

CONSTITUTIONAL LAW – II NOTES

TOPIC:

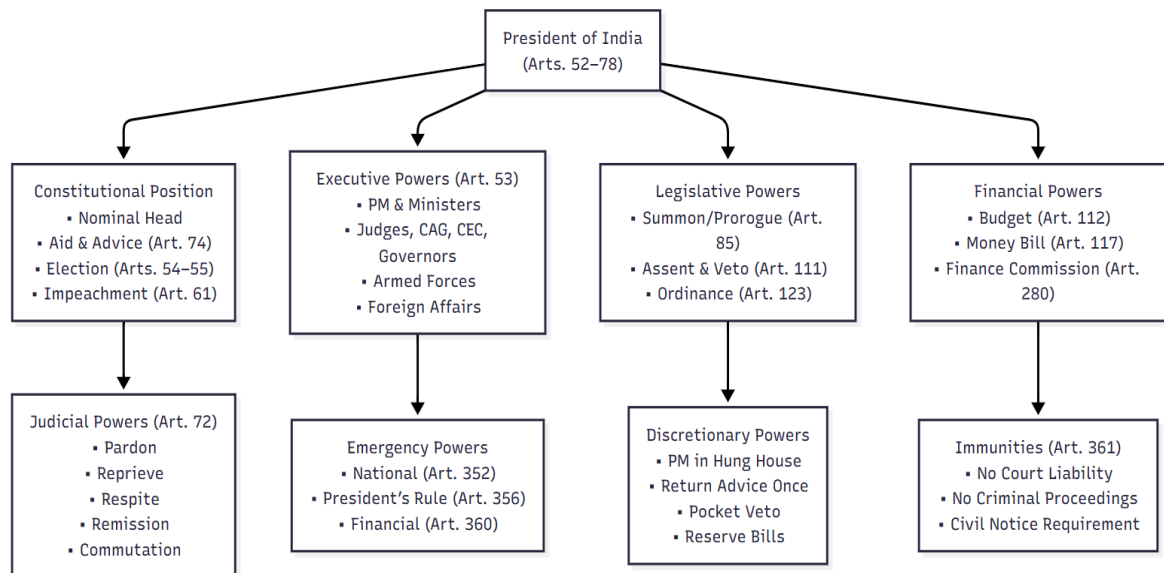
Constitutional Position and Powers of the President of India

Answer:

Introduction

Article 52 of the Constitution provides that “*There shall be a President of India.*” Under Article 53, the executive power of the Union is vested in the President and is exercised either directly or through officers subordinate to him. However, India has adopted a parliamentary form of government, in which the President is the **constitutional head**, while the real executive authority is exercised by the Council of Ministers headed by the Prime Minister under Article 74.

Although often described as a “nominal executive”, the President occupies a position of great constitutional importance. He symbolizes the unity and integrity of the nation and ensures that governance is carried on in accordance with constitutional principles. The true position of the President has evolved through constitutional amendments and judicial interpretation, making the office neither purely ceremonial nor politically dominant, but constitutionally significant.



I. Constitutional Position of the President

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The Constitution establishes the President as the formal executive authority of the Union. However, Article 74 mandates that there shall be a Council of Ministers to aid and advise the President.

Originally, there was ambiguity regarding whether the President was bound by such advice. This issue was clarified through judicial interpretation.

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

Facts:

The validity of certain executive actions taken in the name of the Governor (similar position as President) was challenged. The issue was whether the Governor could act independently or was bound by ministerial advice.

Held:

The Supreme Court held that the President and Governor are constitutional heads and must act on the aid and advice of the Council of Ministers except in a few well-defined exceptional situations.

Principle:

India follows a Cabinet system of government. Real executive power lies with the Council of Ministers, not the President.

The **44th Constitutional Amendment (1978)** strengthened this principle by providing that:

- The President may return advice once for reconsideration.
- If the advice is reiterated, it becomes binding.

Thus, the President:

- Is not an independent executive authority like the U.S. President.
- Is not a mere rubber stamp.
- Functions as a constitutional guardian within parliamentary limits.

Election and Removal

The President is elected indirectly under Articles 54 and 55 through proportional representation by means of the single transferable vote. This ensures federal balance.

Removal of the President is possible only through impeachment under Article 61 for violation of the Constitution. The process requires:

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- Special majority of both Houses.
- A rigorous constitutional procedure.

This ensures stability and dignity of the office.

II. Executive Powers (Article 53)

The executive power of the Union is vested in the President. All executive actions are formally taken in his name.

The President appoints:

- Prime Minister
- Council of Ministers
- Governors
- Attorney General
- Judges of the Supreme Court and High Courts
- Comptroller and Auditor General
- Chief Election Commissioner
- Members of UPSC and Finance Commission

However, these powers are exercised on ministerial advice.

Case: Ram Jawaya Kapur v. State of Punjab (1955)

Facts:

The Punjab Government took executive action without specific legislative backing. The question arose regarding the scope of executive power.

Held:

The Supreme Court held that executive power is co-extensive with legislative power and includes administrative functions necessary for governance.

Principle:

Though executive power is vested in the President, it is exercised through the Council of Ministers under parliamentary responsibility.

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The President is also the Supreme Commander of the Armed Forces. Though actual control lies with the Cabinet, this role symbolizes national sovereignty.

III. Legislative and Financial Powers

The President is an integral part of Parliament under Article 79.

He:

- Summons and prorogues Parliament (Art. 85)
- Dissolves Lok Sabha
- Addresses Parliament

Under Article 111, the President may:

1. Give assent
2. Withhold assent
3. Return a Bill (except Money Bill)

The concept of “pocket veto” emerged when President Zail Singh withheld assent to the Postal Bill (1986).

Ordinance Power (Article 123)

The President may promulgate an Ordinance when:

- Parliament is not in session
- Immediate action is necessary

Ordinance has the same force as an Act of Parliament.

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

Facts:

The Bihar Government repeatedly re-promulgated ordinances without placing them before the Legislature.

Held:

The Supreme Court declared repeated re-promulgation unconstitutional.

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Principle:

Ordinance power is an emergency power and cannot be used as a substitute for regular legislation.

Case: Krishna Kumar Singh v. State of Bihar (2017)

Facts:

The validity of ordinances that had lapsed without legislative approval was challenged.

Held:

The Court ruled that re-promulgation without exceptional circumstances is unconstitutional.

Principle:

Ordinance power is subject to judicial review and constitutional discipline.

Financially, the President:

- Causes the Annual Budget to be laid before Parliament (Art. 112)
- Recommends introduction of Money Bills (Art. 117)
- Appoints Finance Commission (Art. 280)

Thus, fiscal responsibility flows formally through the President.

IV. Judicial Powers (Article 72)

The President may grant:

- Pardon
- Reprieve
- Respite
- Remission
- Commutation

Especially in:

- Death sentence cases
- Court martial cases

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Case: Kehar Singh v. Union of India (1989)

Facts:

A mercy petition was filed after conviction in the Indira Gandhi assassination case.

Held:

The President may examine the merits of the case while deciding mercy petitions.

Principle:

The pardon power is executive in nature but can be exercised on broader considerations of justice.

Case: Epuru Sudhakar v. Govt. of A.P. (2006)

Facts:

A pardon granted by the Governor was challenged as politically motivated.

Held:

The Court held that clemency power is subject to judicial review if exercised arbitrarily.

Principle:

Executive mercy is not beyond constitutional scrutiny.

V. Emergency Powers

The President plays a central role during emergencies:

- Article 352 – National Emergency
- Article 356 – President's Rule
- Article 360 – Financial Emergency

The 44th Amendment introduced safeguards against misuse, including written Cabinet advice and judicial review.

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

Facts:

President's Rule was imposed in several States and challenged.

Held:

The Supreme Court held that the proclamation under Article 356 is subject to judicial review.

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Principle:

Federalism is part of the Basic Structure and emergency powers cannot be exercised arbitrarily.

VI. Discretionary Powers and Immunities

Though generally bound by advice, limited discretion exists in:

- Appointment of Prime Minister in a hung Parliament
- Returning advice once
- Reserving State Bills
- Pocket veto

Article 361 grants immunity from legal proceedings during tenure, ensuring dignity and uninterrupted functioning.

Conclusion

The President of India is the constitutional head of the State and the formal repository of executive power. While bound by ministerial advice in a parliamentary system, the office carries significant authority in executive appointments, legislative processes, ordinance promulgation, judicial clemency, and emergency governance.

Judicial decisions such as *Shamsher Singh*, *D.C. Wadhwa*, *Kehar Singh*, and *S.R. Bommai* have clarified the scope and limits of presidential powers, ensuring that the office functions within constitutional boundaries.

Thus, the President represents:

- Continuity of the Republic
- Stability of governance
- Protection of constitutional values

He is neither an autocratic ruler nor a powerless symbol, but the constitutional sentinel of India's parliamentary democracy.

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TOPIC:

Appointment of Judges – Collegium System vs NJAC & Independence of Judiciary

Answer:

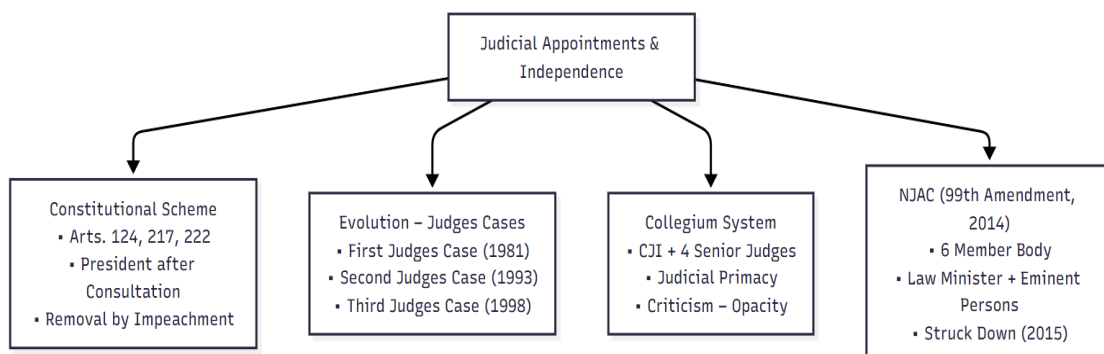
Introduction

The independence of judiciary is one of the foundational pillars of the Indian Constitution. Though not expressly stated in a single provision, it has been recognized as part of the **Basic Structure of the Constitution** by the Supreme Court. Judicial independence ensures rule of law, separation of powers, and protection of fundamental rights against executive or legislative excess.

The controversy relating to judicial appointments centers around the interpretation of Articles:

- Article 124 – Appointment of Supreme Court Judges
- Article 217 – Appointment of High Court Judges
- Article 222 – Transfer of Judges

Originally, the Constitution used the word “consultation” between the President and the Chief Justice of India. Over time, judicial interpretation transformed this scheme into the **Collegium System**, which was later challenged by Parliament through the **99th Constitutional Amendment Act, 2014**, creating the **National Judicial Appointments Commission (NJAC)**.



I. Constitutional Scheme of Judicial Appointments

The Constitution originally provided that judges of the Supreme Court and High Courts shall be appointed by the President “after consultation” with the Chief Justice of India and other judges as deemed necessary. The framers deliberately avoided the term “concurrence,” intending to maintain a balance between executive and judicial participation.

Removal of judges is possible only through impeachment under Articles 124(4) and 217, ensuring security of tenure. Salaries are charged on the Consolidated Fund of India, and their conduct cannot be discussed in Parliament except during removal proceedings. These structural safeguards ensure judicial independence.

However, the interpretation of “consultation” became controversial, leading to judicial evolution through three landmark cases.

II. Evolution Through the Three Judges Cases

1 First Judges Case

S.P. Gupta v. Union of India (1981)

Facts:

The case involved challenges to the transfer of High Court judges and non-appointment of certain judges. The central issue was whether the opinion of the Chief Justice of India had primacy over the executive.

Held:

The Supreme Court held that “consultation” does not mean “concurrence” and that the executive has primacy in judicial appointments.

Principle:

Judicial independence does not require judicial supremacy in appointments; executive participation is constitutionally valid.

This judgment strengthened executive control but raised concerns about judicial independence.

2 Second Judges Case

Supreme Court Advocates-on-Record Association v. Union of India (1993)

Facts:

The constitutional validity of executive primacy in judicial appointments was challenged. The petitioners argued that executive dominance undermined judicial independence.

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Held:

A nine-judge bench overruled the First Judges Case and held that consultation means concurrence. The opinion of the Chief Justice of India, formed collectively with senior judges, would have primacy.

Principle:

Judicial independence is part of the Basic Structure. Therefore, judiciary must have primacy in appointments.

This judgment created the **Collegium System**, though it was not expressly mentioned in the Constitution.

3 Third Judges Case

In re Presidential Reference (1998)

Facts:

The President sought clarification regarding the functioning and composition of the Collegium.

Held:

The Court clarified that the Collegium shall consist of the CJI and four senior-most Supreme Court judges. If two judges dissent, the recommendation would fail.

Principle:

Collective decision-making strengthens transparency and reduces arbitrariness.

Thus, judicial primacy became institutionalized through the Collegium.

III. The Collegium System

Under the Collegium system:

- Supreme Court judges are appointed by CJI + 4 senior judges.
- High Court judges are appointed through a consultative process involving the SC Collegium.
- If the Collegium reiterates a recommendation, the executive is bound to appoint.

The system ensured insulation from political influence. However, over time it faced criticism for:

- Lack of transparency
- No constitutional backing

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- Allegations of nepotism
- Absence of objective criteria

These criticisms led Parliament to introduce the NJAC.

IV. National Judicial Appointments Commission (NJAC)

Through the **99th Constitutional Amendment Act, 2014**, Parliament replaced the Collegium with NJAC.

Composition:

- Chief Justice of India (Chairperson)
- Two senior-most SC judges
- Union Law Minister
- Two eminent persons

If any two members vetoed a candidate, the appointment would fail.

The objective was to ensure transparency and include executive and civil society participation.

V. NJAC Judgment (Fourth Judges Case)

Supreme Court Advocates-on-Record Association v. Union of India (2015)

Facts:

The constitutional validity of the 99th Amendment and NJAC Act was challenged. Petitioners argued that executive participation threatened judicial independence.

Held:

By a 4:1 majority, the Supreme Court struck down the 99th Constitutional Amendment and NJAC Act as unconstitutional.

Principle:

Judicial independence is part of the Basic Structure. Executive interference in appointments violates separation of powers.

The Collegium system was restored.

However, the Court acknowledged the need for reform and directed improvement in the Memorandum of Procedure (MoP).

VI. Safeguards of Judicial Independence

Judicial independence is protected through:

- Security of tenure (removal by impeachment only)
- Fixed service conditions
- Protection of salaries
- Separation of judiciary (Article 50)
- Power of judicial review
- Contempt jurisdiction

These structural safeguards ensure institutional autonomy.

VII. Present Position and Contemporary Debate

After the NJAC judgment:

- Collegium system continues.
- Transparency measures introduced (publication of resolutions).
- Debate continues over delay in appointments.
- Executive sometimes returns recommendations.
- Collegium reiteration makes appointment binding.

The constitutional position today reflects judicial primacy, but with ongoing calls for reform.

The core tension remains:

- Judicial independence vs. Democratic accountability
- Transparency vs. Institutional autonomy

Conclusion

The evolution from executive primacy (1981) to judicial primacy (1993), collective collegiality (1998), and rejection of NJAC (2015) demonstrates constitutional maturation in India.

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The Supreme Court has consistently held that judicial independence forms part of the Basic Structure of the Constitution. Therefore, any system that substantially undermines judicial autonomy would be unconstitutional.

The Collegium system, though criticized, currently remains the operative mechanism for judicial appointments. Future reforms may introduce transparency and objective standards, but judicial primacy is constitutionally entrenched.

Thus, the appointment of judges is not merely an administrative matter but a constitutional safeguard to preserve rule of law and protect citizens' rights.

BY AJTABH MISHRA

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TOPIC:

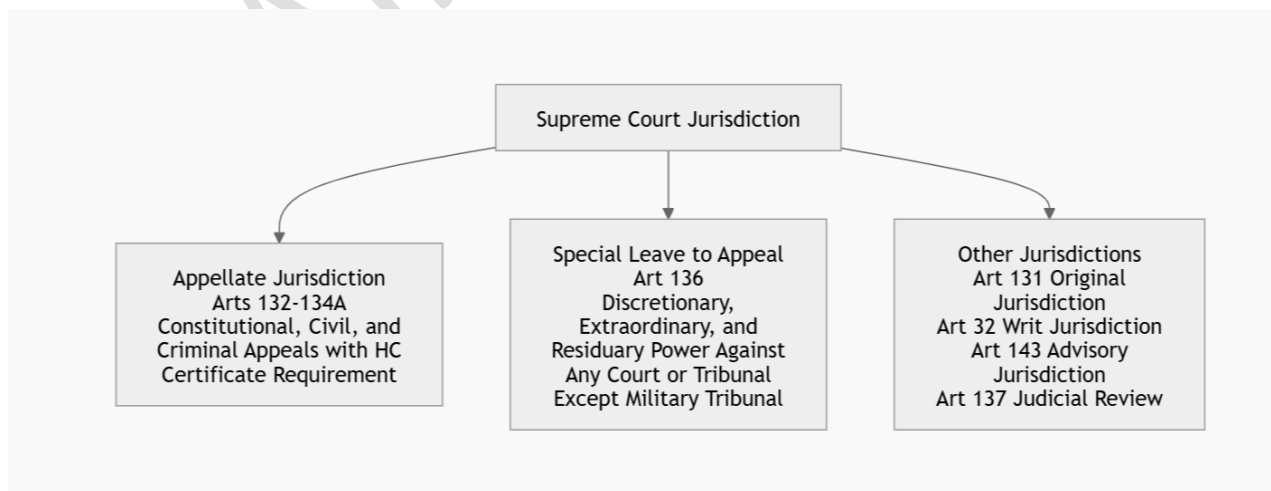
Analyse the Appellate Jurisdiction of the Supreme Court and Contrast it with Special Leave to Appeal under Article 136 of the Constitution of India

Answer:

Introduction

The Supreme Court of India occupies a central position in the constitutional scheme as the guardian of the Constitution, the protector of Fundamental Rights, and the final interpreter of law. Under the constitutional design, it is not merely a court of last resort but also the apex judicial authority entrusted with maintaining constitutional supremacy, federal balance, and uniformity of legal interpretation across the country. The appellate jurisdiction of the Supreme Court forms one of its most vital functions, enabling it to correct errors committed by High Courts and ensure consistency in legal principles.

The appellate jurisdiction is constitutionally structured and specifically enumerated under Articles 132 to 134A of the Constitution of India. These provisions classify appeals into constitutional, civil, and criminal categories, and prescribe procedural safeguards and limitations. In contrast, Article 136 confers upon the Supreme Court a unique and extraordinary discretionary power to grant Special Leave to Appeal (SLP) against any judgment, decree, determination, sentence, or order passed by any court or tribunal in India (except military courts). Unlike regular appeals, Article 136 is not a right of appeal but a residuary, discretionary jurisdiction meant to prevent grave miscarriage of justice.



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I. Appellate Jurisdiction of the Supreme Court (Articles 132–134A)

1. Constitutional Appeals – Article 132

Article 132 provides for appeals to the Supreme Court from any judgment, decree, or final order of a High Court in civil, criminal, or other proceedings if the High Court certifies that the case involves a substantial question of law as to the interpretation of the Constitution.

This provision ensures constitutional uniformity and allows the apex court to authoritatively settle constitutional disputes. The requirement of a “substantial question of law” acts as a filtering mechanism.

In *State of Madras v. V.G. Row*, the Court emphasized its role in constitutional interpretation. Similarly, in *Kesavananda Bharati v. State of Kerala*, the Supreme Court exercised its appellate constitutional jurisdiction to lay down the Basic Structure Doctrine, fundamentally shaping Indian constitutional law.

Thus, Article 132 ensures that constitutional questions do not remain confined to High Courts but receive authoritative pronouncement from the Supreme Court.

2. Civil Appellate Jurisdiction – Article 133

Article 133 deals with civil appeals. After the 30th Constitutional Amendment, monetary thresholds were removed, and the focus shifted to cases involving substantial questions of law of general importance.

The High Court must certify that:

1. The case involves a substantial question of law of general importance.
2. The question needs to be decided by the Supreme Court.

In *Chunilal V. Mehta v. Century Spinning & Manufacturing Co.*, the Court clarified what constitutes a “substantial question of law.” It must be debatable, not previously settled, and have a material bearing on the case outcome.

Thus, Article 133 is designed to ensure legal uniformity in civil matters of national importance.

3. Criminal Appellate Jurisdiction – Article 134

Article 134 provides criminal appellate jurisdiction in three situations:

1. Where the High Court reverses an acquittal and sentences the accused to death.
2. Where the High Court withdraws a case and sentences the accused to death.

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3. Where the High Court certifies that the case is fit for appeal.

This provision reflects the seriousness of criminal matters, particularly capital punishment cases.

In *Bachan Singh v. State of Punjab*, though primarily about the constitutionality of the death penalty, the Supreme Court exercised appellate scrutiny over sentencing principles.

Criminal appellate jurisdiction ensures that liberty and life under Article 21 receive maximum judicial protection.

4. Certificate for Appeal – Article 134A

Article 134A mandates that the High Court shall consider granting a certificate for appeal immediately after delivering judgment.

This procedural safeguard streamlines appellate access and prevents unnecessary delays.

II. Special Leave to Appeal – Article 136

Article 136 provides:

The Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order passed by any court or tribunal in India (except military tribunals).

Nature of Article 136

- It is discretionary.
- It is residuary in nature.
- It is not a regular right of appeal.
- It applies even when no statutory appeal exists.

In *Pritam Singh v. State (1950)*, the Supreme Court clarified that Article 136 should be exercised sparingly and in exceptional cases involving grave injustice.

In *Durga Shankar Mehta v. Thakur Raghuraj Singh*, the Court held that Article 136 confers very wide powers but must be exercised judicially.

In *Kunhayammed v. State of Kerala (2000)*, the Court clarified the doctrine of merger and the effect of dismissal of SLP.

Thus, Article 136 acts as a constitutional safety valve to prevent miscarriage of justice.

III. Comparative Analysis: Appellate Jurisdiction vs Article 136

1. Nature of Right

- Articles 132–134: Appeal as a constitutional right subject to certificate.
- Article 136: Purely discretionary; no right of appeal.

2. Scope

- Appellate Jurisdiction: Limited to specified categories.
- Article 136: Covers any court or tribunal (except military courts).

3. Requirement of Certificate

- Mandatory in regular appeals.
- Not required under Article 136.

4. Objective

- Appellate Jurisdiction: Correct errors of law and ensure uniformity.
- Article 136: Prevent grave injustice.

5. Frequency of Use

Today, Article 136 is the most frequently invoked jurisdiction of the Supreme Court, leading to concerns of docket explosion. The Court has repeatedly cautioned against its routine invocation.

In *Mathai @ Joby v. George*, the Court reiterated that Article 136 should not convert the Supreme Court into a regular third appellate court.

IV. Brief Overview of Other Jurisdictions of Supreme Court

For contextual clarity:

1. Original Jurisdiction – Article 131

Disputes between Centre and States.

2. Writ Jurisdiction – Article 32

Enforcement of Fundamental Rights.

In *Maneka Gandhi v. Union of India*, the Court expanded Article 21 jurisprudence under Article 32.

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3. **Advisory Jurisdiction – Article 143**

President may seek advisory opinion.

4. **Review Jurisdiction – Article 137**

Court may review its judgments.

These jurisdictions collectively reflect the Supreme Court's multi-dimensional constitutional role.

Conclusion

The appellate jurisdiction of the Supreme Court under Articles 132–134A represents a structured and constitutionally regulated mechanism for correcting judicial errors and ensuring uniform interpretation of law. It operates within defined categories—constitutional, civil, and criminal—and requires procedural safeguards such as certification by the High Court. This jurisdiction reinforces the hierarchical judicial system and upholds rule of law.

In contrast, Article 136 embodies an extraordinary and residuary discretionary power. It is not an ordinary appellate provision but a constitutional safety valve designed to prevent grave injustice. The framers intentionally used broad language to confer flexibility, yet judicial precedents have imposed self-restraint to prevent misuse.

While appellate jurisdiction reflects constitutional structure and legal uniformity, Article 136 reflects constitutional conscience and corrective justice. Both are complementary—one structured and rule-based, the other discretionary and equity-based. Together, they ensure that the Supreme Court remains not only the final court of appeal but also the ultimate sentinel on the *qui vive* of justice in India.

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TOPIC: Short Answers

1. What are the discretionary powers of the President of India?
2. Explain the constitutional position of the Prime Minister.
3. What is the procedure for impeachment of the President?
4. Discuss the appointment and removal of the Governor.
5. Explain the doctrine of pleasure under Article 310.
6. What is the advisory jurisdiction of the Supreme Court under Article 143?
7. What is the Collegium System?
8. What was the constitutional issue in the NJAC Case?
9. Explain independence of judiciary in India.
10. Distinguish between the Supreme Court and High Court jurisdiction.

Answer:

1. What are the discretionary powers of the President of India?

Introduction

The President of India is the constitutional head of the Union Executive under Articles 52–78. Though he ordinarily acts on the aid and advice of the Council of Ministers under Article 74, certain limited situations allow the President to exercise discretion. These discretionary powers are not expressly listed but have evolved through constitutional practice and judicial interpretation.

Explanation

The discretionary powers arise mainly in exceptional constitutional circumstances. The most important instance is the appointment of the Prime Minister when no political party has a clear majority in the Lok Sabha. In such cases, the President must use judgment to determine which leader is most likely to command majority support.

Similarly, the President may dismiss a Council of Ministers that has lost majority but refuses to resign. The President also has the power to return the advice of the Council of Ministers once for reconsideration (44th Amendment). Another significant discretionary area includes the use of pocket veto under Article 111, where the President may withhold assent to a bill without returning it. Additionally, the President may reserve certain State Bills for reconsideration or refer constitutional questions for advisory opinion under Article 143.

Case Law

Shamsher Singh v. State of Punjab (1974)

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Facts: The issue was whether the Governor (similar to the President) could act independently without ministerial advice.

Held: The Supreme Court held that the President and Governor must ordinarily act on ministerial advice except in limited situations.

Principle: Discretionary powers are exceptional and not the norm in parliamentary democracy.

Conclusion

The discretionary powers of the President are limited but constitutionally significant. They ensure stability during political uncertainty and uphold constitutional governance without disturbing parliamentary supremacy.

2. Explain the constitutional position of the Prime Minister.

Introduction

The Prime Minister is the real executive authority in India and head of the Council of Ministers under Articles 74 and 75. While the President is the constitutional head, the Prime Minister is the head of the Government.

Explanation

The Prime Minister is appointed by the President and must enjoy majority support in the Lok Sabha. He selects ministers, allocates portfolios, and presides over Cabinet meetings. The Council of Ministers is collectively responsible to the Lok Sabha, making the Prime Minister central to parliamentary governance.

The Prime Minister acts as a link between the President and the Council of Ministers. All executive decisions are effectively taken under his leadership. He also plays a key role in foreign policy, defense decisions, and legislative agenda setting.

Case Law

Shamsher Singh v. State of Punjab (1974)

Facts: The issue involved executive authority in parliamentary government.

Held: The Court held that real executive power lies with the Council of Ministers headed by the Prime Minister.

Principle: In a parliamentary system, the Prime Minister is the effective executive authority.

Conclusion

The Prime Minister occupies a pivotal constitutional position as the real executive head. The stability and functioning of parliamentary democracy largely depend upon the leadership of the Prime Minister.

3. What is the procedure for impeachment of the President?

Introduction

The President may be removed from office by impeachment under Article 61 for violation of the Constitution. The procedure is rigorous to preserve the dignity and stability of the office.

Explanation

Impeachment can be initiated by either House of Parliament. A notice signed by at least one-fourth of members must be given 14 days in advance. The resolution must be passed by a two-thirds majority of total membership.

The other House then investigates the charge. If the charge is proved and passed by two-thirds majority, the President stands removed.

Case Law

Rameshwar Prasad v. Union of India (2006)

Facts: Though not directly on impeachment, the case examined constitutional accountability of high offices.

Held: Constitutional functionaries are subject to constitutional limitations.

Principle: No constitutional authority is above the Constitution.

Conclusion

The impeachment process ensures accountability while maintaining institutional dignity. It reflects the supremacy of the Constitution over all authorities.

4. Discuss the appointment and removal of the Governor.

Introduction

The Governor is the constitutional head of the State under Articles 153–162 and is appointed by the President under Article 155.

Explanation

The Governor is appointed by the President and holds office during the pleasure of the President (Article 156). Though the Constitution prescribes a five-year term, the Governor may be removed earlier.

The Governor functions as a link between Centre and State and acts on aid and advice of the State Council of Ministers, except in discretionary matters.

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Case Law

B.P. Singhal v. Union of India (2010)

Facts: The removal of Governors without reasons was challenged.

Held: The Supreme Court held that though Governors hold office during pleasure, removal cannot be arbitrary or mala fide.

Principle: Pleasure doctrine is not absolute; it is subject to judicial review.

Conclusion

The Governor's appointment reflects federal structure, while removal under pleasure doctrine is constitutionally controlled to prevent arbitrariness.

5. Explain the doctrine of pleasure under Article 310.

Introduction

Article 310 provides that civil servants hold office during the pleasure of the President or Governor.

Explanation

The doctrine of pleasure is derived from British constitutional law. However, in India, it is not absolute and is subject to constitutional safeguards under Article 311, which protects civil servants from arbitrary dismissal.

Thus, the President may remove a civil servant, but procedural safeguards must be followed.

Case Law

Union of India v. Tulsiram Patel (1985)

Facts: The dismissal of civil servants without inquiry was challenged.

Held: The Court upheld certain exceptions under Article 311 but emphasized fairness.

Principle: Pleasure doctrine is subject to constitutional limitations.

Conclusion

The doctrine of pleasure ensures executive control over administration but is balanced by procedural safeguards protecting civil servants.

6. What is the advisory jurisdiction of the Supreme Court under Article 143?

Introduction

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Article 143 of the Constitution confers advisory jurisdiction on the Supreme Court of India. It empowers the President to seek the opinion of the Supreme Court on questions of law or fact of public importance. Unlike ordinary jurisdiction, this power is consultative in nature.

Explanation

Under Article 143(1), the President may refer any question of law or fact that is of public importance to the Supreme Court for its advisory opinion. The Court may choose to answer or decline the reference. Under Article 143(2), disputes arising out of pre-Constitution treaties and agreements may also be referred.

Important features:

- Opinion is advisory, not binding.
- Court may refuse to answer.
- Used in matters of constitutional significance.

The advisory jurisdiction strengthens constitutional dialogue between the Executive and Judiciary and helps prevent constitutional crises.

Case Law

In re Berubari Union (1960)

Facts: The President sought the Court's opinion on whether Parliament could transfer territory to Pakistan under a treaty.

Held: The Supreme Court advised that a constitutional amendment was required to transfer Indian territory.

Principle: Advisory opinions clarify constitutional limits but do not operate as enforceable judgments.

Conclusion

The advisory jurisdiction under Article 143 serves as a constitutional consultative mechanism. It enhances cooperative governance and ensures that important constitutional questions are examined before executive action.

7. What is the Collegium System?

Introduction

The Collegium System is a judge-made mechanism for appointment and transfer of judges of the Supreme Court and High Courts. It evolved through judicial interpretation of Articles 124 and 217.

Explanation

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The Collegium consists of:

- Chief Justice of India
- Four senior-most Supreme Court judges (for SC appointments)

It recommends names for judicial appointments and transfers. If the Collegium reiterates a recommendation, the executive is bound to accept it.

The system ensures judicial primacy in appointments, thereby protecting judicial independence. However, it has been criticized for lack of transparency and absence of clear criteria.

Case Law

Supreme Court Advocates-on-Record Association v. Union of India (1993)

Facts: The executive's dominance in judicial appointments was challenged.

Held: The Supreme Court held that consultation means concurrence and established the Collegium system.

Principle: Judicial independence requires judicial primacy in appointments.

Conclusion

The Collegium System protects judicial independence but faces criticism regarding transparency. It remains the operative mechanism after the NJAC was struck down.

8. What was the constitutional issue in the NJAC Case?

Introduction

The NJAC Case examined the constitutional validity of the 99th Constitutional Amendment Act, 2014, which replaced the Collegium system with the National Judicial Appointments Commission (NJAC).

Explanation

The NJAC consisted of:

- Chief Justice of India
- Two senior judges
- Union Law Minister
- Two eminent persons

The main constitutional issue was whether executive participation in judicial appointments violated judicial independence, which forms part of the Basic Structure doctrine.

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The amendment was challenged as undermining separation of powers and judicial autonomy.

Case Law

Supreme Court Advocates-on-Record Association v. Union of India (2015)

Facts: The 99th Amendment and NJAC Act were challenged as unconstitutional.

Held: The Supreme Court struck down the amendment by 4:1 majority.

Principle: Judicial independence is part of the Basic Structure and cannot be diluted by executive interference.

Conclusion

The NJAC case reaffirmed judicial primacy in appointments and strengthened the Basic Structure doctrine by protecting institutional independence.

9. Explain independence of judiciary in India.

Introduction

Judicial independence means that the judiciary must function free from interference by the executive or legislature. It is essential for rule of law and constitutional supremacy.

Explanation

The Constitution ensures independence through several safeguards:

- Security of tenure (removal only by impeachment)
- Fixed salaries charged on Consolidated Fund
- Separation of judiciary from executive (Article 50)
- Power of judicial review
- Contempt jurisdiction

Judicial appointments through the Collegium system further strengthen autonomy.

Independence ensures protection of fundamental rights and maintenance of constitutional balance.

Case Law

Kesavananda Bharati v. State of Kerala (1973)

Facts: The validity of constitutional amendments affecting judicial power was challenged.

Held: The Supreme Court held that judicial independence is part of the Basic Structure.

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Principle: Parliament cannot amend the Constitution in a manner that destroys judicial independence.

Conclusion

Judicial independence is the cornerstone of constitutional democracy. It safeguards rights, maintains separation of powers, and ensures constitutional supremacy.

10. Distinguish between the Supreme Court and High Court jurisdiction.

Introduction

The Supreme Court is the apex court under Article 124, while High Courts are established under Article 214 for each State. Though both exercise judicial power, their jurisdictions differ in scope and hierarchy.

Explanation

The Supreme Court has:

- Original jurisdiction (Article 131)
- Appellate jurisdiction (Articles 132–136)
- Advisory jurisdiction (Article 143)
- Writ jurisdiction (Article 32)

High Courts have:

- Writ jurisdiction (Article 226) – wider than Article 32
- Appellate jurisdiction within State
- Supervisory jurisdiction (Article 227)

Important distinctions:

- Supreme Court decisions bind all courts (Article 141).
- High Court jurisdiction is territorial.
- Article 32 is itself a Fundamental Right; Article 226 is discretionary.

Case Law

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

Facts: The constitutional validity of excluding High Court jurisdiction over tribunals was challenged.

CONSTITUTIONAL LAW – II NOTES

Held: The Supreme Court restored High Court's power of judicial review.

Principle: High Courts are integral to judicial structure and cannot be excluded from judicial review.

Conclusion

While the Supreme Court is the final interpreter of the Constitution, High Courts play a crucial role at the State level. Together, they form a unified and hierarchical judicial system ensuring constitutional governance.

BY AJTABH MISHRA

CONSTITUTIONAL LAW - II NOTES

TOPIC:

Procedure for Passing Ordinary Bills and Joint Sitting of Parliament

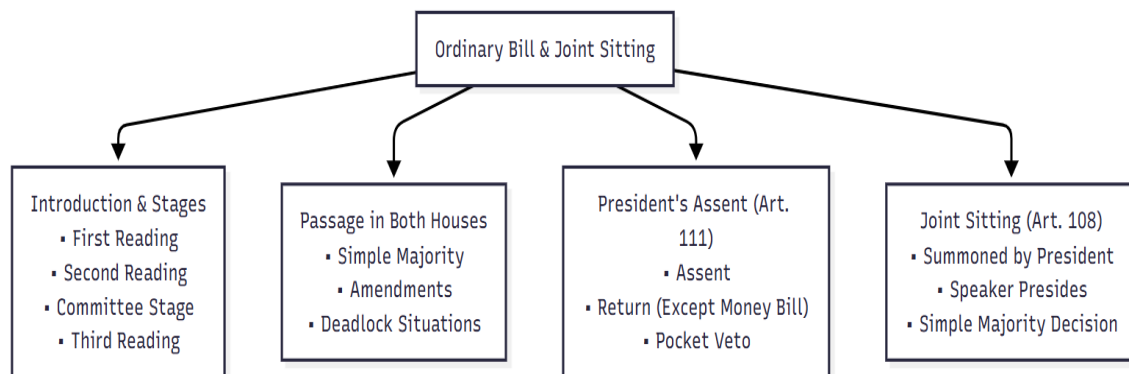
Answer:

Introduction

The legislative process is a core function of Parliament under Articles 79–122 of the Constitution. An Ordinary Bill is a bill other than a Money Bill or Constitutional Amendment Bill. It may originate in either House of Parliament and must be passed by both Houses before receiving the assent of the President under Article 111.

In a bicameral system like India, disagreements between the Lok Sabha and Rajya Sabha may arise. To resolve legislative deadlocks, Article 108 provides for a **Joint Sitting of both Houses**, presided over by the Speaker of the Lok Sabha.

The procedure for passing a Bill reflects the principles of deliberation, majority rule, federal balance, and constitutional checks.



I. Introduction and Stages of an Ordinary Bill

An Ordinary Bill may be introduced in either House of Parliament by a Minister or a private member. The process consists of multiple stages to ensure thorough discussion and democratic scrutiny.

1 First Reading

At this stage, the bill is introduced and published in the Gazette. There is no detailed discussion. The purpose is to formally present the bill before the House.

CONSTITUTIONAL LAW - II NOTES

2 Second Reading

This is the most important stage. It involves:

- General discussion on principles of the bill.
- Clause-by-clause consideration.
- Possible referral to a Select Committee or Joint Committee.

The committee stage ensures detailed scrutiny, expert consultation, and technical refinement.

3 Third Reading

The bill is put to vote. Only formal discussion takes place. If passed by a simple majority of members present and voting, it is transmitted to the other House.

II. Passage in the Second House

After passing in the originating House, the bill is sent to the other House. The second House may:

1. Pass the bill without amendment.
2. Pass the bill with amendments.
3. Reject the bill.
4. Take no action for six months.

If amendments are made, the originating House must approve them.

This bicameral process ensures:

- Legislative caution
- Federal participation (Rajya Sabha represents States)
- Check against hasty law-making

III. Deadlock Between Houses

Deadlock may arise in three situations under Article 108:

- The second House rejects the bill.
- Houses disagree on amendments.

CONSTITUTIONAL LAW - II NOTES

- The second House does not pass the bill within six months.

To resolve such deadlock, the President may summon a Joint Sitting.

IV. Joint Sitting of Parliament (Article 108)

A Joint Sitting is convened by the President to resolve disagreement between the two Houses.

Key features:

- Presided over by the Speaker of Lok Sabha.
- Decision taken by simple majority of members present and voting.
- Applies only to Ordinary Bills (not Money Bills or Constitutional Amendment Bills).

Since Lok Sabha has larger membership, the government usually prevails in Joint Sitting.

Historical examples include:

- Dowry Prohibition Bill (1961)
- Banking Service Commission (Repeal) Bill (1978)
- Prevention of Terrorism Bill (2002)

V. President's Assent (Article 111)

After both Houses pass the bill (or after Joint Sitting), it is presented to the President.

The President may:

- Give assent.
- Withhold assent.
- Return the bill (except Money Bill) for reconsideration.

If Parliament passes the bill again, the President must give assent.

The concept of "pocket veto" arises when the President neither assents nor returns the bill.

CONSTITUTIONAL LAW - II NOTES

Case Law

Kihoto Hollohan v. Zachillhu (1992)

Facts: The validity of Speaker's powers under the Tenth Schedule was challenged.

Held: The Supreme Court held that parliamentary procedures are subject to constitutional review if they violate constitutional mandates.

Principle: Though Parliament has procedural autonomy, constitutional supremacy prevails.

Raja Ram Pal v. Hon'ble Speaker (2007)

Facts: Expulsion of Members of Parliament was challenged.

Held: The Court held that parliamentary proceedings are subject to judicial review in cases of illegality or unconstitutionality.

Principle: Parliamentary privilege does not override constitutional limits.

VI. Significance of Bicameralism and Joint Sitting

The bicameral structure reflects:

- Democratic deliberation
- Federal representation
- Prevention of majoritarian haste

Joint Sitting acts as a constitutional safety valve to avoid legislative paralysis.

However:

- It cannot be used for Money Bills.
- It does not apply to Constitutional Amendment Bills (Article 368).

Thus, the Constitution carefully balances speed with scrutiny.

VII. Critical Evaluation

The procedure for passing bills ensures:

- Transparency

CONSTITUTIONAL LAW - II NOTES

- Public debate
- Committee scrutiny
- Constitutional checks

However, critics argue:

- Excessive use of ordinances bypasses legislative debate.
- Limited use of Joint Sitting shows political hesitation.

Nevertheless, the framework ensures legislative accountability under constitutional supremacy.

Conclusion

The procedure for passing Ordinary Bills under the Constitution reflects the democratic spirit of deliberation, bicameral balance, and constitutional control. From introduction to presidential assent, each stage ensures scrutiny and participation.

The provision for Joint Sitting under Article 108 prevents legislative deadlock while preserving parliamentary supremacy. Judicial decisions such as *Raja Ram Pal* reinforce that even parliamentary procedure remains subject to constitutional limits.

Thus, the legislative process in India embodies majority rule tempered by constitutional discipline, ensuring that laws are enacted through debate, cooperation, and constitutional accountability.

CONSTITUTIONAL LAW - II NOTES

TOPIC:

Discuss Parliament's Power to Legislate in Matters of the State List. Can Parliament Legislate on Matters Not Mentioned in All Three Lists? Justify Your Answer with Constitutional Provisions.

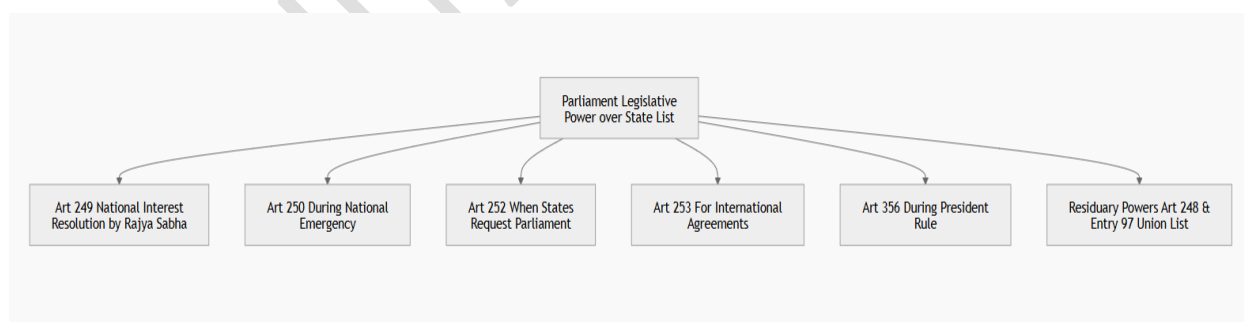
Answer:

Introduction

The Constitution of India establishes a **federal system of government** in which legislative powers are divided between the **Union and the States**. This distribution of legislative authority is provided under **Article 246 and the Seventh Schedule of the Constitution**, which classifies subjects of legislation into three lists: the **Union List, State List, and Concurrent List**.

Generally, the **State Legislature has the exclusive power to legislate on matters included in the State List**, such as police, public order, public health, and agriculture. However, the Constitution also provides certain situations in which **Parliament can legislate on subjects included in the State List**.

In addition, the Constitution grants Parliament the authority to legislate on matters **not mentioned in any of the three lists**, known as **residuary powers**. These provisions ensure flexibility in the federal structure and enable the Union government to act in the national interest when necessary.



Distribution of Legislative Powers

The Constitution divides legislative powers through **Article 246** into three lists.

1. **Union List (List I)** – Parliament has exclusive power to legislate on matters such as defence, foreign affairs, banking, and currency.
2. **State List (List II)** – State legislatures normally have exclusive power over subjects such as police, public order, agriculture, and local government.

CONSTITUTIONAL LAW - II NOTES

3. **Concurrent List (List III)** – Both Parliament and State Legislatures can legislate on matters like criminal law, marriage, education, and forests.

However, the Constitution provides certain **special circumstances where Parliament can legislate on State subjects**.

Circumstances When Parliament Can Legislate on State List

1. Legislation in National Interest (Article 249)

Under **Article 249**, Parliament can legislate on matters in the State List if the **Rajya Sabha passes a resolution declaring that it is necessary in the national interest**.

This resolution must be passed by **two-thirds majority of the members present and voting**.

The law made under this provision remains in force for **one year**, but the resolution can be renewed.

2. During National Emergency (Article 250)

Under **Article 250**, Parliament obtains the power to legislate on State List matters **during the proclamation of a National Emergency**.

This provision ensures that the Union government can effectively manage the country during extraordinary circumstances.

However, such laws cease to operate **six months after the emergency ends**.

3. Legislation at the Request of States (Article 252)

Under **Article 252**, Parliament may legislate on State List subjects if **two or more State Legislatures request Parliament to do so**.

Once such a law is made, it applies only to those states which made the request.

Other states may adopt the law later by passing a resolution.

4. Implementation of International Agreements (Article 253)

Under **Article 253**, Parliament can legislate on any subject, including matters in the State List, in order to **implement international treaties, agreements, or conventions**.

CONSTITUTIONAL LAW - II NOTES

This provision ensures that India can fulfill its international obligations.

5. During President's Rule (Article 356)

When **President's Rule is imposed in a State**, the powers of the State Legislature are exercised by Parliament.

During this period, Parliament can legislate on **State List subjects** for that particular state.

Residuary Legislative Powers of Parliament

The Constitution also provides Parliament with authority over **subjects not mentioned in any of the three lists**.

This power is provided under:

- **Article 248 of the Constitution**
- **Entry 97 of the Union List**

These provisions grant Parliament the power to legislate on **residuary matters**, including new subjects that were not anticipated at the time of framing the Constitution.

Examples include laws related to **cyber technology, digital currency, and emerging scientific fields**.

This arrangement reflects the intention of the Constitution-makers to maintain a **strong central government capable of responding to new developments**.

Significance of Parliamentary Powers over State List

The provisions allowing Parliament to legislate on State subjects serve several important purposes:

- Maintaining **national unity and integrity**
- Ensuring effective governance during emergencies
- Facilitating **uniform national policies**
- Enabling India to meet **international obligations**

These provisions create a **flexible federal system**, sometimes described as "**quasi-federal**", where the Union is stronger than the states.

CONSTITUTIONAL LAW - II NOTES

Conclusion

The Constitution of India carefully balances the distribution of legislative powers between the Union and the States. While the **State List normally falls under the exclusive authority of State Legislatures**, the Constitution permits Parliament to legislate on these matters under specific circumstances such as **national interest, emergency situations, requests by states, implementation of international agreements, and President's Rule**.

Furthermore, under **Article 248 and Entry 97 of the Union List**, Parliament possesses residuary powers to legislate on subjects not included in any of the three lists.

These provisions ensure that the Indian federal system remains **flexible and capable of addressing national needs while maintaining the constitutional framework of division of powers**.

BY AJTABH MISHRA

CONSTITUTIONAL LAW - II NOTES

TOPIC:

Legislative Relations between Union and States (Articles 245–255) and Doctrines

Answer:

Introduction

India follows a federal structure with a strong Centre. The distribution of legislative powers between the Union and the States is provided under **Articles 245–255** read with the **Seventh Schedule** of the Constitution. These provisions determine which level of government has authority to legislate on specific subjects.

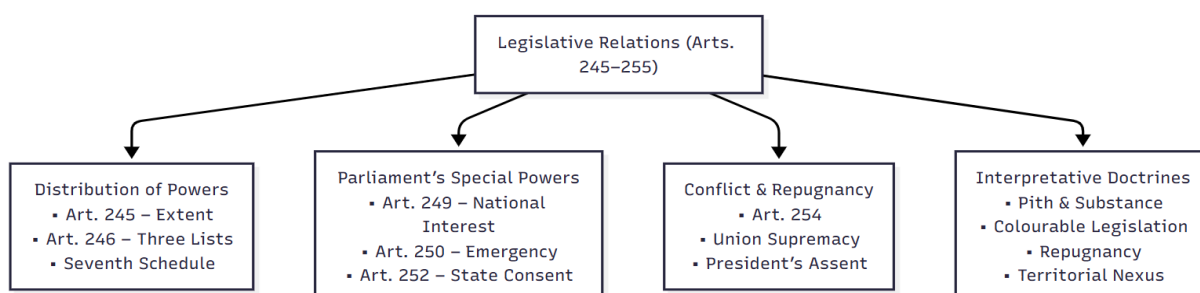
The Constitution divides legislative subjects into three lists:

- Union List (List I)
- State List (List II)
- Concurrent List (List III)

To resolve conflicts arising out of overlapping legislative fields, the judiciary has developed several interpretative doctrines such as:

- Doctrine of Pith and Substance
- Doctrine of Colourable Legislation
- Doctrine of Repugnancy
- Doctrine of Territorial Nexus

These doctrines ensure harmonious construction of federal powers while preserving constitutional balance.



CONSTITUTIONAL LAW - II NOTES

I. Distribution of Legislative Powers

Article 245 provides that Parliament may make laws for the whole or any part of India, while State Legislatures may make laws for their respective States. Article 246 distributes subjects of legislation into three lists in the Seventh Schedule.

Union List (List I)

Parliament has exclusive power over subjects such as defence, foreign affairs, banking, currency, and atomic energy.

State List (List II)

States have exclusive power over subjects like police, public order, agriculture, and public health.

Concurrent List (List III)

Both Parliament and State Legislatures may legislate on subjects such as criminal law, marriage, education, and forests.

In case of conflict in the Concurrent List, Article 254 provides that Union law prevails.

The scheme shows that although federal in structure, India has a tilt towards a strong Centre.

II. Parliament's Special Legislative Powers

The Constitution allows Parliament to legislate even on State List subjects in certain situations.

Under Article 249, if the Rajya Sabha declares by two-thirds majority that it is necessary in national interest, Parliament may legislate on State List matters.

Under Article 250, during National Emergency, Parliament gains power to legislate on State subjects.

Under Article 252, if two or more States consent, Parliament may legislate on a State subject.

These provisions strengthen cooperative federalism while maintaining national unity.

III. Doctrine of Pith and Substance

This doctrine is applied when legislation appears to overlap between Union and State subjects. The court examines the true nature and character of the legislation.

Case: State of Bombay v. F.N. Balsara (1951)

CONSTITUTIONAL LAW - II NOTES

Facts: The Bombay Prohibition Act was challenged on the ground that it encroached upon Union powers relating to import and export.

Held: The Supreme Court upheld the Act, holding that its true nature related to public health, a State subject.

Principle: If the law substantially falls within the legislative competence of the enacting body, incidental encroachment does not invalidate it.

Thus, the doctrine preserves legislative competence despite minor overlaps.

IV. Doctrine of Colourable Legislation

This doctrine is based on the maxim: *“What cannot be done directly cannot be done indirectly.”*

If a legislature lacks competence over a subject, it cannot disguise its action under another entry.

Case: K.C. Gajapati Narayan Deo v. State of Orissa (1953)

Facts: The Orissa Agricultural Income Tax Act was challenged as indirectly attempting to acquire property.

Held: The Court held that the doctrine applies only when the legislature lacks competence.

Principle: If a legislature has competence, motives are irrelevant; colourable legislation arises only where power is lacking.

Thus, substance prevails over form.

V. Doctrine of Repugnancy

Article 254 deals with inconsistency between Union and State laws in the Concurrent List.

If a State law conflicts with a Union law on a Concurrent subject, the Union law prevails unless:

- The State law has received Presidential assent.

However, Parliament may override such State law later.

Case: M. Karunanidhi v. Union of India (1979)

Facts: Conflict arose between Central and State laws on corruption-related matters.

Held: The Court laid down tests to determine repugnancy.

Principle: Repugnancy arises only when there is direct inconsistency and irreconcilable conflict between two laws.

Thus, the doctrine ensures supremacy of Parliament while preserving limited State autonomy.

CONSTITUTIONAL LAW - II NOTES

VI. Doctrine of Territorial Nexus

Under Article 245, State laws are applicable within territorial limits. However, if there is a sufficient territorial connection, a State may legislate even if part of the subject lies outside its boundaries.

Case: State of Bombay v. R.M.D.C. (1957)

Facts: The Bombay Government taxed prize competitions conducted outside the State but affecting residents within.

Held: The Court upheld the law because there was sufficient territorial nexus.

Principle: A law is valid if there exists a real and substantial connection between the State and the subject matter.

This doctrine allows flexibility in federal legislative competence.

VII. Nature of Indian Federalism

The legislative distribution demonstrates that Indian federalism is not strictly symmetrical. It has:

- Strong central bias
- Residuary powers with Parliament (Article 248)
- Power of Parliament during emergency
- Authority over inter-State trade

Yet, States retain autonomy in important areas like police and public order.

The Supreme Court has repeatedly emphasized cooperative federalism.

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

Facts: The State challenged Parliament's power to acquire State property.

Held: The Court held that India is not a compact of sovereign States; Parliament has supremacy within constitutional limits.

Principle: Indian federalism is unique, with a strong Centre.

VIII. Critical Evaluation

The doctrines developed by courts ensure:

CONSTITUTIONAL LAW - II NOTES

- Harmonious construction
- Avoidance of legislative conflict
- Balance between Centre and States

They prevent rigid interpretation and allow practical functioning of federal governance.

However, excessive centralization has sometimes been criticized as undermining true federalism. Nevertheless, constitutional safeguards and judicial review maintain equilibrium.

Conclusion

Legislative relations under Articles 245–255 establish a carefully structured distribution of powers between Union and States. The Seventh Schedule provides clarity, while Articles 249, 250, and 252 allow flexibility in national interest.

Judicial doctrines such as Pith and Substance, Colourable Legislation, Repugnancy, and Territorial Nexus ensure smooth operation of the federal scheme. Landmark decisions like *F.N. Balsara*, *K.C. Gajapati*, and *Karunanidhi* have strengthened interpretative clarity.

Thus, India's legislative federalism represents a balanced model combining unity with diversity, central strength with state autonomy, and constitutional supremacy with judicial control.

CONSTITUTIONAL LAW - II NOTES

TOPIC:

1. What is the procedure for passing an Ordinary Bill?
2. What is a Money Bill? How is it different from an Ordinary Bill?
3. Explain the concept of Joint Sitting under Article 108.
4. What is legislative competence under Articles 245–246?
5. Explain the Doctrine of Pith and Substance.
6. What is the Doctrine of Repugnancy under Article 254?
7. Explain the Doctrine of Colourable Legislation.
8. What is Territorial Nexus theory?
9. Explain the residuary powers of legislation.
10. What is the significance of the Seventh Schedule?

Answer:

1 What is the procedure for passing an Ordinary Bill?

Introduction

An Ordinary Bill is a bill other than a Money Bill or Constitutional Amendment Bill. It may originate in either House of Parliament under Articles 107–111 and must be passed by both Houses before receiving Presidential assent.

Explanation

The procedure consists of three stages in each House. First is the **First Reading**, where the bill is introduced and published without detailed discussion. The **Second Reading** is the most important stage, involving general debate, clause-by-clause consideration, and possible reference to a committee. In the **Third Reading**, the bill is put to vote and, if passed by a simple majority of members present and voting, it is sent to the other House.

The second House may:

- Pass the bill
- Amend it
- Reject it
- Keep it pending for six months

If disagreement arises, a Joint Sitting under Article 108 may be convened. After passage in both Houses, the bill is presented to the President under Article 111 for assent.

Case Law

CONSTITUTIONAL LAW - II NOTES

Raja Ram Pal v. Hon'ble Speaker (2007)

Facts: Parliamentary procedures were challenged regarding expulsion of MPs.

Held: The Supreme Court held that parliamentary procedures are subject to constitutional limits.

Principle: Legislative procedure must conform to constitutional supremacy.

Conclusion

The procedure for passing an Ordinary Bill ensures democratic deliberation, bicameral scrutiny, and constitutional checks before a bill becomes law.

2 What is a Money Bill? How is it different from an Ordinary Bill?

Introduction

A Money Bill is defined under Article 110 of the Constitution and deals exclusively with financial matters such as taxation, borrowing, and expenditure from the Consolidated Fund of India.

Explanation

A Money Bill can be introduced only in the Lok Sabha and only with the prior recommendation of the President. The Rajya Sabha cannot amend or reject it; it can only recommend changes within 14 days. The final authority rests with the Lok Sabha.

Key differences:

- Money Bill can be introduced only in Lok Sabha; Ordinary Bill in either House.
- Rajya Sabha has limited power in Money Bills.
- No Joint Sitting for Money Bills.
- Speaker's decision on Money Bill is final.

Case Law

K.S. Puttaswamy (Aadhaar Case, 2018)

Facts: Aadhaar Act was passed as a Money Bill and challenged.

Held: Majority upheld it as a valid Money Bill, though dissent questioned classification.

Principle: Classification of Money Bill must strictly conform to Article 110.

Conclusion

Money Bills are special financial legislation with limited Rajya Sabha involvement, reflecting the supremacy of the directly elected House in fiscal matters.

3 Explain the concept of Joint Sitting under Article 108.

Introduction

Article 108 provides for a Joint Sitting of both Houses of Parliament to resolve deadlock over an Ordinary Bill.

Explanation

Deadlock occurs when:

- The second House rejects the bill
- Houses disagree on amendments
- The second House does not pass the bill within six months

The President summons a Joint Sitting. It is presided over by the Speaker of Lok Sabha, and decisions are taken by simple majority of members present and voting.

It does not apply to:

- Money Bills
- Constitutional Amendment Bills

Case Law

Madhu Limaye v. Union of India (1971)

Facts: Validity of legislative procedure was questioned.

Held: Parliament has autonomy in internal procedures but within constitutional limits.

Principle: Joint Sitting is a constitutional mechanism to prevent legislative paralysis.

Conclusion

Joint Sitting ensures continuity of law-making and prevents legislative deadlock in a bicameral system.

4 What is legislative competence under Articles 245–246?

Introduction

Legislative competence refers to the authority of Parliament and State Legislatures to enact laws within their respective constitutional domains.

Explanation

CONSTITUTIONAL LAW - II NOTES

Article 245 defines territorial extent of laws. Article 246 distributes subjects into:

- Union List
- State List
- Concurrent List

Parliament has exclusive power over Union List, States over State List, and both over Concurrent List. In case of conflict, Union law prevails.

Case Law

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

Facts: State challenged Parliament's power over State property.

Held: Parliament has supremacy within constitutional limits.

Principle: Indian federalism has a strong central bias.

Conclusion

Legislative competence ensures federal balance by constitutionally demarcating law-making authority.

5 Explain the Doctrine of Pith and Substance.

Introduction

The Doctrine of Pith and Substance is applied when a law appears to overlap between Union and State subjects.

Explanation

The court examines the true nature and character (pith and substance) of the law. If the law substantially falls within the competence of the legislature, incidental encroachment does not invalidate it.

This doctrine prevents rigid interpretation and allows flexibility in federal structure.

Case Law

State of Bombay v. F.N. Balsara (1951)

Facts: Bombay Prohibition Act was challenged as encroaching on Union subjects.

Held: The Court upheld it as primarily related to public health (State subject).

Principle: Incidental encroachment does not invalidate a law if its true character is within competence.

Conclusion

CONSTITUTIONAL LAW - II NOTES

The doctrine ensures harmonious construction and preserves legislative balance.

6 What is the Doctrine of Repugnancy under Article 254?

Introduction

Article 254 deals with conflict between Union and State laws on Concurrent List subjects.

Explanation

If a State law conflicts with a Union law on the same subject, the Union law prevails. However, if the State law receives Presidential assent, it may prevail in that State unless Parliament overrides it later.

Repugnancy arises only when there is direct inconsistency.

Case Law

M. Karunanidhi v. Union of India (1979)

Facts: Conflict arose between Central and State anti-corruption laws.

Held: Court laid down tests to determine repugnancy.

Principle: Repugnancy requires clear and irreconcilable conflict.

Conclusion

Doctrine of Repugnancy maintains Union supremacy while allowing limited State flexibility.

7 Explain the Doctrine of Colourable Legislation.

Introduction

The Doctrine of Colourable Legislation is based on the principle that what cannot be done directly cannot be done indirectly.

Explanation

If a legislature lacks competence over a subject, it cannot disguise legislation under another entry. The court looks beyond form to substance.

The doctrine applies only when there is lack of legislative competence.

Case Law

K.C. Gajapati Narayan Deo v. State of Orissa (1953)

CONSTITUTIONAL LAW - II NOTES

Facts: Law was challenged as indirectly acquiring property.

Held: If legislature has competence, motive is irrelevant.

Principle: Colourable legislation arises only when power is lacking.

Conclusion

The doctrine prevents legislative fraud and preserves constitutional distribution of powers.

8 What is Territorial Nexus theory?

Introduction

The Doctrine of Territorial Nexus relates to the territorial limits of legislative power under Article 245.

Explanation

A State Legislature may make laws for its territory. However, if there is a sufficient territorial connection, it may legislate even if part of the subject lies outside the State.

The connection must be real and substantial.

Case Law

State of Bombay v. R.M.D.C. (1957)

Facts: Bombay taxed prize competitions conducted outside but affecting residents within.

Held: Law upheld due to sufficient territorial nexus.

Principle: Real connection validates extra-territorial effect.

Conclusion

Territorial Nexus ensures flexibility in legislative power while respecting territorial limits.

9 Explain the residuary powers of legislation.

Introduction

Residuary powers refer to subjects not enumerated in any of the three lists in the Seventh Schedule.

Explanation

Article 248 vests residuary powers in Parliament. Entry 97 of the Union List reinforces this. Thus, Parliament can legislate on new or unforeseen matters such as cyber laws or space law.

This shows strong central bias in Indian federalism.

CONSTITUTIONAL LAW - II NOTES

Case Law

Union of India v. H.S. Dhillon (1972)

Facts: Parliament imposed wealth tax on agricultural land, challenged as State subject.

Held: Parliament has residuary power where subject is not expressly mentioned in State List.

Principle: Residuary power lies with Parliament.

Conclusion

Residuary powers strengthen the Union and allow legislative flexibility for emerging subjects.

10 What is the significance of the Seventh Schedule?

Introduction

The Seventh Schedule of the Constitution contains three lists dividing legislative subjects between Union and States.

Explanation

It ensures clarity in distribution of powers:

- List I – Union List
- List II – State List
- List III – Concurrent List

It forms the backbone of Indian federalism and prevents jurisdictional conflicts. It also allows constitutional flexibility through amendments.

Case Law

Kesavananda Bharati v. State of Kerala (1973)

Facts: Amendment affecting federal structure was challenged.

Held: Federalism is part of Basic Structure.

Principle: Distribution of powers under Seventh Schedule is constitutionally significant.

Conclusion

The Seventh Schedule provides structural foundation for legislative federalism and maintains balance between Centre and States.

CONSTITUTIONAL LAW - II NOTES

BY AJITABH MISHRA

CONSTITUTIONAL LAW - II NOTES

TOPIC:

Freedom of Trade, Commerce and Intercourse (Articles 301–307)

Answer:

Introduction

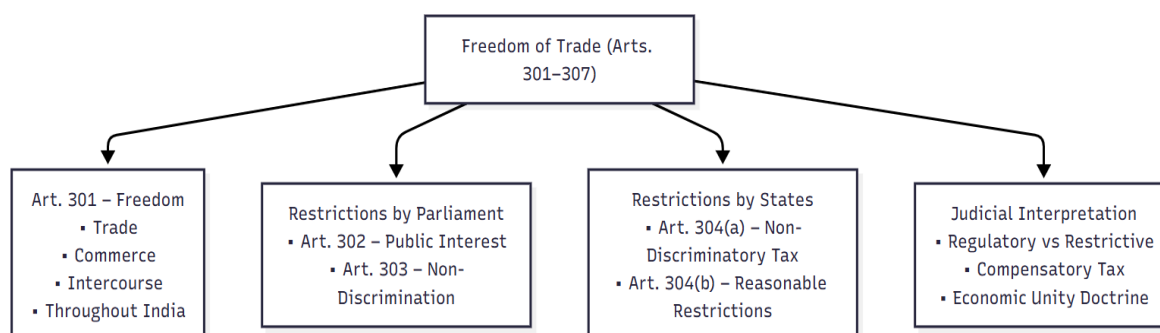
Part XIII of the Constitution (Articles 301–307) deals with **Freedom of Trade, Commerce and Intercourse** throughout the territory of India. The framers recognized that economic unity is essential for political unity and national integration. Therefore, Article 301 declares that trade, commerce and intercourse throughout the territory of India shall be free.

However, this freedom is not absolute. Articles 302–305 provide reasonable restrictions in public interest and to prevent discriminatory taxation. The constitutional objective is to create a **single economic market** while maintaining federal balance.

The provisions reflect a compromise between:

- Economic unity
- State fiscal autonomy
- Public interest regulation

The judiciary has played a crucial role in interpreting the scope of these provisions.



I. Meaning and Scope of Article 301

Article 301 states that trade, commerce and intercourse throughout the territory of India shall be free. The term “trade” refers to buying and selling of goods, “commerce” includes

CONSTITUTIONAL LAW - II NOTES

transmission or transport, and “intercourse” is of wider import covering movement of goods and persons.

The freedom guaranteed is both inter-State and intra-State. The purpose is to prevent economic barriers that could fragment the national market.

However, Article 301 does not create an absolute laissez-faire regime. The freedom is subject to the subsequent provisions of Part XIII.

II. Power of Parliament to Impose Restrictions (Articles 302–303)

Article 302 empowers Parliament to impose restrictions on trade and commerce in public interest. This reflects the supremacy of Parliament in maintaining economic balance.

Article 303 prohibits Parliament and State Legislatures from giving preference to one State over another. However, an exception exists where Parliament may make discriminatory laws if necessary to deal with scarcity of goods in any part of India.

Thus, Parliament enjoys broad authority but within constitutional limits.

III. Power of States to Impose Restrictions (Article 304)

States have limited power under Article 304:

- Article 304(a): States may impose non-discriminatory taxes on goods imported from other States.
- Article 304(b): States may impose reasonable restrictions in public interest, but only with prior Presidential assent.

This ensures that States do not create economic barriers that disrupt national unity.

IV. Regulatory vs Restrictive Measures

A key constitutional question has been whether all taxes or regulations violate Article 301. The Supreme Court distinguished between:

- **Regulatory/Compensatory measures** (valid)
- **Direct restrictions/barriers** (invalid unless justified)

The concept of compensatory tax emerged to validate taxes that facilitate trade rather than hinder it.

CONSTITUTIONAL LAW - II NOTES

Case Law Development

1 **Atiabari Tea Co. v. State of Assam (1961)**

Facts: Assam imposed a tax on transportation of tea. The tax was challenged as violating Article 301.

Held: The Supreme Court held that taxes directly impeding trade violate Article 301 unless saved by Articles 302–304.

Principle: Article 301 prohibits direct and immediate restrictions on movement of goods.

This case gave a broad interpretation to freedom of trade.

2 **Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan (1962)**

Facts: A tax was imposed on motor vehicles using roads. It was challenged as restricting trade.

Held: The Court upheld the tax as compensatory because it facilitated road maintenance.

Principle: Regulatory or compensatory taxes do not violate Article 301.

This case narrowed the strict interpretation in Atiabari.

3 **Jindal Stainless Ltd. v. State of Haryana (2016)**

Facts: Entry tax imposed by States was challenged as unconstitutional.

Held: The Supreme Court held that States can impose taxes if they are non-discriminatory and comply with Article 304.

Principle: The test is non-discrimination; compensatory tax theory is not rigid.

This judgment modernized the doctrine and emphasized equality and federal balance.

V. Relationship with Federalism

Freedom of trade ensures economic integration, while Articles 302–304 preserve fiscal federalism. The Constitution does not permit protectionist barriers between States.

The GST regime introduced by the 101st Constitutional Amendment further strengthens economic unity by subsuming multiple State and Central taxes into a unified framework.

Thus, Part XIII complements cooperative federalism.

CONSTITUTIONAL LAW - II NOTES

VI. Critical Evaluation

The constitutional scheme reflects:

- National economic unity
- Controlled State autonomy
- Parliamentary supremacy in national interest

Judicial interpretation evolved from strict prohibition (*Atiabari*) to pragmatic regulation (*Automobile Transport*) to equality-based federal balance (*Jindal Stainless*).

Critics argue that earlier confusion over compensatory tax created uncertainty, but recent jurisprudence has clarified that the central test is discrimination and direct restriction.

VII. Scope of Article 307

Article 307 empowers Parliament to appoint an authority to carry out the purposes of Articles 301–304. However, no permanent authority has been created under this provision.

Conclusion

Freedom of trade, commerce and intercourse under Articles 301–307 forms the economic backbone of the Indian Constitution. It ensures a unified national market while allowing reasonable regulation in public interest.

Judicial interpretation through *Atiabari Tea*, *Automobile Transport*, and *Jindal Stainless* has shaped the doctrine by distinguishing between restrictive and regulatory measures.

The constitutional design balances:

- Economic freedom
- Federal structure
- Parliamentary control
- Non-discrimination

Thus, Part XIII strengthens both national integration and cooperative federalism by promoting free movement of goods and economic cohesion across India.

CONSTITUTIONAL LAW - II NOTES

TOPIC:

Constitutional Safeguards to Civil Servants (Articles 309–311)

Answer:

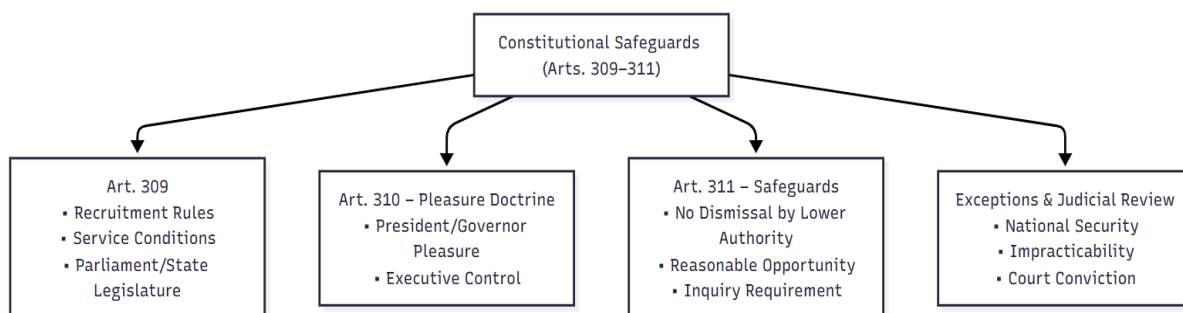
Introduction

The civil services form the administrative backbone of the Indian State. In order to ensure neutrality, efficiency, and independence in administration, the Constitution provides certain safeguards to civil servants under **Articles 309–311** in Part XIV.

While Article 310 incorporates the doctrine of pleasure, allowing the President or Governor to remove civil servants, Article 311 provides procedural safeguards against arbitrary dismissal, removal, or reduction in rank. These provisions strike a balance between:

- Executive control over administration
- Protection of civil servants
- Rule of law and fairness

The objective is to create an independent and politically neutral civil service system.



I. Article 309 – Regulation of Service Conditions

Article 309 empowers Parliament and State Legislatures to regulate recruitment and conditions of service of persons serving the Union or State. Until such legislation is enacted, the President or Governor may frame service rules.

CONSTITUTIONAL LAW - II NOTES

Thus, Article 309 forms the foundation of civil service regulation. It ensures that service conditions are governed by statutory rules rather than arbitrary executive action.

The importance of Article 309 lies in:

- Legal certainty in service conditions
- Rule-based governance
- Administrative discipline

However, rules framed under Article 309 must conform to constitutional mandates, including Articles 14 and 16.

II. Article 310 – Doctrine of Pleasure

Article 310 provides that civil servants hold office during the pleasure of the President or Governor. This doctrine is derived from British constitutional law.

Under this doctrine, the executive has the authority to remove a civil servant at its pleasure. However, in India, this pleasure is not absolute and is subject to constitutional limitations.

The purpose of this doctrine is:

- To maintain discipline in administration
- To ensure executive control
- To prevent rigidity in service tenure

Yet, this power is curtailed by Article 311, which introduces procedural safeguards.

III. Article 311 – Constitutional Safeguards

Article 311 protects civil servants from arbitrary dismissal, removal, or reduction in rank.

It provides two major safeguards:

1 A civil servant cannot be dismissed by an authority subordinate to the one that appointed him.

2 No dismissal, removal, or reduction in rank shall occur without giving the civil servant a reasonable opportunity of being heard.

This includes:

- Notice of charges

CONSTITUTIONAL LAW - II NOTES

- Departmental inquiry
- Opportunity to defend

These safeguards reflect principles of natural justice.

IV. Exceptions to Article 311(2)

The Constitution provides three exceptions where inquiry is not required:

- When a civil servant is convicted on a criminal charge.
- When it is not reasonably practicable to hold an inquiry.
- When the President or Governor is satisfied that it is not in the interest of national security.

Even in these cases, judicial review is available to prevent misuse.

Case Law Development

1 Parshotam Lal Dhingra v. Union of India (1958)

Facts: A government servant was reverted to a lower post and challenged the action as violative of Article 311.

Held: The Supreme Court distinguished between dismissal by way of punishment and termination simpliciter.

Principle: Article 311 applies only when termination amounts to punishment.

This case clarified the scope of protection.

2 Union of India v. Tulsiram Patel (1985)

Facts: Civil servants were dismissed without inquiry under exceptions in Article 311(2).

Held: The Supreme Court upheld the validity of exceptions but stated that they are subject to judicial review.

Principle: Doctrine of pleasure is not absolute; procedural fairness must be respected.

This judgment emphasized constitutional balance.

3 Shamsher Singh v. State of Punjab (1974)

CONSTITUTIONAL LAW - II NOTES

Facts: Issue concerned dismissal of probationary judicial officers.

Held: The Court held that the Governor must act on ministerial advice and termination must conform to Article 311 safeguards.

Principle: Executive power is subject to constitutional limitations and fairness.

V. Relationship Between Articles 310 and 311

Article 310 gives power; Article 311 restricts that power.

The Constitution balances:

- Executive authority
- Administrative efficiency
- Protection from arbitrariness

Thus, pleasure doctrine operates subject to constitutional safeguards.

VI. Importance of Safeguards

The safeguards ensure:

- Political neutrality of civil servants
- Protection against vindictive action
- Administrative stability
- Rule of law in public employment

Without these safeguards, civil servants could be removed for political reasons, undermining democratic governance.

At the same time, exceptions ensure that national security and administrative discipline are not compromised.

VII. Judicial Review and Fairness

The Supreme Court has consistently held that even when Article 311 exceptions apply, courts can review whether:

- Satisfaction was mala fide
- Conditions were genuinely fulfilled

CONSTITUTIONAL LAW - II NOTES

- Action was arbitrary

Thus, judicial review remains a constitutional safeguard.

Critical Evaluation

The constitutional scheme achieves a delicate balance:

- Prevents arbitrary dismissal
- Maintains administrative discipline
- Ensures constitutional accountability

However, challenges remain regarding delays in departmental inquiries and misuse of suspension powers.

Nevertheless, Articles 309–311 collectively strengthen institutional integrity of civil services.

Conclusion

Articles 309–311 form the constitutional foundation for civil service administration in India. While Article 310 incorporates the doctrine of pleasure to maintain executive control, Article 311 introduces essential safeguards to protect civil servants from arbitrary removal.

Judicial decisions such as *Parshotam Lal Dhingra* and *Tulsiram Patel* have clarified that the pleasure doctrine in India is constitutionally limited and subject to natural justice principles.

Thus, the constitutional safeguards to civil servants ensure a balance between efficiency and fairness, authority and accountability, discipline and protection. They reinforce the rule of law and uphold the integrity of public administration in India.

CONSTITUTIONAL LAW - II NOTES

TOPIC:

The Administrative Relations between Centre and State form the Essence of the Federal Structure of the Constitution.

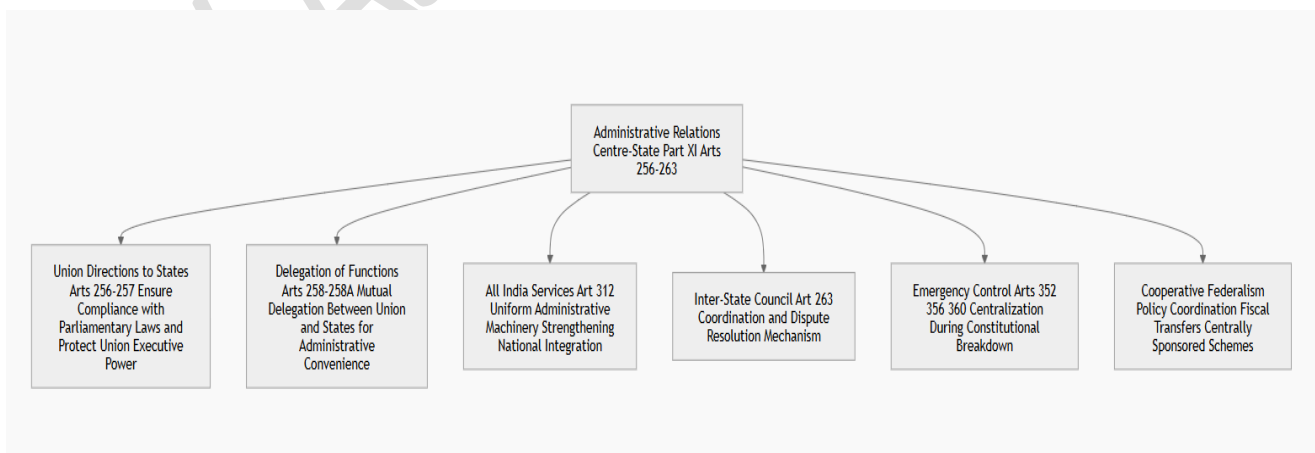
Answer:

Introduction

The Constitution of India establishes a federal structure with a strong unitary bias. While legislative and financial relations define the distribution of powers, it is the administrative relationship between the Centre and the States that ensures the practical functioning of federalism. Federalism is not merely about dividing subjects between Union and State Lists; it is about coordinated governance. Administrative relations determine how laws are implemented, how executive authority is exercised, and how coordination between the Union and the States is maintained.

Part XI (Articles 256–263) of the Constitution deals specifically with administrative relations. These provisions empower the Union to issue directions to States, ensure compliance with parliamentary laws, deploy All India Services, and even intervene during failure of constitutional machinery. At the same time, mechanisms such as Inter-State Council and cooperative federal arrangements reflect collaborative governance.

The Supreme Court in *S.R. Bommai v. Union of India* emphasized that federalism is part of the Basic Structure of the Constitution. Administrative relations operationalize this federal balance. Without administrative coordination, legislative distribution would remain ineffective. Thus, administrative relations form the backbone of Indian federalism, blending control, coordination, and cooperation.



CONSTITUTIONAL LAW - II NOTES

I. Executive Power and Union Directions (Articles 256–257)

Article 256 mandates that States must exercise their executive power in compliance with laws made by Parliament. The Union can issue directions to ensure such compliance.

Article 257 further empowers the Union to give directions to States for:

- Construction and maintenance of means of communication of national importance.
- Protection of railways.
- Ensuring that State executive power does not impede Union executive power.

These provisions indicate that although States have autonomy, they operate within a constitutional framework that preserves national unity.

In *State of Rajasthan v. Union of India*, the Court upheld the supremacy of the Union in certain administrative matters, emphasizing constitutional discipline.

Thus, Articles 256–257 reflect a federal structure with central supervision.

II. Delegation of Functions (Articles 258–258A)

Article 258 allows the President to entrust Union functions to States with consent. Article 258A allows States to entrust their functions to the Union.

This mutual delegation promotes administrative efficiency and cooperative governance.

For example, implementation of central welfare schemes often requires State machinery, reflecting interdependence rather than strict separation.

III. All India Services (Article 312)

Article 312 provides for creation of All India Services like IAS, IPS, and IFoS.

These services:

- Serve both Union and States.
- Maintain uniform administrative standards.
- Promote national integration.

In *T.N. Seshan v. Union of India*, the Court recognized the importance of independent administrative machinery in constitutional functioning.

All India Services ensure continuity and coordination across federal units.

CONSTITUTIONAL LAW - II NOTES

IV. Inter-State Council (Article 263)

Article 263 empowers the President to establish an Inter-State Council to:

- Inquire into disputes between States.
- Investigate subjects of common interest.
- Make recommendations for better coordination.

Though recommendatory in nature, it embodies cooperative federalism.

The Sarkaria Commission strongly recommended strengthening this institution.

V. Emergency Provisions and Administrative Control

During emergencies:

- Article 352 (National Emergency) centralizes power.
- Article 356 (President's Rule) allows Union takeover of State administration.
- Article 360 (Financial Emergency) permits control over State finances.

In *S.R. Bommai v. Union of India*, the Supreme Court limited arbitrary use of Article 356 and reinforced federal principles.

Emergency provisions demonstrate the flexible federal structure of India.

VI. Cooperative Federalism – Modern Trend

Recent constitutional developments emphasize cooperative federalism:

- GST Council (Article 279A) as fiscal coordination body.
- Centrally Sponsored Schemes requiring joint implementation.
- NITI Aayog replacing Planning Commission to foster collaborative planning.

In *Government of NCT of Delhi v. Union of India (2018)*, the Supreme Court stressed constitutional morality and cooperative federalism in administrative functioning.

Thus, administrative relations are no longer merely hierarchical but increasingly collaborative.

Conclusion

CONSTITUTIONAL LAW - II NOTES

The administrative relations between the Centre and the States form the operational core of Indian federalism. While legislative and financial relations define the theoretical distribution of powers, it is administrative coordination that ensures effective governance. Articles 256–263 establish mechanisms of supervision, delegation, cooperation, and coordination, balancing autonomy with national unity.

India's federal structure is neither strictly dual nor completely unitary. It is cooperative and pragmatic. The Union's power to issue directions ensures constitutional compliance, while delegation provisions and institutions like the Inter-State Council promote collaboration. Emergency provisions provide flexibility during crises but are subject to judicial review to protect federal balance.

Therefore, administrative relations indeed form the essence of India's federal structure. They transform constitutional theory into administrative reality, ensuring that federalism in India remains dynamic, resilient, and responsive to national needs.

BY AJTABH MISHRA

CONSTITUTIONAL LAW - II NOTES

TOPIC:

1. What is freedom of trade and commerce under Article 301?
2. Explain exceptions to Article 301.
3. What are Financial Relations between Centre and States?
4. Explain Article 309 and recruitment of civil servants.
5. What protection is provided under Article 311?
6. Explain removal, dismissal and reduction in rank.
7. What is liability of State under Article 299?
8. What is tortious liability of the State?
9. What is Inter-State Council under Article 263?
10. What is the meaning of cooperative federalism?

Answer:

1 What is freedom of trade and commerce under Article 301?

Introduction

Article 301 of the Constitution guarantees that trade, commerce and intercourse throughout the territory of India shall be free. It forms part of Part XIII and aims to ensure economic unity of the nation.

Explanation

The term “trade” refers to buying and selling of goods, “commerce” includes transmission and transportation, while “intercourse” covers movement of goods and persons. The freedom applies both inter-State and intra-State.

However, this freedom is not absolute. It is subject to reasonable restrictions under Articles 302–304. The purpose is to prevent economic barriers between States while allowing regulation in public interest.

The Court distinguishes between:

- Direct restrictions (invalid unless justified)
- Regulatory/compensatory measures (valid)

Case Law

Atiabari Tea Co. v. State of Assam (1961)

Facts: Assam imposed tax on transportation of tea.

Held: The Court held that taxes directly restricting movement violate Article 301 unless saved by exceptions.

Principle: Article 301 prohibits direct and immediate restrictions on trade.

CONSTITUTIONAL LAW - II NOTES

Conclusion

Freedom of trade under Article 301 ensures a single economic market in India while allowing reasonable regulation in public interest.

2 Explain exceptions to Article 301.

Introduction

Although Article 301 guarantees freedom of trade and commerce, Articles 302–305 provide constitutional exceptions.

Explanation

Parliament may impose restrictions in public interest under Article 302. Article 303 prohibits discriminatory laws but allows exceptions during scarcity.

States may impose:

- Non-discriminatory taxes under Article 304(a).
- Reasonable restrictions in public interest under Article 304(b), with Presidential assent.

Thus, freedom is regulated to balance economic unity and federal autonomy.

Case Law

Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan (1962)

Facts: Tax on vehicles was challenged as restriction.

Held: The Court upheld it as compensatory and regulatory.

Principle: Regulatory measures facilitating trade do not violate Article 301.

Conclusion

Exceptions ensure that freedom of trade operates harmoniously with public interest and fiscal federalism.

3 What is Financial Relations between Centre and States?

Introduction

Financial relations between Centre and States are governed by Articles 268–293 in Part XII of the Constitution.

Explanation

CONSTITUTIONAL LAW - II NOTES

The Constitution distributes taxing powers between Union and States. Certain taxes are:

- Levied by Centre but collected by States (Art. 268).
- Shared between Centre and States (Art. 270).

The Finance Commission under Article 280 recommends distribution of revenues.

This framework ensures fiscal federalism and balanced development.

Case Law

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

Facts: The State challenged Union financial authority.

Held: Parliament has supremacy within constitutional limits.

Principle: Indian federalism has a central bias but respects fiscal balance.

Conclusion

Financial relations maintain cooperative federalism by ensuring revenue sharing and fiscal coordination.

Explain Article 309 and recruitment of civil servants.

Introduction

Article 309 empowers Parliament and State Legislatures to regulate recruitment and service conditions of civil servants.

Explanation

Recruitment and service conditions are governed by:

- Parliamentary or State legislation.
- Rules framed by President or Governor until legislation is enacted.

Article 309 ensures structured and rule-based recruitment, preventing arbitrariness. These rules must comply with Articles 14 and 16.

Case Law

B.S. Yadav v. State of Haryana (1981)

Facts: Validity of service rules was challenged.

Held: Rules must conform to constitutional equality principles.

Principle: Article 309 rules are subject to constitutional limitations.

Conclusion

Article 309 ensures legal certainty and fairness in recruitment and service conditions.

5 What protection is provided under Article 311?

Introduction

Article 311 provides safeguards to civil servants against arbitrary dismissal, removal or reduction in rank.

Explanation

Two major protections:

- No dismissal by authority subordinate to appointing authority.
- Reasonable opportunity of being heard before punishment.

Exceptions exist in cases of:

- Criminal conviction
- Impracticability of inquiry
- National security

Case Law

Union of India v. Tulsiram Patel (1985)

Facts: Dismissal without inquiry was challenged.

Held: Exceptions valid but subject to judicial review.

Principle: Pleasure doctrine is constitutionally limited.

Conclusion

Article 311 ensures fairness and natural justice in public employment.

6 Explain removal, dismissal and reduction in rank.

Introduction

Removal, dismissal and reduction in rank are disciplinary punishments imposed on civil servants under Articles 310–311.

Explanation

CONSTITUTIONAL LAW - II NOTES

Dismissal disqualifies future employment; removal does not. Reduction in rank lowers position or pay.

These actions require:

- Notice of charges
- Inquiry
- Opportunity of defence

They must follow principles of natural justice.

Case Law

Parshotam Lal Dhingra v. Union of India (1958)

Facts: Reversion to lower post was challenged.

Held: Protection applies only when action amounts to punishment.

Principle: Article 311 applies where termination is punitive.

Conclusion

These penalties must follow constitutional safeguards to prevent arbitrary executive action.

7 What is liability of State under Article 299?

Introduction

Article 299 deals with contracts made by the Government.

Explanation

For a valid government contract:

- Must be expressed in the name of President/Governor.
- Executed on their behalf.
- Made by authorized person.

If these formalities are not followed, the contract is void.

Case Law

State of Bihar v. Karam Chand Thapar (1962)

Facts: Contract not executed per Article 299 requirements.

Held: Non-compliance renders contract unenforceable.

Principle: Article 299 formalities are mandatory.

Conclusion

Article 299 protects public funds and ensures accountability in government contracts.

8 What is tortious liability of the State?

Introduction

Tortious liability refers to State responsibility for wrongful acts of its servants.

Explanation

Originally, under British rule, State was immune for sovereign functions. In India, courts distinguish between:

- Sovereign functions (immunity)
- Non-sovereign/commercial functions (liable)

Case Law

State of Rajasthan v. Vidyawati (1962)

Facts: Government driver negligently caused death.

Held: State liable for negligence.

Principle: State liable for non-sovereign functions.

Conclusion

Tortious liability promotes accountability and limits arbitrary State immunity.

9 What is Inter-State Council under Article 263?

Introduction

Article 263 provides for establishment of Inter-State Council to promote coordination between States and Centre.

Explanation

The President may establish it to:

- Investigate disputes
- Discuss common interests
- Recommend policies

CONSTITUTIONAL LAW - II NOTES

It promotes cooperative federalism.

Case Law

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

Facts: Validity of President's Rule was challenged.

Held: Federalism is part of Basic Structure.

Principle: Cooperative mechanisms strengthen federal balance.

Conclusion

Inter-State Council facilitates dialogue and coordination in federal governance.

10 What is the meaning of cooperative federalism?

Introduction

Cooperative federalism refers to collaboration between Centre and States in governance.

Explanation

Unlike rigid federalism, Indian federalism emphasizes cooperation through:

- Finance Commission
- GST Council
- Inter-State Council
- Centrally sponsored schemes

Both levels work jointly for national development.

Case Law

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

Facts: Dispute over powers of Delhi Government.

Held: Constitution mandates cooperative federalism.

Principle: Centre and States must function harmoniously.

Conclusion

Cooperative federalism strengthens unity while respecting diversity and autonomy of States.

CONSTITUTIONAL LAW - II NOTES

TOPIC:

Election and Election Commission (Articles 324–329 of the Constitution of India)

Answer:

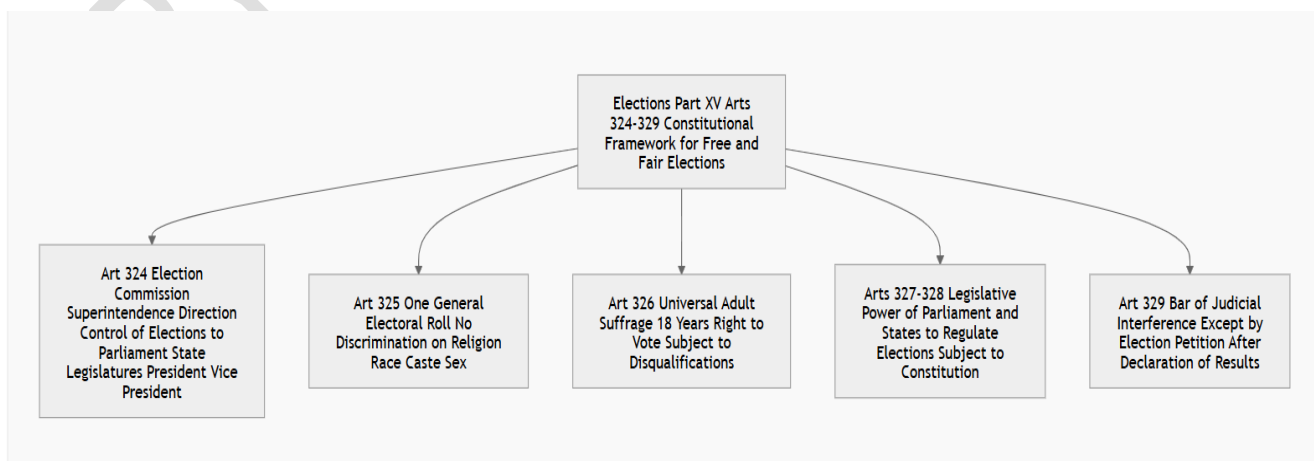
Introduction

Free and fair elections form the foundation of a democratic polity. The Constitution of India establishes an independent constitutional authority—the Election Commission of India (ECI)—to ensure that elections are conducted in a transparent, impartial, and efficient manner. Articles 324 to 329, contained in Part XV of the Constitution, provide the constitutional framework governing elections to Parliament, State Legislatures, and the offices of President and Vice-President.

Article 324 vests the “superintendence, direction and control” of elections in the Election Commission. Articles 325 and 326 ensure equality in electoral rolls and universal adult suffrage. Articles 327 and 328 empower Parliament and State Legislatures to make laws relating to elections, subject to constitutional provisions. Article 329 bars judicial interference in electoral matters except through election petitions.

The Supreme Court has repeatedly emphasized the centrality of electoral democracy. In *Indira Nehru Gandhi v. Raj Narain*, the Court declared that free and fair elections are part of the Basic Structure of the Constitution. Similarly, in *Mohinder Singh Gill v. Chief Election Commissioner*, the Court held that Article 324 is a plenary provision conferring wide powers on the Election Commission to ensure purity of the electoral process.

Thus, Articles 324–329 collectively safeguard electoral integrity, democratic legitimacy, and constitutional governance in India.



CONSTITUTIONAL LAW - II NOTES

I. Article 324 – The Election Commission of India

Article 324 establishes the Election Commission and vests in it the power of superintendence, direction, and control of elections. It covers elections to:

- Lok Sabha
- Rajya Sabha
- State Legislative Assemblies and Councils
- President and Vice-President

The Commission consists of the Chief Election Commissioner (CEC) and such other Election Commissioners as the President may appoint.

Nature of Powers

Article 324 is a reservoir of power. It is both administrative and quasi-judicial.

In *Mohinder Singh Gill v. CEC (1978)*, the Supreme Court held that Article 324 operates in areas left unoccupied by legislation and empowers the Commission to take necessary steps to ensure free and fair elections.

In *T.N. Seshan v. Union of India (1995)*, the Court upheld the multi-member character of the Commission and affirmed that all Election Commissioners have equal powers.

Thus, Article 324 ensures institutional independence and electoral integrity.

II. Article 325 – Equality in Electoral Roll

Article 325 provides that:

- There shall be one general electoral roll for every territorial constituency.
- No person shall be excluded on grounds of religion, race, caste, or sex.

This provision abolishes communal electorates, a practice prevalent under colonial rule.

It reflects the principle of political equality and strengthens democratic inclusiveness.

III. Article 326 – Universal Adult Suffrage

Article 326 provides that elections shall be based on adult suffrage. Every citizen aged 18 years and above has the right to vote, subject to disqualifications such as non-residence, unsoundness of mind, crime, or corrupt practices.

Universal adult franchise ensures participatory democracy and political equality.

CONSTITUTIONAL LAW - II NOTES

In *People's Union for Civil Liberties (PUCL) v. Union of India (2013)*, the Supreme Court recognized the right to vote as a statutory right but emphasized that voter choice and secrecy are essential components of democratic expression. The Court introduced the NOTA (None of the Above) option.

Thus, Article 326 strengthens democratic participation.

IV. Articles 327–328 – Legislative Regulation of Elections

Article 327 empowers Parliament to make laws regarding elections, including:

- Delimitation
- Preparation of electoral rolls
- Conduct of elections

The Representation of the People Act, 1950 and 1951 are enacted under this authority.

Article 328 empowers State Legislatures to make laws relating to State elections, subject to parliamentary law.

In *Lakshmi Charan Sen v. A.K.M. Hassan Uzzaman*, the Court upheld Parliament's supremacy in electoral regulation.

These provisions ensure statutory support for constitutional electoral mechanisms.

V. Article 329 – Bar of Judicial Interference

Article 329 bars courts from interfering in electoral matters except through election petitions after results are declared.

Clause (b) states that no election shall be called in question except by an election petition presented as provided by law.

In *N.P. Ponnuswami v. Returning Officer (1952)*, the Supreme Court held that courts cannot interfere at intermediate stages of the election process.

This ensures smooth conduct of elections without judicial obstruction.

VI. Independence of Election Commission

The Constitution ensures independence through:

- Security of tenure of CEC (removal like a Supreme Court Judge).

CONSTITUTIONAL LAW - II NOTES

- Service conditions protected.
- Charged expenditure on Consolidated Fund of India.

In *Anukul Chandra Pradhan v. Union of India*, the Court reiterated the need for electoral neutrality.

Recent judicial developments, including the 2023 Supreme Court decision in *Anoop Baranwal v. Union of India*, directed that appointments of Election Commissioners should involve a committee consisting of the Prime Minister, Leader of Opposition, and Chief Justice of India to ensure independence (until Parliament makes a law).

Conclusion

Articles 324–329 form the constitutional backbone of India's electoral democracy. Article 324 establishes a powerful and independent Election Commission entrusted with safeguarding electoral integrity. Articles 325 and 326 ensure equality and universal adult suffrage, reinforcing democratic participation. Articles 327 and 328 provide legislative support, while Article 329 ensures uninterrupted electoral processes by restricting judicial interference.

The Supreme Court has consistently recognized free and fair elections as part of the Basic Structure of the Constitution. The Election Commission stands as the sentinel of electoral democracy, ensuring that political power flows from the will of the people.

Thus, the constitutional scheme of elections under Articles 324–329 not only institutionalizes democratic governance but also secures the legitimacy, fairness, and credibility of the Indian Republic.

CONSTITUTIONAL LAW - II NOTES

TOPIC:

Amendment of Constitution & Doctrine of Basic Structure

Answer:

Introduction

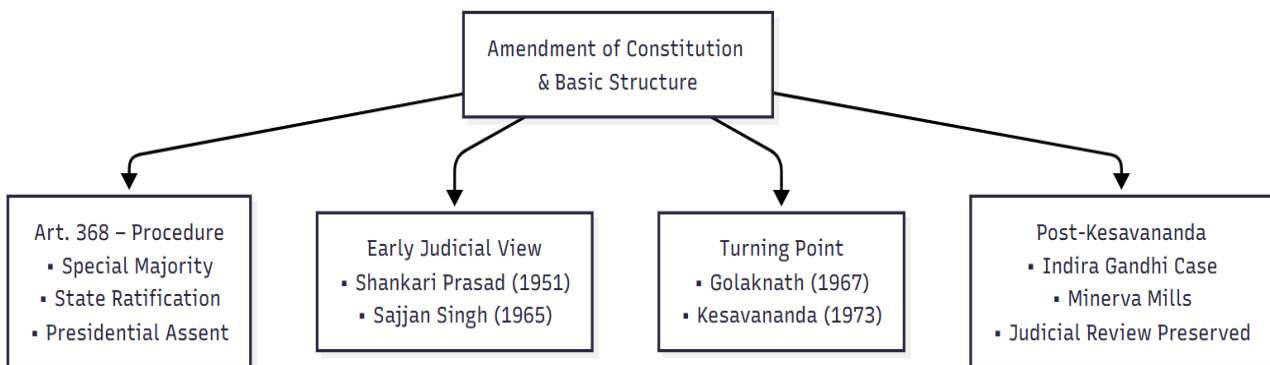
The Constitution of India is neither completely rigid nor wholly flexible. Article 368 provides the procedure for amendment of the Constitution, enabling Parliament to modify constitutional provisions to meet changing needs. However, the power of amendment has been subject to intense judicial scrutiny.

The central constitutional question has been:

Is Parliament's amending power unlimited?

The Supreme Court, through landmark judgments, evolved the **Doctrine of Basic Structure**, which limits Parliament's power under Article 368. According to this doctrine, Parliament cannot amend the Constitution in a manner that destroys its basic structure.

Thus, the evolution of constitutional amendment jurisprudence reflects the dynamic tension between **parliamentary sovereignty and constitutional supremacy**.



I. Procedure for Amendment under Article 368

Article 368 lays down the formal procedure for amending the Constitution. Amendments can be classified into three categories:

CONSTITUTIONAL LAW - II NOTES

- 1 Amendments by simple majority (e.g., reorganization of States).
- 2 Amendments by special majority (majority of total membership + two-thirds of members present and voting).
- 3 Amendments requiring special majority plus ratification by half of the States (e.g., federal provisions).

After passage in Parliament, the Bill is presented to the President for assent, which is mandatory.

Article 368 grants Parliament the power to amend “by way of addition, variation or repeal.” However, the extent of this power became controversial.

II. Early Judicial Interpretation – Unlimited Power?

1 Shankari Prasad v. Union of India (1951)

Facts: The First Constitutional Amendment inserted Article 31A and 31B, curtailing property rights. It was challenged as violating Fundamental Rights.

Held: The Supreme Court held that “law” under Article 13 does not include constitutional amendment. Therefore, Parliament can amend Fundamental Rights.

Principle: Parliament’s amending power under Article 368 is unrestricted and includes Fundamental Rights.

2 Sajjan Singh v. State of Rajasthan (1965)

Facts: The validity of the 17th Constitutional Amendment affecting property rights was challenged.

Held: The Court reaffirmed Shankari Prasad and upheld Parliament’s unlimited amending power.

Principle: Constitutional amendments are not subject to Article 13.

However, dissenting opinions hinted that Fundamental Rights may have a special status.

III. Golaknath – First Major Limitation

Golaknath v. State of Punjab (1967)

Facts: The validity of land reform amendments affecting property rights was challenged.

CONSTITUTIONAL LAW - II NOTES

Held: By 6:5 majority, the Court held that Parliament cannot amend Fundamental Rights. Constitutional amendments are “law” under Article 13.

Principle: Fundamental Rights are transcendental and beyond Parliament’s amending power.

This judgment curtailed Parliament’s authority and triggered political response.

IV. Kesavananda Bharati – Birth of Basic Structure Doctrine

Kesavananda Bharati v. State of Kerala (1973)

Facts: The 24th, 25th, and 29th Amendments were challenged for curtailing property rights and expanding Parliament’s amending power.

Held: By 7:6 majority, the Supreme Court held that Parliament can amend any part of the Constitution, including Fundamental Rights, but cannot alter the Basic Structure.

Principle: The power under Article 368 is wide but not unlimited; Basic Structure cannot be destroyed.

The Court did not exhaustively define basic structure but identified elements such as:

- Supremacy of the Constitution
- Rule of Law
- Judicial Review
- Federalism
- Separation of Powers

This judgment reconciled parliamentary sovereignty with constitutional supremacy.

V. Post-Kesavananda Developments

Indira Nehru Gandhi v. Raj Narain (1975)

Facts: The 39th Amendment excluded judicial review of the Prime Minister’s election dispute.

Held: The Court struck down the amendment.

Principle: Free and fair elections and judicial review are part of Basic Structure.

CONSTITUTIONAL LAW - II NOTES

Minerva Mills v. Union of India (1980)

Facts: The 42nd Amendment expanded Parliament's amending power and curtailed judicial review.

Held: The Court struck down these provisions.

Principle: Limited amending power and balance between Fundamental Rights and Directive Principles are part of Basic Structure.

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

Facts: Laws placed under Ninth Schedule were challenged.

Held: Even Ninth Schedule laws are subject to Basic Structure review.

Principle: Judicial review cannot be excluded.

VI. Features of Basic Structure Doctrine

Though not exhaustively defined, the following have been recognized as basic features:

- Supremacy of Constitution
- Republican and democratic form of government
- Secularism
- Federalism
- Judicial review
- Independence of judiciary
- Rule of law
- Free and fair elections

The doctrine ensures that constitutional identity remains intact despite amendments.

VII. Significance of the Doctrine

The Doctrine of Basic Structure ensures:

- Protection against authoritarian amendments
- Preservation of constitutional morality

CONSTITUTIONAL LAW - II NOTES

- Balance between Parliament and Judiciary
- Stability of constitutional framework

It makes the Constitution a living yet enduring document.

Critics argue that it gives excessive power to judiciary. However, supporters consider it essential to preserve democratic order.

VIII. Amendment vs. Rewriting

The distinction between “amendment” and “destruction” is central. Amendment means improvement or modification; destruction implies abrogation of identity.

The Supreme Court acts as guardian to ensure Parliament does not convert amendment into rewriting.

Conclusion

Article 368 empowers Parliament to amend the Constitution to adapt to changing circumstances. However, the evolution from *Shankari Prasad* to *Kesavananda Bharati* reflects judicial balancing of constitutional flexibility with structural permanence.

The Doctrine of Basic Structure stands as a constitutional safeguard preventing misuse of amending power. Landmark cases such as *Kesavananda Bharati*, *Indira Gandhi*, and *Minerva Mills* have reinforced that constitutional supremacy prevails over parliamentary sovereignty.

Thus, the Indian Constitution remains dynamic yet stable, amendable yet protected, flexible yet structurally secure.

TOPIC:

National Emergency – Impact on Fundamental Rights & 44th Constitutional Amendment

Answer:

Introduction

The Constitution of India provides for emergency provisions under **Part XVIII (Articles 352–360)** to safeguard the sovereignty, unity, and integrity of the nation during extraordinary situations. Among these, **National Emergency under Article 352** is the most significant and far-reaching.

National Emergency may be proclaimed on grounds of:

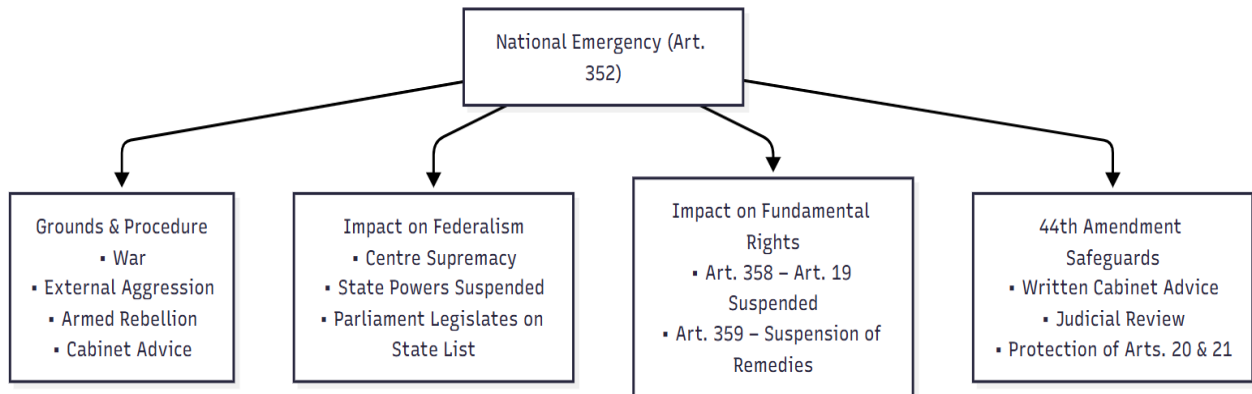
- War
- External aggression
- Armed rebellion

The declaration of emergency drastically alters the federal structure and affects Fundamental Rights. The experience of the 1975–77 Emergency exposed serious misuse of executive power, leading to corrective constitutional reforms through the **44th Constitutional Amendment Act, 1978**.

Thus, understanding National Emergency requires examining:

- Constitutional framework
- Impact on Fundamental Rights
- Judicial interpretation
- Safeguards introduced by 44th Amendment

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I. Constitutional Framework of National Emergency (Article 352)

Article 352 empowers the President to proclaim a National Emergency if satisfied that the security of India or any part thereof is threatened by war, external aggression, or armed rebellion.

Originally, the ground included “internal disturbance,” which was vague and prone to misuse. The 44th Amendment replaced it with the narrower term “armed rebellion.”

Procedure:

- Written advice of the Cabinet is mandatory (44th Amendment).
- Proclamation must be approved by both Houses within one month.
- Approval requires special majority.
- It continues for six months unless renewed.

This procedure aims to balance executive urgency with parliamentary control.

II. Impact on Federal Structure

During National Emergency:

- Parliament can legislate on State List subjects (Article 250).
- Executive power of Centre extends over States.
- Financial distribution may be altered.

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Thus, federalism becomes temporarily unitary. However, the Constitution ensures that these changes are temporary and reversible.

III. Impact on Fundamental Rights

The most controversial aspect of National Emergency is its effect on Fundamental Rights.

1 Article 358 – Suspension of Article 19

Article 358 provides that during an Emergency declared on grounds of war or external aggression, the freedoms under Article 19 are automatically suspended.

Originally, suspension applied to all emergencies. The 44th Amendment restricted it to emergencies based on war or external aggression only, not armed rebellion.

Thus:

- Laws inconsistent with Article 19 are valid during emergency.
- After emergency ends, such laws cease to operate.

2 Article 359 – Suspension of Enforcement of Rights

Under Article 359, the President may suspend the right to move courts for enforcement of specified Fundamental Rights.

Originally, all rights including Articles 20 and 21 could be suspended. This led to grave misuse during the 1975 Emergency.

The 44th Amendment introduced a crucial safeguard:

- Articles 20 and 21 cannot be suspended even during emergency.

This ensures protection of life and personal liberty.

IV. Judicial Interpretation

1 A.D.M. Jabalpur v. Shivkant Shukla (1976)

Facts: During the 1975 Emergency, detainees challenged their preventive detention and argued that even during suspension of Article 21, courts could review detention orders.

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Held (Majority): The Supreme Court held that during suspension of Article 21, no person had locus standi to challenge unlawful detention.

Principle: During emergency, enforcement of right to life and liberty could be suspended.

This judgment is widely criticized as a dark phase in constitutional history.

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

Facts: While deciding right to privacy, the Court reconsidered earlier judgments including ADM Jabalpur.

Held: The Supreme Court overruled ADM Jabalpur.

Principle: Right to life and liberty cannot be taken away arbitrarily; constitutional morality prevails even during emergency.

This restored constitutional faith and emphasized that even emergency powers are subject to basic structure.

V. 44th Constitutional Amendment Act, 1978

The 44th Amendment introduced major safeguards to prevent misuse of emergency powers.

Key reforms:

- 1 Replaced “internal disturbance” with “armed rebellion.”
- 2 Made written Cabinet advice mandatory.
- 3 Required special majority for approval.
- 4 Allowed one-tenth members of Lok Sabha to demand special sitting to revoke emergency.
- 5 Protected Articles 20 and 21 from suspension.
- 6 Restricted automatic suspension of Article 19 only to war/external aggression.

These reforms reflect constitutional learning from past misuse.

VI. Relationship with Basic Structure Doctrine

In **Kesavananda Bharati v. State of Kerala (1973)**, the Supreme Court held that Parliament cannot alter the basic structure of the Constitution.

Post-Emergency jurisprudence reinforced that:

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- Judicial review
- Rule of law
- Federalism
- Fundamental Rights

are part of the basic structure.

Thus, emergency powers cannot destroy constitutional identity.

VII. Critical Evaluation

The Emergency of 1975–77 demonstrated how constitutional provisions can be misused if not adequately safeguarded. The suspension of civil liberties, censorship of press, and mass detentions exposed the vulnerability of democratic institutions.

The 44th Amendment restored constitutional balance by:

- Strengthening parliamentary oversight
- Protecting core rights
- Narrowing executive discretion

Today, emergency provisions exist as protective mechanisms rather than tools of authoritarianism.

Conclusion

National Emergency under Article 352 represents an extraordinary constitutional mechanism designed to protect national security. However, its impact on federalism and Fundamental Rights makes it one of the most powerful constitutional tools.

The experience of the 1975 Emergency revealed serious weaknesses in the original framework. The 44th Constitutional Amendment corrected these flaws by introducing procedural safeguards and protecting Articles 20 and 21 from suspension.

Judicial decisions such as *ADM Jabalpur* and its subsequent overruling in *Puttaswamy* illustrate constitutional evolution toward stronger protection of liberty.

Thus, the present constitutional position ensures that while the State retains power to respond to grave threats, individual liberty and constitutional morality remain protected even in times of crisis.

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TOPIC:

1. What are the powers of the Election Commission under Article 324?
2. What is Model Code of Conduct?
3. Explain National Emergency under Article 352.
4. What is President's Rule under Article 356?
5. What is Financial Emergency under Article 360?
6. Explain the 44th Constitutional Amendment safeguards.
7. What is the procedure for constitutional amendment under Article 368?
8. What is Doctrine of Basic Structure?
9. Explain the 9th Schedule and judicial review.
10. What is the significance of Kesavananda Bharati case?

Answer:

- 1 What are the powers of the Election Commission under Article 324?

Introduction

Article 324 of the Constitution vests the superintendence, direction, and control of elections in the Election Commission of India (ECI). It is an independent constitutional body responsible for ensuring free and fair elections.

Explanation

The powers of the Election Commission include:

- Conducting elections to Parliament, State Legislatures, and the offices of President and Vice-President.
- Preparing and revising electoral rolls.
- Recognizing political parties and allotting symbols.
- Enforcing the Model Code of Conduct.
- Supervising election machinery.

The Commission has plenary powers where laws are silent, enabling it to act to preserve electoral integrity.

Case Law

Mohinder Singh Gill v. Chief Election Commissioner (1978)

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Facts: Cancellation of an election was challenged.

Held: The Supreme Court held that Article 324 gives wide powers to the Election Commission to act in areas not covered by legislation.

Principle: Article 324 is a reservoir of power to ensure free and fair elections.

Conclusion

The Election Commission is the guardian of electoral democracy. Its wide powers under Article 324 ensure transparency, neutrality, and credibility in the electoral process.

2 What is Model Code of Conduct?

Introduction

The Model Code of Conduct (MCC) is a set of guidelines issued by the Election Commission to regulate the behavior of political parties and candidates during elections.

Explanation

The MCC comes into force once election dates are announced. It ensures:

- No misuse of official machinery.
- No hate speech or bribery.
- Equal opportunity for all candidates.
- No announcement of new schemes to influence voters.

Though not legally enforceable as a statute, violation may attract action under existing laws.

Case Law

S. Subramaniam Balaji v. State of Tamil Nadu (2013)

Facts: Distribution of freebies during elections was challenged.

Held: The Court directed Election Commission to frame guidelines.

Principle: Electoral promises must conform to constitutional principles.

Conclusion

The Model Code of Conduct promotes ethical campaigning and maintains fairness in elections, reinforcing democratic values.

3 Explain National Emergency under Article 352.

Introduction

CONSTITUTIONAL LAW - II NOTES

Article 352 empowers the President to proclaim National Emergency when security of India is threatened by war, external aggression, or armed rebellion.

Explanation

The proclamation must be based on written Cabinet advice and approved by Parliament within one month. During Emergency:

- Parliament can legislate on State List.
- Article 19 may be suspended (limited by 44th Amendment).
- Enforcement of certain Fundamental Rights may be suspended.

Case Law

A.D.M. Jabalpur v. Shivkant Shukla (1976)

Facts: Detenues challenged suspension of Article 21 during Emergency.

Held: Majority held enforcement of Article 21 could be suspended.

Principle: Emergency provisions were interpreted broadly (later overruled).

Conclusion

National Emergency centralizes power to protect national security but is subject to constitutional safeguards.

What is President's Rule under Article 356?

Introduction

Article 356 provides for President's Rule when there is failure of constitutional machinery in a State.

Explanation

If the President is satisfied that State government cannot function according to the Constitution, he may:

- Dismiss the Council of Ministers.
- Dissolve or suspend the State Legislature.
- Authorize Parliament to legislate for the State.

Approval of Parliament is mandatory within two months.

Case Law

CONSTITUTIONAL LAW - II NOTES

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

Facts: Dismissal of State governments was challenged.

Held: The Court held that Article 356 is subject to judicial review.

Principle: Federalism is part of Basic Structure; misuse of Article 356 is unconstitutional.

Conclusion

President's Rule is an exceptional measure, subject to judicial scrutiny and constitutional limitations.

5 What is Financial Emergency under Article 360?

Introduction

Article 360 empowers the President to declare Financial Emergency if financial stability of India is threatened.

Explanation

During Financial Emergency:

- Salaries of government servants, including judges, may be reduced.
- States must follow financial directions of the Centre.

It must be approved by Parliament within two months.

No Financial Emergency has been declared so far.

Case Law

Rameshwar Prasad v. Union of India (2006)

Facts: Concerned misuse of constitutional emergency powers.

Held: Constitutional powers are subject to judicial review.

Principle: Emergency powers must not be exercised arbitrarily.

Conclusion

Financial Emergency ensures fiscal discipline but remains an unused constitutional provision.

6 Explain the 44th Constitutional Amendment safeguards.

Introduction

CONSTITUTIONAL LAW - II NOTES

The 44th Constitutional Amendment Act, 1978 introduced safeguards against misuse of Emergency provisions.

Explanation

Major safeguards include:

- Replacing “internal disturbance” with “armed rebellion.”
- Mandatory written Cabinet advice.
- Special majority approval in Parliament.
- Protection of Articles 20 and 21 from suspension.
- Right of Lok Sabha members to demand revocation.

Case Law

Minerva Mills v. Union of India (1980)

Facts: Validity of amendments expanding emergency powers was challenged.

Held: The Court upheld limited amending power.

Principle: Balance between liberty and state power is part of Basic Structure.

Conclusion

The 44th Amendment restored constitutional balance and strengthened protection of fundamental rights.

7 What is the procedure for constitutional amendment under Article 368?

Introduction

Article 368 lays down the procedure for amendment of the Constitution.

Explanation

Amendments may require:

- Simple majority (in certain cases).
- Special majority.
- Special majority plus ratification by half of States.

After passage, Presidential assent is mandatory.

Case Law

CONSTITUTIONAL LAW - II NOTES

Shankari Prasad v. Union of India (1951)

Facts: First Amendment was challenged.

Held: Amendment is not “law” under Article 13.

Principle: Parliament has power to amend Fundamental Rights (subject to later limitations).

Conclusion

Article 368 ensures constitutional flexibility while maintaining procedural safeguards.

8 What is Doctrine of Basic Structure?

Introduction

The Doctrine of Basic Structure limits Parliament’s power to amend the Constitution.

Explanation

According to this doctrine, Parliament may amend any provision but cannot alter the Constitution’s basic features such as:

- Supremacy of Constitution
- Rule of Law
- Judicial Review
- Federalism

Case Law

Kesavananda Bharati v. State of Kerala (1973)

Facts: Amendments curtailing property rights were challenged.

Held: Parliament cannot destroy Basic Structure.

Principle: Amending power is wide but not unlimited.

Conclusion

The doctrine protects constitutional identity from authoritarian amendments.

9 Explain the 9th Schedule and judicial review.

Introduction

The 9th Schedule was inserted by the First Amendment (1951) to protect certain laws from judicial review.

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Explanation

Laws placed in the 9th Schedule were immune from challenge under Fundamental Rights. However, misuse led to judicial intervention.

Case Law

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

Facts: Validity of 9th Schedule laws was challenged.

Held: Laws inserted after 1973 are subject to Basic Structure review.

Principle: Judicial review cannot be excluded.

Conclusion

The 9th Schedule cannot be used to bypass constitutional supremacy.

10 What is the significance of Kesavananda Bharati case?

Introduction

The Kesavananda Bharati case (1973) is the most significant constitutional decision in India.

Explanation

The Court examined Parliament's power under Article 368 and evolved the Basic Structure Doctrine.

It balanced:

- Parliamentary sovereignty
- Constitutional supremacy

Case Law

Kesavananda Bharati v. State of Kerala (1973)

Facts: Validity of constitutional amendments affecting property rights was challenged.

Held: Parliament cannot alter Basic Structure.

Principle: Limited amending power preserves constitutional identity.

Conclusion

The case safeguards democracy, judicial review, and constitutional supremacy, making it a cornerstone of Indian constitutional law.