of such law to provide for compensation in article 31(2) and the power of making a law laying down the principles for determining such compensation in article 246 read with entry 42 in List III."

## **Subsequent Impact of the Judgement**

The judgement in the case of State of Bihar v. Kameshwar Singh had a significant impact on the interpretation of the Constitution of India and the distribution of legislative powers in India. It clarified the extent of the Union and State governments' powers and their respective jurisdictions. The case also affirmed the validity of the Bihar Land Reforms Act, 1950, thereby setting a precedent for similar cases in the future.

The judgement also had implications for the

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interpretation of the Seventh Schedule of the Constitution. It clarified the scope of the Union List, State List, and Concurrent List, and how these lists should be interpreted in cases of conflict between Union and State laws.

Furthermore, the judgement had a significant impact on the land reforms in Bihar. By upholding the validity of the Bihar Land Reforms Act, 1950, the court effectively ended the Zamindari system and transferred the ownership of the land to the person who tilled the land, thereby bringing about a significant change in the agrarian structure of the state.

17.

**M. KARUNANIDHI V. UNION OF INDIA**

**AIR 1979 SC 898**

## **Facts in brief:**

The case of M. Karunanidhi v. Union of India, AIR 1979 SC 898, was a landmark case that dealt with the constitutional position and status of a Minister or Chief Minister. The case arose out of the Tamilnadu Public Men (Criminal Misconduct) Act, 1973, and its potential inconsistency with the provisions of the Code of Criminal Procedure 1898, the Prevention of Corruption Act 1947, and the Criminal Law (Amendment) Act, 1952. The case also dealt with the interpretation of Article 254 of the

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Constitution of India, which deals with the inconsistency between laws made by Parliament and laws made by the legislature of states.

The petitioner in the case was M. Karunanidhi, the then Chief Minister of Tamil Nadu, and the respondent was the Union of India. The case was heard by a bench consisting of Justices Syed Murtaza Fazalali, Y.V. Chandrachud, P.N. Bhagwati, N.L. Untwalia, and R.S. Pathak.

## Issues:

The main issues in the case were:

- Whether the Tamilnadu Public Men (Criminal Misconduct) Act, 1973, was inconsistent with the provisions of the Code of Criminal Procedure 1898, the Prevention of Corruption Act 1947, and the Criminal Law (Amendment) Act, 1952.
- The interpretation of Article 254 of the Constitution of India, which deals with the inconsistency between laws made by Parliament and laws made by the legislature of states.
- The nature, constitutional position, and status of a Minister or Chief Minister.
- Whether a Chief Minister is a 'public servant' as defined in section 21(12) of the Indian Penal Code 1869 and section 199(2) of the Criminal Procedure Code 1898.

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## Arguments:

The petitioner argued that a Minister or Chief Minister is not a 'public servant' as defined in section 21(12) of the Indian Penal Code 1869 and section 199(2) of the Criminal Procedure Code 1898. It was contended that a Minister or Chief Minister is not in the service or pay of the Government, and therefore, does not fall within the definition of 'public servant'.

The respondent, on the other hand, argued that a Minister or Chief Minister is indeed a 'public servant'. It was contended that a Minister or Chief Minister is appointed or dismissed by the Governor, gets salary for the public work done or the public duty performed, and the said salary is paid from the Government funds. Therefore, a Minister or Chief Minister is in the pay of the Government and is a public servant within the meaning of section 21 (12) of the Penal Code.

## Held

The Supreme Court held that a Chief Minister or a Minister is undoubtedly a public servant as defined in section 21(12) (a) of the Penal Code. The Court stated that the holder of a public office such as the Chief Minister is a public servant in respect of whom the Constitution provides that he will get his salary from the Government Treasury so long he holds his office on account of the

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public service that he discharges. The salary given to the Chief Minister is coterminous with his office and is not paid like other constitutional functionaries such as the President and the Speaker. These facts point to one and only one conclusion and that is that the Chief Minister is in the pay of the Government and is, therefore, a public servant within the meaning of section 21 (12) of the Penal Code.

The Court also held that the Tamilnadu Public Men (Criminal Misconduct) Act, 1973, was not inconsistent with the provisions of the Code of Criminal Procedure 1898, the Prevention of Corruption Act 1947, and the Criminal Law (Amendment) Act, 1952. The Court found that the State Act creates distinct and separate offences with different ingredients and different punishments and does not in any way collide with the Central Acts. On the contrary, the State Act itself permits the Central Act, namely, the Criminal Law (Amendment) Act, to come to its aid after an investigation is completed and a report is submitted by the Commissioner or the Additional Commissioner.

## **Legal principles with relevant sections**

The case of M. Karunanidhi v. Union of India, AIR 1979 SC 898, established several important legal principles. The Court clarified the interpretation of section 21(12) of the Indian Penal Code 1869 and section 199(2) of the Criminal Procedure Code 1898, which define the term

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'public servant'. The Court held that a Chief Minister or a Minister is undoubtedly a public servant as defined in section 21(12) (a) of the Penal Code.

The Court also interpreted Article 254 of the Constitution of India, which deals with the inconsistency between laws made by Parliament and laws made by the legislature of states. The Court held that the Tamilnadu Public Men (Criminal Misconduct) Act, 1973, was not inconsistent with the provisions of the Code of Criminal Procedure 1898, the Prevention of Corruption Act 1947, and the Criminal Law (Amendment) Act, 1952. The Court found that the State Act creates distinct and separate offences with different ingredients and different punishments and does not in any way collide with the Central Acts.

## **Obiter dictum**

The obiter dictum in this case was the Court's observation on the nature, constitutional position, and status of a Minister or Chief Minister. The Court observed that a Minister is appointed or dismissed by the Governor and is, therefore, subordinate to him whatever be the nature and status of his constitutional functions. The Court also observed that a Chief Minister or a Minister gets salary for the public work done or the public duty performed by him, and that the said salary is paid to the Chief Minister or the Minister from the Government funds.

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## Important paras from the judgement

An important paragraph from the judgement is as follows:

"It is thus incontrovertible, that the holder of a public office such as the Chief Minister is a public servant in respect of whom the Constitution provides that he will get his salary from the Government Treasury so long he holds his office on account of the public service that he discharges. The salary given to the Chief Minister is coterminous with his office and is not paid like other constitutional functionaries such as the President and the Speaker. These facts, therefore, point to one and only one conclusion and that is that the Chief Minister is in the pay of the Government and is, therefore, a public servant within the meaning of section 21 (12) of the Penal Code."

## Subsequent Impact of the Judgement

The judgement in *M. Karunanidhi v. Union of India*, AIR 1979 SC 898, had a significant impact on the interpretation of the term 'public servant' and the constitutional position and status of a Minister or Chief Minister. The judgement clarified that a Chief Minister or a Minister is indeed a 'public servant' as defined in section 21(12) of the Indian Penal Code 1869 and section 199(2) of the Criminal Procedure Code 1898. This interpretation has been followed in subsequent cases and has been instrumental in holding Ministers and Chief Ministers

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accountable for their actions under the Prevention of Corruption Act and other similar laws.

**18.**

**G.K KRISHNA V. STATE OF TAMIL NADU**

**AIR 1975 SC 583**

**Facts in brief:**

The case of G.K. Krishna v. State of Tamil Nadu, AIR 1975 SC 583, was heard by the Supreme Court of India and the judgment was delivered on 12th November 1974. The petitioner in the case was G.K. Krishnan and the respondents were the State of Tamil Nadu and another party. The case was heard by a bench consisting of Justice Kuttyil Kurien Mathew and Chief Justice A.N. Ray.

The case revolves around the Madras Motor Vehicles Taxation Act (3 of 1931). The State Government had issued a notification dated September 20, 1971, enhancing the motor vehicles tax on omnibuses from Rs. 30 per seat per quarter to Rs. 100 per seat per quarter. This enhancement was challenged by the petitioner on several grounds.

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## Issues:

The main issues raised in the case were:

- Whether the tax imposed by the notification was compensatory in character.
- Whether the enhancement of the tax was violative of Article 301 of the Indian Constitution.
- Whether the motive for enhancing the tax was relevant.
- Whether the tax was discriminatory as compared to stage carriages and violative of Article 14 of the Indian Constitution.

## Arguments:

The petitioner argued that the tax imposed by the notification was not compensatory in character. They contended that the enhancement of the tax was violative of Article 301 of the Indian Constitution, which provides for the freedom of trade, commerce, and intercourse within the territory of India. They also argued that the motive for enhancing the tax was relevant to the case.

The petitioner further argued that the tax was discriminatory as compared to stage carriages and thus violative of Article 14 of the Indian Constitution, which guarantees equality before the law and equal protection of the laws within the territory of India.

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## Held

The court held that the tax imposed by the notification was indeed compensatory in character. It was also found that the enhancement of the tax was not violative of Article 301 of the Indian Constitution. The court ruled that the motive for enhancing the tax was not relevant to the case.

The court further held that the tax was not discriminatory as compared to stage carriages and thus was not violative of Article 14 of the Indian Constitution. The court noted that no scheme of taxation is free of all discriminatory impact and that in such a complex arena, the court should not impose too rigorous a standard of scrutiny.

The court also noted that judicial deference to the legislature in instances of economic regulation is sometimes explained by the argument that the rationality of a classification may depend upon 'local conditions' about which the local legislative or administrative body would be better informed than a court. Therefore, the court should hesitate to dub the legislative classification irrational.

The court concluded that the needs and difficulties of a community are constituted out of facts and information beyond the easy ken of the court. It depends to a great extent upon an assessment of the local condition under which these carriages are being run which the legislature or the administrative body alone was competent to make.

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Therefore, the court upheld the validity of the notification issued by the State Government enhancing the motor vehicles tax on omnibuses.

## **Legal principles with relevant sections**

The case of G.K. Krishna v. State of Tamil Nadu, AIR 1975 SC 583, primarily revolved around the principles of taxation and the constitutional validity of the same. The legal principles that were invoked in this case were related to the Madras Motor Vehicles Taxation Act (3 of 1931) and the constitutional provisions of Articles 301 and 14 of the Indian Constitution.

The Madras Motor Vehicles Taxation Act (3 of 1931) was the primary legislation under which the tax on contract carriages was enhanced by the state government's notification. The Act provided the legal framework for the imposition and collection of taxes on motor vehicles in the state of Tamil Nadu.

Article 301 of the Indian Constitution pertains to the freedom of trade, commerce, and intercourse within the territory of India. The petitioners in the case contended that the enhanced tax was violative of this constitutional provision as it imposed restrictions on the freedom of trade and commerce.

Article 14 of the Indian Constitution guarantees equality before the law and equal protection of the laws within the territory of India. The petitioners argued that the

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enhanced tax was discriminatory as compared to stage carriages and thus, violated this constitutional provision.

## **Obiter dictum**

The court's observation on the nature of the tax imposed by the notification. The court opined that the tax was compensatory in character, meaning it was imposed to cover the costs of regulating the trade or business that was being taxed. This observation, although not directly related to the main issue of the case, provides valuable insight into the court's interpretation of the nature and purpose of the tax.

## **Important paras from the judgement**

An important paragraph from the judgement is as follows:

"Judicial deference to legislature in instances of economic regulation is sometimes explained by the argument that rationality of a classification may depend upon 'local conditions' about which local legislative or administrative body would be better informed than a court. Consequently, lacking the capacity to inform itself fully about the peculiarities of a particular local situation, a court should hesitate to dub the legislative classification irrational (see *Carmichael v. Southern Coal & Coke Co.*(1). Tax laws, for example, may respond closely to local

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needs and court's familiarity with these needs is likely to be limited. Therefore, the Court must be aware of its own remoteness and lack of familiarity with the local problems. Classification is dependent on peculiar needs and specific difficulties of the community. The needs and the difficulties of a community are constituted out of facts and information beyond the easy ken of the court. It depends to a great extent upon an assessment of the local condition under which these carriages are being run which the legislature or the administrative body alone was competent to make(2). Therefore, when the Government..."

This paragraph is significant as it highlights the court's stance on judicial deference to legislative decisions, particularly in matters of economic regulation. It underscores the court's recognition of the legislature's superior position in understanding local conditions and making informed decisions based on those conditions.

## **Subsequent Impact of the Judgement**

The judgement in G.K. Krishna v. State of Tamil Nadu, AIR 1975 SC 583, had a significant impact on the interpretation and application of the principles of taxation and constitutional law. The court's decision in this case set a precedent for future cases involving similar issues of taxation and constitutional validity.

The judgement reinforced the principle of judicial

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deference to legislative decisions, particularly in matters of economic regulation. It emphasized the importance of considering local conditions and the specific needs and difficulties of the community in making legislative classifications and decisions.

The case also had a significant impact on the interpretation of Articles 301 and 14 of the Indian Constitution. It clarified the application of these constitutional provisions in the context of taxation and highlighted the importance of ensuring that taxes are not discriminatory and do not unduly restrict the freedom of trade and commerce.

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19.

**M. NAGRAJ V. UNION OF INDIA**

**AIR 2007 SC71**

## **Facts in brief:**

The case of M. Nagraj v. Union of India, AIR 2007 SC71, was heard by the Supreme Court of India and the judgment was delivered on 19th October 2006. The petitioners in the case were M. Nagraj and others, and the respondents were the Union of India and others. The case was heard by a bench consisting of Justice Y.K. Sabharwal, Justice K.G. Balakrishnan, Justice S.H. Kapadia, Justice C.K. Thakker, and Justice P.K. Balasubramanyan.

The case primarily revolved around the right to equal opportunity in public employment in the context of reservation. The petitioners challenged the constitutional validity of the Constitution (Seventy-Seventh Amendment) Act, 1995, the Constitution (Eighty-First Amendment) Act, 2000, the Constitution (Eighty-Second Amendment) Act, 2000, and the Constitution (Eighty-Fifth Amendment) Act, 2001.

## **Issues:**

The main issues raised in the case were:

- Whether the above-mentioned constitutional

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amendments were constitutionally valid.

- Whether the principle of "catch up" rule and the concept of "consequential seniority" are constitutional.
- Whether the reservation policy violated the equality principle, which is part of the basic structure of the Constitution.

## **Arguments:**

The petitioners argued that the constitutional amendments were unconstitutional as they violated the equality principle, which is part of the basic structure of the Constitution. They contended that the principle of "catch up" rule and the concept of "consequential seniority" were unconstitutional.

The respondents, on the other hand, defended the constitutional validity of the amendments and the reservation policy. They argued that the amendments were necessary to ensure equal opportunity in public employment for the socially and educationally backward classes.

## **Held**

The court held that the constitutional amendments were constitutionally valid. It ruled that the principle of "catch

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up" rule and the concept of "consequential seniority" were constitutional. The court noted that if roster-point promotees are given the benefit of consequential seniority, it will not result in violation of the equality principle, which is part of the basic structure of the Constitution.

The court also held that the reservation policy did not violate the equality principle. It noted that the width and amplitude of the right to equal opportunity in public employment, in the context of reservation, must be considered in light of the constitutional provisions and principles.

This case is significant as it deals with important constitutional provisions and principles such as the right to equal opportunity in public employment and the equality principle. It also highlights the role and limitations of the judiciary in reviewing constitutional amendments and reservation policies.

## **Legal principles with relevant sections**

The case of M. Nagraj v. Union of India, AIR 2007 SC71, primarily dealt with the interpretation and application of Articles 14 and 16 of the Indian Constitution. The court emphasized that the equality enshrined in Articles 14 and 16 should not be equated with the basic feature of equality in the Constitution. The judgment also highlighted the principle of equality in the context of roster-point

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promotions for reserved category candidates. The court stated that if roster-point promotees are given the benefit of consequential seniority, it could result in a violation of the equality principle, which is part of the basic structure of the Constitution.

The court also discussed the implementation of Article 16(4A) and Article 16(4B), stating that they fall within the pattern of Article 16(4) and must be considered as long as the parameters are met.

## **Obiter dictum**

In the judgment, the court made several obiter dicta. One of the key obiter dicta was the court's statement that the equality enshrined in Articles 14 and 16 should not be equated with the basic feature of equality in the Constitution. The court also mentioned that if the structural balance of equality is considered, it is not coupled with duty.

## **Important paras from the judgement**

One of the important paragraphs from the judgment is where the court discusses the concept of consequential seniority in the context of roster-point promotions for reserved category candidates. The court stated that if roster-point promotees are given the benefit of consequential seniority, it could result in a violation of

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the equality principle, which is part of the basic structure of the Constitution.

Another important paragraph is where the court discusses the implementation of Article 16(4A) and Article 16(4B), stating that they fall within the pattern of Article 16(4) and must be considered as long as the parameters are met.

## **Subsequent Impact of the Judgement**

The judgment in *M. Nagaraj v. Union of India* had a significant impact on the interpretation and application of the principles of equality and reservation in India. The court's decision to uphold the validity of the Constitution (Seventy-Seventh Amendment) Act, 1995, and the Constitution (Eighty-Fifth Amendment) Act, 2001, which provided for reservation in promotions for SCs and STs with consequential seniority, has shaped the discourse on reservation policies in India.

The court's interpretation of the equality principle in the context of roster-point promotions for reserved category candidates has also had a significant impact on the implementation of reservation policies. The judgment has led to a greater understanding of the balance that needs to be struck between the principles of equality and social justice in the context of reservation policies.

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However, the judgment has also been the subject of criticism and debate. Some argue that the court's interpretation of the equality principle and its application to roster-point promotions could potentially undermine the objectives of reservation policies by limiting the benefits available to reserved category candidates.

20.

**I.R. COEHLO V. STATE OF TAMIL NADU**

**AIR 2007 SC 8617**

## **Facts in brief:**

The case of I.R. Coehlo vs State Of Tamil Nadu revolves around the interpretation and application of Article 31-B of the Indian Constitution, which deals with the validation of certain Acts and Regulations. The case specifically deals with the laws added to the Ninth Schedule by amendments made after 24th April 1973, the date when the judgment in His Holiness Kesavananda Bharati, Sripadagalvaru v. State of Kerala & Anr. [(1973) 4 SCC 225] was pronounced, propounding the doctrine of Basic Structure of the Constitution to test the validity of constitutional amendments.

The case was brought to the court following the inclusion of the Gudalur Janmam Estates (Abolition and Conversion into Ryotwari) Act, 1969 (the Janmam Act), and the West Bengal Land Holding Revenue Act, 1979, in

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the Ninth Schedule by the Constitution (Thirty-fourth Amendment) Act and the Constitution (Sixty-sixth Amendment) Act, respectively. These insertions were challenged before a Five Judge Bench.

## Issues:

The primary issue in the case was the constitutionality of the laws added to the Ninth Schedule after the Kesavananda Bharati case. The question was whether these laws, which were previously struck down as unconstitutional, could be protected from judicial review by being included in the Ninth Schedule. The case also dealt with the broader issue of the balance between the power of the Parliament to amend the Constitution and the doctrine of the basic structure, which limits this power.

## Arguments:

The main argument presented in the case was that the laws added to the Ninth Schedule after the Kesavananda Bharati case were unconstitutional and violated the basic structure of the Constitution. It was argued that these laws were an outright negation of the right of equality conferred by Article 14, a right which more than any other is a basic postulate of our constitution.

On the other hand, it was contended that the power to

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amend the Constitution, including the power to add laws to the Ninth Schedule, was located in Article 368 and that this power was not limited by the doctrine of the basic structure.

## **Held**

The Supreme Court held that the power to amend the Constitution was not located in Article 368 and that the doctrine of the basic structure limited this power. The Court rejected the argument that the laws added to the Ninth Schedule after the Kesavananda Bharati case were protected from judicial review. The Court held that these laws were unconstitutional and violated the basic structure of the Constitution.

The judgment in the I.R. Coelho case reaffirmed the doctrine of the basic structure and emphasized the importance of judicial review in maintaining the balance of power in the Constitution. The case is a landmark in the constitutional law of India as it clarified the limits of the power of the Parliament to amend the Constitution and the role of the judiciary in protecting the basic structure of the Constitution.

## **Legal principles with relevant sections**

The case of I.R. Coelho vs State Of Tamil Nadu primarily revolved around the interpretation and application of

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Article 31-B and Article 368 of the Indian Constitution.

Article 31-B provides a protective umbrella to the laws placed in the Ninth Schedule, shielding them from judicial scrutiny on the grounds of violation of fundamental rights. However, this case questioned the extent of this protection, especially for the laws added to the Ninth Schedule after the Kesavananda Bharati case.

Article 368 of the Indian Constitution provides the Parliament with the power to amend the Constitution. The case questioned whether this power is absolute or is it subject to the doctrine of the basic structure propounded in the Kesavananda Bharati case.

The legal principle that emerged from this case is that the power of the Parliament to amend the Constitution, including the power to add laws to the Ninth Schedule, is not absolute. It is subject to the doctrine of the basic structure, and any law that violates this doctrine is unconstitutional, even if it is included in the Ninth Schedule.

## **Obiter dictum**

The obiter dictum in this case is the court's observation that the power to amend the Constitution is not located in Article 368. This observation, although not directly related to the main issue in the case, has significant implications for the interpretation of the Constitution. It implies that the power to amend the Constitution is not

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absolute and is subject to the limitations imposed by the doctrine of the basic structure.

## **Important paras from the judgement**

One of the most important paragraphs from the judgement is where the court held that "validation of laws based on exercise of blanket immunity eliminates Part III in entirety hence the principles underlying thereunder." This statement reaffirms the importance of Part III of the Constitution, which contains the fundamental rights, and emphasizes that these rights cannot be completely eliminated by providing blanket immunity to laws under the Ninth Schedule.

## **Subsequent Impact of the Judgement**

The judgement in the I.R. Coelho case has had a significant impact on the constitutional law of India. It has reaffirmed the doctrine of the basic structure and has clarified the limits of the power of the Parliament to amend the Constitution. The judgement has emphasized the importance of judicial review in maintaining the balance of power in the Constitution and in protecting the fundamental rights of the citizens.

The judgement has also had a significant impact on the interpretation of the Ninth Schedule. It has clarified that the laws included in the Ninth Schedule are not immune

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from judicial review and can be struck down if they violate the basic structure of the Constitution. This has led to a reevaluation of the laws included in the Ninth Schedule and has resulted in the striking down of several laws that were previously considered to be immune from judicial review.

The judgement has also had a broader impact on the political and legal discourse in India. It has sparked debates about the balance of power between the judiciary and the legislature and about the role of the judiciary in protecting the fundamental rights of the citizens. The judgement has been cited in numerous subsequent cases and has significantly influenced the development of constitutional law in India.

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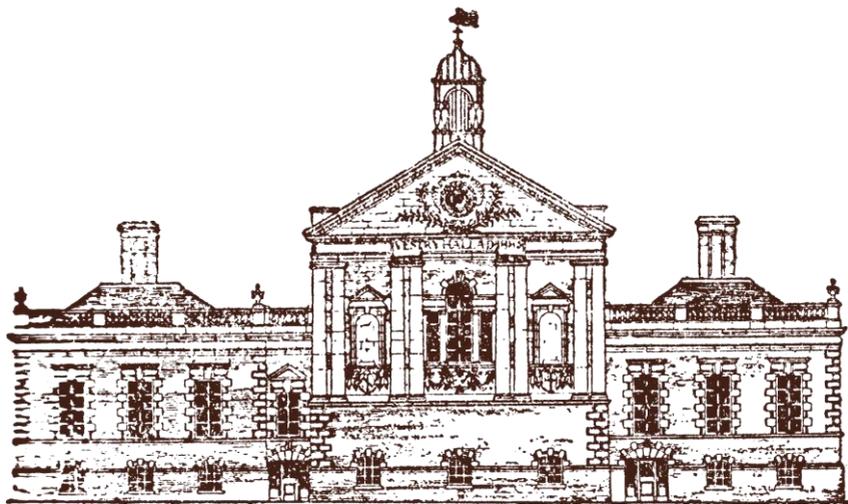
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#### PAPER 1

#### PART A

**QUESTION 1: WRITE SHORT NOTES ON THE  
FOLLOWING:**

#### **QUESTION (A): WRITE SHORT NOTE ON CLASSIFICATION OF CONSTITUTIONS**

A constitution is a set of fundamental principles or established precedents that constitute the legal basis of a state, a sovereign body, or any other organization. It determines the relationship of the different parts of the government to one another and prescribes the conduct of its various functions. It's indeed the supreme law of the land.

There are several ways to classify constitutions. These classifications reflect the political realities and philosophical principles embedded within these foundational documents. Here, we shall focus on four major classifications of constitutions, namely:

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## 1. Written and Unwritten Constitutions:

A **written constitution** is one where the fundamental constitutional provisions are embodied in a single document, which was enacted at a definite period of time. It is clear, precise, and organized. Examples include the Constitution of the United States (1787) and the Constitution of India (1950).

An **unwritten constitution**, on the other hand, consists of both written laws and unwritten conventions. It evolves over time and is continually being shaped by new acts of government, court judgments, and historical practices. The UK is the most cited example of a country with an unwritten constitution.

## 2. Flexible and Rigid Constitutions:

A **flexible constitution** is one that can be easily amended or modified. There are typically no special procedures for amendment, and changes can be made by ordinary legislation. The British constitution is an example of this type.

A **rigid constitution** is more difficult to change. The amendment procedure is usually complex and time-consuming, often requiring supermajority votes in the legislature or even ratification by the citizens through a referendum. The American and Indian constitutions are examples of rigid constitutions.

## 3. Unitary and Federal Constitutions:

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In a **unitary constitution**, the central government holds the ultimate sovereign power. Local governments, if any, derive their powers from the central authority. They do not have any autonomous status. Examples include the constitution of France and Japan.

A **federal constitution**, on the other hand, divides power between a central (federal) government and regional (state) governments. Both levels of government are autonomous and sovereign within their own spheres. Examples include the constitutions of the United States, India, and Germany.

#### 4. Presidential and Parliamentary Constitutions:

A **presidential constitution** establishes a clear separation of powers between the executive and legislative branches, with the president serving as the head of state and head of government. The US follows a presidential system.

A **parliamentary constitution**, on the other hand, typically fuses the legislative and executive branches. The executive (Prime Minister and cabinet) is derived from the legislature and is accountable to it. Countries like the UK and India follow the parliamentary system.

Each of these classifications speaks to a different facet of a constitution's character and represents a different philosophical and practical approach to governance.

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## QUESTION (B): WRITE SHORT NOTE ON CONVENTIONS OF THE CONSTITUTION

Constitutional conventions are unwritten rules that fill the gaps in the written constitution, providing guidelines for the operation of the constitutional structures. They form an important part of many countries' constitutional systems and are often crucial in ensuring that the constitution functions effectively.

### **Nature and Purpose of Conventions:**

The main purpose of constitutional conventions is to ensure that the legal framework of the constitution, which is often rigid and difficult to change, is capable of evolving and adapting to new circumstances. They provide a measure of flexibility that allows the constitution to function smoothly.

Constitutional conventions are not enforceable by courts because they are not laws. They rely on the principle of political accountability. When they are breached, the consequences are typically political rather than legal.

### **Examples of Conventions:**

In the UK, where the constitution is unwritten, conventions play an extremely significant role. One of the most well-known examples is the convention that the monarch will not refuse to assent to a law passed by Parliament, despite technically having the power to do so.

Another example of a convention is the rule that

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ministers (members of the government) should be members of Parliament. This is not written into law but is almost always the case.

In India, a prominent example is the convention that the President acts on the advice of the Council of Ministers. While this was originally a convention, it was later incorporated into the Constitution during the 42nd Amendment, thus giving it a legal status.

## **Role of Courts in Recognising Conventions:**

Courts do not enforce conventions but may recognize their existence to interpret legal rules. In the Canadian case of *Patriation Reference*, the Supreme Court of Canada noted that conventions form part of the constitution but are not judicially enforceable.

In India, in the *S.R. Bommai vs Union of India* case, the Supreme Court recognized the convention of a floor test to determine the majority support of a government in the legislature.

To sum up, constitutional conventions, while not legally enforceable, play a crucial role in the functioning of the constitution. They provide the necessary flexibility and adaptability required to ensure the smooth operation of the constitutional machinery, thereby preserving the spirit of the constitution.

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## QUESTION (C): WRITE SHORT NOTE ON DOCTRINE OF REPUGNANCY

The doctrine of repugnancy is a fundamental principle in constitutional law that deals with the scenario of a conflict between central and state laws in a federal system. It is of particular relevance in countries like India, which follow a quasi-federal structure.

According to Article 254 of the Constitution of India, if a state law is 'repugnant' to a law made by Parliament, then the law made by Parliament prevails, and the state law, to the extent of repugnancy, is void. The term 'repugnancy' in legal parlance signifies a direct conflict or inconsistency between two laws such that compliance with one would lead to the infringement of the other.

There are three prerequisites for the invocation of the doctrine of repugnancy:

1. **There must be a clear and direct inconsistency between the Central and State Laws.** The inconsistency must be so irreconcilable that both the laws cannot stand together. For instance, if a Central law prohibits a certain act, and a State law permits the same act, then there is a clear inconsistency.
2. **The legislation must be related to a subject matter within the concurrent list.** The doctrine of repugnancy only comes into play when both the Central and State Governments are

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competent to legislate on the subject matter, i.e., the matter is enumerated in the Concurrent List of the Seventh Schedule.

3. **The Central Law must be intended to be a complete, exhaustive code on the matter.** If a Central law is intended to serve as a comprehensive code on a subject, any state law on the same subject may be held repugnant.

The doctrine of repugnancy has been examined and evolved through several judicial pronouncements. In the landmark case of *M. Karunanidhi v. Union of India* (1979), the Supreme Court provided valuable insights into the doctrine. The court stated that the test of two legislations containing contradictory provisions is not sufficient to declare repugnancy. Repugnancy must exist in fact, and not merely as a possibility.

However, it is essential to note that Article 254(2) provides an exception to the doctrine. It states that if a state law that is inconsistent with a parliamentary law has received the President's assent, the state law will prevail in that state. This provision recognises the fact that there may be local needs and circumstances that might necessitate a deviation from the Central law.

In conclusion, the doctrine of repugnancy serves as a crucial tool to maintain the harmony of laws in India's quasi-federal structure. It upholds the supremacy of the Union list over the Concurrent list while balancing the principle of federalism.

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## QUESTION (D): WRITE SHORT NOTE ON NATURE OF EXECUTIVE POWER

The executive power of a state refers to the ability and authority to enforce laws and ensure administrative continuity. It's one of the three main types of power in a government, alongside legislative and judicial.

### **Theoretical Background:**

The nature of executive power varies widely between different political and legal systems. Broadly speaking, however, it includes the power to implement, administer, and enforce laws, the power to maintain peace and order, and the power to conduct foreign relations.

### **Presidential and Parliamentary Systems:**

In a **presidential system** like the United States, executive power is vested in an individual—the President. The President, being the head of state and government, has considerable power and independence from the legislature. The executive branch in such systems is usually characterized by a clear separation of powers.

In a presidential system, like the United States, the President is the head of State and head of the government, wielding real executive powers. The President is not responsible to the legislature and does not have a fixed term that depends on the confidence of the legislature. Unlike a parliamentary executive, the

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presidential executive is characterized by the separation of powers. The executive, legislative, and judicial branches are independent and co-equal, and there are elaborate systems of checks and balances to prevent the abuse of power by any branch.

In a **parliamentary system** like India and the UK, the executive includes the Monarch or the President (as a nominal executive) and the Council of Ministers headed by the Prime Minister (as the real executive). The executive in such systems is collectively responsible to the legislature. This responsibility manifests as a fusion of powers, which is a key feature of parliamentary systems.

The executive power in a parliamentary system is co-extensive with the legislative power. The executive can't infringe upon the rights of the citizens without the authority of law, and it can't go against or beyond the law to perform any act. In a parliamentary system, the executive is responsible to the legislature for its actions and decisions. It means that the government remains in power as long as it has the confidence of the majority of the members of the lower house of Parliament. This principle of responsible government was reaffirmed in the landmark case of *U.N.R. Rao v. Indira Gandhi* (1971), where the Indian Supreme Court noted the responsible nature of the Indian executive.

## **Executive Power in India:**

In the context of India, the nature of executive power is dictated by the Constitution. Article 53(1) states that the

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executive power of the Union shall be vested in the President and be exercised by him either directly or through officers subordinate to him in accordance with the Constitution.

However, as per Article 74 of the Constitution, there shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President, who shall, in the exercise of his functions, act in accordance with such advice.

This makes the President the nominal executive, and the Prime Minister along with his council of ministers, the real executive.

## **QUESTION (E): WRITE SHORT NOTE ON AMENDABILITY OF INDIAN CONSTITUTION**

### **Amendability of the Indian Constitution**

The Constitution of India, a living document, is not a static set of rules and norms. Rather, it's a dynamic and evolving text that must adjust and adapt to the changing circumstances and requirements of the nation. To that end, the framers of the Constitution included provisions for its amendment, ensuring that it could be revised and updated without losing its basic structure or foundational principles.

### **Article 368: Power of Parliament to Amend the Constitution and Procedure Therefor**

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The power to amend the Constitution is vested in the Parliament by Article 368. This article lays out the procedure to amend the Constitution. It's important to note that this power is not absolute and is subject to certain conditions.

Article 368 provides for two types of amendment processes based on the nature of the provisions to be amended:

1. **By Simple Majority of Parliament:** Some provisions of the Constitution can be amended by a simple majority of the two houses of Parliament, similar to the passing of an ordinary law. These provisions mostly relate to the ordinary matters of administration. For example, the creation or abolition of Legislative Councils in States.
2. **By Special Majority of Parliament and Ratification by States:** Some other provisions require a more stringent process. They must be amended by a two-thirds majority of the members present and voting in each house of Parliament, provided that the number of members present is not less than half of the total membership of the house—a requirement known as an "absolute majority". In addition, such amendments must also be ratified by the legislatures of at least half of the states. This provision applies to amendments that seek to alter the federal structure of the Constitution, such as those changing the powers of the states or the Supreme

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Court and High Courts.

## **Limitations on the Amending Power & Doctrine of Basic Structure**

The power to amend the Constitution, although wide-ranging, is not unlimited. In the landmark case of *Kesavananda Bharati v. State of Kerala* (1973), the Supreme Court of India ruled that while the Parliament has broad amending powers, it did not have the power to alter the 'basic structure' of the Constitution. The basic structure doctrine was thus born, and it has been a cornerstone of constitutional law in India ever since.

The court held that the Constitution's basic structure, which includes principles like democracy, rule of law, secularism, judicial review, and fundamental rights, is inviolable and cannot be amended. In subsequent cases, the court continued to expand upon the basic structure doctrine.

In the *Minerva Mills v. Union of India* (1980) case, the Supreme Court further strengthened the basic structure doctrine, declaring clauses 4 and 5 of the 42nd Constitutional Amendment Act, 1976, which attempted to limit judicial review, as unconstitutional.

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## PART B

**Q.2. “INDIAN CONSTITUTION IS A REPOSITORY OF DEMOCRATIC EXPERIMENTATION DONE ACROSS THE GLOBE”. EXPLAIN THE SALIENT FEATURES OF THE INDIAN CONSTITUTION IN THE LIGHT OF THE ABOVE STATEMENT.**

The Constitution of India, adopted on 26th November 1949 and enforced on 26th January 1950, is a seminal document in the history of democratic governance. The constitutional framers, influenced by various constitutions and philosophical ideologies worldwide, sought to incorporate the best elements from each source, thus making the Indian Constitution a repository of democratic experimentation done across the globe.

Let's delve deeper into the salient features of the Indian Constitution in light of this statement:

### **1. Preamble: The Ideological Manifesto**

The Preamble to the Indian Constitution encapsulates its spirit and philosophical foundations. It is heavily influenced by the American and French revolutions, underscoring the values of Justice, Liberty, Equality, and Fraternity. The words 'We the people' underscore the sovereignty of the people, a principle that echoes the American Constitution's Preamble.

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## **2. Blend of Rigidity and Flexibility: Borrowed from the US and UK**

The Indian Constitution is neither wholly rigid nor entirely flexible, striking a balance between the American and British constitutions. Like the US Constitution, some provisions require a special majority in Parliament and ratification by state legislatures. However, some provisions can be amended by a simple majority, a feature borrowed from the flexible British Constitution. This blend ensures that while the Constitution adapts to changing times, its fundamental ethos remains intact.

## **3. Parliamentary Form of Government: Influence of the Westminster Model**

The Indian Constitution establishes a parliamentary system of government, modelled after the British 'Westminster' system. This system is characterised by the principle of collective responsibility of the executive to the legislature, the leadership of the Prime Minister, and a bicameral parliament. The essence of the parliamentary system is its fusion of powers between the legislative and executive branches, in contrast to the US's presidential system's separation of powers.

## **4. Fundamental Rights: Reflecting the Influence of the US Bill of Rights**

The Fundamental Rights in Part III of the Indian Constitution mirror the US Bill of Rights. These rights, such as the Right to Equality, Right to Freedom, and

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Right to Constitutional Remedies, embody the democratic ideal that every citizen, regardless of their background, is entitled to certain basic liberties and freedoms that cannot be violated. Additionally, the Constitution provides for Directive Principles of State Policy, inspired by the Irish Constitution, which lay down the guidelines for establishing a just society.

## **5. Independent Judiciary and Judicial Review: Adopted from the US Constitution**

The Indian Constitution ensures an independent judiciary with the Supreme Court at its helm, akin to the US system. It plays a vital role in protecting the Constitution and upholding the rule of law. The power of judicial review, empowering courts to declare a law unconstitutional, also has its origins in the American Constitution. It is a safeguard against legislative and executive arbitrariness.

## **6. Federal Structure with Unitary Bias: Unique to India**

The Indian Constitution establishes a federal structure of government, albeit with a unitary bias. This means that while power is divided between the Centre and States, the Centre holds a higher authority, especially during times of emergency, a feature unique to India. This hybrid federal system accommodates India's diversity while ensuring national unity and integrity.

## **7. Directive Principles of State Policy: Inspired by**

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## **Ireland**

The Directive Principles of State Policy (DPSPs), embodied in Part IV of the Constitution, are guidelines for the government to ensure social and economic democracy. The concept of DPSPs has been borrowed from the Irish Constitution. The DPSPs, though not justiciable, serve as a beacon for the legislature and the executive.

## **8. Emergency Provisions: Reflecting the German Influence**

The emergency provisions of the Indian Constitution are influenced by the German Constitution (Weimar Constitution). In situations of war, external aggression, or armed rebellion, special powers are vested in the President and the Centre, providing flexibility in governance during critical times.

## **9. Fundamental Duties: Inspired by the USSR**

The inclusion of Fundamental Duties in the Constitution via the 42nd Amendment was inspired by the Constitution of the former USSR. These duties, listed in Part IV-A of the Constitution, serve as a reminder to every citizen of their obligations towards the state and society.

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**Q.3. “RULE OF LAW CONNOTES A LIMITED GOVERNMENT AND SOME HIGHER KIND OF LAW WHICH IS REASONABLE, JUST AND NON-DISCRIMINATORY.” CRITICALLY DISCUSS THE RULE OF LAW IN THE LIGHT OF ABOVE STATEMENT.**

The Rule of Law, as a legal concept, holds a paramount position in any democratic system. Rooted in the belief that governance must be conducted following clearly defined and established legal principles, it serves as a bulwark against arbitrary rule and authoritarian tendencies.

### **Conceptual Understanding of Rule of Law:**

The concept of the Rule of Law was first outlined by British jurist A.V. Dicey in his work 'Introduction to the Study of the Law of the Constitution' (1885). Dicey articulated three principles central to the Rule of Law:

1. **Supremacy of Law:** It implies the absolute predominance of regular law as opposed to arbitrary powers. No man can be punished or lawfully interfered with by the authorities except for breaches of law.
2. **Equality before the Law:** It suggests that no person, irrespective of their status, is above the law. Every person, from a common citizen to a government official, must face the same law in the ordinary courts of the land.

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3. **Primacy of Individual Rights:** It postulates that the Constitution is the result of individual rights, as decided by the courts. As such, it positions the protection of rights as the cornerstone of the legal system.

## **Rule of Law in India:**

In the Indian context, the Rule of Law forms the bedrock of the Constitution and is intrinsic to the functioning of the democratic polity. It has been interpreted and evolved through various judicial pronouncements and is implicitly embedded in many provisions of the Constitution.

The Rule of Law connotes a limited government, as mentioned in the question, by ensuring that every government action is carried out within the ambit of the law. The judiciary, through judicial review, checks the actions of both the legislature and executive, thereby maintaining a balance of power and curbing any potential misuse of power.

The Indian Constitution, through its Preamble, Fundamental Rights, Directive Principles of State Policy, and various other provisions, ensures a higher kind of law that is reasonable, just, and non-discriminatory. It endeavors to provide a system of governance that upholds justice—social, economic, and political—and promises equality of status and opportunity.

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## **Rule of Law as a Limitation on Government**

The first aspect of the Rule of Law emphasizes that no one is above the law, including the government. This is intrinsically tied to the idea of a "limited government". A limited government is one where governmental power is restricted by law, usually in a written constitution. It is based on the idea that certain rights and freedoms are inviolable and must be protected from governmental interference.

The principle of limited government is inextricably linked to the Rule of Law. A government bound by law is obliged to respect the rights and freedoms of individuals, avoid arbitrary use of power, and exercise authority within the bounds set by law. This aspect of the Rule of Law is integral to safeguarding individual liberty and preventing tyranny and autocracy.

## **Rule of Law as Higher, Reasonable, and Just Law**

The Rule of Law does not merely imply the existence of laws and their supremacy but also indicates the quality of these laws. It suggests that the laws should be 'higher', reasonable, just, and non-discriminatory. This aspect is closely linked to the principle of Natural Justice and the notion of 'just laws' propounded by thinkers like St. Thomas Aquinas and Martin Luther King Jr.

The principle of Natural Justice implies that laws must be fair, unbiased, and affords the opportunity of a hearing. A just law is one that upholds justice and does not

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arbitrarily or discriminately infringe on people's rights. The Rule of Law necessitates that laws should not merely exist but should be just in their essence, aligning with moral principles and societal notions of fairness.

## **Critical Examination of Rule of Law in Practice:**

Despite its foundational significance, the actual implementation of the Rule of Law is subject to certain criticisms.

In many instances, 'procedure established by law' has been manipulated to justify state actions that infringe upon individual rights, thus putting the Rule of Law into question. This was evident in the ADM Jabalpur case (1976) during the Emergency, where the court ruled that a person's right to not be unlawfully detained could be suspended.

Similarly, the principle of equality before the law is often criticized as being 'formal', and not 'substantive'. While the law does not discriminate, its impact might vary based on the social and economic disparities prevalent in society.

Furthermore, the Constitution allows for 'reasonable restrictions' on fundamental rights. However, the interpretation of 'reasonable' is often contested, and an overly broad understanding can lead to an infringement of rights, thereby undermining the Rule of Law.

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## **Role of Judiciary:**

The judiciary plays a crucial role in upholding the Rule of Law in India. Its interpretation and application of laws and the Constitution often help rectify shortcomings in legislative or executive actions.

Notably, the judiciary's development of the 'Doctrine of Basic Structure' in the Kesavananda Bharati case (1973) has helped preserve the Rule of Law against arbitrary Constitutional amendments.

**Q.4. IN THE DISTRIBUTION OF LEGISLATIVE POWERS UNDER INDIAN CONSTITUTION THERE APPEARS TO BE A CLEAR BENT TOWARDS CENTRE, SO MUCH SO THAT PARLIAMENT OF INDIA IS AUTHORIZED TO LEGISLATE FROM STATE LIST IN MORE THAN ONE CASE. EXPLAIN THE DISTRIBUTION OF LEGISLATIVE POWERS.**

The Constitution of India, in its design of the legislative power distribution, essentially establishes a federal system of governance. However, it reflects a certain degree of 'centrality,' showing a tilt towards the Centre in certain circumstances, as underlined in the question.

## **The Distribution of Legislative Powers:**

The structure of the distribution of legislative powers is laid out primarily in Part XI of the Constitution, which

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includes Articles 245 to 255. The core mechanism for this distribution is given in the Seventh Schedule, which lists the subjects on which the Centre and the States can make laws.

This Schedule comprises three lists:

1. **Union List (List I):** Comprising 100 subjects (originally 97), this list includes topics of national importance, such as defence, atomic energy, foreign affairs, war and peace, banking, railways, post and telegraph, airways, ports, foreign trade, etc. The exclusive power to legislate on these subjects lies with the Parliament.
2. **State List (List II):** Initially consisting of 66 subjects (now 61), this list covers areas of regional and local importance like police, public health, agriculture, fisheries, water supply, etc. The power to legislate on these subjects primarily rests with the States.
3. **Concurrent List (List III):** This list initially contained 47 subjects (now 52) and includes subjects like bankruptcy and insolvency, marriage and divorce, bankruptcy and insolvency, education, etc. Both the Centre and the States can make laws on these subjects. However, in case of a conflict, the law made by the Parliament prevails.

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## Central Tilt in the Distribution of Legislative Powers:

The claim that there is a clear bent towards the Centre is not unfounded. Several provisions of the Constitution grant the Parliament the authority to legislate on subjects that fall within the State List:

1. **Article 249 - Rajya Sabha's Power to legislate on State List subjects in the National Interest:** If the Rajya Sabha passes a resolution by a two-thirds majority declaring that it is necessary for the Parliament to legislate on a State List subject in the national interest, then the Parliament can make laws on that subject.
2. **Article 250 - Legislation during National Emergency:** During a National Emergency, the Parliament can make laws on any subject of the State List.
3. **Article 252 - Legislation for giving effect to International Agreements:** If two or more States pass a resolution that it is desirable to have a law passed by the Parliament on any matter in the State List, then the Parliament can make laws for those States and any other State which adopts it later.
4. **Article 253 - Legislation for giving effect to International Agreements:** The Parliament has the power to make laws to fulfil India's

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obligations under international agreements, which can include subjects from the State List.

5. **Article 356 - Legislation during President's**

**Rule:** During the President's Rule in a State, the Parliament can legislate on the State's subjects.

### A Justifiable 'Central' Tilt?

While the apparent 'central' tilt in legislative powers might seem contrary to the principles of federalism, it reflects the framers' vision of maintaining the unity and integrity of a diverse and geographically vast nation like India. Considering India's pluralistic society, regional disparities, and potential inter-state conflicts, these provisions serve as an essential mechanism to ensure the smooth functioning of the country.

However, it is crucial to ensure that these 'central' powers are not misused to undermine the federal spirit of the Constitution. The judiciary, as the custodian of the Constitution, plays a pivotal role in ensuring this delicate balance between the Centre and the States.

The distribution of legislative powers in the Indian Constitution, while primarily federal in nature, does embody a distinct 'central' tilt. This centralization is not aimed at negating the principles of federalism, but rather, it serves as a pragmatic approach to maintain national unity and ensure a cohesive policy framework on matters of national and international importance. The Indian

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model of federalism, often termed as 'quasi-federal', effectively balances the diversity of regional self-government with the integrity of national unity.

However, it's critical to maintain this delicate balance. Undue centralization or misuse of the 'emergency' powers granted to the Centre could potentially disrupt this balance and strain the Centre-State relations, which would be detrimental to the democratic fabric of the nation. Therefore, the effective implementation of the constitutional provisions, the role of judiciary, and the spirit of cooperative federalism, are the essential prerequisites to ensure the true realization of the ideals of federalism as enshrined in the Indian Constitution.

## **Q.5. EXPLAIN THE DOCTRINE OF PITH AND SUBSTANCE WITH THE HELP OF DECIDED CASES ON THE SUBJECT.**

The Doctrine of Pith and Substance is a fundamental legal principle used in constitutional law, specifically in the context of the distribution of legislative powers between the Centre and the States. This doctrine is employed when the legislative competence of a law made either by the Parliament or a State legislature is challenged on the grounds of the subject matter's intrusion into the legislative domain of the other.

### **Understanding the Doctrine of Pith and Substance:**

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The Doctrine of Pith and Substance postulates that if the substance or the true essence ('pith') of a law falls within the domain of the legislature that enacted it, then it is not deemed invalid merely because it incidentally encroaches upon the legislative sphere of another legislative body. The doctrine essentially focuses on the intention behind the law and where its impact is felt the most.

For example in the context of the division of legislative powers, when a law made by a legislature (State or Union) is challenged as being ultra vires on the ground that it encroaches upon the sphere of the other, the courts apply the doctrine of 'pith and substance'. They examine the real purpose and the true nature of the legislation - its 'pith and substance' - rather than its form or title to decide the constitutionality of the law.

## **Case Laws Illustrating the Application of the Doctrine of Pith and Substance:**

The Doctrine of Pith and Substance has been instrumental in adjudicating various cases involving jurisdictional disputes between the Centre and the States. A few notable ones include:

1. **Prafulla Kumar Mukherjee v. Bank of Commerce Ltd., Khulna (1947):** This case is considered a landmark judgment regarding the application of the Doctrine of Pith and Substance. The Bengal Money Lenders Act, 1946, was challenged on the ground that it encroached upon subjects in the Union List, specifically

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'Promissory Notes' and 'Banking.' However, the Privy Council ruled that the pith and substance of the Act fell within 'Money-lending and Money-lenders,' a subject within the State List, and any encroachment on the Union List subjects was merely incidental. Hence, the Act was held valid.

2. **State of Bombay v. F.N. Balsara (1951):** In this case, the Bombay Prohibition Act, 1949, was challenged for encroaching upon the subjects 'Import and Export across customs frontiers' and 'Inter-state trade and commerce,' which were in the Union List. However, the Supreme Court ruled that the pith and substance of the Act fell within 'Public health and sanitation, hospitals and dispensaries,' a subject within the State List. The encroachment upon the Union List was incidental, and hence, the Act was upheld.
3. **State of Rajasthan v. G. Chawla (1959):** The Supreme Court applied the doctrine to uphold the validity of the Rajasthan Motor Vehicles Taxation Act, 1951, which was challenged for encroaching upon the Union List subject 'Inter-state trade and commerce.' The Court observed that the primary object and substance of the Act were 'Tax on vehicles,' a subject within the State List, and any encroachment upon the Union List was merely incidental.

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## **The Role of Judiciary:**

The judiciary, through its interpretation and application of the Doctrine of Pith and Substance, plays a pivotal role in maintaining the balance of power between the Centre and the States. It ensures that the principle of federalism, a core tenet of the Constitution, is not compromised and that both the Centre and the States operate within their designated legislative domains.

the Doctrine of Pith and Substance is a vital tool in constitutional interpretation, specifically in disputes involving the distribution of legislative powers. This doctrine reflects the delicate balance of power envisaged in the federal structure of the Indian Constitution, thereby allowing the central and state legislatures to function within their designated spheres of influence.

While its application can be complex, given the increasing overlaps in the issues of state and national concern in an interconnected and interdependent world, the principle continues to provide a robust mechanism for dispute resolution in matters of legislative competence.

Through its landmark judgements, the Indian judiciary has demonstrated its commitment to uphold this principle, ensuring that legislative competence is determined based on the essence of the legislation, rather than mere incidental overlaps. The consistent application of this doctrine by the judiciary thus reiterates the commitment towards upholding the principles of federalism and constitutionalism, which are the

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cornerstones of India's democratic setup.

In essence, the Doctrine of Pith and Substance underscores the principle that each level of government should be able to legislate effectively within its jurisdictional sphere without undue interference, thus reinforcing the federal structure and division of powers inherent in the Constitution of India.

## **Q.6. WHAT IS PARLIAMENTARY SOVEREIGNTY? ARE THE CONCEPTS LIKE SUPREMACY OF PARLIAMENT AVAILABLE IN UK APPLICABLE TO INDIA AS WELL. EXPLAIN GIVING REASONS.**

### **Understanding Parliamentary Sovereignty:**

Parliamentary Sovereignty, a concept integral to the constitutional framework of the United Kingdom (UK), signifies the legal supremacy of the Parliament. It essentially means that Parliament is the supreme law-making body and that its legislative competence is unlimited. This doctrine originated from the writings of Albert Venn Dicey, an influential British jurist and constitutional theorist.

The three core principles of Parliamentary Sovereignty, as articulated by Dicey, are:

1. **The Parliament can legislate on any subject matter:** There are no bounds to the

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subject matter on which Parliament can legislate.

2. **No Parliament can bind its successors or be bound by its predecessors:** This means that no law passed by a particular Parliament can prevent a future Parliament from altering or repealing it.
3. **No person or body, including a court of law, may question the validity of an Act of Parliament:** The laws passed by Parliament cannot be challenged in any court on any grounds.

## **Parliamentary Sovereignty in the United Kingdom**

The principle of parliamentary sovereignty is a cornerstone of the unwritten UK constitution. Under this principle, the UK Parliament can make, modify, or reverse any law, and its decisions cannot be overridden or set aside by any other institution, including the courts.

The supremacy of Parliament in the UK is a product of its historical development. It emerged in the aftermath of the struggle for power between the Monarchy and Parliament, culminating in the Glorious Revolution of 1688, which firmly established the supremacy of Parliament over the Monarchy.

## **Parliamentary Sovereignty in the Indian Context:**

While Parliamentary Sovereignty is a fundamental principle of the UK Constitution, its application in the

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Indian context is significantly different due to the nature of the Indian Constitution.

The Constitution of India does not ascribe absolute supremacy to the Parliament. It establishes India as a 'Sovereign Democratic Republic,' signifying that the sovereignty resides with the people of India, and the Constitution is the supreme law of the land.

## **Differences in the Concept of Parliamentary Supremacy between the UK and India:**

1. **Written vs Unwritten Constitution:** Unlike the UK, which has an unwritten Constitution, India has a written and codified Constitution. The Indian Constitution clearly delineates the powers and functions of the different branches of government, including the Parliament.
2. **Judicial Review:** One of the key differences lies in the power of Judicial Review. While in the UK, the concept of Parliamentary Sovereignty essentially negates the scope of judicial review of parliamentary enactments, the Indian Constitution expressly provides for judicial review. Indian Judiciary has the power to review and strike down any law passed by the Parliament that it deems unconstitutional, as provided under Article 13 and Article 32 of the Constitution. This was reiterated in landmark cases like *Kesavananda Bharati v. State of Kerala* (1973) and *Minerva Mills v. Union of India* (1980).

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- 3. Amendment of the Constitution:** The Indian Parliament, unlike the UK Parliament, does not have unlimited powers to amend the Constitution. The Supreme Court, in the Kesavananda Bharati case, propounded the 'Doctrine of Basic Structure,' which holds that Parliament cannot alter the basic structure of the Constitution while exercising its amending power under Article 368.
- 4. Federal Structure:** The Indian Constitution establishes a federal structure of governance, where legislative powers are distributed between the Centre and the States. This is markedly different from the UK's unitary system, where the Parliament has overarching legislative competence.

While the UK embodies the principle of Parliamentary Sovereignty, India adheres to Constitutional Supremacy and Judicial Review, reflecting its commitment to the principles of federalism, separation of powers, and the rule of law.

The Indian Constitution, being the supreme law of the land, provides a robust framework of checks and balances to ensure that no single organ of the government overpowers others. The Indian Parliament does not possess absolute legislative competence. Its powers are defined and limited by the Constitution itself. The concept of Judicial Review further ensures that laws

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passed by the Parliament are in line with the constitutional provisions, and the landmark doctrine of 'Basic Structure' prevents any alterations to the fundamental tenets of the Constitution.

The federal structure of India also necessitates a balanced power distribution between the Centre and the States, thereby deviating from the UK model of a unitary system with a supremely powerful Parliament.

While both systems have their unique strengths and are tailored to their specific socio-political contexts, they share the common goal of promoting democratic governance and upholding the rule of law.

Therefore, although Parliamentary Supremacy forms a crucial part of the UK's constitutional framework, the same principle, in its absolute sense, is not applicable to India due to the stark differences in the constitutional designs and principles governing the two countries. The Indian model demonstrates a careful balance of powers, weaving together the strengths of legislative enactment, judicial review, and constitutional safeguards to ensure an effective, accountable and robust democratic system.

Thus, in the Indian context, the supremacy does not lie with the Parliament but with the Constitution, as a representation of the will of the people. The unique blend of these principles, customised to the diverse and pluralistic needs of India, characterises the world's largest democracy.

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**Q.7 WHAT DO YOU UNDERSTAND BY “INDEPENDENCE OF JUDICIARY”? WHETHER INDIAN CONSTITUTION MAKES CERTAIN PROVISIONS FOR THE PURPOSE OF ENSURING “INDEPENDENCE MAKES OF JUDICIARY”. EXPLAIN WITH THE HELP OF CONSTITUTIONAL PROVISIONS AND DECIDED CASES ON THE SUBJECT.**

### **Understanding Independence of Judiciary:**

Independence of Judiciary is a fundamental tenet of a democratic system, premised on the belief that justice must be dispensed without any interference or influence from the executive and legislative branches of the government or from any other external forces.

This concept is quintessential to uphold the rule of law, safeguard human rights, and to maintain checks and balances in the system. It ensures that the courts are impartial and their proceedings are fair and transparent. Judges must be free to make decisions based purely on facts and law, without any fear, favour, bias, or prejudice.

### **Provisions for Independence of Judiciary in the Indian Constitution:**

The Constitution of India provides for various provisions to maintain and uphold the independence of judiciary.

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These provisions can be broadly classified under the following categories:

1. **Security of Tenure:** Judges of the Supreme Court and High Courts hold office till the age of 65 and 62 years respectively, as per Articles 124(2) and 217(1). This provides them with a secure tenure, ensuring they can function without fear of wrongful removal.
2. **Removal Process:** The process of removal of a judge is strenuous and safeguarded. A judge can be removed only by an order of the President, based on a resolution passed by both Houses of Parliament by a majority of the total membership of that House and by a majority of not less than two-thirds of the members present and voting, on the grounds of proven misbehaviour or incapacity (Articles 124(4) and 217(1)(b)).
3. **Salary and Allowances:** The salaries and allowances of the judges are charged on the Consolidated Fund of India, ensuring that they are not subject to the vote of the Parliament (Articles 125 and 221).
4. **Prohibition on Practice after Retirement:** According to Article 124(7), a retired judge of the Supreme Court is prohibited from pleading or acting in any court or before any authority in India.

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5. **Powers and Jurisdiction of the Courts:** The Constitution provides the higher judiciary with wide-ranging powers, including the power of judicial review, original jurisdiction in disputes between states and the centre, and the authority to interpret the Constitution.

## Case Laws Upholding Independence of Judiciary:

Several landmark judgements by the Supreme Court of India have upheld and emphasized the importance of independence of judiciary. Notable among them are:

1. **Keshavananda Bharati v. State of Kerala (1973):** In this case, the Supreme Court held that independence of judiciary is part of the basic structure of the Constitution and cannot be altered or amended.
2. **S.P. Gupta v. Union of India (1981):** Commonly known as the 'First Judges Case', it interpreted Article 124 and held that the primacy of the Chief Justice of India's recommendation to the President can be overruled by the executive. However, this verdict was later overruled in the Second and Third Judges Cases.
3. **Supreme Court Advocates-on-Record Association v. Union of India (1993):** Known as the 'Second Judges Case', it overruled the decision in S.P. Gupta case, holding that in the event of a conflict between the President and the

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Chief Justice of India over appointments of judges, the opinion of the Chief Justice of India would hold primacy.

- 4. In re Special Reference 1 of 1998 (1998):** Commonly referred to as the 'Third Judges Case', it reiterated the importance of consultation with the Chief Justice of India in appointments and transfers of judges. The decision led to the current collegium system for the appointment and transfer of judges in the higher judiciary.

Independence of Judiciary is a critical aspect of the constitutional design of India, aimed at ensuring a robust system of checks and balances among the three branches of government. The Constitution of India, through various provisions, seeks to maintain this independence by providing safeguards concerning the appointment, tenure, and removal of judges, their salaries and allowances, and their post-retirement conduct.

Judicial precedents have further strengthened these constitutional protections, establishing the independence of judiciary as a part of the unalterable basic structure of the Constitution. It is this independence that endows the judiciary with the necessary authority, trust, and legitimacy to perform its critical role as the guardian of the Constitution and the fundamental rights of the people.

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**Q.8. INDIAN CONSTITUTION BY FAR IS ONE OF MOST FLEXIBLE CONSTITUTIONS OF THE WORLD, SO MUCH SO THAT SOME OF THE PROVISIONS OF THE CONSTITUTION CAN BE AMENDED BY A SIMPLE LEGISLATIVE PROCESS. EXPLAIN THE AMENDMENT PROCEDURE OF THE CONSTITUTION IN THE LIGHT OF THE ABOVE STATEMENT.**

The Indian Constitution, considered the lengthiest written constitution in the world, deftly balances rigidity and flexibility. This carefully crafted design reflects the vision of the framers, who aimed to create a document robust enough to stand the test of time, yet adaptable enough to meet evolving societal and political needs.

The founding fathers, well aware of the challenges of a rigid constitution as well as the perils of an overly flexible one, incorporated the constitutional amendment process under Article 368. This article outlines a sophisticated procedure that maintains the constitution's durability while allowing modifications to address changing realities.

### **Amendment Procedure under Article 368:**

The constitutional amendment procedure in India is neither as rigid as in the United States, where ratification by three-fourths of states is required, nor as flexible as in the United Kingdom, where the parliament can amend

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the constitution as an ordinary legislative act.

The procedure under Article 368 is a three-tier structure, distinguished by the level of difficulty, that caters to different parts and provisions of the Constitution:

1. **Amendment by Simple Majority of Parliament:** Some provisions of the Constitution can be amended by a simple majority in the Parliament, akin to the passing of an ordinary law. These provisions include creation or abolition of legislative council in states (Article 169), admission, establishment, or formation of new states (Article 2 and 3), and conferment of more jurisdiction on the Supreme Court (Article 138).
2. **Amendment by Special Majority of Parliament:** A majority of the constitutional provisions require a 'special majority' for their amendment. As per Article 368, this involves approval by a majority of the total membership of each House and by a majority of not less than two-thirds of the members of that House present and voting. This applies to a significant portion of the Constitution.
3. **Amendment by Special Majority of Parliament and Ratification by States:** The most stringent amendment process involves ratification by at least half of the state legislatures in addition to a special majority of the Parliament.

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This is required for amendments affecting the federal structure of the Constitution, including matters related to the election of the President (Article 54), extent of executive power of the Union and States (Article 73 and 162), the Supreme Court and High Courts (Chapter IV of Part V and Chapter V of Part VI), distribution of legislative powers (Chapter I of Part XI and Seventh Schedule), representation of states in Parliament, and Article 368 itself.

## **Judicial Interpretation of Article 368:**

The courts have played an instrumental role in interpreting the power and scope of constitutional amendments:

1. **Shankari Prasad v. Union of India (1951):**  
The Supreme Court ruled that the power of Parliament to amend the Constitution under Article 368 also includes the power to amend Fundamental Rights.
2. **Golaknath v. State of Punjab (1967):**  
Overruling the Shankari Prasad judgement, the court held that Parliament cannot amend Fundamental Rights.
3. **Kesavananda Bharati v. State of Kerala (1973):**  
The court overruled the Golaknath case, holding that although Parliament has wide amending power, it cannot alter the basic

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structure of the Constitution.

4. **Indira Nehru Gandhi v. Raj Narain (1975):** The court reaffirmed the Kesavananda Bharati judgement and clarified that the rule of law, democracy, and judicial review are parts of the basic structure of the Constitution.
5. **Minerva Mills v. Union of India (1980):** The court struck down the clauses of the 42nd Amendment Act, which gave primacy to the Directive Principles of State Policy over Fundamental Rights and excluded judicial review of constitutional amendments, asserting that they violated the basic structure of the Constitution.

The constitutional amendment process outlined in the Indian Constitution manifests an astute balancing act between flexibility and rigidity. While the flexibility has enabled the Indian Constitution to evolve over time and respond to changing circumstances, the inbuilt safeguards ensure that the foundational values and structure of the Constitution remain intact.

The judiciary, through its various interpretations, has further ensured that this amendment power is not used indiscriminately to alter the core principles enshrined in the Constitution. By propounding the doctrine of the basic structure, the judiciary has established an essential threshold, thereby reiterating that while the Constitution can adapt and evolve, its foundational values and ideals are sacrosanct and unalterable.

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Hence, the Indian Constitution's ability to be amended, either through a simple majority or a more stringent process, does not imply that it is overly flexible. Rather, it points towards the sophistication of its design, which permits adaptability without compromising its fundamental tenets.

**Q.9. ALL PARTS OF THE CONSTITUTION ARE AMENABLE INCLUDING FUNDAMENTAL RIGHTS. HOWEVER, THERE ARE CERTAIN PROVISIONS OF THE CONSTITUTION, WHICH ARE BASIC TO THE SCHEME OF THE CONSTITUTION AND THEY CAN NOT BE CHANGED OR AMENDED. WHO DECIDES WHAT IS BASIC TO THE SCHEME OF THE CONSTITUTION? ELUCIDATE.**

The question addresses the critical constitutional doctrine of the 'basic structure,' which emerges from India's tryst with constitutional amendments and judicial interpretations. This doctrine places certain limitations on the amendatory powers of Parliament, protecting the fundamental ethos and foundational features of the Constitution.

### **The Doctrine of Basic Structure:**

The doctrine of the basic structure, propounded by the Supreme Court in the landmark case of Kesavananda

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Bharati v. State of Kerala in 1973, posits that while Parliament has broad powers to amend the Constitution under Article 368, it does not encompass the authority to alter or destroy the basic structure or framework of the Constitution.

The concept of the basic structure has not been explicitly defined in the Constitution; its contours have been delineated through judicial interpretations over time. The court did not provide an exhaustive list of the basic features but indicated that these would include supremacy of the constitution, republican and democratic form of government, secular character of the constitution, separation of powers among the legislature, executive and judiciary, and federal character of the constitution.

## **Deciding What is Basic to the Scheme of the Constitution:**

As per the constitutional scheme in India, it is the Judiciary, specifically the Supreme Court, that has the authority to decide what constitutes the basic structure of the Constitution. This power is derived from its role as the ultimate interpreter of the Constitution and the guardian of the fundamental rights of the citizens. The Court has, through various judgments, explicated the elements of the basic structure. These include:

1. **Supremacy of the Constitution:** The Constitution is the supreme law of the land, and all laws and actions must conform to it.

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2. **Republican and Democratic Form of Government:** The democratic ethos and the republican nature of the Indian polity, which guarantee political sovereignty to the people, are integral parts of the basic structure.
3. **Secular Character of the Constitution:** The commitment to secularism, ensuring equal respect and protection for all religions, is an essential feature of the Constitution.
4. **Separation of Powers:** The division of powers among the legislative, executive, and judicial branches, ensuring a system of checks and balances, is a fundamental tenet of the Constitution.
5. **Federal Character of the Constitution:** The federal nature of the Indian polity, with a division of powers between the Union and the States, forms a part of the basic structure.
6. **Unity and integrity of the nation:** The territorial integrity and unity of India form a core part of the Constitution.
7. **Sovereignty of the country:** India is a sovereign entity, free from external control.
8. **Provision for socio-economic justice:** The Constitution provides for justice - social, economic, and political. This underlines its commitment to achieving an equitable society.

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In addition to these, the judiciary has identified other elements of the basic structure, such as the principle of equality, the rule of law, judicial review, and the independence of the judiciary. However, the list is not exhaustive, and the Court retains the discretion to add to it based on the evolving constitutional jurisprudence.

## Landmark Cases Illustrating the Doctrine's Application

- a. **Indira Nehru Gandhi v. Raj Narain (1975):** The Supreme Court held that the rule of law is a basic structure of the Constitution. Thus, the amendment providing for the supremacy of the Parliament was struck down.
- b. **Minerva Mills v. Union of India (1980):** In this case, the Supreme Court reiterated the importance of judicial review as a part of the basic structure. The Court struck down the clauses of the 42nd Amendment that restricted judicial review.
- c. **S.R. Bommai v. Union of India (1994):** The Supreme Court held that secularism is a part of the basic structure of the Constitution.

While the Indian Constitution provides for amendments to adapt to changing circumstances, the doctrine of the basic structure serves as a safeguard against potential misuse of amendatory powers, protecting the Constitution's fundamental ethos. The Supreme Court, as the ultimate interpreter of the Constitution, plays a

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pivotal role in delineating the contours of the basic structure, thereby ensuring that the Constitution's foundational principles remain inviolate. The power and relevance of the basic structure doctrine underscore the delicate balance between constitutional rigidity and flexibility, and the ongoing commitment to uphold the constitutional identity of India.

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## PAPER 2

### PART A

**QUESTION 1: WRITE SHORT NOTES ON THE FOLLOWING**

#### **QUESTION (A): WRITE SHORT NOTE ON CONSTITUTIONAL CONVENTIONS**

**Constitutional Conventions** are fundamental practices, procedures, or norms that are not codified or embodied in written laws, but are nevertheless deemed to be indispensable elements of a constitutional system. They form an integral part of the constitution, filling the gaps left by written laws. Convention provides the 'flesh' to the 'skeleton' of a constitution, making it workable and efficient.

#### **Nature and Characteristics**

Constitutional Conventions are primarily based on precedents, traditions, and practices which have, over time, obtained a mandatory character. They are political in nature and are not enforceable by a court of law, unlike legal rules. Nonetheless, they are considered binding on the organs of the State, due to their moral and ethical underpinnings.

#### **Role and Importance**

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Constitutional Conventions serve many essential functions in a constitutional system. They protect the rights of individuals, help maintain the balance of power among various organs of the State, ensure the smooth functioning of the State machinery, and provide for a solution in times of unforeseen constitutional crises.

## Constitutional Conventions in India

In India, though not formally recognized, Constitutional Conventions have played a crucial role in shaping the constitutional law. The office of the Prime Minister, President, and the Council of Ministers, the relationships between the executive, legislative, and judiciary, all follow certain conventions. For instance, the convention of the collective responsibility of the Council of Ministers to the Lok Sabha, the convention of the President acting on the advice of the Council of Ministers, etc. are all instances of conventions that are critical to India's constitutional fabric.

In the landmark case of **S.R. Bommai v Union of India** (1994), the Supreme Court highlighted the importance of constitutional conventions, affirming that the President's rule under Article 356 must be used sparingly, in accordance with the conventions of a parliamentary form of government.

Constitutional Conventions, though not legally enforceable, hold significant value in the functioning of a constitutional government. They ensure a spirit of democracy, rule of law, and respect for fundamental

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rights. Violation of these conventions may not attract legal penalties but can have severe political repercussions.

## QUESTION (B): WRITE SHORT NOTE ON DIVISION OF POWER

**Division of Power** is a constitutional principle that divides the powers of governance among different organs of the State – the Legislature, Executive, and Judiciary. The intent is to prevent the concentration of power, to promote checks and balances, and to protect the democratic setup.

### Theory of Separation of Powers

The theory of Separation of Powers, propounded by Montesquieu, is the basis for the Division of Power. According to this principle, each organ should function within its domain without interference from the other two organs. This ensures a balanced and efficient system of governance.

### Division of Power in the Indian Constitution

The Indian Constitution adopts a system of division of power but not in the strict sense of Montesquieu's theory. The Constitution demarcates the functional domain of each organ but also provides for checks and balances.

In the vertical distribution of powers, the Constitution, under **Articles 245 to 255**, divides powers between the

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Union and the States in terms of Union List, State List, and Concurrent List. The Union List contains subjects on which only the Union government can make laws. The State List comprises subjects on which only the State governments can make laws, and the Concurrent List has subjects on which both the Union and the State can make laws.

## Judicial Precedents in India

The Indian courts have consistently upheld the doctrine of the division of power. In the case of **Ram Jawaya Kapur v State of Punjab** (1955), the Supreme Court stated that our Constitution does not contemplate a strict separation of powers but rather a system of checks and balances.

Another landmark judgment is the **Keshavananda Bharti v State of Kerala** case (1973), where the Court held that the amending power of Parliament under Article 368 does not permit altering the basic structure of the Constitution, thus maintaining the balance of power.

The division of power is a fundamental principle in constitutional law, which is intrinsic to the democratic functioning of a State. It maintains the balance of power among the organs of the government, ensures their efficient functioning, and protects against the misuse of power.

**QUESTION (C): WRITE SHORT NOTE ON**

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## LEGISLATION UNDER FOREIGN CLAUSE

The term "**Foreign Clause**" generally refers to the power vested in the Union Government by the Indian Constitution to legislate on subjects that may not normally come within its purview, but have an international or external dimension. This power is found in Entries 10 to 21 of the Union List (List I of Seventh Schedule) in the Constitution of India, which deal with international affairs, foreign relations, and related matters.

### Legislation Under Foreign Clauses

The Indian Constitution bestows exclusive power upon the Union Government to legislate on foreign affairs, including diplomacy, foreign relations, war and peace, extradition, and aliens. This is a constitutional necessity as the sovereign power to interact with other nations is entrusted to the Union government.

The Union has the power to legislate on matters like foreign jurisdiction, diplomatic, consular and trade representation, participation in international conferences, associations, and bodies, implementation of decisions made at these international platforms, etc. Additionally, under Article 253 of the Indian Constitution, the Parliament has the power to make laws for the whole of India or any part thereof for implementing any treaty, agreement, or convention with any other country, or any decision made at any international conference, association, or other body.

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## Recent Judicial Precedents

The power of the Parliament to legislate under Foreign Clauses has been reiterated in several cases. In **Maganbhai Ishwarbhai Patel Vs. Union of India and Anr.** (1970), the Supreme Court ruled that Article 253 of the Constitution and the relevant entries of List I empower Parliament to make laws enforcing treaty obligations, even if these obligations infringe upon matters within the legislative competence of the State.

To sum up, legislation under the foreign clause is crucial in a globalized world where international relations play a major role. The Union Government has been granted the exclusive power to legislate on these matters due to its sovereign role in managing India's foreign relations.

## QUESTION (D): WRITE SHORT NOTE ON INDEPENDENCE OF JUDICIARY

The **Independence of Judiciary** is one of the cardinal principles of a democratic constitution. It implies that the Judiciary is free from control by the Executive and the Legislature, and judges can perform their duties without fear or favor.

### Importance of Independence of Judiciary

The independence of the judiciary is crucial for upholding the rule of law, protecting the rights and liberties of

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citizens, ensuring fairness in administration of justice, and maintaining public faith in the judicial system. It is a prerequisite for impartial judgment and is necessary for the judiciary to act as the guardian of the Constitution.

## Provisions in the Indian Constitution

The Indian Constitution provides for the independence of the judiciary through various provisions.

1. **Appointment of Judges:** The judges of the Supreme Court and High Courts are appointed by the President (Article 124(2) and Article 217). The involvement of the judiciary in its own appointment process, as observed in the **Second Judges Case** (1993), strengthens its independence.
2. **Security of Tenure:** The judges can only be removed from office through a process of impeachment for 'proven misbehavior or incapacity' (Article 124(4) and Article 217(1)(b)), ensuring their job security and independence.
3. **Salaries and Allowances:** The salaries and allowances of the judges are charged on the Consolidated Fund of India, which cannot be changed to their disadvantage after their appointment (Article 125 and Article 221).

## Recent Judicial Precedents

The Supreme Court, in **Supreme Court Advocates-**

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**On-Record Association vs Union of India (2015)**, reiterated the importance of the independence of the judiciary and held that the collegium system of appointment of judges is a part of the basic structure of the Constitution.

The independence of the judiciary is an essential pillar of a robust democratic setup. It assures a system of checks and balances, safeguards the fundamental rights of citizens, and upholds the Constitution. Despite criticisms, the independence of the Indian judiciary is well-established and has evolved over time to meet the changing needs of society.

## QUESTION (E): WRITE SHORT NOTE ON ENTRENCHED PROVISIONS

**Entrenched Provisions** are specific provisions in a constitution that are safeguarded from being amended or repealed through the regular legislative process. They establish a higher constitutional requirement for their alteration, usually requiring a supermajority vote or a special constitutional amendment procedure.

### **Rationale Behind Entrenchment**

Entrenched provisions aim to protect the core values and principles of a constitution, ensuring stability and continuity in the legal and social system of a nation. They are essential in safeguarding democratic principles, human rights, the rule of law, and the basic structure of

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the constitution.

## Entrenchment in the Indian Constitution

The Indian Constitution doesn't explicitly distinguish between entrenched and non-entrenched provisions. However, it lays down a rigorous process for constitutional amendments under Article 368. Any amendment requires a special majority of the Parliament, i.e., a majority of the total membership of each House and a majority of not less than two-thirds of the members present and voting.

Moreover, the Supreme Court of India, in the landmark judgment of **Keshavananda Bharati v State of Kerala** (1973), introduced the doctrine of the 'Basic Structure' of the Constitution. The Court held that while the Parliament has wide powers to amend the Constitution, it does not have the power to destroy or alter its 'basic structure'. This doctrine essentially 'entrenches' certain fundamental features of the Constitution, such as democracy, rule of law, secularism, judicial review, etc., which cannot be amended by the Parliament.

Entrenched provisions, while not explicitly mentioned in the Indian Constitution, have evolved through judicial interpretation. These provisions, safeguarded by the 'Basic Structure' doctrine, play a significant role in maintaining the sanctity of the Constitution, ensuring that it remains a living document that evolves over time while retaining its core principles.

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## PART B

**QUESTION 2: HOW DO YOU DEFINE THE EXPRESSION 'CONSTITUTION'? EXPLAIN AND ELUCIDATE THE SALIENT FEATURES OF INDIAN CONSTITUTION IN THE LIGHT OF YOUR DEFINITION.**

### **Definition and Understanding of 'Constitution'**

The term 'Constitution' signifies a document of paramount importance in the governance of a nation, embodying the foundational principles and norms upon which the legal and political order of the country rests. It is a legal and institutional framework defining the fundamental political principles, establishing the structure, procedures, powers and duties of the government, and securing the basic rights of the citizens.

The constitution serves as a mirror reflecting the national ethos and aspirations of a society, a vehicle of the nation's progress, and a bridge between the past and the future. It is the ultimate law of the land, having a binding effect on all other laws, ensuring they adhere to its principles.

### **Salient Features of the Indian Constitution**

The Indian Constitution, often called a 'bag of borrowings', is unique in its essence, having adopted various features from other constitutions, yet retaining a distinct character shaped by India's historical

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experiences, socio-cultural diversity, and aspirations for development. Here are some of its salient features:

## 1. Preamble:

The Preamble is the introductory part of the Constitution, often referred to as the 'keynote' to the Constitution. It embodies the fundamental values and the philosophy on which the Constitution is based. It declares India to be a Sovereign, Socialist, Secular, and Democratic Republic, ensuring justice, liberty, equality, and fraternity to its citizens.

## 2. Longest Written Constitution:

With an original count of 395 Articles divided into 22 Parts and 8 Schedules, the Indian Constitution is the longest written constitution in the world. This is due to the country's vast diversity and the comprehensive nature of the Constitution, which seeks to address a wide array of issues in detail.

## 3. Combination of Rigidity and Flexibility:

The Indian Constitution combines rigidity and flexibility, striking a balance between stability and adaptability. While some parts of the Constitution can be amended by a simple majority, others require a special majority as per the procedure laid down in Article 368, making it partly rigid and partly flexible.

## 4. Fundamental Rights:

Part III of the Constitution provides for Fundamental

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Rights, which are justiciable in nature. They include Right to Equality, Right to Freedom, Right against Exploitation, Right to Freedom of Religion, Cultural and Educational Rights, and Right to Constitutional Remedies. They aim to establish a 'just society' by eliminating discrimination, ensuring human dignity, and promoting individual freedom.

## **5. Directive Principles of State Policy (DPSP):**

Part IV of the Constitution contains DPSP, which are non-justiciable in nature. These principles are guidelines for the government to ensure social and economic welfare of the people. They aim at establishing social and economic democracy, thereby working towards a welfare state.

## **6. Fundamental Duties:**

Inserted by the 42nd Amendment Act, 1976, Part IVA of the Constitution stipulates the Fundamental Duties of every citizen of India. These were added to promote a sense of responsibility among the citizens, balancing the extensive rights they enjoy.

## **7. Parliamentary System of Government:**

The Indian Constitution provides for a parliamentary form of government, which is federal in structure with unitary features. It is based on the principle of cooperation and coordination between the legislative and executive organs while maintaining a system of checks and balances.

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## **8. Independent and Integrated Judiciary:**

The Indian Judiciary is a unified judiciary with the Supreme Court at its apex. It is independent and has the power of judicial review to ensure that the laws are in conformity with the Constitution. The judiciary also acts as the guardian of the Constitution and the fundamental rights of the people.

## **9. Secularism:**

The Indian Constitution embodies the principle of secularism. It does not uphold any particular religion as the official religion of the Indian state. The state treats all religions equally and grants every citizen the freedom of conscience and the right to freely profess, practice, and propagate religion.

## **10. Provision for Emergency:**

The Indian Constitution provides for three types of emergencies - National, State, and Financial under Articles 352, 356 and 360 respectively. These provisions enable the Central Government to meet any abnormal situation effectively.

The Indian Constitution, often hailed as a living document, is a comprehensive piece of legislation that encompasses wide-ranging provisions aimed at addressing the diverse needs of a vast and culturally varied population. Its primary aim is to establish a democratic and egalitarian society where every citizen enjoys freedom, justice, and equality, and where

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fraternity ensures the dignity of the individual and unity and integrity of the nation. It stands as a testament to the wisdom of the framers, and its enduring values continue to guide the nation on its path towards achieving the goals enshrined in the Preamble.

**QUESTION 3: “RULE OF LAW CONNOTES A LIMITED GOVERNMENT AND SOME HIGHER KIND OF LAW WHICH IS REASONABLE, JUST AND NON-DISCRIMINATORY.” CRITICALLY DISCUSS THE RULE OF LAW IN THE LIGHT OF THE ABOVE STATEMENT.**

## **Understanding Rule of Law**

The concept of 'Rule of Law' originates from the French phrase 'La Principe de Legalite' (the principle of legality), which refers to a government based on principles of law and not of men. The term means that the rule of law is supreme and can be understood as a tool to curb absolute powers that may be vested in an individual or a body of individuals in a system of governance.

The idea of Rule of Law is fundamental to the functioning of a democratic society, representing a bulwark against arbitrary governance or dictatorship. It signifies that no person is above the law, every person, whatever be his rank or condition, is subject to the jurisdiction of ordinary courts, and no person can be punished or made to suffer except for a breach of law proved in an ordinary legal

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manner before the ordinary courts of the land.

## Components of Rule of Law

The theory of Rule of Law is essentially based on three principles:

1. **Supremacy of Law:** This signifies that law is supreme, and all persons, whether private citizens or government officials, are under a responsibility to obey the law.
2. **Equality before Law:** This signifies that no one is above the law, and everyone, irrespective of their social, economic, or political status, is subject to the same laws.
3. **Predominance of Legal Spirit:** This signifies the independence of the judiciary and the existence of a legal profession that is well-educated and well-organized.

## Rule of Law in Indian Constitution

In India, the concept of Rule of Law can be traced back to the Upanishads. The modern Indian legal system, however, owes much to the British legal system which in turn is inclined towards 'Rule of Law' as propagated by A.V. Dicey.

The Indian Constitution, through its Preamble, implicitly adopts the concept of the Rule of Law by securing to all its citizens equality of status and opportunity and promoting among them all fraternity assuring the dignity

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of the individual. This is achieved in the Indian Constitution through Fundamental Rights (Part III) and Directive Principles of State Policy (Part IV). Furthermore, the procedure established by law under Article 21 reiterates the principle of Rule of Law.

## Critical Evaluation of Rule of Law in India

India, as a democratic republic, is governed by the Rule of Law. However, the application of this concept has been the subject of much debate and criticism. While it is true that the Indian Constitution incorporates a system that restricts the powers of the government and upholds a system of laws that is reasonable, just, and non-discriminatory, the implementation of this concept often faces challenges.

In the Indian context, Rule of Law does not merely mean formal legal equality or the mere absence of arbitrary power, but it encompasses the concept of 'substantive equality' and principles of justice and fairness. The Supreme Court, in **Maneka Gandhi v Union of India** (1978), held that the procedure established by law must be just, fair, and reasonable and not fanciful, oppressive, or arbitrary.

However, the principle of equality before the law does not prevent the State from framing laws which are applicable to certain groups or classes of persons, subject to the condition that it must not be arbitrary or unreasonable. For example, protective discrimination policies such as reservations for Scheduled Castes and Scheduled Tribes,

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and laws providing special protection for women and children are justified under the constitutional mandate to address historical injustices and inequalities.

There are also exceptions to the Rule of Law where powers are conferred on government officials to detain a person without trial, mostly in the case of preventive detention laws. However, the Constitution itself provides various safeguards against misuse of such powers.

Rule of Law, as a concept, denotes the supremacy of a legal system that is just, reasonable, and non-discriminatory. While the Indian legal system and the Constitution strive to uphold this principle, challenges remain in ensuring its full and effective implementation. The core principles of the Rule of Law - equality, justice, and freedom - are fundamental to India's constitutional vision, and any interpretation of the Constitution should be in harmony with these underlying principles.

**QUESTION 4: “POWER OF ISSUING WRITS IN NATURE OF HABEAS CORPUS, MANDAMUS ETC., IN THE NAME OF PUBLIC INTEREST LITIGATION HAS GONE OUT OF FASHION. DO YOU AGREE WITH THE STATEMENT? CRITICALLY EXAMINE THE CONCEPT OF PIL WITH THE HELP OF DECIDED CASES ON THE SUBJECT.**

**Understanding Public Interest Litigation (PIL)**

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Public Interest Litigation (PIL) signifies the use of law to advance human rights, social justice, and equality. Originating in the United States, the concept of PIL found its way to India during the 1980s, giving a broader interpretation to the right to life and personal liberty under Article 21 of the Constitution.

The intention behind PIL is to provide a legal remedy to those who are unable to approach the court due to poverty, ignorance, or any other similar reason. PIL was seen as a radical departure from traditional litigation which was characterised by locus standi, i.e., the ability of a party to demonstrate to the court sufficient connection to and harm from the law or action challenged to support that party's participation in the case.

## Critical Examination of PIL

The statement suggests that the power of issuing writs in the nature of Habeas Corpus, Mandamus, etc., in the name of PIL, has lost its relevance. A critical examination of the developments and trends in Indian jurisprudence suggests otherwise.

The Supreme Court and High Courts have been proactive in entertaining PILs and issuing writs in several landmark cases.

## Case Studies

1. **Hussainara Khatoon v. State of Bihar (1979):** This was one of the earliest cases that marked the beginning of the PIL era. The case

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highlighted the pitiable condition of undertrial prisoners who were denied their right to speedy trial. The Supreme Court issued the writ of Habeas Corpus, resulting in the release of more than 40,000 undertrial prisoners.

2. **Bandhua Mukti Morcha v. Union of India (1984):** The case involved the issue of bonded labour, which was rampant despite constitutional prohibitions and statutory provisions. The court issued the writ of Mandamus directing the state to take necessary actions.
3. **M.C. Mehta v. Union of India (1986):** This is one of the most landmark environmental cases in India. The court took a proactive role in the enforcement of the constitutional mandate for protection and improvement of the environment.
4. **Vishaka v. State of Rajasthan (1997):** This PIL led to significant changes in the Indian legal landscape regarding sexual harassment at the workplace. The Supreme Court laid down exhaustive guidelines (known as the Vishaka Guidelines) to deal with sexual harassment at work until legislation was enacted for the same.

The above cases suggest that the Indian judiciary has not shied away from using PIL as a tool to uphold justice and equality, especially for the marginalised sections of society. However, concerns have been raised about the misuse of PIL, with frivolous and vexatious litigations

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often being filed in the garb of PIL, thereby burdening the judiciary. It has led to the courts becoming more cautious and stringent in admitting PILs.

The power of issuing writs under PIL may seem to have declined due to the judiciary's cautious approach in recent times. However, to state that it has gone out of fashion would not be accurate. Instead, the courts have become more vigilant and judicious in admitting PILs, ensuring that it serves its original purpose of advancing justice and equality and is not misused as a tool for personal or political agendas. The PIL continues to be an essential tool for social change and upholding constitutional values, as long as it is used judiciously and responsibly.

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**QUESTION 5: WHAT KIND OF EMERGENCIES HAVE BEEN PROVIDED FOR UNDER THE CONSTITUTION OF INDIA? CRITICALLY EXAMINE THE CONCEPT OF EMERGENCY IN A FEDERAL SYSTEM.**

## **Understanding Emergencies under the Indian Constitution**

The Constitution of India under Part XVIII provides for three types of emergencies:

1. **National Emergency (Article 352):** A National Emergency can be declared in the whole of India or a part of its territory for reasons of war, external aggression, or armed rebellion. Such an emergency can be proclaimed by the President if he is satisfied that the security of India or any part of its territory is threatened.
2. **State Emergency or President's Rule (Article 356):** The President can proclaim a State Emergency if he is satisfied, on receipt of the report from the Governor of a state or otherwise, that a situation has arisen in which the government of a state cannot be carried on in accordance with the provisions of the Constitution.
3. **Financial Emergency (Article 360):** A Financial Emergency can be declared by the President if he is satisfied that a situation has

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arisen due to which the financial stability or credit of India or any part thereof is threatened.

## **Emergency Provisions and Federalism**

Federalism is a system of government where power is divided between the central government and the state governments. The emergency provisions under the Indian Constitution impact the federal structure as they vest vast powers in the central government, often at the expense of the states.

During a National Emergency, the federal structure of the Constitution gets fundamentally altered and India turns into a unitary state. The Union Parliament assumes the power to legislate on any subject mentioned in the State List. Also, the financial arrangements prescribed by the Constitution can also be altered.

In case of a State Emergency, the President can assume all the functions of the government of a state. The powers of the state legislature are exercised by the Parliament. The President can also take over the powers vested in the High Court of the state.

During a Financial Emergency, the President can direct any state to observe such canons of financial propriety as specified by him, and the President can also require the state to reduce the salaries and allowances of all or any class of persons serving in the state.

## **Critical Evaluation of Emergency Provisions**

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The emergency provisions are an integral part of the Indian Constitution, designed to safeguard the sovereignty, unity, and integrity of the country. They reflect a necessary departure from the principles of federalism to ensure the stability and security of the nation in extraordinary circumstances.

However, the provisions have been subjected to significant criticisms. It is argued that these provisions are capable of turning the democratic and federal structure of the Constitution into a totalitarian and unitary one, even if temporarily. The emergency provisions have been alleged to be misused, especially the State Emergency under Article 356, which has been invoked on numerous occasions.

The 38th and 44th Constitutional Amendment Acts were introduced to prevent the misuse of emergency provisions. The 38th Amendment made the declaration of a National Emergency non-justiciable. However, this amendment was widely criticized, and the 44th Amendment rectified this by making such proclamation justiciable.

Furthermore, the 44th Amendment brought several changes, including that a National Emergency could be proclaimed only on the grounds of 'armed rebellion' or external aggression and not on 'internal disturbance'. It also necessitated that the President could declare a National Emergency only on the written recommendation of the Cabinet.

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In a federal system, emergency provisions are crucial for the preservation of the unity and integrity of the nation during exceptional circumstances. However, their potential for misuse can lead to a significant dilution of federal principles and a concentration of power in the Centre. Thus, it is essential to have adequate safeguards to prevent the misuse of these provisions, and to ensure that the principles of federalism are not undermined in the process. The experience of the Indian republic provides valuable lessons on balancing the imperatives of security and unity with the principles of federalism and democracy

**QUESTION 6: "THE CONSTITUTION COMMANDS THE STATES TO CARRY OUT THEIR EXECUTIVE POWERS SO AS TO ENSURE COMPLIANCE WITH THE LAWS MADE BY PARLIAMENT AND ANY EXISTING LAW THAT APPLY TO THAT STATE." CRITICALLY EXAMINE THE DISTRIBUTION OF ADMINISTRATIVE POWERS BETWEEN THE UNION AND THE STATES UNDER INDIAN CONSTITUTION IN THE LIGHT OF THE ABOVE STATEMENT.**

**Understanding the Distribution of Administrative Powers**

The Indian Constitution establishes a federal system of government, though it is tilted towards a stronger Centre.

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The Constitution has meticulously detailed the distribution of powers between the Union and the States. The administrative relations between the Centre and the States are outlined in Part XI of the Indian Constitution from Articles 256 to 263.

The statement mentioned captures the spirit of Article 256, which states that the executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State. The Union can issue directions to a State to ensure the implementation of the laws of Parliament.

## **Distribution of Administrative Powers**

In general, the executive power of the State is vested in the Governor and extends to the administration of the State subject to the provisions of the Constitution. It includes the power to implement laws pertaining to subjects enumerated in the State List and the Concurrent List, maintaining law and order, and running the state administration.

On the other hand, the executive power of the Union extends to implementing laws relating to subjects enumerated in the Union List, maintaining law and order in areas under its control (like Union Territories and the national capital), ensuring compliance by States with laws enacted by Parliament, and safeguarding the interests of the country at the international level.

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However, the Constitution provides for several contingencies when the administrative powers of the Centre override those of the States:

1. **Article 249:** The Rajya Sabha can pass a resolution empowering the Parliament to make laws on any matter enumerated in the State List.
2. **Article 252:** If two or more States request, the Parliament can legislate on a subject in the State List.
3. **Article 253:** The Parliament has powers to make any law for the whole or any part of India for implementing international treaties.
4. **Articles 355 and 356:** The Union can take appropriate steps (including the imposition of President's rule) to ensure that governance in the State is carried out in accordance with the provisions of the Constitution.

## Critical Examination

The Constitution seeks to achieve a balance between the administrative powers of the Centre and the States. However, critics often argue that the balance tilts heavily in favour of the Centre. The administrative supremacy of the Centre can be seen through its power to give directions to the States under Articles 256 and 257. These directions can relate to the construction and maintenance of means of communication declared to be of national or military importance and the measures to be taken for the

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protection of railways.

Moreover, the Centre can direct the States to comply with the laws of Parliament. If any State fails to comply with such directions, the Centre may take action under Article 365, potentially leading to the imposition of President's Rule under Article 356. This provision, while necessary for maintaining national integrity and addressing exigent circumstances, has sometimes been criticised for being misused.

However, such overriding powers of the Centre are not unusual in a quasi-federal system like India, which needs a strong Centre for reasons of diversity, national integrity, and security. The Supreme Court, in the State of Rajasthan vs. Union of India (1977), has held that our Constitution is not federal in nature and does not provide for a watertight division of powers. Hence, the presence of strong Centre is justified.

While the Constitution of India meticulously demarcates administrative powers between the Union and the States, there are clear provisions that empower the Centre in certain situations. These provisions, while often criticised for centralising power, are integral to maintaining national unity and integrity in a diverse country like India. Therefore, while the Centre-State administrative power dynamics may seem tilted towards the Centre, they represent a pragmatic approach that acknowledges India's socio-cultural diversity and political complexity.

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## **QUESTION 7: DEFINE AND EXPLAIN THE DOCTRINE OF HARMONIOUS CONSTRUCTION WITH THE HELP OF DECIDED CASE LAW ON THE POINT**

### **Understanding the Doctrine of Harmonious Construction**

The doctrine of Harmonious Construction is a principle in constitutional interpretation that seeks to resolve conflicts between conflicting statutes or constitutional provisions. The principle holds that every provision of a statute has a specific function to perform and should be given effect to, to the extent possible. Thus, the different provisions of a statute or the Constitution should be harmoniously constructed in a way that gives effect to all of them.

In the context of the Indian Constitution, the doctrine of Harmonious Construction is crucial due to the federal structure of the Constitution, which necessitates the division of powers between the Centre and the States, outlined in the three Lists (Union List, State List, Concurrent List) in the Seventh Schedule. It's also applicable when there is a conflict between fundamental rights or between a fundamental right and other legal provisions.

### **Application in Case Law**

The Doctrine of Harmonious Construction has been applied and discussed in various landmark judgments of

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the Supreme Court of India, reinforcing its importance in the interpretation of constitutional and statutory provisions.

1. **State of West Bengal vs. Union of India (1963):** In this case, the question was whether the Union of India, under Entry 33 of List I (Union List), could requisition land held and managed by the State Government. The court used the principle of Harmonious Construction to hold that Entry 33 of List I and Entry 36 of List II must be read together. Consequently, the Union's power to requisition property in the states does not extend to the land held and managed by the state.
2. **IC Golak Nath vs. State of Punjab (1967):** In this case, the question was whether the Parliament could amend fundamental rights. The court used the Doctrine of Harmonious Construction to hold that the power of Parliament to amend the Constitution under Article 368 does not include the power to amend Part III of the Constitution concerning fundamental rights.
3. **Minerva Mills Ltd. vs. Union of India (1980):** The Supreme Court used the doctrine to uphold the harmony between Articles 14, 19, and 21 (fundamental rights) and Article 39(b) and 39(c) of the Directive Principles of State Policy.
4. **Keshavananda Bharati vs. State of Kerala**

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**(1973):** The apex court used the Doctrine of Harmonious Construction in its interpretation of the Parliament's power to amend the Constitution. It held that while the Parliament has the power to amend, it cannot alter the basic structure of the Constitution.

The Doctrine of Harmonious Construction is a vital principle of constitutional interpretation in India. It plays a significant role in ensuring that each provision of the Constitution can be meaningfully and effectively implemented, without undermining any other provision. The doctrine, as upheld by various landmark judgments, advocates for a balanced approach to constitutional interpretation that respects the essence and coherence of the Constitution as a whole.

**QUESTION 8: WHAT DO YOU UNDERSTAND BY THE EXPRESSION “PARLIAMENTARY SOVEREIGNTY”? IS IT AVAILABLE UNDER THE INDIAN CONSTITUTION? COMMENT WITH REFERENCE TO CONSTITUTIONAL PROVISIONS ON THE SUBJECT.**

## **Understanding Parliamentary Sovereignty**

Parliamentary Sovereignty, a principle coined by British constitutional theorist A.V. Dicey, refers to the supreme legislative power of a Parliament, implying that it is the ultimate source of law. A Parliament that is sovereign can

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make, amend, or repeal any law, and no court or other institution can challenge or overturn its legislation. Parliamentary sovereignty is the cornerstone of the unwritten British Constitution, where there is no fundamental law beyond the reach of Parliament.

## Parliamentary Sovereignty in the Indian Context

Unlike Britain, India follows a written Constitution, which is the supreme law of the land. The principle of Parliamentary sovereignty does not exist in its absolute form in India. The legislative power of the Indian Parliament is subject to the provisions of the Constitution, which limits the supremacy of Parliament.

Several aspects of the Indian Constitution underscore this limited sovereignty:

1. **Division of Powers:** The Constitution establishes a federal structure, distributing legislative powers between the Union and the States (Seventh Schedule). This distribution limits the legislative competence of Parliament.
2. **Fundamental Rights and the Basic Structure Doctrine:** Parliament cannot enact laws that infringe upon the Fundamental Rights guaranteed by the Constitution (Part III). Furthermore, the landmark case of *Keshavananda Bharati vs. State of Kerala* (1973) propounded the Basic Structure Doctrine, asserting that Parliament cannot amend the 'basic

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structure' of the Constitution.

3. **Judicial Review:** The power of judicial review, implicit in Articles 13 and 368, empowers the judiciary to examine the constitutionality of legislative acts. This mechanism provides a check on the Parliament's power.
4. **Procedure for Amendment:** Article 368 provides a specific procedure for the amendment of the Constitution, which must be strictly followed. This provision curbs the absolute power of Parliament in amending the Constitution.

## Interpreting Parliamentary Sovereignty in India

The concept of Parliamentary Sovereignty has, however, evolved with significant judicial interpretations. While the Parliament's power is limited by the Constitution, it still retains considerable legislative competence.

In the Golak Nath Case (1967), the Supreme Court initially held that Parliament cannot amend the Fundamental Rights. However, this was overruled in Keshavananda Bharati (1973), where the court upheld Parliament's power to amend the Constitution, including Fundamental Rights, provided it does not alter the Constitution's 'basic structure'. This judgment increased the scope of Parliamentary sovereignty while preserving the essence of the Constitution.

The Indian Constitution, while providing substantial legislative power to Parliament, does not grant it absolute

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sovereignty akin to the British model. The Constitution's supremacy, the division of powers, the guaranteed Fundamental Rights, the doctrine of Basic Structure, and the power of Judicial Review collectively create checks and balances on Parliamentary power. Therefore, while the Indian Parliament enjoys extensive legislative powers, it operates within the bounds of Constitutional propriety and judicial scrutiny, upholding the constitutional ethos of a balanced democracy.

**QUESTION 9: WHAT DO YOU UNDERSTAND BY THE EXPRESSION “DOCTRINE OF BASIC STRUCTURE”? CRITICALLY EXAMINE WITH THE HELP OF DECIDED CASES.**

## **Understanding the Doctrine of Basic Structure**

The Doctrine of Basic Structure is a judicial principle that the Supreme Court of India propounded in the landmark case *Keshavananda Bharati v. State of Kerala* in 1973. According to this doctrine, the Constitution of India has a basic structure of principles and values that cannot be altered or destroyed through amendments by the Parliament.

In other words, while the Parliament has the power to amend the Constitution, it does not extend to altering its basic framework. This concept was developed to maintain the integrity and identity of the Constitution, even as changes are made to address new situations and needs.

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## Decided Cases and the Evolution of the Doctrine

The Doctrine of Basic Structure has its roots in several earlier court decisions:

1. **Shankari Prasad v. Union of India (1951):**  
In this case, the Supreme Court held that Parliament could amend any part of the Constitution, including Fundamental Rights.
2. **Sajjan Singh v. State of Rajasthan (1965):**  
The court affirmed its earlier decision in Shankari Prasad and held that an amendment of the Constitution would be considered a 'law' within the meaning of Article 13 of the Constitution.
3. **IC Golak Nath v. State of Punjab (1967):**  
Overruling its prior judgments, the Supreme Court held that the Parliament could not amend Fundamental Rights.

The Doctrine of Basic Structure was formally established in the following landmark case:

4. **Keshavananda Bharati v. State of Kerala (1973):** Overruling the Golak Nath case, the court held that while the Parliament has wide powers, it did not have the power to destroy or alter the basic structure or framework of the Constitution. However, the court did not define what constituted the 'basic structure', leaving it to be determined on a case-by-case basis.

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The application of the doctrine was further strengthened in subsequent cases:

5. **Indira Nehru Gandhi v. Raj Narain (1975):** The court applied the doctrine to hold that an amendment that violated the basic structure would be invalid.
6. **Minerva Mills Ltd. v. Union of India (1980):** The Supreme Court invalidated clauses (4) and (5) of Article 368, holding that a limited amending power was a basic feature of the Constitution. It reiterated that even the amending power could not be used in a manner that violated the Doctrine of Basic Structure.

## Critical Examination

The Doctrine of Basic Structure has been both praised and criticised. It is seen as a balance between rigidity and flexibility, ensuring the Constitution's survival in its original form. It prevents the arbitrary amendment of the Constitution, preserving its spirit and character.

However, critics argue that the doctrine limits Parliament's powers, one of the three pillars of democracy. It also raises questions about the judiciary's role, as deciding what constitutes the 'basic structure' seems a political rather than a judicial decision.

The Doctrine of Basic Structure, while not explicitly mentioned in the Constitution, has become a cornerstone of Indian constitutional law through judicial

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interpretation. It has played a significant role in maintaining the balance of power between the judiciary and the legislature. Although it has its critics, the doctrine serves as a shield that protects the Constitution's core values against potential misuse of power.

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## PAPER 3

### PART A

**QUESTION 1: WRITE SHORT NOTES ON THE FOLLOWING**

**QUESTION (A): WRITE SHORT NOTE ON SOURCES AND FRAMING OF THE INDIAN CONSTITUTION**

The making of the Indian Constitution is an unparalleled historical event, not merely for its length and detail but for its unique creation of procedural designs. The construction of the Indian Constitution involved tireless efforts of the Constituent Assembly, which was constituted in 1946 under the Cabinet Mission's plan. The comprehensive nature of the Indian Constitution can be traced back to multiple sources that inspired its diverse provisions.

#### **Sources of the Indian Constitution**

The Indian Constitution, known for its detailed articulation, derives its provisions from various global constitutions alongside several indigenous sources. The Constitution makers were influenced by features of other constitutions, yet they ensured the adoption of these features to suit the socio-economic-political context of India.

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1. **Government of India Act, 1935:** The most significant source, providing the administrative detail. It contributed the Federal Scheme, Office of Governor, Judiciary, Public Service Commissions, and Emergency provisions.
2. **British Constitution:** Provided Parliamentary government, Rule of Law, legislative procedure, single citizenship, Cabinet system, Prerogative writs, Parliamentary privileges, and Bicameralism.
3. **US Constitution:** Fundamental Rights, independence of Judiciary, judicial review, impeachment of the President, removal of Supreme Court and High Court Judges, and post of Vice-President.
4. **Irish Constitution:** Directive Principles of State Policy, method of Election of the President, and the nomination of members to Rajya Sabha.
5. **Canadian Constitution:** Federation with a strong Centre, vesting of residuary powers in the Centre, appointment of state Governors by the Centre, and advisory jurisdiction of the Supreme Court.
6. **Australian Constitution:** Concurrent List, joint-sitting of the two Houses of Parliament, and Freedom of trade and commerce.

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7. **Weimar Constitution of Germany:** Suspension of Fundamental Rights during Emergency.
8. **French Constitution:** Republic and ideals of Liberty, Equality, and Fraternity.
9. **South African Constitution:** Procedure for amendment of the Constitution and Election of members of Rajya Sabha.
10. **Soviet Constitution (USSR):** Fundamental Duties and the ideal of Justice (social, economic, and political) in the Preamble.

## Framing of the Indian Constitution

The Indian Constitution was framed by a Constituent Assembly, a body of elected representatives of the people of India. This was a democratic method unlike several constitutions that came into effect either through revolution or assertion of independence. The key stages in framing the Constitution were as follows:

1. **Constituent Assembly's Formation:** Under the Cabinet Mission Plan of May 16, 1946, an interim government was established, and a Constituent Assembly was formed comprising representatives from all communities and princely states.
2. **Working Committees and Adoption of Objectives Resolution:** The Constituent

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Assembly worked through Committees. The Drafting Committee chaired by Dr. B.R. Ambedkar was responsible for drafting the Constitution. The Objectives Resolution, moved by Jawaharlal Nehru and later adopted as the Preamble, outlined the fundamental philosophy of the constitution.

3. **Drafting and Adoption:** The Drafting Committee prepared the first draft of the Constitution, which was published in February 1948. After thorough discussions, the final constitution was adopted on November 26, 1949.
4. **Enactment:** The Constitution came into effect on January 26, 1950. This date is celebrated as Republic Day in India.

Thus, the Constitution of India, a detailed document of governance, is a careful assimilation of borrowed provisions and indigenous elements that address the unique multicultural and diverse societal fabric of India.

## QUESTION (B): WRITE A SHORT NOTE ON PARLIAMENTARY SOVEREIGNTY

Parliamentary Sovereignty, also known as Supremacy of Parliament, is a concept of political science that originates from the British Constitution. This doctrine implies that the Parliament is the supreme legislative

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body and its authority is unlimited, indivisible, and cannot be challenged or overridden.

## **Parliamentary Sovereignty in India**

Unlike the British Constitution, the Indian Constitution doesn't completely imbibe the concept of Parliamentary Sovereignty due to the introduction of judicial review and constitutional supremacy.

**Constitutional Supremacy:** The Indian Constitution is the supreme law of the land, and the authority of the Parliament is subject to the provisions of the Constitution. Any law passed by the Parliament, inconsistent with the Constitution, can be declared invalid by the judiciary.

**Judicial Review:** An essential feature of the Constitution, borrowed from the US, judicial review allows the courts to examine the constitutionality of legislative acts. In the landmark case of *Keshavananda Bharati v. State of Kerala* (1973), the Supreme Court propounded the Doctrine of Basic Structure, implying that Parliament cannot amend the basic features of the Constitution.

However, the Parliament still holds significant authority within the bounds of the Constitution:

**Legislative Powers:** Parliament has the authority to make laws on subjects mentioned in the Union List and Concurrent List. It can also legislate on State List subjects

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under certain circumstances (Article 249, 250, 253, and during national emergency).

**Amendment Powers:** Article 368 confers power on the Parliament to amend any part of the Constitution. However, this power is subject to the Doctrine of Basic Structure.

**Financial Powers:** No taxation can be imposed, and no expenditure can be incurred without the approval of the Parliament.

**Control over Executive:** The Council of Ministers remains in office as long as it enjoys confidence in the Lok Sabha.

**Emergency Powers:** In the event of a national emergency (Article 352), state emergency (Article 356) or financial emergency (Article 360), the Parliament's power increases exceptionally.

## QUESTION (C): WRITE SHORT NOTE ON OFFICE OF PROFIT

The term 'Office of Profit' has been used in the Indian Constitution without a specific definition. However, the understanding of the term has been developed through constitutional debates, parliamentary laws, and judicial interpretations. An Office of Profit refers to a position that brings to the person holding it some financial gain, advantage, or benefit.

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## Office of Profit in the Indian Constitution

The concept of Office of Profit is enshrined in Articles 102 (1)(a) and 191 (1)(a) of the Indian Constitution, which deal with the disqualification of the members of Parliament (MPs) and the Members of Legislative Assembly (MLAs) respectively.

The idea behind the inclusion of this concept is to maintain the integrity of the elected representatives, ensuring that they can carry out their duties without any undue influence from the executive, and to avoid any conflict of interest. It also reinforces the doctrine of separation of powers among the three branches of government.

## Parliament (Prevention of Disqualification) Act, 1959

To deal with various complexities and ambiguities related to the Office of Profit, the Parliament passed the Parliament (Prevention of Disqualification) Act, 1959. This act provides a list of offices that will not disqualify a person for being chosen as, or for being, a member of Parliament. The Act has been amended several times to include more offices in the exemption list.

## Judicial Interpretations

1. **Ravanna Subanna v G. S. Kaggeerappa (1954)**: The Supreme Court held that the test for determining whether a person holds an office of profit is the test of appointment. Certain factors

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are considered such as, whether the government makes the appointment, remunerates, dismisses, and what functions the holder performs.

2. **Jaya Bachchan v Union of India (2006):** The Supreme Court ruled that if an office carries with it certain emoluments or perks, then it will be an Office of Profit, notwithstanding the fact that the person has chosen not to draw such perks.
3. **Shibu Soren v Dayanand Sahay (2001):** The Jharkhand High Court stated that an office would be an Office of Profit if governmental influence dominates the appointment, removal, and functioning of the office.

The concept of 'Office of Profit' is significant in maintaining the sanctity of our democratic structures. The legislature's primary duty is to express the will of the people in the matters of governing the state. Therefore, a legislator must not feel obligated to the executive for holding offices that could give pecuniary benefits or any other executive discretion advantage. Any dilution of these principles would be a serious blow to the doctrine of separation of powers, a key feature of our Constitution.

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## QUESTION (D): WRITE SHORT NOTE ON DOCTRINE OF PITH AND SUBSTANCE

The doctrine of Pith and Substance is a legal principle used by courts for interpreting legislations, particularly in the context of distribution of powers between the Centre and the states. The concept originated in Canadian jurisprudence and later got adopted in Indian legal system.

### Doctrine of Pith and Substance

In the Indian context, the doctrine of Pith and Substance is deployed when laws made by the Centre and State appear to intrude into each other's constitutionally assigned spheres (Union List, State List, and Concurrent List under the Seventh Schedule). The doctrine determines where the 'true nature', 'true object', or 'pith and substance' of the legislation lies. If a law's real substance falls within the lawmaker's competence, any incidental encroachment on the other's domain does not invalidate the law.

### Landmark Judgments

1. **State of Bombay v. F.N. Balsara (1951):** This case involved the Bombay Prohibition Act, 1949, which also extended to medicinal and toilet preparations containing alcohol (falling under the Union List). The Supreme Court held that the Act's pith and substance was within the State List

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and any incidental encroachment on the Union List did not make it invalid.

2. **Prafulla Kumar Mukherjee v Bank of Commerce Ltd (1947):** The Privy Council held that if a statute is found in substance to relate to a topic within the competence of the legislature, it should be held to be *intra vires* even if it incidentally trenches upon matters beyond its legislative competence.

The Doctrine of Pith and Substance thus helps maintain federal equilibrium by ensuring that each level of legislation stays within its boundaries. It recognises that in a complex legislative environment, some degree of overlap is inevitable, and minor transgressions do not render laws invalid, provided they serve their core, constitutionally sanctioned purpose.

## QUESTION (E): WRITE SHORT NOTE ON ARTICLE 360

Article 360 of the Indian Constitution provides for the imposition of a financial emergency in the country. It is part of Part XVIII of the Constitution, dealing with 'Emergency Provisions'.

### Provisions under Article 360

As per Article 360, if the President is satisfied that a situation has arisen whereby the financial stability or

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credit of India, or of any part of its territory, is threatened, he/she may declare a state of financial emergency.

## **Effects of Financial Emergency**

Upon the proclamation of a financial emergency:

1. The Centre can give financial orders to any state, directing the economic and financial policies of the country.
2. The President can order the reduction of salaries and allowances of all or any class of persons serving in the Centre and the States, including judges of the Supreme Court and High Courts.
3. All Money Bills or other financial bills that come up for the President's approval can be modified, the effect of which is to decrease expenditure.

## **Revocation of Financial Emergency**

The President can revoke the financial emergency by a subsequent proclamation. This proclamation does not require the parliamentary approval to cease its operation.

## **Conclusion**

As of the present, a financial emergency under Article 360 has never been proclaimed in India. The provision provides for extraordinary measures to meet potential threats to the financial stability of the country. It allows the central government to temporarily suspend the federal distribution of financial powers to manage an

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## PART B

### **Q2: DISCUSS IN DETAIL SALIENT FEATURES OF INDIAN CONSTITUTION**

The Indian Constitution, the world's lengthiest written constitution, is not merely a legal document but a social one, drafted with the purpose of establishing India as a country of justice, liberty, equality, and fraternity. This Constitution's salient features reflect the country's aspirations and the characteristics of its political, social, and economic systems. Let's delve into these features in detail.

#### **Preamble**

The Preamble is the philosophical manifesto of the Constitution. It sets out the nationalistic, socio-economic, and political goals of the Constitution - securing justice, liberty, equality, and fraternity. It declares India to be a sovereign, socialist, secular, and democratic republic, further committing to securing for its citizens social, economic and political justice, and unity and integrity of the nation.

#### **Lengthy and Detailed**

The Indian Constitution is the most comprehensive constitution in the world. Initially, it consisted of a Preamble, 395 Articles, divided into 22 parts and eight schedules. As of now, after many amendments, it comprises a Preamble, about 470 Articles (divided into 25 parts), and 12 schedules. This detailed framework was

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provided to avoid any constitutional disputes and misunderstandings.

## **Blend of Rigidity and Flexibility**

The Constitution provides a synthesis of rigidity and flexibility, unlike the American Constitution which is extremely rigid and the British Constitution which is extremely flexible. Some provisions can be amended by a simple majority in the Parliament, while others require a special majority in the Parliament, and some need ratification by at least half of the state legislatures.

## **Parliamentary System of Government**

The Indian Constitution establishes a parliamentary system of government, modelled after the British system. It is federal in form but unitary in spirit. The President is the constitutional head of the state, while real executive power lies with the Council of Ministers headed by the Prime Minister.

## **Federal System with Unitary Bias**

India has a federal structure of government, although the word is not used in the Constitution itself. The Constitution divides powers between the Centre and the States with a bias towards the Centre. It contains provisions for the unitary control of the Centre over the States during normal times and specially during Emergency.

## **Fundamental Rights**

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Part III of the Constitution provides for six fundamental rights: Right to Equality, Right to Freedom, Right against Exploitation, Right to Freedom of Religion, Cultural and Educational Rights, and Right to Constitutional Remedies. These rights are justiciable, allowing persons to move the courts for their enforcement, if violated.

## **Directive Principles of State Policy**

The Directive Principles of State Policy (DPSP), envisaged in Part IV, set out the socio-economic goals that the states should strive to achieve. Though non-justiciable, they serve as a beacon for creating a social order characterized by social, economic, and political justice, as mentioned in the Preamble.

## **Fundamental Duties**

The concept of Fundamental Duties was introduced by the 42nd Amendment Act, 1976, and are incorporated in Part IV-A. They serve as a reminder to the citizens that they have an obligation to contribute to the unity and integrity of the nation.

## **Secular State**

The Indian Constitution establishes a secular state that does not uphold any particular religion as the state religion. Every person is guaranteed freedom of conscience and has the right to freely profess, practice, and propagate their religion.

## **Independent Judiciary**

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The Indian Constitution establishes an independent judiciary, which acts as the guardian protector of the Constitution and the fundamental rights of the people. It has the power to enforce and interpret the Constitution (Judicial Review) and its verdicts are binding on all.

## **Provision for a Welfare State**

The Indian Constitution makes provisions for a welfare state. It directs the state to secure a social order for the promotion of welfare of the people.

## **Emergency Provisions**

Part XVIII of the Indian Constitution provides for Emergency provisions (National, State and Financial). During an emergency, the Central Government becomes all-powerful and the states go into total control of the Centre.

## **Single Citizenship**

The Constitution of India provides for a single citizenship for the whole of India. It is only the citizens of India who enjoy civil and political rights.

Thus, the Constitution of India, with all its salient features, serves as the guiding beacon, the supreme law of the land, ensuring democratic governance and fostering a society where justice, liberty, equality, and fraternity prevail. It is a living document, responsive to the changing needs of the society, and is flexible enough to incorporate the necessary changes without losing its

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basic structure and ethos. Through the years, it has successfully stood the test of time, demonstrating its vitality and adaptability.

**Q3: DEFINE CONSTITUTION AND CONSTITUTIONAL LAW. ON WHAT BASIS YOU WILL CLASSIFY THE INDIAN CONSTITUTION?**

The Indian Constitution forms the backbone of India's legal and political system, laying down the structure, procedures, powers, and duties of the government institutions and delineating the fundamental rights, directive principles, and duties of citizens. A thorough understanding of the Constitution and Constitutional Law is essential to comprehend the Indian democratic system's functioning.

### **Definition of Constitution**

A Constitution is the supreme law of the land, a written document that contains a set of principles according to which a state or any other organization is ruled. It establishes the framework and system of government, delineates the division of powers among different organs of government, and lays down the fundamental rights and duties of the citizens. In essence, a Constitution forms the basic structure upon which the edifice of governance and law of a country is built.

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## Definition of Constitutional Law

Constitutional Law is a body of law that defines the role, powers, and structure of different entities within a state, including the executive, the parliament or legislature, and the judiciary, as well as the basic rights of citizens. In short, it covers all the laws derived from the Constitution of a country and interprets the nation's fundamental principles.

## Classification of the Indian Constitution

The Indian Constitution can be classified on multiple bases, primarily depending upon its features and characteristics. These include:

**1. Written and Unwritten:** Most constitutions are either written or unwritten. A written constitution is a single document or set of legal instruments, deliberately enacted. The Indian Constitution is a written constitution. It was framed over a period of 2 years, 11 months, and 18 days by the Constituent Assembly and finally adopted on 26th November 1949.

**2. Rigid and Flexible:** The Constitution is also classified based on the procedure of its amendment. A flexible constitution is one that can be amended in the same manner as an ordinary law is made. A rigid constitution is one in which a special procedure is required for its amendment. The Indian Constitution is a blend of rigidity and flexibility. Some provisions can be amended by a simple majority in the parliament, others

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require a two-thirds majority, and some need ratification by the states.

**3. Federal and Unitary:** On the basis of the relationship between the centre and the states, the constitutions can be federal (where powers are divided between the central government and the state governments) or unitary (where all power is vested in the central government). The Indian Constitution establishes a federal system with a unitary bias. Although it provides for a clear division of powers between the Centre and the States, in case of disputes, the Centre has been given priority over the states. Also, during an emergency, the Indian Constitution can become unitary.

**4. Parliamentary and Presidential:** Depending on the system of government, a constitution can be classified as Parliamentary (where real power resides with the Parliament) or Presidential (where real power resides with the President). The Indian Constitution provides for a parliamentary form of government, both at the Centre and the States. The President is the constitutional head of state, but the real executive power is vested in the Council of Ministers headed by the Prime Minister.

**5. Republic and Monarchy:** A constitution can also be classified based on the head of state. If the head of the state is hereditary, it is a monarchy, if the head is elected, it is a republic. The Indian Constitution establishes India as a republic. The President of India is elected and serves as the head of state.

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The Indian Constitution is the guiding force that lays the foundation for democratic governance in India. Understanding the Constitution and constitutional law helps in understanding how India's political system functions. The classification of the Indian Constitution provides a clearer view of its various aspects and its functioning. It has stood the test of time and has been successful in meeting the socio-political and economic challenges faced by the country, reflecting its robustness and flexibility.

**Q4: “THOUGH THE EXECUTIVE POWER IS VESTED IN THE PRESIDENT BUT HE EXERCISES THIS POWER WITH THE AID AND ADVICE OF THE COUNCIL OF MINISTERS.” JUSTIFY THIS STATEMENT. ALSO EXPLAIN THE VARIOUS POWERS OF PRESIDENT IN DETAIL.**

As per the provisions of the Indian Constitution, the President of India holds the supreme command of the defense forces and the executive power of the Union. However, the President exercises these powers in sync with the Parliamentary system of governance, wherein the real executive power is vested in the Council of Ministers, with the Prime Minister at its helm.

**Role of Council of Ministers in Executive Power of the President**

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According to Article 74(1) of the Constitution of India, there shall be a Council of Ministers with the Prime Minister at its head to aid and advise the President in the exercise of his functions. This advice, in legal terms, is binding on the President. Further, the 44th Amendment of the Constitution clarified that the President could return the advice for reconsideration, but if the Council of Ministers gave the same advice again, the President would be bound to follow it.

## **Powers of the President**

The Indian President wields various powers as per the Constitution, which are legislative, executive, financial, judicial, military, diplomatic, and emergency powers.

### **1. Legislative Powers:**

**Summoning, Proroguing, and Dissolving the Parliament:** As per Article 85, the President has the power to summon or prorogue the Parliament and dissolve the Lok Sabha.

**Addressing the Parliament:** The President addresses both Houses of Parliament assembled together at the commencement of the first session after each general election and at the first session of each year, as enshrined in Article 87.

**Assent to Bills:** Every bill passed by the Houses of Parliament can become an Act only after receiving the assent of the President as per Article 111.

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**Ordinance Making Power:** When neither House of the Parliament is in session, and if the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate an Ordinance according to Article 123.

## 2. Executive Powers:

**Appointment:** The President appoints the Prime Minister, other ministers, Attorney General of India, Comptroller and Auditor General of India, Judges of the Supreme Court and High Courts, Governors of the States, Chairman and members of UPSC, Election Commissioners, and Ambassadors and High Commissioners to other countries, amongst others.

**Administration of Union Territories:** As per Article 239, the President administers the Union Territories through administrators appointed by him.

## 3. Financial Powers:

**Money Bills:** Money bills can be introduced in the Parliament only with the prior approval of the President as per Article 110.

**Annual Financial Statement (Budget):** The President causes to be laid before both Houses of Parliament the Annual Financial Statement (i.e., the Budget) as per Article 112.

**Contingency Fund of India:** The President has the power to make advances out of the Contingency Fund of

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India to meet unforeseen expenditure, according to Article 267.

#### 4. Judicial Powers:

**Pardoning Powers:** Under Article 72, the President has been given the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence.

**Appointment of Judges:** The President appoints the Judges of the Supreme Court and the High Courts.

**5. Military Powers:** As the Supreme Commander of the Defence Forces of India, the President has the authority to declare war and conclude peace, subject to the approval of the Parliament.

**6. Diplomatic Powers:** The President represents India in international forums and affairs and can send and receive diplomats, and negotiate and sign international treaties and agreements.

#### 7. Emergency Powers:

**National Emergency:** Under Article 352, the President can declare a national emergency.

**State Emergency (President's Rule):** The President can declare President's Rule in a state under Article 356, assuming the functions of the state government.

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**Financial Emergency:** As per Article 360, the President has the power to proclaim a financial emergency if he is satisfied that the financial stability or credit of India or any part of its territory is threatened.

The President of India, though holding a largely ceremonial post in the Parliamentary democracy, is nonetheless crucial for the functioning of India's democratic machinery. The President is bound by the advice of the Council of Ministers under normal circumstances but exercises wide discretionary powers under certain special circumstances, such as during the proclamation of Emergency. This finely balanced arrangement ensures that no organ of the government becomes too powerful and that the democratic ethos is maintained.

**Q5: WHY IT IS SAID THAT SUPREME COURT OF INDIA IS THE GUARDIAN OF THE CONSTITUTION? ALSO DISCUSS ABOUT THE JURISDICTION OF SUPREME COURT INDIA.**

The Supreme Court of India, often referred to as the 'Guardian of the Constitution,' is the apex judicial body of India, possessing the responsibility of interpreting the Constitution, ensuring its supremacy, and safeguarding the rights and liberties of the people. Its functions and powers are carefully designed to maintain the rule of law and uphold the democratic ethos of the country.

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## Role of Supreme Court as the Guardian of the Constitution

The Indian Constitution has entrusted the Supreme Court with the crucial role of protecting the Constitution and upholding its principles.

**1. Guardian of Fundamental Rights:** The Supreme Court ensures that the state respects and protects the fundamental rights of its citizens. Any violation of these rights can be directly taken to the Supreme Court under Article 32. The Constitution designates the Supreme Court as the defender and protector of fundamental rights.

**2. Interpreter of the Constitution:** As the highest judicial authority, the Supreme Court is tasked with interpreting the Constitution's provisions. It resolves disputes concerning the interpretation of the Constitution and gives judgments that set precedents for lower courts.

**3. Upholding the Rule of Law:** The Supreme Court plays a key role in maintaining the rule of law in the country. Its power of judicial review ensures that both the legislative and executive branches operate within the confines of the law, and their actions conform to the provisions of the Constitution.

## Jurisdiction of the Supreme Court

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The Supreme Court's jurisdiction, as detailed in the Constitution, is extensive, covering a wide array of areas, including but not limited to:

**1. Original Jurisdiction:** Under Article 131, the Supreme Court has original jurisdiction in any dispute involving states, or the Centre and states. The disputes can be between the Government of India and one or more states; between the Government of India and any state or states on one side and one or more states on the other; or between two or more states.

**2. Writ Jurisdiction:** Under Article 32, the Supreme Court has the power to issue directions, orders, or writs for the enforcement of any of the fundamental rights. The writs can be habeas corpus, mandamus, prohibition, quo warranto, and certiorari, depending on the nature and purpose of the petition.

**3. Appellate Jurisdiction:** The Supreme Court is the highest appellate court in the country. As per Articles 132, 133, and 134, it hears appeals from the judgments, decrees, or final orders of the High Courts in civil, criminal, and constitutional cases. Further, under Article 136, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence, or order in any cause or matter passed or made by any court or tribunal in the territory of India.

**4. Advisory Jurisdiction:** Under Article 143, the President of India may seek the opinion of the Supreme

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Court on questions of law or fact of public importance. This is called its advisory jurisdiction.

**5. Court of Record:** As per Article 129, the Supreme Court is a court of record, and its judgments are legally recognized and used as precedents and sources of law. The Court has the power to punish for its contempt.

**6. Power of Judicial Review:** The Supreme Court has the power to adjudicate the constitutional validity of any legislative enactment or executive order. This power is implicit in Articles 13 and 32 of the Constitution.

**7. Guardian of the Constitution:** As already discussed, the Supreme Court is the ultimate interpreter of the Constitution. It can declare a law unconstitutional and void if it contravenes the provisions of the Constitution, hence acting as the custodian of the Constitution.

In light of the extensive jurisdiction, the Supreme Court of India has and its duty to protect and interpret the Constitution, it is fittingly referred to as the 'Guardian of the Constitution'. The Court upholds the Constitution's supremacy and ensures that the values enshrined in it, like justice, liberty, equality, and fraternity, are maintained and defended.

Through its power of judicial review, the Court ensures that any law passed by the legislature or any order issued by the executive does not infringe upon the Constitution's provisions. It ensures the protection of fundamental

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rights and acts as the custodian of the Constitution, thus maintaining the democratic fabric of the nation.

The power and jurisdiction of the Supreme Court serve as a testament to the founding fathers' vision who envisaged a robust and independent judiciary that could uphold the Constitution's values, maintain the rule of law, and act as the final arbiter of all disputes in the nation. The Supreme Court has, over the years, through its judgments and interpretations, evolved the constitutional jurisprudence of the country and has truly lived up to its name as the 'Guardian of the Constitution'. It ensures the harmonious functioning of the legislature, the executive, and the judiciary, thus maintaining the delicate balance of power enshrined in the Constitution.

Hence, the Supreme Court is more than just a judicial body - it is an institution that holds the responsibility of safeguarding the Constitution's spirit, thereby ensuring the continuation of democratic values and principles in India.

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**Q6: THE CONSTITUTION OF INDIA MAKES TWO-FOLD DISTRIBUTIONS OF LEGISLATIVE POWERS. ELUCIDATE BY EXPLAINING LEGISLATIVE RELATIONS BETWEEN UNION AND STATE.**

The Indian Constitution, while adhering to federal principles, embraces a unitary spirit, and hence has established a quasi-federal form of government. This balance is evident in the constitutional scheme of the distribution of legislative powers between the Union and the States, which is primarily twofold: a) distribution of subjects between the Union and the States (Vertical Division), and b) prioritization of Union law over state law (Horizontal Division).

## **Two-fold Distribution of Legislative Powers**

### **1. Distribution of Subjects:**

As per the Seventh Schedule of the Indian Constitution, legislative subjects are divided into three lists - Union List, State List, and Concurrent List.

**Union List (List I):** It includes subjects of national importance such as defense, atomic energy, foreign affairs, war and peace, etc. The Union Government has exclusive power to legislate on these 97 subjects.

**State List (List II):** It comprises subjects of local or regional importance such as police, agriculture, health, etc. The State Governments have exclusive power to legislate on these 61 subjects. However, under certain

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circumstances, the Parliament can also legislate on these subjects.

**Concurrent List (List III):** It includes subjects requiring uniform laws across the country but also needing special flexibility to cater to local peculiarities. Both the Union and State Governments can legislate on these 52 subjects, like bankruptcy, marriage and divorce, bankruptcy and insolvency, education, etc.

## 2. Prioritization of Union Law over State Law:

In case of a conflict between Union and State law, the Constitution gives precedence to Union law.

**Article 245:** The Union law prevails over State law in case of any inconsistency.

**Article 246:** In case of overlapping between the Union and State Lists, the Union law will prevail.

**Article 254:** If a state law is inconsistent with a Union law on a subject in the Concurrent List, the Union law will prevail. However, if the President assents to a state law that is inconsistent with the Union law, the state law will prevail in that state.

## Legislative Relations between Union and State

1. **Normal Legislative Relations:** Under normal circumstances, Parliament has exclusive power to legislate on subjects in the Union List, and States have exclusive power to legislate on subjects in the State List. Both can legislate on subjects in the

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Concurrent List. However, the Union law prevails over State law in case of conflict (Articles 245 to 255).

2. **Parliament's Power to Legislate in the State List under Extraordinary Circumstances:** In exceptional circumstances, Parliament can legislate on subjects in the State List:

- **National Interest (Article 249):** The Rajya Sabha can pass a resolution by a two-thirds majority that it is necessary for Parliament to legislate on a subject in the State List in the national interest.
- **Emergency Provisions (Article 250):** During a National Emergency, Parliament can legislate on any subject in the State List.
- **Request by States (Article 252):** If two or more States request, Parliament can legislate on a subject in the State List pertaining to those States.
- **Failure of Constitutional Machinery in States (Article 356):** During President's Rule in a State, Parliament assumes the power to legislate on subjects in the State List.

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In essence, the Constitution provides for a comprehensive schema for legislative relations between the Union and the States, ensuring a delicate balance between federalism and unitarism. This two-fold division of powers underpins the co-operative federalism that India embodies. The distribution of powers not only maintains the supremacy of the Union in necessary matters but also respects the autonomy of the States in local affairs.

**Q7: “NO SYSTEM CAN BE SUCCESSFUL UNLESS BOTH UNION AND STATES HAVE AT THEIR DISPOSAL ADEQUATE FINANCIAL RESOURCES TO ENABLE THEM TO DISCHARGE THEIR RESPECTIVE AND RESPONSIBILITIES UNDER THE CONSTITUTION.” JUSTIFY.**

The financial viability of both the Union and the States is indispensable for the efficient functioning of a federation. In India, the Constitution has adroitly distributed financial resources between the Union and States, maintaining a balance between autonomy and interdependence. This setup ensures that both the Union and the States have enough resources to efficiently carry out their respective constitutional responsibilities, thereby facilitating an effective federal system of governance.

**Financial Distribution between Union and States**

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1. **Division of Taxing Powers:** As per the Indian Constitution, the taxing powers are divided between the Union and the States. The Union has exclusive power to levy taxes on subjects mentioned in the Union List (like income tax, customs duties, etc.), and the States have exclusive power to levy taxes on subjects mentioned in the State List (like taxes on agricultural income, sales tax, etc.). Concurrently, both can levy taxes on subjects mentioned in the Concurrent List.
2. **Grants-in-aid:** The Constitution, under Articles 275 and 282, provides for grants-in-aid to the States from the Union. These are aimed at assisting the States in fulfilling their financial obligations and reducing the financial gap.
3. **Distribution of Revenue between Union and States:** The revenue obtained from certain taxes is distributed between the Union and the States as per the provisions of the Constitution. The Finance Commission, established under Article 280 of the Constitution, plays a key role in this distribution.

## Significance of Adequate Financial Resources

1. **Discharge of Constitutional Responsibilities:** Both the Union and the States have been assigned distinct roles and responsibilities under the Constitution. For instance, the Union is responsible for national defense,

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foreign affairs, atomic energy, and so forth, whereas the States are accountable for public health, agriculture, police, etc. Thus, the availability of adequate financial resources is crucial to discharge these responsibilities efficiently.

## **2. Social Welfare and Developmental Activities:**

The Union and the States need to undertake various welfare and developmental activities for their citizens. These activities range from implementing poverty-alleviation programs, providing quality education and healthcare facilities, to infrastructural development, etc. Such activities require considerable financial resources.

**3. Economic Stability and Growth:** Adequate financial resources enable the Union and States to maintain economic stability and foster growth. They can invest in crucial sectors of the economy, implement fiscal policies, and manage economic downturns.

**4. Federalism and Autonomy:** Adequate financial resources uphold the principles of federalism and autonomy. Financial independence allows both the Union and States to exercise their powers effectively without undue reliance on each other. It strengthens the federal structure and maintains the delicate balance of power.

**5. Reducing Regional Disparities:** Adequate financial resources, especially through grants-in-aid and revenue distribution, help in reducing regional disparities. They ensure that economically weaker States

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have sufficient resources to meet their obligations and foster development.

Therefore, the statement stands justified that the successful operation of a system—particularly a federal one like India's—hinges on the Union and States having adequate financial resources at their disposal. This financial autonomy and adequacy is not just about the capacity to generate resources but also about the constitutional mechanisms that ensure their judicious allocation and distribution. The Indian Constitution, through its careful design of financial relations, ensures a robust federal system, fostering co-operation, reducing disparities, and enhancing overall national development.

## **Q8: EXPLAIN THE PROCEDURE OF AMENDMENT OF THE CONSTITUTION AND DOCTRINE OF BASIC STRUCTURE.**

The Indian Constitution provides for its own amendment to adapt and respond to changing conditions while ensuring its fundamental principles remain unaltered. This fine balance is achieved through a well-defined amendment procedure (Article 368) and the judicially evolved 'Doctrine of Basic Structure'.

### **Procedure of Amendment of the Constitution**

The Constitution of India provides a dual procedure for its amendment as per Article 368:

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1. **Amendment by Simple Majority:** Certain amendments do not require special procedure and can be done by a simple majority of the Parliament, similar to the passing of an ordinary law. Examples include the creation or abolition of Legislative Councils in States, the creation of a new State, changes in the First and Fourth Schedules, etc.
2. **Amendment by Special Majority:** Most amendments require a special majority. Such amendments must be approved by a majority of the total members of each House and by a majority of not less than two-thirds of the members present and voting. This type of amendment is applicable to all provisions which are not covered by either the first or the third categories.
3. **Amendment by Special Majority and Ratification by States:** Amendments that seek to make any change in the provisions mentioned in the proviso to Article 368 require, in addition to a special majority, ratification by the legislatures of not less than one-half of the States. This provision applies to amendments which seek to affect the federal structure of the Constitution.

## Doctrine of Basic Structure

In addition to the formal amendment process, the judiciary has propounded a doctrine to protect the

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fundamental features of the Constitution. The 'Doctrine of Basic Structure' emerged from the landmark case of *Kesavananda Bharati v. State of Kerala (1973)*, where the Supreme Court held that the amending power of the Parliament under Article 368 does not extend to altering the 'basic structure' of the Constitution.

The Court, however, did not define the 'basic structure', and it has been evolving through subsequent judicial interpretations. Broadly, it includes features like supremacy of the Constitution, democratic republic form of government, secular character, separation of powers, federal character, unity and integrity of the nation, dignity of the individual, parliamentary system, rule of law, etc.

Any amendment which impinges upon these 'basic features' can be declared unconstitutional. This doctrine, while safeguarding the Constitution's core principles, also ensures that it doesn't lose its inherent adaptability.

## **Significance of the Doctrine of Basic Structure**

The Doctrine of Basic Structure has played a significant role in maintaining the sanctity and integrity of the Constitution. It acts as a limitation on the constituent power of the Parliament and prevents it from destroying or altering the fundamental identity of the Constitution. This doctrine asserts the notion of constitutional supremacy over parliamentary sovereignty.

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Therefore, the procedure of amendment and the Doctrine of Basic Structure together facilitate a dynamic yet stable constitutional system in India. While the amendment process provides for the necessary flexibility and adaptability, the Doctrine of Basic Structure protects the Constitution's fundamental identity. This ensures the Constitution's longevity and relevance, allowing it to serve as a living document capable of meeting the aspirations and challenges of changing times.

**Q9: “EMERGENCY PROVISIONS VEST A VERY GREAT POWER IN THE EXECUTIVE”. DISCUSS THE STATEMENT IN DETAIL.**

The Constitution of India under Part XVIII provides for emergency provisions, which are designed to safeguard the sovereignty, integrity, and security of the country and the constitution during times of grave crisis. They confer extensive powers on the Executive, allowing it to bypass the normal balance of power to ensure swift and efficient response to emergent situations. However, the exercise of such powers is not devoid of concerns about potential misuse and the curtailment of fundamental rights.

**Types of Emergency and Powers of the Executive**

The Indian Constitution envisages three types of emergencies:

1. **National Emergency (Article 352):** When a National Emergency is proclaimed, the executive

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acquires far-reaching powers. The President can declare a National Emergency on the grounds of war, external aggression, or armed rebellion. During such an emergency:

- The executive power of the Union extends to directing any State's functioning.
- Laws that do not align with the constitutional distribution of powers between the Center and the States can be enacted.
- Fundamental Rights under articles 19 are automatically suspended, and others can be suspended by the President.

2. **State Emergency or President's Rule (Article 356):** Under this, the President assumes the functions of the State Government when it is deemed that the State cannot be run in accordance with the provisions of the Constitution. The President's Rule significantly enhances the executive's powers:

- The President can assume to himself all or any of the functions of the State Government or vest them with the Governor or any other authority.
- The President can declare that the powers of the State Legislature are to be exercised by the Parliament.

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3. **Financial Emergency (Article 360):** It is declared when the financial stability or credit of India or any part of its territory is threatened. The executive's powers during a financial emergency include:

- Directions can be issued to any State to observe canons of financial propriety.
- The President can direct reductions in the salaries and allowances of all or any class of persons serving in connection with the affairs of the Union including the Judges of the Supreme Court and High Courts.

## Justification and Concerns

Emergency provisions are an integral part of the constitutional design to ensure the effective handling of extraordinary situations that require a swift and decisive response. The concentration of powers in the Executive is necessitated by the imperative to preserve the nation's security, constitutional order, and financial stability.

However, the extensive powers vested in the Executive under these provisions have also been a subject of criticism. Concerns have been raised about the potential for misuse of these powers, as evidenced by the controversial imposition of the National Emergency in 1975. Further, the suspension of fundamental rights during a National Emergency has implications for civil liberties and democratic principles.

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## Safeguards Against Misuse

The Constitution provides several safeguards against the misuse of emergency powers:

1. **Parliamentary Approval:** Every proclamation of emergency must be approved by both Houses of Parliament. For National Emergency, such approval must be obtained within one month, and for President's Rule, within two months.
2. **Judicial Review:** The Supreme Court in *Minerva Mills v. Union of India (1980)* held that the proclamation of emergency is subject to judicial review. The Court can invalidate the proclamation on the ground of mala fide, baseless or irrelevant grounds.
3. **Fundamental Rights:** The 44th Amendment Act, 1978, ensured that Article 20 and 21 cannot be suspended during a National Emergency.

Thus, the statement that "Emergency Provisions vest a very great power in the Executive" stands true. These provisions are a testament to the vast responsibility that the Executive bears during times of crisis. Nevertheless, the potential for misuse underscores the need for vigilant parliamentary oversight and judicial review to ensure that these extraordinary powers serve their intended purpose – to secure the nation and its Constitution without compromising democratic principles and individual liberties.

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## PAPER 4

### PART A

**QUESTION 1: WRITE SHORT NOTES ON THE FOLLOWING**

**QUESTION (A): WRITE A SHORT NOTE ON DOCTRINE OF PITH AND SUBSTANCE**

#### **Doctrine of Pith and Substance**

The **Doctrine of Pith and Substance** is a fundamental legal principle in constitutional law, particularly within the context of federal polity. It is a doctrine of interpretation that is applied to resolve jurisdictional disputes between the center and the state in a federal structure. Originating from Canadian law, it was later adopted by the Indian judiciary.

#### **The Principle**

The doctrine suggests that if the true nature, i.e., the "pith and substance", of a legislative enactment falls under the legislative competence of the legislating authority, then the incidental or indirect encroachment upon the legislative field of another authority doesn't make the enactment invalid. Simply put, the validity of an act depends upon its substance – not on its form or incidental effects.

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## Landmark Judicial Precedents

*In re The Central Provinces and Berar Act of 1939*

The doctrine of pith and substance first came into the limelight in Indian jurisprudence in the case of 'In re The Central Provinces and Berar Act of 1939'. The Federal Court held that the impugned act, although it was in respect of a matter which was in the State list, it affected trade and commerce, a subject matter in the Federal list. The Court, applying the doctrine, ruled that the impugned Act was *intra vires* since its pith and substance was in the Provincial list.

*State of Bombay v. F.N. Balsara*

In the *State of Bombay v. F.N. Balsara* (1951), the Supreme Court held that if a law, in substance, falls within the area of permitted legislative competence, it can't be deemed invalid merely because it incidentally trenches upon matters outside the authorized field.

## Recent Developments

The doctrine of Pith and Substance continues to evolve through various court rulings. In *State of Rajasthan v. G. Chawla* (2018), the Supreme Court reaffirmed that while interpreting a particular legislation, if its pith and substance can be categorized under a topic within the competence of the legislation, then it should be deemed valid even though it might incidentally encroach upon some other topic not within its competence.

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Thus, the doctrine of Pith and Substance is an instrumental principle which assists in maintaining the delicate balance of power in a federal setup like India. It allows both the center and states to function within their respective spheres without excessive conflict or overreach.

## QUESTION (B): WRITE A SHORT NOTE ON PARLIAMENTARY SOVEREIGNTY

### Parliamentary Sovereignty

**Parliamentary Sovereignty** is a fundamental principle of the UK Constitution. According to this doctrine, the Parliament is the supreme legal authority in the country, and it can make, modify, or repeal laws as it wishes. No court or any other institution can question its laws.

### Concept in Indian Context

In the Indian context, parliamentary sovereignty is limited due to the written nature of the Constitution, and the constitutional supremacy is observed instead. However, Parliament has been granted significant powers under the Constitution, including the power to amend the Constitution.

### Landmark Judicial Precedents

*Kesavananda Bharati v. State of Kerala*

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The landmark case of *Kesavananda Bharati v. State of Kerala* (1973) played a critical role in defining the power of the Parliament. The Supreme Court introduced the "Basic Structure" doctrine, stating that while the Parliament has extensive powers, it cannot alter the basic structure of the Constitution. This decision significantly restricted the concept of Parliamentary Sovereignty in India.

### *Minerva Mills v. Union of India*

In *Minerva Mills v. Union of India* (1980), the Supreme Court struck down the 42nd Amendment's clause that prohibited judicial review of constitutional amendments. The court ruled that a limited amending power was part of the basic structure of the Constitution, further affirming the principle of constitutional supremacy over parliamentary sovereignty.

### **Recent Developments**

In the recent case of *I.R. Coelho v. State of Tamil Nadu* (2007), the Supreme Court reiterated the basic structure doctrine, stating that even laws placed in the Ninth Schedule (thus, exempted from judicial review) could be reviewed if they violated the basic structure of the Constitution.

While India respects the principle of Parliamentary Sovereignty, it operates under a framework of Constitutional Supremacy, which restricts absolute Parliamentary Sovereignty to maintain a democratic

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structure. The principle of Parliamentary Sovereignty is reconciled with the doctrine of the basic structure, ensuring the upholding of constitutional values and the balance of power.

## QUESTION (C): WRITE A SHORT NOTE ON INDEPENDENCE OF JUDICIARY

### Independence of Judiciary

The **Independence of Judiciary** is a cornerstone of the Constitution of India, designed to ensure the impartial and fair administration of justice, free from extraneous influences and pressures. It is crucial to the rule of law, and forms an integral part of the basic structure of the Constitution, as laid down by the Supreme Court in *Kesavananda Bharati v. State of Kerala* (1973).

### Constitutional Provisions

Various provisions have been embedded within the Constitution to uphold the independence of judiciary:

- **Security of Tenure (Article 124):** The judges of the Supreme Court and High Courts can only be removed by the President on an address from both Houses of the Parliament, and only on the grounds of 'proven misbehavior' or 'incapacity'.

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- **Fixed Service Conditions (Article 125 and 221):** The salaries and allowances of judges cannot be altered to their disadvantage after their appointment.
- **Appointment of Judges (Article 124 and 217):** The appointment of judges is free from political influence as they are appointed by the President on the recommendation of a collegium of judges.

## Landmark Judicial Precedents

*S.P. Gupta v. Union of India (1981)*

This case, also known as the 'First Judges Case', initially held that the concept of primacy of the Chief Justice of India in matters of appointment and transfer of judges is not really to be found within the Constitution.

*Supreme Court Advocates-on-Record Association v. Union of India (1993)*

This case, also known as the 'Second Judges Case', overruled the judgment in *S.P. Gupta v. Union of India* and reinstated the primacy of the Chief Justice of India (along with a collegium of four senior-most judges of the Supreme Court) in judicial appointments and transfers.

The independence of judiciary is crucial to maintain the rule of law, protect fundamental rights and uphold the Constitution. Despite some critiques, the Indian judiciary

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has largely managed to maintain its independence and continues to serve as the guardian of the Constitution.

## QUESTION (D): WRITE A SHORT NOTE ON ARTICLE 370 ON INDIAN CONSTITUTION

### Article 370 of the Indian Constitution

**Article 370** was a unique provision in the Indian Constitution that granted special autonomy to the state of Jammu & Kashmir. It was a 'temporary provision' that acknowledged the special status of the state due to the peculiar conditions of its accession to the Indian Union.

### Key Provisions

- It exempted the state from the complete applicability of the Constitution of India. The state had its own Constitution and was allowed to make its own laws in all matters except defence, foreign affairs, and communications.
- It required the concurrence of the state government for applying any law, except in cases specified.

### Landmark Judicial Precedents

*Prem Nath Kaul v. State of J&K (1959)*

The constitutionality of Article 370 was first challenged in this case. The Supreme Court held that the Article was

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a valid part of the Constitution, and observed that the President could, in accordance with the provisions of the Article, declare it inoperative but had not chosen to do so.

*Rekha Lakshman Wani v. State of J&K (2016)*

The High Court of Jammu & Kashmir in this case re-affirmed the permanent nature of Article 370, and stated that it was beyond the amending power of the Parliament.

## **Revocation of Article 370**

On August 5, 2019, the President of India, by virtue of powers vested in him under Article 370 (3), effectively revoked Article 370 with the Jammu and Kashmir Reorganisation Act, 2019. This move, however, has led to numerous legal challenges, and the issue is currently sub judice before the Supreme Court of India.

## **Conclusion**

Article 370 was an important aspect of Indian Constitutional history, and it represented India's commitment to the unique circumstances of Jammu & Kashmir's accession. Its revocation marks a significant shift in the constitutional relationship between the Union and the erstwhile state.

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## PART B

**Q2: DISCUSS THE EXTENT TO WHICH THE FEDERAL PRINCIPLES HAVE BEEN INCORPORATED INTO THE INDIAN CONSTITUTION. REFER TO ITS OPERATIONALIZATION WITH THE HELP OF CASE LAW.**

### **Federal Principles in the Indian Constitution**

The **Constitution of India** is neither purely federal nor unitary, but is a blend of both. It is often defined as 'quasi-federal' in nature, i.e., it is federal in form but unitary in spirit. The framers of the Indian Constitution adapted the federal principle to suit the unique needs and circumstances of the country. They designed a constitution with a strong center to maintain the unity and integrity of the nation while preserving the federal principle.

### **Incorporation of Federal Principles**

The Indian Constitution has several features that manifest the federal principle:

1. **Distribution of Powers:** Under the Indian Constitution, the powers of legislation are divided between the Central and State Governments. The Seventh Schedule of the Constitution provides for a three-fold distribution of legislative subjects between the Union and the States viz. List I

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(Union List), List II (State List), and List III (Concurrent List).

- Supremacy of the Constitution:** The Constitution is the supreme law of the land. Both the Union and the States are subordinate to and have to operate within the parameters of the Constitution.
- Written Constitution:** The Constitution is a written and comprehensive document that details the structure, functions, and powers of different organs of government.
- Rigidity of the Constitution:** The method of amending the Constitution is neither too easy (as in the case of a unitary constitution) nor too difficult (as in the case of a rigid federal constitution). This rigidity, to some extent, ensures the protection of the rights and powers of the States.
- Independent Judiciary:** The Constitution establishes an independent judiciary to resolve disputes between the Centre and States and to interpret the Constitution.

## Case Law Illustrating Operationalization of Federal Principles

- State of West Bengal v. Union of India (1963):** This case is significant in understanding the federal nature of the Indian Constitution. The

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Supreme Court held that the Indian Constitution did not propound a principle of absolute federalism. Although it did contain certain federal features, it did not go all the way in establishing a full-fledged federal structure.

2. **Kesavananda Bharati v. State of Kerala (1973)**: This case established the doctrine of the 'Basic Structure' of the Constitution. The court observed that while the Parliament has the power to amend the Constitution, it cannot alter its basic structure. This implies that federalism, being a part of the basic structure, cannot be abrogated.
3. **S.R. Bommai v. Union of India (1994)**: This landmark judgment helped strengthen federalism in India. The Court affirmed that federalism is a part of the basic structure of the Constitution. It also held that the power of the President to dismiss a State government is not absolute and that it is subject to judicial review.

The Indian Constitution incorporates federal principles to balance the needs of unity with the needs of regional autonomy. However, it also contains several unitary features, such as a strong Centre, single Constitution, integrated judiciary, All-India Services, and emergency provisions. Therefore, it can be said that the federalism in the Indian Constitution is unique, embodying both federal and unitary elements. The operationalization of these principles through various judicial pronouncements has furthered our understanding of the

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Constitution's unique brand of federalism. The principles of federalism continue to evolve through interpretation by the judiciary, shaping the contours of the federal structure of India.

**Q3: WHAT ARE THE SALIENT FEATURES OF THE INDIAN CONSTITUTION? DISCUSS THE CASE LAW TO EXPLAIN THE JUDICIAL APPROACH IN PRESERVING THE BASIC STRUCTURE OF THE CONSTITUTION.**

## **Salient Features of the Indian Constitution**

The Indian Constitution, the world's lengthiest written constitution, embodies a blend of several salient features that make it unique:

1. **Preamble:** The Preamble is the essence of the Constitution, outlining the philosophy and objectives of the constitutional makers. It states the source of the Constitution (the people of India) and defines India as a Sovereign, Socialist, Secular, and Democratic Republic.
2. **Parliamentary System of Government:** The Indian Constitution establishes a parliamentary form of government, both at the Centre and the State level. This system is marked by the separation of powers

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among different branches of government with checks and balances.

3. **Federal Structure with Unitary Bias:** The Constitution provides for a quasi-federal structure. It contains federal features such as dual polity, division of powers, written Constitution, and an independent judiciary. However, it also incorporates unitary features like a strong Centre, All-India Services, single citizenship, and emergency provisions.
4. **Fundamental Rights:** The Indian Constitution guarantees certain fundamental rights to its citizens under Part III. These rights are sacrosanct, and any law infringing upon them can be declared as unconstitutional.
5. **Directive Principles of State Policy:** The Directive Principles, enshrined in Part IV of the Constitution, aim at establishing social and economic democracy in India. They are not enforceable by courts, but the state is obligated to apply these principles in making laws.
6. **Secularism:** The Constitution of India establishes a secular state, ensuring all religions are treated equally. It safeguards the right of every citizen to freedom of religion.
7. **Independent Judiciary:** The Constitution establishes an independent and impartial judiciary as

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the guardian of the Constitution and the protector of the fundamental rights of individuals.

## **Judicial Approach in Preserving the Basic Structure of the Constitution**

Indian judiciary has played a vital role in preserving the basic structure of the Constitution through its dynamic and proactive approach. A critical case law in this regard is:

*Kesavananda Bharati v. State of Kerala (1973)*

This is a landmark case in the history of India, wherein the doctrine of "Basic Structure" was propounded by the Supreme Court. The court held that while the Parliament has extensive powers to amend the Constitution under Article 368, it could not alter its basic structure. However, the court did not specifically define what constituted the basic structure, and it was left for determination on a case-to-case basis.

Following this case, several other cases helped define the elements of the 'basic structure'. For example:

- **Indira Nehru Gandhi v. Raj Narain (1975):** The Supreme Court applied the basic structure doctrine to declare clause (4) of Article 329A, which sought to validate the election of the Prime Minister, as unconstitutional.
- **Minerva Mills v. Union of India (1980):** In this case, the Supreme Court furthered the doctrine by

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ruling that the Parliament cannot alter the basic structure by expanding its amending power. The court held that the harmony and balance between fundamental rights and directive principles is an essential feature of the basic structure.

- **I.R. Coelho v. State of Tamil Nadu (2007):** The Supreme Court reiterated that judicial review is a part of the basic structure of the Constitution, and thus, any law placed in the Ninth Schedule is open to scrutiny if it violates the basic structure.

The Indian Constitution, with its diverse and comprehensive set of features, forms the bedrock of the Indian polity. The proactive approach of the judiciary has been instrumental in preserving and enriching the basic structure of the Constitution, thereby ensuring its survival, growth, and adaptation to changing circumstances.

**Q4: “THE ISSUE OF PARLIAMENTARY PRIVILEGES HAS BEEN BONE OF CONTENTION AND CONFLICT BETWEEN THE PARLIAMENT AND THE JUDICIARY.” CRITICALLY EXAMINE IN THE LIGHT OF DECIDED CASES.**

**Parliamentary Privileges and the Conflict between the Parliament and the Judiciary**

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Parliamentary privileges are certain rights and immunities enjoyed by the Parliament, its Committees, and its Members. These privileges are fundamental to the functioning of Parliament and enable it to carry out its legislative functions effectively. However, the interpretation and scope of these privileges have often resulted in conflicts between the Parliament and the Judiciary, especially when it comes to the balance between these privileges and the fundamental rights of citizens.

## **Constitutional Provisions**

Article 105 of the Constitution of India grants certain privileges and immunities to the Parliament and its members. These include freedom of speech in Parliament, immunity from judicial scrutiny into the proceedings of the House, and prohibition of arrest and detention of members during the session of Parliament. Similarly, Article 194 grants similar privileges to the State Legislatures.

## **Conflict between the Parliament and the Judiciary**

The issue of Parliamentary privileges often becomes a bone of contention between the Parliament and the Judiciary. The conflict primarily arises from the broad and ambiguous nature of these privileges and the lack of codification, which gives rise to different interpretations. While the Parliament asserts its autonomy and authority in matters of privileges, the Judiciary steps in to ensure

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these privileges do not infringe upon the fundamental rights of citizens.

## Case Law

- **Searchlight Case (M.S.M Sharma v. Sri Krishna Sinha, 1959):** In this case, the Patna High Court held that a person could not be prosecuted for breach of privilege for publishing a speech made in the Bihar Legislative Assembly, as it was protected under the Right to Freedom of Speech and Expression. However, the Supreme Court overturned the judgment and held that Article 194(3) grants absolute and unlimited powers to the Legislature to punish for contempt, and this power was not subject to judicial review.
- **Keshav Singh Case (1964):** This is a landmark case regarding parliamentary privileges. In this case, the Allahabad High Court issued a writ of Habeas Corpus to release Keshav Singh, who was detained for breach of privilege by the UP Legislative Assembly. The Assembly retaliated by sentencing the judges to imprisonment for breach of its privileges. The Supreme Court intervened and held that the judiciary had the power to scrutinize parliamentary proceedings for illegality or unconstitutionality. This case highlighted the urgent need for defining and codifying the scope and extent of parliamentary privileges.

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- **Raja Ram Pal v. The Hon'ble Speaker, Lok Sabha (2007):** In this case, the Supreme Court reaffirmed that while Article 105(2) conferred certain privileges on the Parliament, these privileges are subject to the Constitution and fundamental rights. The court also held that the judiciary could intervene in matters of parliamentary privileges when there is an allegation of violation of fundamental rights.

While parliamentary privileges are essential for the functioning of the Parliament, an unrestricted and absolute interpretation of these privileges could potentially infringe upon the fundamental rights of citizens. The judiciary, as the custodian of the Constitution and fundamental rights, has a significant role to play in ensuring that these privileges are not misused. The conflict between the Parliament and the Judiciary over the issue of parliamentary privileges underscores the need for their codification and clear demarcation. This codification would not only lend clarity and certainty but also ensure a harmonious balance between the effective functioning of the Parliament and the protection of citizens' rights.

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**Q5: DISCUSS THE POWERS OF THE EXECUTIVE TO LEGISLATE THROUGH ORDINANCES AND THE LIMITATIONS FORCED IN THE CONSTITUTION ON THIS POWER.**

## **Powers of the Executive to Legislate Through Ordinances**

The executive's power to legislate through ordinances is an exceptional feature of the Indian Constitution. The power is vested in the President and the Governors of the states. This provision enables the executive to deal with emergent situations that require immediate legislative action, particularly when the Parliament or State Legislature is not in session.

### **Constitutional Provisions**

1. **Article 123 of the Indian Constitution** empowers the President to promulgate Ordinances during the recess of Parliament. These Ordinances have the same force and effect as laws passed by Parliament.
2. **Article 213** provides similar powers to the Governor of a state to promulgate Ordinances when the State Legislature is not in session.

### **Limitations on the Power of the Executive to Issue Ordinances**

The power to issue Ordinances is not absolute and is subject to certain constitutional limitations:

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1. **Temporal Limitations:** An Ordinance may be promulgated only when both Houses of Parliament are not in session or when either of the Houses is not in session.
2. **Existence of Circumstances:** An Ordinance can be issued only when the President or Governor is satisfied that circumstances exist which render it necessary for him to take immediate action.
3. **Parliamentary Approval:** An Ordinance must be placed before both Houses of Parliament and must be approved by them within six weeks from the reassembly of Parliament. If not approved, the Ordinance ceases to operate.
4. **Subject to Fundamental Rights:** The Ordinance making power of the President or the Governor is subject to the Constitution and particularly the fundamental rights of the citizens.
5. **Judicial Review:** The Ordinance-making power is subject to judicial review. The courts can scrutinize whether there was a necessity for the Ordinance and whether it infringes upon the fundamental rights of citizens.

## Case Law

The Supreme Court of India has, in several judgments, delineated the scope of the power of the executive to issue Ordinances and the limitations on this power.

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- **A.K. Roy v. Union of India (1982):** The Supreme Court held that the President's satisfaction could be questioned in a court on the ground of malafide exercise of power.
- **D.C. Wadhwa v. State of Bihar (1987):** This case is a prime example of the judiciary scrutinizing the power of the executive to issue Ordinances. In this case, the State of Bihar had re-promulgated ordinances over several years without seeking the legislature's approval. The court held that the executive's power to issue ordinances is not an absolute power and condemned the practice of re-promulgation of ordinances without legislative approval as unconstitutional.
- **Krishna Kumar Singh v. State of Bihar (2017):** This landmark judgment by the Supreme Court significantly circumscribed the power of the executive to issue Ordinances. The court held that the failure to place the Ordinance before the Parliament and the State Legislature would constitute a serious constitutional infraction.

While the Constitution provides the executive with the power to legislate through Ordinances, it also imposes several limitations on this power. These limitations ensure that the executive does not overstep its powers and that the principles of parliamentary sovereignty and separation of powers are upheld. The judiciary, through its judgments, has further underscored the importance of

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these limitations and has played a crucial role in ensuring that the power to issue Ordinances is not misused or abused by the executive.

**Q6: EXPLAIN AND ILLUSTRATE THE LEGISLATIVE RELATIONS BETWEEN UNION AND THE STATES WITH THE HELP OF DECIDED CASES.**

## **Legislative Relations Between Union and States**

The Indian Constitution lays down a complex structure of legislative relations between the Union and the states. The legislative powers are distributed between the Union and the states, with a bias towards the Union for national integration and uniformity on issues of national importance.

## **Constitutional Provisions**

The legislative relations between the Union and the states are primarily outlined in three lists in the Seventh Schedule of the Indian Constitution:

1. **Union List (List I):** It comprises subjects on which only the Union can make laws. These subjects pertain to national importance and require uniform legislation across the country, such as defense, atomic energy, and foreign affairs.

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2. **State List (List II):** It includes subjects on which the state legislatures have the exclusive power to legislate, such as police, agriculture, and public health.
3. **Concurrent List (List III):** It contains subjects on which both the Union and the states have competence to legislate. However, in case of a conflict, the law made by the Union prevails.

## Judicial Interpretation

The legislative relations between the Union and the states have been a subject of several court rulings. The courts have played a crucial role in interpreting these provisions and clarifying the legislative competence of the Union and the states.

- **State of Rajasthan v. G. Chawla (1959):** In this case, the Supreme Court held that if a law deals with a subject in the Concurrent List, it is not invalid merely because it incidentally encroaches upon a matter in the State List.
- **Re: The Delhi Laws Act, 1912; The Ajmer-Merwara (Extension of Laws) Act, 1947 & The Part C States (Laws) Act, 1950 (1951):** This case dealt with the competence of the Union to extend laws to its territories. The Supreme Court held that the Union can extend laws to its territories and make necessary adaptations and

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modifications, as long as the basic structure of the laws is not changed.

- **State of West Bengal v. Kesoram Industries Ltd. (2004):** This case is a landmark judgment on the subject of inter-state sales tax. The Supreme Court held that tax on sale or purchase of goods taking place in the course of inter-state trade falls within the exclusive legislative competence of Parliament.

## Doctrine of Pith and Substance

The doctrine of pith and substance is a fundamental principle used by the judiciary to determine the legislative competence of the Union and the states. It implies that if the substance of a statute falls within the competence of the legislature that enacted it, it should be held to be *intra vires*, even though it might incidentally trench on matters beyond its competence.

The legislative relations between the Union and the states in India is characterized by a harmonious blend of federalism and unitarism. While the Constitution lays down the broad framework of legislative powers, the courts, through their interpretations, provide clarity and settle disputes pertaining to legislative competence. The courts play an instrumental role in maintaining a delicate balance of power between the Union and the states, thereby ensuring the smooth functioning of the nation's legislative machinery.

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**Q7: A. DISCUSS THE DOCTRINE OF HARMONIOUS CONSTRUCTION.**

**B. WRITE SHORT NOTE ON DOCTRINE OF COLORABLE LEGISLATION**

### **a. Doctrine of Harmonious Construction**

The Doctrine of Harmonious Construction is a fundamental principle in constitutional law, which guides the interpretation of statutes with overlapping or conflicting provisions. The doctrine states that when two or more provisions of the same statute or different statutes deal with the same subject matter, they should be interpreted in such a way that each provision has its effect and there is harmony between all the provisions.

### **Application of Doctrine of Harmonious Construction**

The Doctrine of Harmonious Construction has been used extensively by the judiciary to reconcile conflicts between various provisions of the law and to ensure that the whole system of statutes can be read together in a harmonious and holistic manner. It avoids contradiction between different statutes and gives effect to each provision.

### **Case Law**

- **M.P. Gopalakrishnan Nair v. State of Kerala (2005):** The Supreme Court applied the doctrine of harmonious construction and held

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that when there are two provisions in a statute which are in apparent conflict with each other, they should be interpreted in such a manner that effect can be given to both, and a construction that renders either of them inoperative and useless should not be adopted.

- **Zee Telefilms Ltd. & Anr. v. Union of India (2005):** In this case, the Supreme Court applied the doctrine to balance the rights of broadcasting corporations with the citizens' right to access information of national importance.

## **b. Doctrine of Colorable Legislation**

The Doctrine of Colorable Legislation is another important principle in constitutional law. It is based on the premise that what cannot be done directly, cannot be done indirectly. This means that the legislature cannot do indirectly what it is not permitted to do directly.

In simpler terms, if the Constitution does not allow a certain provision to be made by the legislature, it cannot be made under the guise or pretense of doing something else. The doctrine serves as a check on the powers of the legislature and prevents any misuse of its law-making powers.

## **Application of the Doctrine of Colorable Legislation**

The Doctrine of Colorable Legislation comes into play when a law appears to be within the competence of the

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legislature on the surface but in reality, infringes upon the areas of competency of another legislative body. The courts have used this doctrine to strike down laws that overstep the legislative competence of the legislature.

## Case Law

- **K.C. Gajapati Narayan Deo v. State of Orissa (1953):** The doctrine was elaborately discussed in this case. The court held that if the constitution of a state distributes the legislative powers amongst different bodies, which have to act within their respective spheres marked out by specific legislative entries, the legislature cannot, under the pretext of legislating on a subject within its legislative field, trespass upon the legislative field of another body.
- **State of Bihar v. Kameshwar Singh (1952):** In this landmark case, the Bihar Land Reforms Act, 1950 was challenged on the grounds of being a colorable legislation. The court struck down the legislation, observing that the Act was an attempt to indirectly achieve what could not have been done directly.

Both the Doctrine of Harmonious Construction and the Doctrine of Colorable Legislation play vital roles in the interpretation of statutes and serve as checks on the legislative powers. The former promotes a comprehensive and harmonious reading of the law, while the latter ensures that the legislature remains within its

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designated sphere of competence. These doctrines not only reflect the wisdom of the judiciary but also act as guiding principles in the dynamic interpretation of statutes.

**Q8: WHAT ARE THE GROUNDS, DURATION AND CONSEQUENCES OF THE PROCLAMATION ISSUED BY THE PRESIDENT OF INDIA PERTAINING TO THE FAILURE OF CONSTITUTIONAL MACHINERY IN STATES?**

**Proclamation Issued by the President of India Pertaining to the Failure of Constitutional Machinery in States**

The Constitution of India provides for a unique safeguard to maintain the integrity of the state and ensure that the state machinery does not fail in its responsibilities. This safeguard, articulated in Article 356 of the Constitution, allows the President of India to assume the functions of the state government in the event of a failure of the constitutional machinery in a state.

**Grounds for the Proclamation**

The President can issue a proclamation of President's rule on the receipt of a report from the Governor of the state or otherwise when he/she is satisfied that a situation has arisen in which the government of the state cannot be

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carried on in accordance with the provisions of the Constitution. This may occur under the following circumstances:

1. **Political Crisis:** This includes situations where no party or coalition can form a government, or the government in power has lost its majority in the state legislature.
2. **Internal Subversion:** Where there is a large-scale violence, internal disturbance, or insurgency affecting law and order in the state.
3. **Non-compliance with Union Directions:** If the state government fails to comply with the constitutional directions issued by the Union government.

## **Duration of the Proclamation**

Once the President's rule has been proclaimed, it can initially last for up to six months, and it can be extended with the approval of the Parliament, for a maximum period of three years. However, this requires the following conditions to be fulfilled:

1. A proclamation of Emergency should be in operation in the country, or in the whole or any part of the state; and
2. The Election Commission should certify that the general elections to the legislative assembly of the

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concerned state cannot be held on account of difficulties.

## Consequences of the Proclamation

Once the President's rule is imposed, the President assumes all the functions of the state government and the powers vested in the Governor. Other consequences include:

1. The state executive is dismissed, and the Governor, acting on behalf of the President, carries out the state administration.
2. The state legislature can be either suspended or dissolved. If it is suspended, the Parliament can pass the state's legislative duties. If it is dissolved, fresh elections are held for the state legislature.

## Judicial Interpretations

The Supreme Court has examined the scope and implications of Article 356 on numerous occasions. The landmark judgment in the S.R. Bommai vs. Union of India case significantly curtailed the indiscriminate use of Article 356. The Court held that the President's proclamation under Article 356 is subject to judicial review and that the material facts and grounds forming the basis of the President's satisfaction should be relevant to the action.

The provisions of Article 356 empower the President to deal effectively with situations where a state government

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is unable to function in accordance with constitutional provisions. However, the powers conferred by Article 356 are drastic, and their use and extension must be carefully monitored and judiciously limited to prevent any misuse or undue encroachment on state autonomy.

**Q9: DEFINE 'CUSTOMS' AND EXPLAIN HOW DO THEY BECOME BASIS OF LAW. GIVE AN ANALYTICAL VIEW ON THE ROLE CUSTOMS IN REGULATING THE FUNCTIONING OF SOCIETY.**

## **Definition of 'Customs'**

In the sociological and legal context, 'customs' refer to the established patterns of behavior that can be objectively verified within a particular social setting. A 'custom' may also be defined as a cultural practice that is consistently and regularly followed over a prolonged period, often regarded as having legal force. Customs provide guidelines for how individuals are supposed to behave, thereby contributing to the smooth functioning of society.

## **Customs as the Basis of Law**

Customs, due to their consistent and pervasive nature, often form the basis of law. In many societies, especially those that preceded modern legal systems, customs were the primary source of rules and regulations. This can be understood in the following ways:

1. **Historical Aspect:** Many of the earliest laws were based on customs. These customs were

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unwritten, and their authority was derived from the long-established practices and their general acceptance by the community. Many of these customary laws have been incorporated into the written legal code.

2. **Societal Acceptance:** Customs are observed by the people voluntarily and are typically followed due to societal pressures or expectations. This acceptance and adherence provide customs with the force of law.
3. **Legal Recognition:** Many legal systems across the world, including the Indian legal system, recognize and enforce certain customs if they have been followed for a long time and do not contravene any statutory laws or fundamental rights. For instance, customary personal laws are recognized under the Indian legal system.

## Role of Customs in Regulating the Functioning of Society

Customs play an integral role in regulating the functioning of society. They act as unwritten laws and are crucial for maintaining order and stability in society.

1. **Maintaining Order and Stability:** Customs offer a predictable set of behaviors and norms, providing a sense of order and stability. They guide social interactions and expectations,

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facilitating smooth interpersonal and societal relations.

2. **Social Control:** Customs serve as an informal mechanism of social control. By prescribing acceptable and unacceptable behaviors, they influence individuals' actions and maintain social harmony.
3. **Cultural Transmission:** Customs are a means through which cultural practices and traditions are passed down from generation to generation. They preserve cultural heritage and foster a sense of identity and continuity within the community.

## Analytical View on the Role of Customs

While customs have historically played a significant role in the formation of law and societal regulation, it's crucial to take an analytical view on this matter:

1. **Evolution and Change:** As societies evolve, some customs may become outdated or oppressive. It's important that laws do not remain stagnant and adapt to changing societal norms and values. For example, certain customs related to caste, gender, or religion have been found to be discriminatory and have been outlawed.
2. **Conflict with Legal Principles:** At times, customs may conflict with constitutional principles or human rights norms. In such cases, customs must be scrutinized, and if found in

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conflict with constitutional values, they should be discarded. The Indian Supreme Court's stand against the practice of "triple talaq" under Muslim personal law is an example of this.

3. **Role of Judiciary:** Judiciary plays an essential role in scrutinizing customs against the touchstone of constitutional principles and fundamental rights. Courts can declare a custom as void if it contradicts statutory laws or is against public policy.

Customs have traditionally played a pivotal role in shaping laws and regulating society. However, it is imperative that they are consistently re-evaluated and reformed in light of evolving societal norms, constitutional values, and human rights principles. The challenge lies in maintaining a balance - respecting the cultural significance of customs while ensuring they do not infringe upon fundamental rights or foster discrimination.

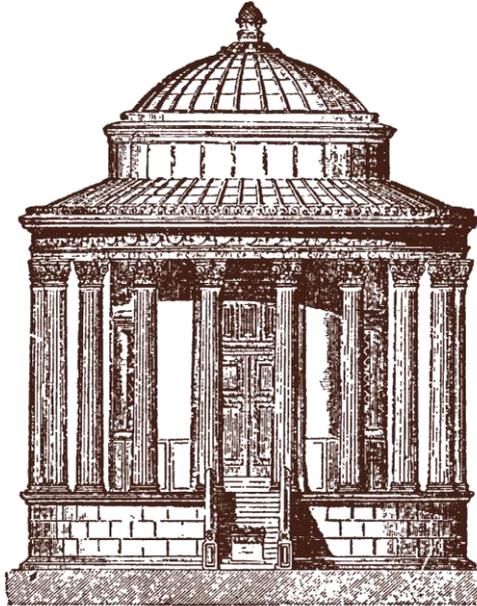
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## MIND MAPS

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## UNIT 1

### Definitions by Jurists and Scholars

01

**Thomas Paine**

- Constitution as the act of the people creating and constituting the government.

02

**A.V. Dicey**

- Constitution consists of rules governing the distribution of sovereign power.

03

**K.C. Wheare**

- A system of fundamental rules guiding the government.

04

**Carl Schmitt**

- Constitution as a political decision that defines state organization.

05

**Herman Finer**

- Prescriptive rules detailing the structure and limits of government.

06

**Hans Kelsen**

- The supreme norm from which all other legal norms derive their validity.

07

**Maurice Duverger**

- A body of legal rules establishing the nature of the state and citizens' rights.

### CONSTITUTION OF INDIA

01

#### Constitution Overview

The Constitution of India is the supreme law, adopted on November 26, 1949, and came into effect on January 26, 1950. It provides a framework for governance, and is the longest written constitution in the world.

02

#### Core Principles

The Preamble declares India a sovereign, socialist, secular, democratic republic, securing justice, liberty, equality, and fraternity for its people. It reflects the guiding values and objectives of the Constitution.

03

#### Fundamental Rights & Duties

Part III guarantees Fundamental Rights such as equality before the law, freedom of speech, freedom of religion, and protection against exploitation. Part IVA outlines Fundamental Duties, including respecting the Constitution and promoting national harmony.

04

#### Structure of Government

India follows a federal structure with a unitary bias. It consists of a Parliament (Legislature), the President, Prime Minister, and Council of Ministers (Executive), and an independent Judiciary led by the Supreme Court.

05

#### Amendments & Landmark Judgments

The Constitution allows amendments under Article 368. Key judgments include the Kesavananda Bharati case (Basic Structure doctrine), Maneka Gandhi (right to life), and Navtej Singh Johar (decriminalization of homosexuality).

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## CLASSIFICATION OF CONSTITUTIONS

1

### WRITTEN VS. UNWRITTEN

- Written: Single documented framework (e.g., Indian Constitution).
- Unwritten: Collection of statutes and decisions (e.g., UK).

2

### RIGID VS. FLEXIBLE

- Rigid: Amendments need special procedures (e.g., U.S. Constitution).
- Flexible: Amended like ordinary laws (e.g., UK).

3

### UNITARY VS. FEDERAL

- Unitary: Central authority holds all power (e.g., France).
- Federal: Power divided between central and regional governments (e.g., India).

4

### PRESIDENTIAL VS. PARLIAMENTARY

- Presidential: Separate executive and legislative branches (e.g., U.S.).
- Parliamentary: Executive derived from the legislature (e.g., India).

5

### MONARCHICAL VS. REPUBLICAN

- Monarchical: Hereditary monarch as head of state (e.g., UK).
- Republican: Elected or appointed head of state (e.g., India).

## Classification

### Definition of Constitution

- Fundamental principles or laws defining the structure, powers, and limitations of government.
- Acts as a blueprint for the state's organization and protects citizens' rights and freedoms.



### Constitutionalism

- Advocates adherence to a constitution, limiting government power, ensuring the rule of law, and protecting individual liberties.
- Emphasizes checks and balances to prevent power concentration.

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## LANDMARK JUDGMENTS ON THE PREAMBLE

BERUBARI UNION  
CASE (1960)

- Preamble not initially considered part of the Constitution.

01

02

- Declared Preamble integral; introduced the Basic Structure doctrine.

KESAVANANDA  
BHARATI V. STATE OF  
KERALA (1973)

S.R. BOMMAI V. UNION  
OF INDIA (1994)

- Reinforced the secular nature as a basic feature.

03

04

- Supported using the Preamble to interpret ambiguous provisions.

UNION  
GOVERNMENT V. LIC  
OF INDIA (1995)

Government of India  
Act, 1935

- Framework and structure

01

02

British  
Constitution

- Parliamentary system, rule of law, single citizenship.

U.S. Constitution

- Separation of powers, checks and balances, judicial review.

03

04

Irish Constitution

- Directive Principles of State Policy.

### Sources of the Indian Constitution

08

Canadian  
Constitution

- Federal structure with a strong central government.

Australian  
Constitution

- Concurrent List for shared powers

07

06

Weimar Constitution  
(Germany)

- Emergency provisions

French Constitution

- Liberty, equality, fraternity

05

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## TOOLS OF DATA COLLECTION

- Described as a "bag of borrowings" or "beautiful patchwork" with roots in global sources.
- Constituent Assembly (1946) with 389 members (299 post-partition) represented diverse groups.
- Key drafting stages: Committees (e.g., Drafting Committee chaired by Dr. B.R. Ambedkar), submission of the draft on November 4, 1947, and adoption on November 26, 1949, effective January 26, 1950.

### Landmark Judgments on the Preamble

- **Berubari Union Case (1960):** Preamble not initially considered part of the Constitution.
- **Kesavananda Bharati v. State of Kerala (1973):** Declared Preamble integral; introduced the Basic Structure doctrine.
- **S.R. Bommai v. Union of India (1994):** Reinforced the secular nature as a basic feature.
- **Union Government v. LIC of India (1995):** Supported using the Preamble to interpret ambiguous provisions.

### Preamble to the Indian Constitution

- Introduces the Constitution, reflecting its objectives, principles, and philosophy.
- Declares India a sovereign, socialist, secular, democratic republic and secures justice, liberty, equality, and fraternity.
- Adopted on November 26, 1949.

### Text of the Preamble

- Begins with "WE, THE PEOPLE OF INDIA..." and outlines the ideals of sovereignty, socialism, secularism, democracy, and republicanism.

### Length and Detail

- Longest written constitution globally, featuring 395 articles, 12 schedules, and over 100 amendments, covering governance, rights, and administration comprehensively.

### Core Values and Structure

- **Preamble:** Highlights objectives, principles, and aspirations of the Indian people.
- **Federal Structure with Unitary Bias:** Balances power between central and state governments while maintaining national unity.
- **Parliamentary System:** Bicameral legislature, nominal President, and accountable executive led by the Prime Minister.

### Rights, Guidelines, and Duties

- **Fundamental Rights (Part III):** Guarantees equality, freedom, religious rights, and remedies.
- **Directive Principles (Part IV):** Framework for social, economic, and political justice.
- **Fundamental Duties (Part IVA):** Citizen responsibilities introduced in 1976.

### Secularism and Judiciary

- State neutrality in religious matters; citizens have the freedom to practice any faith.
- Independent judiciary with powers of constitutional guardianship and judicial review.

### Adaptability and Amendments

- Flexible amendment process allowing evolution through special majority procedures in Parliament.

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## INTER-CASTE CONFLICTS IN INDIAN SOCIETY

Quasi-federal with a unitary bias, blending federal and unitary elements.

1

### Federal Features

- Dual Government: Power shared between center and states.
- Division of Powers: Defined in the Seventh Schedule.
- Written Constitution: Clear roles for government entities.
- Supremacy of the Constitution: Binding on all authorities.
- Independent Judiciary: Guardian of the Constitution.

2

### Unitary Features

- Strong Center: Key powers in defense, foreign affairs, and finance.
- Single Constitution: One Constitution for center and states.
- Emergency Provisions: Centralized powers during emergencies.
- Integrated Judiciary: Uniform application of laws.
- All-India Services: Officers serve both center and states

3

### Relevant Judgments

- West Bengal v. Union of India (1963): Blend of federal and unitary features.
- S.R. Bommai v. Union of India (1994): Federalism balanced within a unitary framework.

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## UNIT 2

### PARLIAMENT: COMPOSITION, PARLIAMENTARY SOVEREIGNTY, PARLIAMENTARY PRIVILEGES

SUPREME LEGISLATIVE BODY FOR LAW-MAKING AND EXECUTIVE OVERSIGHT.  
INCLUDES PRESIDENT, LOK SABHA, AND RAJYA SABHA.

#### 1. COMPOSITION OF PARLIAMENT

1. President (Article 79): Part of Parliament; assents bills, summons sessions.
2. Lok Sabha (Article 81): Lower house; max 552 members (530 states, 20 UTs, 2 Anglo-Indians).
3. Rajya Sabha (Article 80): Upper house; max 250 members (238 elected, 12 nominated).

#### 2. PARLIAMENTARY PRIVILEGES

- Rights (Article 105): Enable effective parliamentary functioning.
- Freedom of speech in Parliament.
  - Immunity from arrest during/near sessions.
  - Exemption from jury duty.
  - Right to exclude outsiders for confidentiality.
  - Power to punish for contempt or breaches.
- Types:
- Collective: Rights of each House (e.g., exclude outsiders).
  - Individual: Rights of members (e.g., arrest immunity).

#### 3. PARLIAMENTARY SOVEREIGNTY

Supreme legislative authority but bound by constitutional limits.

#### 4. LANDMARK JUDGMENTS

- Keshavananda Bharati (1973): No altering the Constitution's basic structure.
- Golak Nath (1967): Fundamental rights not amendable (later overruled).
- S.P. Gupta (1981): Limited privileges in judicial matters.
- Raja Ram Pal (2007): Expulsion powers within constitutional limits.
- P.V. Narasimha Rao (1998): Privileges don't cover criminal offenses.

### JURISDICTION OF HON'BLE SUPREME COURT & HIGH COURTS

Supreme Court: Apex judicial authority in India.  
High Courts: Highest judicial authority at the state level.

#### Jurisdiction of the Supreme Court

- Defined under Articles 131-143
- Original Jurisdiction (Article 131): Exclusive jurisdiction over disputes between:
  - Government of India and states.
  - Government of India and states on both sides.
  - Two or more states.
- Appellate Jurisdiction (Articles 132-134): Handles constitutional, civil, and criminal appeals, with High Court certification.
- Special Leave to Appeal (Article 136): Discretionary power to grant leave from any court's judgments.
- Advisory Jurisdiction (Article 143): President can seek legal advice on significant public matters.
- Writ Jurisdiction (Article 32): Power to issue writs for enforcement of fundamental rights.

#### Preamble to the Indian Constitution

- Defined under Articles 226 and 227
- Original Jurisdiction (Article 226): Handles matters like matrimonial cases, company law, and constitutional issues.
- Appellate Jurisdiction: Over judgments from subordinate courts in civil, criminal, and other matters.
- Supervisory Jurisdiction (Article 227): Supervises all courts and tribunals within its territorial jurisdiction.
- Writ Jurisdiction (Article 226): Power to issue writs for fundamental rights and other purposes, broader than Supreme Court's writ power.

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## APPOINTMENT & INDEPENDENCE OF JUDICIARY

### LANDMARK JUDGEMENTS

1

#### S.P. GUPTA V. UNION OF INDIA (1981)

- Affirmed the President's consultative role; upheld executive involvement.

2

#### SUPREME COURT ADVOCATES-ON-RECORD ASSOCIATION V. UNION OF INDIA (1993)

- Collegium system introduced; Chief Justice's primacy established.

3

#### IN RE: SPECIAL REFERENCE 1 OF 1998

- Struck down NJAC Act, reinforcing judicial independence.

4

#### NJAC CASE (2015)

- Presidential: Separate executive and legislative branches (e.g., U.S.).
- Parliamentary: Executive derived from the legislature (e.g., India).

5

#### KESAVANANDA BHARATI V. STATE OF KERALA (1973)

- Judicial independence part of the unamendable basic structure.

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## JURISDICTION OF HON'BLE SUPREME COURT & HIGH COURTS

Judiciary's independence is vital for democracy.

Focuses on appointment processes and constitutional safeguards for independence.

### Jurisdiction of the Supreme Court

- Governed by the Constitution and Collegium System
- Supreme Court Judges (Article 124):
  - Appointed by the President.
  - Chief Justice based on outgoing Chief Justice's recommendation.
  - Other judges appointed via Chief Justice and four senior-most judges' collegium.
- High Court Judges (Article 217):
  - Appointed by the President.
  - Chief Justice appointed on Chief Justice of India's recommendation.
  - Other judges based on recommendations of High Court Chief Justice and Supreme Court collegium.
- Subordinate Judiciary (Articles 233, 234):
  - Appointed by the Governor in consultation with the High Court.
  - Selection via competitive exams.

### Preamble to the Indian Constitution

- Security of Tenure (Articles 124, 217):
- Judges hold office until retirement (65 for Supreme Court, 62 for High Court).
- Impeachment Process (Articles 124, 218):
- Removal only through a rigorous impeachment process by Parliament.
- Salaries and Allowances (Articles 125, 221):
- Drawn from Consolidated Fund; not subject to parliamentary approval.
- Prohibition on Practice After Retirement (Articles 124, 220):
- Retired judges cannot practice in any court or authority in India.
- Separation from Executive (Article 50):
- Ensures judicial independence from the executive branch.

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## UNIT 3

### LEGISLATIVE RELATIONS BETWEEN UNION & THE STATES

India follows a federal system with legislative relations outlined in the Constitution.

#### Division of Legislative Powers

- Seventh Schedule: Three lists divide powers.
- Union List (List I): Exclusive to Parliament (100 items: defense, foreign affairs).
- State List (List II): Exclusive to states (61 items: police, agriculture).
- Concurrent List (List III): Shared by Parliament and states (52 items: marriage, criminal law).
- Residuary Powers (Article 248): Unspecified subjects belong to Parliament.

#### Parliament's Power to Legislate on State Subjects

- Rajya Sabha Resolution (Article 249): Allows Parliament to legislate on national importance issues.
- National Emergency (Article 250): Temporarily allows Parliament to legislate on state subjects.
- States' Request (Article 252): Two or more states can authorize Parliament to legislate.
- International Agreements (Article 253): Enables Parliament to legislate for treaty implementation.

#### Landmark Judgments

- Kesoram Industries (2004): State and central taxes can coexist.
- Tika Ramji (1956): States can regulate gur under State List.
- ITC Ltd. (2002): No conflict between Central Sales Tax Act and state law.
- G. Chawla (1959): President's assent can be post-enactment.
- Zaverbhai Amaldas (1955): Central law prevails in conflicts with state laws.

#### DOCTRINE OF REPUGNANCY

Article 254: Central law overrides state law in Concurrent List conflicts.  
Presidential Assent: State law can prevail if assented by the President.

### ADMINISTRATIVE RELATIONS BETWEEN THE UNION AND THE STATES

Federal system requires defined administrative relations for harmony and cooperation.

1

#### Distribution of Executive Power

- Union Executive (Articles 53, 73): President exercises executive power directly or through subordinates.
- State Executive (Articles 154, 162): Governor exercises executive power directly or through subordinates.

2

#### Coordination between Union and States

- Inter-State Council (Article 263): President establishes to advise on disputes and ensure coordination.
- All-India Services (Article 312): IAS, IPS, and others ensure administrative continuity.
- Integrated Judicial System: Uniformity in law application by Supreme Court and High Courts.

3

#### Union's Power to Give Directions

- Executive Directions (Article 256): Union directs states to comply with parliamentary laws.
- Essential Services (Article 257): Union can direct states on critical services like railways.
- National Emergency (Article 353): Union issues directions on state executive powers during emergencies.
- President's Rule (Article 365): Union directs state governments or Governors under President's Rule.

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## TERRITORIAL NEXUS AND HARMONIOUS CONSTRUCTION

Key legal principles in Indian constitutional law.  
Aid judiciary in interpreting provisions and preserving federal structure.

### Doctrine of Territorial Nexus

- Definition: Determines state legislatures' competence to make laws with extra-territorial impact.
- Criteria: States can legislate with extra-territorial effects if a sufficient connection exists.
- Landmark Judgments:
  - State of Bombay v. RMD Chamarbaugwala (1957): Upheld Bombay State Lottery Act based on sufficient nexus.
  - Tata Iron and Steel Co. Ltd. v. State of Bihar (1963): Validated Bihar Sales Tax Act due to nexus with sales and delivery.

### Doctrine of Harmonious Construction

- Objective: Resolves conflicts between statutes or provisions to ensure coherence.
- Principles:
  - Avoid conflicts by minimizing contradictions.
  - Balance interests between competing statutes.
  - Preserve the legislative intent of lawmakers.
- Landmark Cases:
  - Sri Shankari Prasad Singh Deo v. Union of India (1951): Harmonized Fundamental Rights and Directive Principles.
  - Commissioner of Income Tax v. Hindustan Bulk Carriers (2000): Laid down rules for harmonious construction.

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## FINANCIAL RELATIONS BETWEEN THE UNION AND THE STATES

Financial relations are critical in a federal system, with a constitutional framework for equitable resource distribution.

### Distribution of Taxing Powers

- Union List (List I): Parliament levies taxes on customs, corporate tax, non-agricultural income, etc.
- State List (List II): States levy taxes on land revenue, agricultural income, sales of goods, etc.
- Concurrent List (List III): Both can levy taxes; parliamentary law prevails in conflicts.
- Residuary Powers (Article 248): Unenumerated subjects fall under Parliament's taxing power.

### Grants-in-Aid

- Statutory Grants (Article 275): Parliament provides grants to support specific state services.
- Discretionary Grants (Article 282): Union and states provide grants for public purposes outside legislative competence.

### Finance Commission

- Article 280: Established every five years to recommend:
  - Tax revenue sharing between Union and states.
  - Principles for grants-in-aid.
  - Measures to augment state resources.

## GOODS AND SERVICES TAX (GST)

Introduced in 2017 (101st Amendment): Unified indirect tax replacing multiple taxes.  
GST Council: Recommends rates, exemptions, ensuring cooperative fiscal management.

## PITH & SUBSTANCE, DOCTRINE OF REPUGNANCY, AND COLORABLE LEGISLATION

Crucial principles in Indian constitutional law.

Ensure balance of power between Union and states.

### Doctrine of Pith & Substance

- Examines the true nature and essence of legislation to assess legislative competence.
- Considers the core objective rather than incidental effects.
- Landmark Judgments:
  - Prafulla Kumar Mukherjee v. Bank of Commerce (1947): Upheld Bengal Money Lenders Act; primary focus was on money lending.
  - State of Rajasthan v. G. Chawla (1959): Upheld Rajasthan Sales Tax Act; incidental impact on inter-state trade was allowed.

### Doctrine of Repugnancy

- Addresses conflicts between central and state laws in the Concurrent List.
- Article 254 ensures central law prevails in case of inconsistency.
- Landmark Judgments:
  - Deep Chand v. State of Uttar Pradesh (1959): State law is repugnant if it directly conflicts with central law.
  - M. Karunanidhi v. Union of India (1979): Repugnancy occurs when two laws occupy the same field and cannot coexist.

### Doctrine of Colorable Legislation

- Applies to laws that appear within legislative competence but covertly encroach on another's domain.
- "What cannot be done directly cannot be done indirectly."
- Landmark Judgments:
  - K.C. Gajapati Narayan Deo v. State of Orissa (1953): Law falling within a prohibited field is deemed colorable.
  - State of Bihar v. Kameshwar Singh (1952): Bihar Land Reforms Act struck down for evading compensation obligations.

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## DOCTRINE OF HARMONIOUS CONSTRUCTION

A constitutional interpretation tool resolving conflicts between provisions.  
Courts aim to harmonize provisions to achieve constitutional objectives.

1

### Application of the Doctrine

- **Equal Importance:** Give equal weight to conflicting provisions.
- **Comprehensive Reading:** Interpret provisions as part of the entire law.
- **Broader Provision Consideration:** Refer to broader provisions for clarity in conflicts.

2

### Key Principles of the Doctrine

- **Avoiding Conflicts:** Minimize contradictions between provisions.
- **Balancing Interests:** Strike a balance between competing statutes or provisions.
- **Protecting Legislative Intent:** Maintain lawmakers' original intent.

3

### Landmark Judgments

- **In Re Kerala Education Bill (1957):** Harmonized Article 30 (minority rights) with Article 29(2) (state's regulatory power).
- **Kesavananda Bharati v. State of Kerala (1973):** Balanced Parliament's amendment power with the protection of the Constitution's basic structure.

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# TOP THE SEMESTER

by

ADV. MOHIT TANWR  
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## UNIT 4

### FREEDOM OF TRADE, COMMERCE & INTERCOURSE

Fundamental aspect of the Indian Constitution.  
Promotes economic growth and free flow of goods and services.  
Enshrined in Part XIII (Articles 301-307) of the Constitution.

#### Article 301: Freedom of Trade, Commerce & Intercourse

- Guarantees freedom of trade, commerce, and intercourse throughout India.
- Aims to create a single economic market and eliminate trade barriers.
- Applies to internal movement as well as import and export.

#### Landmark Judgments

- *Atiabari Tea Co. Ltd. v. State of Assam* (1961):
  - Held that freedom under Article 301 is not absolute.
  - Restrictions must be reasonable to be valid.
- *Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan* (1962):
  - Clarified that restrictions under Article 304(b) must be reasonable.
  - Judiciary determines reasonableness and whether it serves public interest.

#### Articles 302-305: Power to Impose Restrictions

- Article 302:
  - Parliament can impose restrictions on trade for public interest.
  - Prohibits discrimination between states.
- Article 303:
  - Prohibits preference or discrimination between states.
  - Exceptions permitted during emergencies or scarcity.
- Article 304:
  - States can impose reasonable restrictions and taxes on goods imported from other states.
  - Ensures no discrimination in taxation.
- Article 305:
  - Existing laws imposing restrictions are exempt from Articles 301 and 303.

### TYPES OF EMERGENCIES

Emergency provisions are outlined in Part XVIII of the Constitution (Articles 352-360).  
Empower the President to take extraordinary measures during crises to safeguard the nation.

#### National Emergency (Article 352)

- Declared due to war, external aggression, or armed rebellion.
- The President can declare if India's security is under threat.
- Effects:
  - Suspension of Fundamental Rights, except those guaranteed under Articles 20 and 21.
  - Redistribution of legislative powers; Parliament can legislate on matters in the State List.
  - Extension of the terms of Lok Sabha and State Legislative Assemblies for one year at a time.

#### President's Rule (Article 356)

- Imposed when a state's government fails to function in accordance with the Constitution.
- Effects:
  - President assumes the functions of the state government.
  - Parliament gains authority to legislate on subjects from the State List for that state.
  - State Legislative Assembly may be dissolved, with fresh elections ordered.

#### Financial Emergency (Article 360)

- Declared if financial stability or credit of India is in jeopardy.
- Effects:
  - Suspension of financial resource allocation between Union and states.
  - Directions to states on financial propriety and reduction of government employee salaries.
  - Money Bills passed by state legislatures require the President's approval.

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## AMENDMENT OF THE CONSTITUTION - PROCEDURE OF AMENDMENT

The Indian Constitution is a living document, designed to adapt to changing times and needs. Amendment procedure is outlined in Part XX (Article 368) of the Constitution.

### Procedure of Amendment under Article 368 Three Categories of Amendment Procedures

Amendment by a simple majority of Parliament:

- Used for provisions like:
  - Creation or abolition of Legislative Councils.
  - Formation of new states or alteration of state boundaries.

Amendment by a special majority of Parliament:

- Requires approval from:
  - Two-thirds of members present and voting.
  - A majority of the total membership of each House.
- Applies to most constitutional provisions.

Amendment by a special majority and ratification by states:

- Provisions affecting the federal structure require:
  - Approval by a special majority in Parliament.
  - Ratification by at least half of the state legislatures.

### Landmark Judgment: Kesavananda Bharati v. State of Kerala (1973)

- Established the "Basic Structure Doctrine."

Key Principles:

- Parliament has the power to amend any part of the Constitution.
- Amendments cannot alter the Constitution's basic structure.

Basic Structure Includes:

- Supremacy of the Constitution.
- Rule of law.
- Separation of powers.
- Protection of Fundamental Rights.
- Principle of federalism.
- Principle of secularism.
- Principle of democracy.

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## LANDMARK JUDGMENTS RELATED TO EMERGENCY PROVISIONS

### State of Rajasthan v. Union of India (1977)

Held that the President's satisfaction in declaring a National Emergency is subject to challenge if based on mala fide or extraneous considerations.

### Minerva Mills Ltd. v. Union of India (1980)

- Upheld judicial review as essential to preserving the Constitution's basic structure.
- Struck down amendments that excluded judicial review of Emergency declarations.

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

- Held that imposing President's Rule is subject to judicial review.
- Declared that it cannot be imposed solely due to political differences.

### A.D.M. Jabalpur v. Shivakant Shukla (1976)

- Held that imposing President's Rule is subject to judicial review.
- Declared that it cannot be imposed solely due to political differences.

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

- Overruled A.D.M. Jabalpur case.
- Held that the right to habeas corpus cannot be suspended, even during emergencies.

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## IMPORTANT JUDGMENTS RELATED TO THE BASIC STRUCTURE DOCTRINE

KESAVANANDA  
BHARATI V. STATE OF  
KERALA (1973)

- Established the Basic Structure Doctrine.
- Declared amendments violating the basic structure void.

01

02

- Struck down the 39th Amendment Act, which sought to immunize the Prime Minister's election from judicial review.
- Upheld free and fair elections as part of the basic structure.

INDIRA NEHRU GANDHI  
V. RAJ NARAIN (1975)

MINERVA MILLS LTD.  
V. UNION OF INDIA  
(1980)

- Invalidated provisions of the 42nd Amendment Act.
- Emphasized the balance between Fundamental Rights and Directive Principles as essential to the basic structure.

03

04

- Declared secularism as an integral part of the basic structure.
- Reaffirmed the importance of judicial review in maintaining constitutional supremacy.

S.R. BOMMAI V.  
UNION OF INDIA  
(1994)

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Mohit Tanwar, a distinguished scholar, holds the prestigious Indraprastha Research Fellowship (IPRF) from Guru Gobind Singh Indraprastha University, New Delhi and is currently pursuing a Ph.D. in law at the University School of Law Legal Studies, GGS IP University, specialising in Digital Payments and Corporate Governance. As an esteemed IPRF scholar at USLLS, he possesses knowledge in diverse legal subjects, including

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Mr. Shivang Verma is an accomplished legal professional with a wealth of expertise and brings a dynamic perspective to Top The Semester (Formerly, Verdict Vault). He is passionate about enhancing legal education and empowering the next generation of legal minds. As a lawyer dedicated to innovation and excellence, he embodies Verdict Vault's commitment to reshaping the future of legal learning.

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