



CONSTITUTIONAL LAW 2

2ND SEM 3 YEARS LL.B (100 MARKS)

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1. What is a Bill? Discuss the various kinds of Bills and the procedure for passing them in Parliament.

The Parliament of India is the supreme legislative body at the Union level. Its primary function is law-making. However, before a law comes into existence, it begins as a **Bill**. A Bill is the preliminary form of legislation that embodies the intention of the government or a member of Parliament to enact, amend, or repeal a law. It acquires the force of law only after undergoing the constitutional legislative process and receiving the assent of the President.

The Constitution of India lays down a detailed procedure for the introduction, consideration, and passage of Bills through Articles 107 to 122 and Article 368. The nature of the Bill determines the procedure to be followed.

Meaning of Bill

A Bill is a legislative proposal placed before Parliament for consideration and approval. It contains the text of the proposed law and the reasons for its enactment.

In simple words, a Bill is the draft of a law. Once approved by Parliament and assented to by the President, it becomes an Act.

For example, before becoming the **Right to Information Act, 2005**, it was introduced as the Right to Information Bill.

The legislative process involving Bills reflects democratic governance because laws are debated, scrutinized, and approved by representatives of the people.

Kinds of Bills

Bills may be classified on several bases. The most important constitutional classification includes:

1. Ordinary Bills
2. Money Bills
3. Financial Bills
4. Finance Bills
5. Constitutional Amendment Bills

Apart from these, Bills may also be classified as:

6. Government Bills
7. Private Members' Bills

I. Ordinary Bill

An Ordinary Bill is a Bill that deals with any matter other than financial matters specifically mentioned under Article 110.

Ordinary Bills constitute the majority of legislation enacted by Parliament. They may relate to criminal law, civil law, education, environment, labour welfare, family law, or any matter within Parliament's legislative competence.

Introduction of Ordinary Bill

An Ordinary Bill may be introduced in either House of Parliament, namely the Lok Sabha or the Rajya Sabha.

Unlike Money Bills, no prior recommendation of the President is required.

The Bill may be introduced either by a Minister or by a private member.

Passage of Ordinary Bill

After introduction, the Bill undergoes three readings.

First Reading

The first reading is merely the introduction stage. The title and objectives of the Bill are read before the House. No detailed discussion takes place at this stage.

The purpose of the first reading is to place the Bill before Parliament.

Second Reading

The second reading is the most important stage.

At this stage, the House discusses the general principles and objectives of the Bill. Members debate whether the proposed legislation is necessary and beneficial.

After the general discussion, the Bill may be referred to:

- A Select Committee,
- A Joint Committee of Parliament, or
- A Department-related Standing Committee.

The Committee examines the Bill clause by clause and may hear experts, stakeholders, and affected groups before submitting a report.

The House then considers the Committee's recommendations and discusses each provision in detail.

Third Reading

The Bill is finally put to vote.

Discussion at this stage is limited to whether the Bill should be passed.

If approved by a majority of members present and voting, it is transmitted to the other House.

Consideration by the Other House

The second House follows the same procedure.

It may:

- Pass the Bill,
- Reject the Bill,
- Suggest amendments, or
- Keep the Bill pending.

If both Houses agree on the same text, the Bill is sent to the President.

Joint Sitting under Article 108

Sometimes disagreement arises between the two Houses.

Such disagreement is called a deadlock.

Article 108 empowers the President to summon a Joint Sitting of both Houses.

A deadlock exists when:

- One House rejects the Bill,
- Houses disagree regarding amendments,
- The Bill remains pending for more than six months.

The Joint Sitting is presided over by the Speaker of Lok Sabha.

The decision is taken by a simple majority of members present and voting.

Examples

The Dowry Prohibition Bill, 1961 and the Prevention of Terrorism Bill, 2002 were passed through Joint Sittings.

The Joint Sitting mechanism prevents legislative paralysis and ensures effective law-making.

II. Money Bill

Money Bills occupy a special position in the constitutional scheme because they relate directly to public finances.

Article 110 defines a Money Bill.

A Bill is a Money Bill only when it deals exclusively with one or more matters specified in Article 110.

These matters include:

- Imposition or abolition of taxes,
- Regulation of government borrowing,
- Custody of the Consolidated Fund of India,
- Withdrawal of money from the Consolidated Fund,
- Appropriation of public money.

Special Procedure

The Constitution grants greater authority to the Lok Sabha because it directly represents the people who pay taxes.

Therefore:

- A Money Bill can be introduced only in the Lok Sabha.
- It can be introduced only with the President's prior recommendation.
- The Speaker certifies whether a Bill is a Money Bill.

Role of Rajya Sabha

The Rajya Sabha has a very limited role.

It cannot reject or amend a Money Bill.

It can only make recommendations.

The Lok Sabha may accept or reject those recommendations.

The Rajya Sabha must return the Bill within fourteen days.

If it fails to do so, the Bill is deemed to have been passed by Parliament.

This reflects the principle that control over public finance should rest primarily with the directly elected House.

III. Financial Bills

Financial Bills are broader than Money Bills.

Every Money Bill is a Financial Bill, but every Financial Bill is not a Money Bill.

Article 117 recognizes two categories.

Financial Bill Type I (Article 117(1))

This Bill contains matters mentioned in Article 110 along with other provisions.

For example, a Bill dealing with taxation as well as administrative reforms would be a Financial Bill Type I.

Such Bills:

- Can be introduced only in Lok Sabha.
- Require Presidential recommendation.
- Must be passed by both Houses.

Unlike a Money Bill, Rajya Sabha has equal powers over Financial Bills.

It may reject or amend the Bill.

If disagreement occurs, a Joint Sitting may be held.

Financial Bill Type II (Article 117(3))

This category includes Bills involving expenditure from the Consolidated Fund of India.

They do not contain matters listed in Article 110.

Such Bills may be introduced in either House.

However, Presidential recommendation is necessary before consideration.

Rajya Sabha enjoys equal legislative authority over such Bills.

IV. Finance Bill

A Finance Bill is introduced every year after the presentation of the Union Budget. Its purpose is to give legal effect to taxation proposals announced by the Finance Minister.

For example:

- Increase in income tax,
- Customs duties,
- GST-related changes.

Without the Finance Bill, the government's taxation proposals cannot be implemented.

Thus, the Finance Bill serves as the legislative instrument for carrying out the fiscal policy of the government.

V. Constitutional Amendment Bill

A Constitutional Amendment Bill is introduced for amending provisions of the Constitution.

The procedure is governed by Article 368.

Since the Constitution is the supreme law of the land, amendment requires a stricter procedure.

Introduction

Such a Bill may be introduced in either House of Parliament.

No prior Presidential recommendation is required.

Special Majority

The Bill must be passed by:

- A majority of the total membership of the House; and
- A two-thirds majority of members present and voting.

This is called a special majority.

Ratification by States

Certain amendments affecting federal features require ratification by at least half of the State Legislatures.

Examples include amendments relating to:

- Election of the President,
- Distribution of legislative powers,
- Judiciary,
- Representation of States in Parliament.

Presidential Assent

After passage, the President is constitutionally bound to give assent. The President cannot return or veto a Constitutional Amendment Bill.

VI. Government Bill

A Government Bill is introduced by a Minister on behalf of the Government.

Most laws enacted in India originate as Government Bills because the ruling party generally commands majority support in Parliament.

Government Bills reflect official government policy and have a greater likelihood of becoming law.

Examples include the Goods and Services Tax Bill and the Digital Personal Data Protection Bill.

VII. Private Member's Bill

A Private Member's Bill is introduced by a Member of Parliament who is not a Minister. Such Bills are intended to highlight public concerns or propose legal reforms.

Although very few Private Members' Bills become law, they play an important role in stimulating legislative debate and influencing public policy.

Case Laws

1. K.S. Puttaswamy (Aadhaar-5J.) v. Union of India

Citation: (2019) 1 SCC 1

Bench: 5-Judge Constitution Bench

Facts: The Aadhaar Act, 2016 was enacted as a Money Bill. Petitioners argued that the Act contained provisions beyond Article 110 and therefore could not be treated as a Money Bill.

Issue : Whether the Aadhaar Act was validly enacted as a Money Bill.

Judgment: The majority held that the Act substantially related to expenditure from the Consolidated Fund and therefore qualified as a Money Bill. Justice D.Y. Chandrachud dissented and held that the legislation was unconstitutional because it bypassed the Rajya Sabha.

Significance: The case became the leading authority on the scope of Article 110.

2. Rojer Mathew v. South Indian Bank Ltd.

Citation: (2020) 6 SCC 1

Bench: 5-Judge Constitution Bench

Facts: The Finance Act, 2017 reorganized tribunals and was enacted as a Money Bill.

Issue: Whether Parliament misused the Money Bill procedure.

Judgment: The Court expressed serious concerns and referred the issue to a larger Bench

Significance : The decision emphasized constitutional limits on the use of the Money Bill route.

3. Kesavananda Bharati v. State of Kerala

Citation: (1973) 4 SCC 225

Bench: 13-Judge Constitution Bench

Facts: Several constitutional amendments were challenged for curtailing fundamental rights.

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

Judgment: The Supreme Court evolved the Basic Structure Doctrine and held that Parliament cannot destroy the basic structure of the Constitution.

Significance: Every Constitutional Amendment Bill must satisfy the Basic Structure Doctrine.

4. Raja Ram Pal v. Speaker, Lok Sabha

Citation: (2007) 3 SCC 184

Facts : MPs expelled in the cash-for-query scandal challenged parliamentary action.

Issue : Whether parliamentary proceedings are immune from judicial review.

Judgment: The Court held that Parliament's actions are subject to constitutional scrutiny.

Significance: The case established that legislative procedures must conform to constitutional requirements.

Conclusion: Bills are the foundation of the legislative process in India. Through Ordinary Bills, Money Bills, Financial Bills, Finance Bills, Constitutional Amendment Bills, Government Bills, and Private Members' Bills, Parliament exercises its law-making authority. The Constitution carefully balances democratic deliberation, financial accountability, federalism, and constitutional supremacy through distinct procedures for different categories of Bills. Judicial decisions such as *Kesavananda Bharati v. State of Kerala* and *K.S. Puttaswamy v. Union of India* have further strengthened the constitutional framework governing legislative processes in India.

Q.2 Explain the Power of Parliament to Legislate on Matters in the State List.

The Constitution of India establishes a federal system of government with a clear distribution of legislative powers between the Union and the States. This distribution is contained in the **Seventh Schedule** of the Constitution, which divides legislative subjects into three lists:

1. Union List (List I)
2. State List (List II)
3. Concurrent List (List III)

Under normal circumstances, Parliament legislates on matters contained in the Union List, while State Legislatures make laws on matters included in the State List. However, the Indian Constitution does not establish a rigid federal

system. It creates a federation with a strong Centre and therefore provides several situations in which Parliament may legislate even on subjects contained in the State List.

These provisions ensure national unity, coordinated administration, protection of national interests, and effective governance during emergencies.

Constitutional Scheme of Distribution of Legislative Powers

Article 245

Article 245 empowers Parliament to make laws for the whole or any part of India and empowers State Legislatures to make laws for their respective States.

Article 246

Article 246 distributes legislative competence between Parliament and State Legislatures.

Union List

Parliament has exclusive power to legislate on matters such as:

- Defence
- Foreign Affairs
- Citizenship
- Banking
- Currency

State List

States ordinarily have exclusive power over matters such as:

- Police
- Public Order
- Agriculture
- Local Government
- Public Health

Concurrent List

Both Parliament and States can legislate on these matters.

Thus, under ordinary circumstances, Parliament cannot legislate on State List matters. However, the Constitution creates important exceptions.

Circumstances in Which Parliament Can Legislate on State List Matters

Parliament may legislate on State List subjects under the following situations:

1. In National Interest (Article 249)
2. During National Emergency (Article 250)
3. With Consent of States (Article 252)
4. To Implement International Agreements (Article 253)
5. During President's Rule (Article 356)
6. Residuary and Ancillary Powers
7. When State Law Conflicts with Parliamentary Law

I. Parliament's Power Under Article 249 – National Interest

Constitutional Provision

Article 249 empowers Parliament to legislate on matters in the State List when it becomes necessary in the national interest.

This provision reflects the supremacy of national concerns over regional interests.

Procedure

The Rajya Sabha must first pass a resolution declaring that it is necessary in the national interest for Parliament to make laws on a State subject.

The resolution must be passed by:

Two-thirds majority of members present and voting.

After such resolution, Parliament acquires power to legislate on the specified State List matter.

Duration

The resolution remains effective for one year.

It may be renewed repeatedly by fresh resolutions.

A law made under Article 249 continues to remain in force even after the resolution expires, but it ceases to operate six months after the resolution ends unless otherwise continued.

Significance

Article 249 recognizes the special role of the Rajya Sabha as the representative of States.

It balances federalism and national interest.

II. Parliament's Power During National Emergency – Article 250

Constitutional Provision

Article 250 empowers Parliament to legislate on State List matters during the operation of a National Emergency under Article 352.

Reason

When the security of India is threatened by:

- War,
- External aggression, or
- Armed rebellion,

a unified legislative response may become necessary.

Scope

During the emergency, Parliament may legislate on any State List matter.

The States do not lose their legislative power, but Parliamentary law prevails.

Duration

The law remains effective during the emergency and for six months after the emergency ceases.

Importance

This provision strengthens national unity during extraordinary situations and ensures centralized decision-making.

III. Parliament's Power with Consent of States – Article 252

Constitutional Provision

Article 252 allows Parliament to legislate on State List matters when two or more States request Parliament to do so.

Procedure

1. Two or more State Legislatures pass resolutions.
2. Parliament enacts the law.
3. The law applies only to those States that requested it.
4. Other States may subsequently adopt the law by passing similar resolutions.

Special Feature

Once Parliament enacts such a law, the participating States cannot amend or repeal it themselves.

Only Parliament can do so.

Examples

Water (Prevention and Control of Pollution) Act, 1974

Several States requested Parliament to enact a uniform law dealing with water pollution.

Prize Competitions Act, 1955

Enacted on the request of States.

Significance

Article 252 promotes cooperative federalism by allowing States to seek uniform legislation when necessary.

IV. Parliament's Power Under Article 253 – International Agreements

Constitutional Provision

Article 253 authorizes Parliament to make laws for implementing:

- Treaties,
- Agreements,
- International conventions,
- Decisions of international organizations.

Scope

Parliament can legislate even on State List subjects if implementation of an international obligation requires it.

State consent is not necessary.

Rationale

India must be able to fulfill its international commitments effectively.

If States could prevent implementation of treaties, India's credibility in international relations would suffer.

Example

The Environment (Protection) Act, 1986 was enacted following commitments arising from the Stockholm Conference on Human Environment.

Case Law

Maganbhai Ishwarbhai Patel v. Union of India

Citation: AIR 1969 SC 783

Facts: The case concerned implementation of an agreement between India and Pakistan relating to territorial adjustments.

Issue : Whether Parliament possesses power to implement international agreements.

Judgment: The Supreme Court held that Parliament has authority to enact laws necessary to implement international obligations.

Significance: The case affirmed the broad scope of Article 253.

V. Parliament's Power During President's Rule – Article 356

Constitutional Provision

Article 356 provides for President's Rule when constitutional machinery in a State fails.

Effect

When President's Rule is imposed:

- The State Legislature may be suspended or dissolved.
- Parliament assumes the legislative functions of the State Legislature.

Scope

Parliament may enact laws on any State List subject for that State.

Reason

Governance cannot come to a standstill merely because constitutional machinery in a State has failed.

Case Law:

S.R. Bommai v. Union of India

Citation

(1994) 3 SCC 1

Bench

Nine-Judge Constitution Bench

Facts: Several State Governments were dismissed under Article 356.

Issue: Whether the President's satisfaction under Article 356 is subject to judicial review.

Judgment: The Supreme Court held that imposition of President's Rule is subject to judicial review.

Significance : The Court protected federalism and restricted arbitrary use of Article 356. This case is regarded as the most important decision on Centre-State relations.

VI. Parliament's Residuary Legislative Power

Article 248

Residuary powers belong exclusively to Parliament.

Any subject not mentioned in:

- Union List,
- State List, or
- Concurrent List

falls within Parliamentary competence.

Example

Cyber laws, digital currencies, and emerging technologies were not contemplated when the Constitution was enacted.

Parliament can legislate on such matters.

Case Law

Union of India v. H.S. Dhillon

Citation: (1972) 2 SCC 779

Bench : Constitution Bench

Facts: The validity of wealth tax legislation was challenged.

Issue : Whether Parliament possessed residuary power to enact the law.

Judgment: The Court upheld Parliament's competence.

Significance: The judgment clarified the broad scope of Parliament's residuary legislative power.

VII. When Parliamentary Law Prevails Over State Law

Although this principle mainly applies to Concurrent List matters under Article 254, it demonstrates the supremacy of Parliamentary legislation in specified circumstances.

Where Parliament validly legislates on a State subject under Articles 249, 250, 252, 253, or 356, the State law becomes subordinate to Parliamentary law.

This ensures uniformity and constitutional coherence.

Judicial Interpretation of Parliamentary Power Over State List

The Supreme Court has consistently emphasized that these provisions do not destroy federalism.

Rather, they are constitutional mechanisms designed to meet exceptional circumstances.

Indian federalism has therefore been described as:

"Federal in form but unitary in spirit during emergencies and matters of national importance."

Case Laws

1. State of West Bengal v. Union of India

Citation

AIR 1963 SC 1241

Facts: The State challenged Parliament's authority concerning acquisition of State property.

Issue: Whether States enjoy complete sovereignty against Parliament.

Judgment: The Supreme Court held that Indian States are not sovereign entities independent of the Union.

Significance: The case emphasized the strong central features of the Indian Constitution.

2. S.R. Bommai v. Union of India

Citation

(1994) 3 SCC 1

Facts: Several State Governments challenged Presidential proclamations under Article 356.

Issue: Whether President's Rule could be imposed arbitrarily.

Judgment: The Court held that federalism is part of the Basic Structure of the Constitution and misuse of Article 356 is subject to judicial review.

Significance: The decision strengthened federalism while preserving Parliament's constitutional authority.

3. Union of India v. H.S. Dhillon

Citation

(1972) 2 SCC 779

Issue: Scope of Parliament's residuary powers.

Judgment: Parliament possesses exclusive authority over subjects not enumerated in any list.

4. Maganbhai Ishwarbhai Patel v. Union of India

Citation: AIR 1969 SC 783

Judgment: Parliament may enact laws necessary to implement international agreements under Article 253.

Critical Evaluation

Advantages

National Unity

Allows Parliament to respond effectively to national challenges.

Uniform Legislation

Promotes consistency in matters requiring nationwide regulation.

International Responsibility

Enables India to honor treaty obligations.

Emergency Governance

Ensures continuity of administration during crises.

Criticisms

Centralization

Excessive use of these powers may weaken State autonomy.

Potential Misuse

Provisions like Article 356 have historically been misused for political purposes.

Federal Concerns

Frequent intervention by Parliament may disturb the federal balance.

Conclusion: The Constitution ordinarily reserves State List matters for State Legislatures. However, recognizing the practical needs of governance, it grants Parliament power to legislate on State subjects in exceptional situations through Articles 249, 250, 252, 253, and 356. These provisions reflect the unique nature of Indian federalism, which combines State autonomy with a strong national government. Judicial decisions such as *S.R. Bommai v. Union of India*, *State of West Bengal v. Union of India*, and *Union of India v. H.S. Dhillon* have ensured that these powers are exercised within constitutional limits, preserving both national unity and the federal structure of India.

Q.3 Examine the Administrative and Legislative Relations between the Centre and the States.

India is a federal polity with a strong unitary bias. The Constitution distributes powers between the Union and the States while maintaining the supremacy of the Union in matters of national importance. The relationship between the Centre and the States forms the backbone of Indian federalism.

The Constitution provides a detailed framework regarding legislative and administrative relations between the Centre and the States under **Part XI (Articles 245 to 263)**. While legislative relations determine the authority to make laws, administrative relations govern the exercise of executive powers and coordination between the Union and State Governments.

The objective of these provisions is to maintain national unity, administrative efficiency, and harmonious Centre-State relations.

Legislative Relations between the Centre and the States

Legislative relations refer to the distribution of law-making powers between Parliament and State Legislatures.

The Constitution distributes legislative powers through Articles 245 to 255 and the Seventh Schedule.

Territorial Distribution of Legislative Powers

Article 245 empowers Parliament to make laws for the whole or any part of India, whereas State Legislatures may make laws for the whole or any part of their respective States.

Parliament may also enact laws having extra-territorial operation, whereas State laws ordinarily operate only within the territorial limits of the State.

This provision reflects the wider legislative competence of Parliament.

Distribution of Subjects under Article 246

Article 246 divides legislative subjects into three lists contained in the Seventh Schedule.

Union List

The Union List contains matters of national importance requiring uniform regulation throughout the country.

Examples include:

- Defence
- Foreign Affairs
- Banking
- Currency
- Atomic Energy
- Citizenship
- Railways

Parliament enjoys exclusive power to legislate on these subjects.

State List

The State List contains matters primarily affecting local administration and regional interests.

Examples include:

- Police
- Public Order
- Agriculture
- Public Health
- Local Government
- Markets and Fairs

Ordinarily, State Legislatures possess exclusive authority to legislate on these matters.

Concurrent List

The Concurrent List contains subjects on which both Parliament and State Legislatures can legislate.

Examples include:

- Criminal Law
- Marriage and Divorce
- Education
- Forests
- Labour Welfare
- Electricity

When both Parliament and a State Legislature enact laws on the same Concurrent List subject and inconsistency arises, Parliamentary law generally prevails under Article 254.

Residuary Powers

Article 248 vests residuary powers exclusively in Parliament.

Residuary subjects are matters not mentioned in any of the three lists.

The framers of the Constitution assigned these powers to Parliament to ensure that emerging subjects resulting from scientific and technological advancement could be effectively regulated.

Examples include cyber law, digital technologies, and electronic commerce.

Parliament's Power to Legislate on State Subjects

Although the State List is ordinarily reserved for State Legislatures, Parliament may legislate on State subjects under certain exceptional circumstances.

Under Article 249, Parliament may legislate on State subjects if the Rajya Sabha passes a resolution declaring it necessary in the national interest.

Under Article 250, Parliament may legislate on State subjects during a National Emergency.

Under Article 252, Parliament may legislate on State subjects when two or more States request Parliament to do so.

Under Article 253, Parliament may enact laws to implement international treaties and agreements even if the subject falls within the State List.

Under Article 356, Parliament may exercise legislative powers of a State Legislature during President's Rule.

These provisions demonstrate the flexible nature of Indian federalism.

Repugnancy between Union and State Laws

Article 254 deals with inconsistency between Parliamentary and State laws relating to Concurrent List matters.

If a State law conflicts with a Parliamentary law, the Parliamentary law prevails, and the State law becomes void to the extent of inconsistency.

However, if the State law has received Presidential assent, it may prevail within that State. Nevertheless, Parliament retains the power to override such State legislation subsequently.

This ensures legislative uniformity while preserving limited State autonomy.

Administrative Relations between the Centre and the States

Administrative relations refer to the manner in which executive powers are exercised and coordinated between the Union and the States.

Articles 256 to 263 govern administrative relations.

The Constitution seeks to maintain cooperation while ensuring effective implementation of Union laws.

Obligation of States and Union Directions – Article 256

Article 256 provides that the executive power of every State shall be exercised in a manner that ensures compliance with Parliamentary laws.

The Union Government may issue directions to a State Government for ensuring proper implementation of Union laws.

This provision ensures that Parliamentary enactments are uniformly enforced throughout India.

Control of the Union over States – Article 257

Article 257 provides that the executive power of States shall not impede or prejudice the exercise of executive power by the Union.

Accordingly, the Union Government may issue directions to States regarding matters affecting national interests.

For example, directions may be issued regarding:

- National highways,
- Means of communication,
- Protection of railways,
- Strategic infrastructure.

This provision strengthens national coordination and administrative efficiency.

Delegation of Functions – Article 258

Article 258 authorizes the President to entrust Union functions to State Governments with their consent.

This arrangement promotes administrative convenience and cooperation.

Instead of creating separate administrative machinery, the Union may utilize existing State agencies for implementing Union policies and laws.

Delegation of State Functions – Article 258A

Article 258A enables a State Government, with the consent of the Union Government, to entrust State functions to the Union.

This provision reflects the principle of cooperative federalism.

It facilitates effective administration whenever either level of government is better equipped to perform a particular function.

Inter-State River Water Disputes – Article 262

Water disputes often arise between States sharing common rivers.

Article 262 empowers Parliament to enact laws for adjudication of such disputes.

Pursuant to this power, Parliament enacted the Inter-State River Water Disputes Act, 1956.

The objective is to provide a specialized mechanism for resolving disputes and maintaining harmony among States.

Inter-State Council – Article 263

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

The Council may:

- Investigate disputes between States,
- Discuss subjects of common interest,
- Make recommendations for better coordination.

The Inter-State Council serves as an important institution for cooperative federalism.

Case Laws

1. State of West Bengal v. Union of India

Citation: AIR 1963 SC 1241

Facts: The State of West Bengal challenged the constitutional validity of a Parliamentary law affecting State-owned property and argued that States possessed sovereign powers.

Issue: Whether States enjoy sovereign status independent of the Union Government.

Judgment: The Supreme Court held that the Constitution establishes a strong Union and that States are not sovereign entities independent of the Centre.

Significance: The case emphasized the supremacy of the Union within the constitutional framework and remains a landmark decision on Centre-State relations.

2. S.R. Bommai v. Union of India

Citation: (1994) 3 SCC 1

Bench: Nine-Judge Constitution Bench

Facts: Several State Governments were dismissed under Article 356 and the validity of Presidential proclamations was challenged.

Issue: Whether the President's satisfaction under Article 356 is subject to judicial review.

Judgment: The Supreme Court held that federalism is part of the Basic Structure of the Constitution and that Presidential proclamations are subject to judicial review.

Significance: The judgment strengthened federalism and restricted arbitrary interference by the Centre in State affairs.

3. State of Rajasthan v. Union of India

Citation: (1977) 3 SCC 592

Bench: Seven-Judge Constitution Bench

Facts: Several States challenged the Union Government's directive requiring dissolution of Legislative Assemblies after a change in government at the Centre.

Issue: Whether the Union could issue such directions to States.

Judgment: The Supreme Court upheld the Union's action and emphasized the constitutional relationship between the Centre and the States.

Significance: The case highlighted the scope of Union influence in administrative matters.

4. Union of India v. H.S. Dhillon

Citation: (1972) 2 SCC 779

Bench: Constitution Bench

Facts: The validity of wealth tax legislation was challenged on the ground that Parliament lacked legislative competence.

Issue: Whether Parliament possessed residuary legislative powers.

Judgment: The Court upheld Parliament's authority under Article 248.

Significance: The decision clarified the extent of Parliament's residuary powers.

Critical Evaluation

The Indian Constitution establishes a federal system but incorporates several unitary features. Legislative relations demonstrate a clear preference for national unity through Union supremacy, residuary powers, and emergency provisions. Administrative relations ensure effective implementation of laws through Union directions, delegation of functions, and inter-governmental coordination mechanisms.

While these provisions strengthen national integration and administrative efficiency, excessive central intervention may sometimes affect State autonomy. Judicial review and constitutional safeguards therefore play a crucial role in maintaining the federal balance.

Conclusion: The legislative and administrative relations between the Centre and the States constitute the essence of Indian federalism. Through Articles 245 to 263, the Constitution carefully distributes powers while ensuring coordination and national unity. The Union enjoys a position of constitutional superiority in certain circumstances, but the States remain vital partners in governance. Judicial decisions such as *S.R. Bommai v. Union of India*, *State of West Bengal v. Union of India*, and *State of Rajasthan v. Union of India* have ensured that the balance between Union authority and State autonomy is maintained in accordance with the constitutional vision of cooperative federalism.

Q.4 Explain the Jurisdiction of the Supreme Court of India.

The Supreme Court of India is the apex judicial institution of the country and the final interpreter of the Constitution. It was established on **26 January 1950** under **Article 124** of the Constitution. The Supreme Court occupies a unique position in the Indian constitutional system because it functions as:

- Guardian of the Constitution,

- Protector of Fundamental Rights,
- Final Court of Appeal,
- Federal Court,
- Court of Record,
- Custodian of the Rule of Law.

The Constitution confers extensive powers and jurisdiction upon the Supreme Court to ensure constitutional supremacy, maintain federal balance, safeguard individual rights, and provide justice to citizens.

The term "jurisdiction" means the legal authority of a court to hear, determine, and decide cases. The jurisdiction of the Supreme Court is the widest among constitutional courts in the world.

The jurisdiction of the Supreme Court may be classified into:

1. Original Jurisdiction
2. Writ Jurisdiction
3. Appellate Jurisdiction
4. Special Leave Jurisdiction
5. Advisory Jurisdiction
6. Review Jurisdiction
7. Curative Jurisdiction
8. Court of Record Jurisdiction
9. Power of Judicial Review
10. Miscellaneous and Extraordinary Jurisdiction

Constitutional Position of the Supreme Court

The Supreme Court is established under **Part V, Chapter IV (Articles 124–147)** of the Constitution.

The Constitution envisages the Supreme Court as:

- The highest court of the land.
- The final interpreter of constitutional provisions.

- The protector of Fundamental Rights.
- The guardian of federalism.

The Supreme Court stands at the apex of the judicial hierarchy and all courts in India are bound by its decisions under **Article 141**.

Original Jurisdiction of the Supreme Court

Meaning

Original jurisdiction means the power of a court to hear and decide a dispute in the first instance. Unlike appellate jurisdiction, the case originates directly before the Supreme Court.

Article 131: Article 131 confers exclusive original jurisdiction on the Supreme Court in disputes involving:

- Government of India and one or more States;
- Government of India and one or more States on one side and one or more States on the other side;
- Two or more States.

The dispute must involve a legal right.

Importance

This jurisdiction is intended to preserve federal harmony.

Since disputes between the Centre and States involve constitutional questions, the Constitution entrusts them directly to the Supreme Court.

Examples include disputes regarding:

- Distribution of powers,
- Taxation,
- Water sharing,
- Executive authority.

State of Karnataka v. Union of India

Citation: (1977) 4 SCC 608

Bench: Seven-Judge Constitution Bench

Facts : The Union Government appointed a Commission of Inquiry to investigate allegations against the Chief Minister of Karnataka. The State Government challenged the action.

Issue : Whether the dispute between the Union and the State could be brought directly before the Supreme Court under Article 131.

Judgment: The Court held that Article 131 confers exclusive jurisdiction over disputes involving legal rights between the Union and States.

Significance : The case clarified the scope of federal disputes under Article 131.

Writ Jurisdiction

Article 32

Article 32 empowers the Supreme Court to enforce Fundamental Rights.

Dr. B.R. Ambedkar called Article 32: "The heart and soul of the Constitution." The right to move the Supreme Court under Article 32 is itself a Fundamental Right.

Types of Writs

Habeas Corpus : Meaning "produce the body."

Issued to secure release from illegal detention.

Mandamus: Meaning "we command."

Issued to compel a public authority to perform a legal duty.

Prohibition :Issued to prevent a lower court or tribunal from exceeding jurisdiction.

Certiorari: Issued to quash an illegal order of a lower court or tribunal.

Quo Warranto: Issued to challenge the legality of a person's claim to public office.

Significance: Article 32 transforms the Supreme Court into the protector of civil liberties and constitutional rights.

Romesh Thappar v. State of Madras

Citation: AIR 1950 SC 124

Facts: The Government of Madras prohibited circulation of a political journal.

Issue: Whether the ban violated freedom of speech under Article 19(1)(a).

Judgment: The Court struck down the order.

Significance: One of the earliest examples of enforcement of Fundamental Rights through Article 32.

Appellate Jurisdiction

The Supreme Court is the highest appellate court in India. Articles 132 to 136 provide for appeals from High Courts and tribunals. The appellate jurisdiction ensures uniformity in the interpretation of law throughout India.

Constitutional Appeals (Article 132)

An appeal lies to the Supreme Court when a substantial question of constitutional interpretation is involved. The High Court must certify that the case involves such a question. This provision ensures authoritative interpretation of constitutional provisions.

Civil Appeals (Article 133)

Appeals may be filed in significant civil disputes where the High Court certifies the matter as fit for appeal.

This jurisdiction helps in maintaining uniform civil jurisprudence.

Criminal Appeals (Article 134)

Criminal appeals lie to the Supreme Court in serious cases, particularly where:

- Death sentence is imposed,
- Acquittal is reversed by the High Court,
- The High Court certifies the matter as fit for appeal.

This jurisdiction acts as an important safeguard against wrongful convictions.

Bachan Singh v. State of Punjab

Citation: (1980) 2 SCC 684

Bench: Constitution Bench

Facts: The constitutional validity of the death penalty was challenged.

Issue : Whether capital punishment violates Articles 14, 19, and 21.

Judgment: The Court upheld the death penalty but limited it to the "rarest of rare cases."

Significance: One of the most significant criminal appeals decided by the Supreme Court.

Special Leave Jurisdiction

Article 136: Article 136 grants extraordinary discretionary power to the Supreme Court to grant Special Leave to Appeal against any judgment, decree, sentence, determination, or order passed by any court or tribunal.

This jurisdiction is unique and extremely broad.

The Supreme Court may intervene whenever substantial injustice has occurred.

Nature of Power

Article 136 is:

- Residual in nature,
- Extraordinary,
- Discretionary,
- Corrective.

No person can claim Special Leave as a matter of right.

Pritam Singh v. State

Citation: AIR 1950 SC 169

Facts: The appellant challenged a criminal conviction.

Issue: Scope of Article 136.

Judgment: The Court held that Article 136 should be exercised only in exceptional circumstances.

Significance: The judgment established guidelines for exercising Special Leave jurisdiction.

Advisory Jurisdiction

Article 143: The President may seek the opinion of the Supreme Court on questions of law or matters of public importance.

This is known as advisory jurisdiction.

The opinion is not binding on the President but carries enormous persuasive authority.

Importance: This jurisdiction enables the executive to obtain constitutional guidance before taking major decisions.

In Re Berubari Union

Citation: AIR 1960 SC 845

Facts: The President referred questions regarding transfer of Indian territory to Pakistan.

Issue: Whether Parliament could transfer territory by ordinary legislation.

Judgment: The Court held that a Constitutional Amendment was necessary.

Significance: A landmark exercise of advisory jurisdiction.

Review Jurisdiction

Article 137: The Supreme Court may review its own judgments. The purpose is to correct mistakes and prevent injustice.

Grounds include:

- Error apparent on the face of record,
- Discovery of new evidence,
- Other sufficient reasons.

Review jurisdiction reflects judicial accountability.

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

Citation: (1988) 2 SCC 602

Facts: An earlier Supreme Court order had prejudiced the accused.

Issue: Whether the Court could correct its own mistake.

Judgment: The Court reviewed and recalled its earlier order.

Significance: Demonstrated the importance of review jurisdiction.

Curative Jurisdiction

The Constitution does not expressly mention curative jurisdiction. It was evolved by the Supreme Court to prevent gross miscarriage of justice. A Curative Petition is entertained only after dismissal of a Review Petition.

Rupa Ashok Hurra v. Ashok Hurra

Citation: (2002) 4 SCC 388

Facts: The petitioner sought reconsideration of a final judgment.

Issue: Whether any remedy exists after dismissal of a review petition.

Judgment: The Court created the Curative Petition mechanism.

Significance: Established an extraordinary remedy to prevent abuse of judicial process.

Court of Record Jurisdiction

Article 129: The Supreme Court is a Court of Record. Its records and judgments possess evidentiary value and cannot be questioned in subordinate courts. As a Court of Record, it possesses power to punish for contempt.

Contempt Jurisdiction

Contempt may be:

Civil Contempt: Wilful disobedience of court orders.

Criminal Contempt : Acts lowering the authority of the judiciary. This power protects the dignity and effectiveness of the judicial system.

Supreme Court Bar Association v. Union of India

Citation: (1998) 4 SCC 409

Judgment: The Court recognized the broad scope of its contempt powers while emphasizing judicial restraint.

Judicial Review Jurisdiction

Judicial Review is one of the most significant powers exercised by the Supreme Court. The Court examines whether laws and executive actions conform to the Constitution. If a law violates the Constitution, it may be declared unconstitutional.

Judicial Review flows from:

- Article 13
- Article 32
- Article 131
- Article 136
- Article 141
- Article 142

Kesavananda Bharati v. State of Kerala

Citation: (1973) 4 SCC 225

Bench: Thirteen-Judge Constitution Bench

Facts: Several Constitutional Amendments affecting Fundamental Rights were challenged.

Issue: Whether Parliament's amending power is unlimited.

Judgment: The Court evolved the Basic Structure Doctrine.

Significance: Established the Supreme Court as the ultimate guardian of constitutional supremacy.

Power to Do Complete Justice

Article 142: Article 142 empowers the Supreme Court to pass any decree or order necessary for doing complete justice in any case before it. This extraordinary power enables the Court to fill gaps in law and ensure equitable outcomes. The power is unique and reflects the Court's constitutional responsibility to ensure justice.

Public Interest Litigation (PIL) Jurisdiction

The Supreme Court has expanded access to justice through Public Interest Litigation. PIL allows public-spirited individuals to approach the Court on behalf of disadvantaged groups. This innovation has transformed the Court into an institution of social justice.

S.P. Gupta v. Union of India

Citation: 1981 Supp SCC 87

Significance: The Court liberalized the doctrine of locus standi and laid the foundation for Public Interest Litigation in India.

The Supreme Court possesses one of the broadest jurisdictions among constitutional courts worldwide. Its powers extend beyond traditional adjudication and include constitutional interpretation, judicial review, protection of rights, federal dispute resolution, and advisory functions. The Court has emerged as the guardian of democracy, constitutional morality, and rule of law. However, increasing pendency of cases and excessive reliance on Special Leave Petitions have placed considerable pressure on the institution. Despite these challenges, the Supreme Court remains the cornerstone of India's constitutional framework.

Conclusion: The jurisdiction of the Supreme Court of India is vast, multifaceted, and indispensable for the functioning of constitutional democracy. Through its original, writ, appellate, special leave, advisory, review, curative, judicial review, and extraordinary jurisdictions, the Court safeguards constitutional values and ensures justice. Landmark decisions such as *Kesavananda Bharati v. State of Kerala*, *Rupa Ashok Hurra v. Ashok Hurra*, *S.P. Gupta v. Union of India*, and *Romesh Thappar v. State of Madras* have strengthened the role of the Supreme Court as the guardian of the Constitution and protector of the rights and liberties of the people of India.

Q.5 Explain the Scope of Original and Advisory Jurisdiction of the Supreme Court of India.

The Supreme Court of India is the apex judicial institution established under **Article 124** of the Constitution. It acts as the guardian of the Constitution, protector of Fundamental Rights, and final interpreter of constitutional provisions. To effectively discharge these functions, the Constitution confers various types of jurisdiction upon the Supreme Court.

Among these, **Original Jurisdiction** and **Advisory Jurisdiction** occupy a special place. Original Jurisdiction enables the Supreme Court to directly adjudicate disputes involving the Union and States, thereby preserving federal harmony. Advisory Jurisdiction enables the President of India to seek the opinion of the Supreme Court on important legal and constitutional questions, thereby facilitating constitutional governance.

Together, these jurisdictions strengthen the federal structure, constitutional supremacy, and rule of law in India.

Meaning of Jurisdiction

Jurisdiction refers to the legal authority of a court to hear and decide cases.

The Constitution confers different jurisdictions on the Supreme Court, including:

- Original Jurisdiction
- Appellate Jurisdiction
- Writ Jurisdiction
- Advisory Jurisdiction
- Review Jurisdiction
- Special Leave Jurisdiction

Among these, Original and Advisory Jurisdiction are unique because they directly concern the constitutional relationship between different organs of the State.

Original Jurisdiction of the Supreme Court

Meaning

Original Jurisdiction refers to the authority of a court to hear and determine a dispute in the first instance.

In such cases, the proceedings begin directly before the Supreme Court without first being heard by any subordinate court or High Court.

The Constitution confers Original Jurisdiction on the Supreme Court under **Article 131**.

Constitutional Provision – Article 131

Article 131 provides that the Supreme Court shall have exclusive original jurisdiction in disputes involving:

- The Government of India and one or more States;
- The Government of India and one or more States on one side and one or more States on the other side;
- Two or more States.

The dispute must involve a question of law or fact on which the existence or extent of a legal right depends.

The jurisdiction is exclusive because no other court in India can entertain such disputes.

Nature of Original Jurisdiction

Original Jurisdiction under Article 131 is:

Exclusive

Only the Supreme Court can hear such disputes.

Neither High Courts nor subordinate courts have authority over such matters.

Federal

It is designed to preserve the federal structure of the Constitution.

Disputes between the Centre and States require a neutral constitutional forum.

Constitutional

The jurisdiction arises directly from the Constitution and cannot ordinarily be excluded by legislation.

Scope of Original Jurisdiction

The scope of Original Jurisdiction extends to disputes involving constitutional and legal rights between governmental units.

Examples include:

Centre-State Disputes

Disputes relating to:

- Legislative competence,
- Taxation powers,

- Administrative control,
- Distribution of resources.

Inter-State Disputes

Disputes between States regarding:

- Territorial boundaries,
- Water sharing,
- Financial obligations,
- Administrative authority.

Disputes Involving Legal Rights

The dispute must concern an enforceable legal right.

Political disagreements without legal consequences cannot be brought under Article 131.

Matters Excluded from Original Jurisdiction

Certain disputes are excluded from Article 131.

Inter-State Water Disputes

Under **Article 262**, Parliament may exclude the jurisdiction of courts regarding river water disputes.

Accordingly, the **Inter-State River Water Disputes Act, 1956** excludes the jurisdiction of the Supreme Court in such matters.

Pre-Constitution Treaties and Agreements

Article 131 does not apply to disputes arising from treaties or agreements entered into before the commencement of the Constitution if such agreements specifically exclude judicial intervention.

Purely Political Questions

Disputes involving political considerations without legal rights are not covered.

Importance of Original Jurisdiction

Original Jurisdiction serves several important purposes.

Protection of Federalism

It ensures peaceful settlement of disputes between the Centre and States.

Constitutional Supremacy

It prevents constitutional conflicts from escalating into political crises.

Uniform Interpretation

The Supreme Court provides authoritative interpretation of constitutional provisions.

National Integration

It promotes cooperative federalism and strengthens national unity.

Case Laws on Original Jurisdiction

State of Karnataka v. Union of India

Citation: (1977) 4 SCC 608

Bench: Seven-Judge Constitution Bench

Facts: The Union Government appointed a Commission of Inquiry to investigate allegations against the Chief Minister of Karnataka and certain State officials.

The State Government challenged the action before the Supreme Court.

Issue: Whether the dispute between the State Government and the Union Government could be entertained under Article 131.

Judgment: The Supreme Court held that Article 131 confers exclusive jurisdiction over disputes involving legal rights between the Union and States.

Significance: The case clarified the scope of Article 131 and strengthened federal dispute resolution.

State of Rajasthan v. Union of India

Citation: (1977) 3 SCC 592

Bench: Seven-Judge Constitution Bench

Facts: Several State Governments challenged the Union Government's directive recommending dissolution of State Legislative Assemblies.

Issue: Whether the dispute was maintainable under Article 131.

Judgment: The Court examined the scope of Centre-State relations and Article 131.

Significance: The judgment highlighted constitutional limitations on Centre-State disputes.

State of Jharkhand v. State of Bihar

Citation: (2015) 2 SCC 431

Facts: A dispute arose regarding division of assets and liabilities after the creation of the State of Jharkhand.

Issue: Whether such disputes fall within Article 131.

Judgment : The Supreme Court entertained the dispute under its original jurisdiction.

Significance: The case demonstrated the wide scope of Article 131 in resolving inter-State disputes.

Advisory Jurisdiction of the Supreme Court

Meaning

Advisory Jurisdiction refers to the power of the Supreme Court to advise the President of India on important questions of law or public importance.

Unlike ordinary judicial proceedings, advisory jurisdiction does not involve adjudication of disputes between parties.

The Court merely provides its opinion.

Constitutional Basis – Article 143

Article 143 empowers the President to seek the opinion of the Supreme Court.

The provision recognizes the Supreme Court as the highest constitutional advisor of the nation.

Types of References under Article 143

Article 143 contains two categories.

Article 143(1)

The President may refer any question of law or fact of public importance to the Supreme Court.

The Court may choose to answer or decline the reference.

This is discretionary.

Article 143(2)

The President may refer disputes arising out of pre-Constitution treaties, agreements, covenants, engagements, or similar instruments.

In such cases, the Supreme Court generally examines the issue and provides its opinion.

Procedure under Advisory Jurisdiction

The President sends a reference to the Supreme Court.

The Court constitutes an appropriate Bench and hears arguments from:

- Attorney General of India,
- Interested parties,
- Constitutional experts.

After considering the matter, the Court submits its opinion to the President.

Nature of Advisory Opinion

The opinion rendered under Article 143 is:

Not Binding

The President is not legally bound to accept the opinion.

Highly Persuasive

Although advisory opinions are not binding, they carry great constitutional authority.

Governments generally follow them.

Preventive in Nature

The jurisdiction helps resolve constitutional uncertainties before disputes arise.

Scope of Advisory Jurisdiction

The Advisory Jurisdiction extends to:

Constitutional Questions

Questions involving interpretation of constitutional provisions.

Matters of Public Importance

Issues affecting governance, national policy, or public administration.

Federal Questions

Issues involving Centre-State relations.

International Agreements

Questions relating to treaties and territorial arrangements.

Importance of Advisory Jurisdiction

Constitutional Guidance

Provides authoritative legal advice to the executive.

Prevention of Litigation

Helps resolve legal issues before they become contentious disputes.

Constitutional Stability

Promotes certainty in governance and administration.

Strengthening Rule of Law

Ensures that major governmental decisions conform to constitutional principles.

Case Laws on Advisory Jurisdiction

In Re Berubari Union

Citation: AIR 1960 SC 845

Bench: Constitution Bench

Facts: The President referred questions regarding implementation of the Nehru-Noon Agreement involving transfer of certain territories to Pakistan.

Issue: Whether Parliament could transfer Indian territory through ordinary legislation.

Judgment: The Supreme Court held that transfer of territory required a Constitutional Amendment under Article 368.

Significance: One of the most important advisory opinions in Indian constitutional history.

In Re Kerala Education Bill, 1957

Citation: AIR 1958 SC 956

Facts: The President sought the Court's opinion regarding the constitutional validity of certain provisions of the Kerala Education Bill.

Issue: Whether the Bill violated Fundamental Rights of minorities under Article 30.

Judgment: The Court examined the provisions and clarified constitutional limitations.

Significance: The case established the importance of advisory jurisdiction in constitutional governance.

Special Reference No. 1 of 1993 (Ayodhya Reference)

Citation: (1994) 1 SCC 642

Facts: The President referred a question regarding the existence of a Hindu temple at the disputed Ayodhya site before the construction of the Babri Masjid.

Issue: Whether the Court should answer the reference.

Judgment: The Supreme Court declined to answer the question.

Significance: The case demonstrated that the Court possesses discretion under Article 143(1).

Distinction Between Original and Advisory Jurisdiction

Basis	Original Jurisdiction	Advisory Jurisdiction
Constitutional Provision	Article 131	Article 143
Nature	Judicial	Consultative
Parties	Union and States	President and Supreme Court
Purpose	Settlement of disputes	Constitutional advice
Binding Effect	Binding Judgment	Advisory Opinion
Enforceability	Enforceable	Not enforceable
Outcome	Decree or Judgment	Opinion

Critical Evaluation

The Original Jurisdiction of the Supreme Court serves as the cornerstone of Indian federalism by ensuring peaceful resolution of Centre-State and inter-State disputes. Advisory Jurisdiction, on the other hand, enables the President to obtain authoritative constitutional guidance on important issues.

While Original Jurisdiction produces binding judgments that directly affect legal rights, Advisory Jurisdiction provides preventive constitutional

guidance. Together, they strengthen constitutional governance, democratic accountability, and the rule of law.

Conclusion: The Original and Advisory Jurisdictions of the Supreme Court represent two of the most significant constitutional functions entrusted to the apex court. Original Jurisdiction under Article 131 safeguards the federal structure by resolving disputes between the Union and States, while Advisory Jurisdiction under Article 143 assists the President in addressing important constitutional and legal questions. Landmark decisions such as *State of Karnataka v. Union of India*, *In Re Berubari Union*, and *In Re Kerala Education Bill, 1957* have expanded and clarified the scope of these jurisdictions. Together, they enable the Supreme Court to function not only as a court of law but also as the guardian of the Constitution and the protector of India's federal system.

Q.6 Discuss the Circumstances under which National Emergency may be Proclaimed and Explain its Effects.

The Constitution of India provides extraordinary powers to the Union Government to deal with abnormal situations that threaten the security, sovereignty, unity, and integrity of the nation. These emergency provisions are contained in **Part XVIII of the Constitution (Articles 352 to 360)**.

Among the three types of emergencies provided by the Constitution, the **National Emergency** is the most important and far-reaching. It enables the Union Government to assume extraordinary powers and temporarily transform the federal system into a highly centralized form of government.

The National Emergency is governed by **Article 352** of the Constitution. It may be proclaimed when the security of India or any part thereof is threatened by war, external aggression, or armed rebellion.

The framers of the Constitution included these provisions to ensure that the nation remains capable of defending itself and maintaining constitutional governance during grave crises.

Meaning of National Emergency

National Emergency refers to a constitutional mechanism through which the normal distribution of powers between the Centre and the States is altered in favour of the Union Government in order to meet extraordinary situations affecting national security.

It is popularly known as a **Constitutional Emergency** because it affects the entire constitutional structure of governance.

Since Independence, National Emergency has been proclaimed three times:

First National Emergency (1962)

Declared due to Chinese aggression against India.

Second National Emergency (1971)

Declared due to war between India and Pakistan.

Third National Emergency (1975)

Declared on the ground of internal disturbance (now replaced by armed rebellion).

The misuse of the 1975 Emergency led to significant constitutional reforms through the 44th Constitutional Amendment Act, 1978.

Constitutional Provision – 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,
- Armed Rebellion.

The President acts on the written advice of the Union Cabinet.

The 44th Constitutional Amendment introduced several safeguards to prevent arbitrary use of this power.

Circumstances under Which National Emergency May Be Proclaimed

War

War refers to an armed conflict between India and another country.

The existence of actual hostilities is sufficient to justify proclamation of National Emergency.

War threatens the sovereignty and territorial integrity of the nation and may require centralized decision-making and resource mobilization.

Example

The National Emergency proclaimed in 1971 during the Indo-Pakistan War was based on this ground.

External Aggression

External aggression means an attack or threat originating from outside India even if a formal declaration of war has not been made.

The expression is broader than war.

It includes:

- Military incursions,
- Border attacks,
- Foreign-sponsored invasions,
- Armed attacks by external forces.

Example

The 1962 Emergency proclaimed during Chinese aggression was based on external aggression.

Armed Rebellion

The term "armed rebellion" was inserted by the **44th Constitutional Amendment Act, 1978**.

Before the amendment, the Constitution used the expression "internal disturbance."

The term "internal disturbance" was considered vague and susceptible to misuse.

To prevent arbitrary proclamation of emergency, the Constitution now requires an actual armed uprising against the State.

Armed rebellion involves:

- Organized violence,
- Use of weapons,
- Attempt to overthrow constitutional authority.

The threshold for invoking emergency on this ground is therefore much higher than under the earlier provision.

Procedure for Proclamation of National Emergency

Satisfaction of the President

The President may proclaim emergency if satisfied that the security of India or any part thereof is threatened.

However, this satisfaction is not purely personal.

Written Advice of the Cabinet

After the 44th Constitutional Amendment, the President can proclaim emergency only on the written advice of the Union Cabinet.

This safeguard was introduced because the 1975 Emergency was proclaimed without a formal written Cabinet recommendation.

Parliamentary Approval

The proclamation must be approved by both Houses of Parliament within one month.

If the Lok Sabha is dissolved during this period, special provisions apply to ensure Parliamentary control.

Special Majority

Approval requires:

- Majority of the total membership of each House, and
- Two-thirds majority of members present and voting.

This special majority acts as an important constitutional safeguard.

Duration

Once approved, the Emergency remains in force for six months.

It may be extended indefinitely by Parliamentary resolutions passed every six months.

Revocation

The President may revoke the Emergency at any time by issuing a subsequent proclamation.

The Lok Sabha may also compel revocation through a resolution.

Effects of National Emergency

The proclamation of National Emergency produces significant constitutional consequences affecting federalism, executive authority, legislative powers, and Fundamental Rights.

Effect on Executive Relations

Article 353(a) During National Emergency, the executive power of the Union extends to directing any State regarding the manner in which its executive power is to be exercised. Ordinarily, States enjoy autonomy in matters within their jurisdiction.

However, during emergency, the Union Government acquires extensive authority to supervise and direct State administration.

This results in greater centralization of executive power.

Effect on Legislative Relations

Article 353(b): Parliament acquires authority to legislate on matters contained in the State List. Under normal circumstances, State Legislatures possess exclusive authority over State List subjects.

During National Emergency, Parliament may enact laws on any State List matter.

State Legislatures do not cease to function, but Parliamentary legislation prevails.

The purpose is to ensure uniform national action during crises.

Effect on Distribution of Financial Resources

Article 354

The President may modify constitutional provisions relating to distribution of revenues between the Centre and the States.

Such modifications remain effective during the Emergency period.

This enables the Union Government to mobilize financial resources necessary for national security and emergency administration.

Effect on Lok Sabha and State Legislative Assemblies

Article 83

While an Emergency is in operation, Parliament may extend the term of the Lok Sabha by one year at a time.

However, such extension cannot continue beyond six months after the Emergency ceases.

Article 172: The term of State Legislative Assemblies may also be similarly extended. This provision avoids elections during periods of national crisis.

Effect on Fundamental Rights

One of the most significant consequences of National Emergency concerns Fundamental Rights.

Suspension of Article 19 – Article 358

Article 358 provides that when a National Emergency is declared on the grounds of:

- War, or
- External Aggression,

the freedoms guaranteed under Article 19 are automatically suspended.

The State may enact laws inconsistent with Article 19 during this period.

However, after the 44th Constitutional Amendment, Article 358 does not apply when Emergency is declared on the ground of armed rebellion.

Suspension of Enforcement of Fundamental Rights – Article 359

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

However, after the 44th Constitutional Amendment:

- Article 20 (Protection in Criminal Cases)
- Article 21 (Right to Life and Personal Liberty)

cannot be suspended even during Emergency.

This reform was introduced in response to abuses during the 1975 Emergency.

Case Laws

A.D.M. Jabalpur v. Shivkant Shukla

Citation: (1976) 2 SCC 521

Bench: Five-Judge Constitution Bench

Facts: During the Emergency of 1975, several political leaders were detained under preventive detention laws. Their detention was challenged through Habeas Corpus petitions.

Issue: Whether a person could seek judicial remedy for unlawful detention during Emergency when Article 21 stood suspended.

Judgment: The majority held that during Emergency, citizens could not seek enforcement of the right to personal liberty. Justice H.R. Khanna delivered a historic dissent and held that liberty cannot be entirely extinguished.

Significance: The decision is widely criticized and is regarded as one of the darkest moments in Indian constitutional history. The 44th Constitutional

Amendment effectively reversed its consequences by protecting Articles 20 and 21.

Minerva Mills Ltd. v. Union of India

Citation: (1980) 3 SCC 625

Bench: Five-Judge Constitution Bench

Facts: The constitutional validity of provisions inserted during the Emergency period was challenged.

Issue: Whether Parliament could acquire unlimited power through constitutional amendments.

Judgment: The Supreme Court held that limited government and judicial review form part of the Basic Structure of the Constitution.

Significance: The case strengthened constitutional safeguards against misuse of emergency powers

Kesavananda Bharati v. State of Kerala

Citation: (1973) 4 SCC 225

Bench: Thirteen-Judge Constitution Bench

Facts: Several constitutional amendments affecting Fundamental Rights were challenged.

Issue: Whether Parliament's amending power is unlimited.

Judgment: The Court evolved the Basic Structure Doctrine.

Significance: Even emergency powers cannot destroy the Basic Structure of the Constitution.

Safeguards Introduced by the 44th Constitutional Amendment

The 44th Constitutional Amendment Act, 1978 introduced important safeguards:

- "Internal Disturbance" replaced by "Armed Rebellion."
- Written advice of the Cabinet made mandatory.
- Approval period reduced and stricter parliamentary control introduced.
- Article 20 and Article 21 made non-suspendable.
- Lok Sabha empowered to revoke Emergency.

These reforms were intended to prevent recurrence of abuses witnessed during the Emergency of 1975–77.

The National Emergency provisions are essential for safeguarding national security and constitutional stability. They enable rapid and coordinated governmental action during extraordinary situations.

However, the experience of the 1975 Emergency demonstrated the potential for misuse of such powers. Excessive concentration of authority may threaten democracy, federalism, civil liberties, and judicial independence.

The safeguards introduced by the 44th Constitutional Amendment have significantly strengthened constitutional accountability and reduced the possibility of arbitrary action.

Conclusion: National Emergency under Article 352 is one of the most powerful constitutional mechanisms available to the Union Government. It may be proclaimed when the security of India is threatened by war, external aggression, or armed rebellion. The proclamation substantially alters the federal structure, expands Union authority, and affects Fundamental Rights. At the same time, constitutional safeguards and judicial decisions such as *A.D.M. Jabalpur v. Shivkant Shukla*, *Minerva Mills Ltd. v. Union of India*, and *Kesavananda Bharati v. State of Kerala* ensure that emergency powers remain subject to constitutional limitations. Thus, National Emergency represents a balance between the need for national security and the preservation of democratic values and constitutional governance.

Q.7 what is State Emergency? When can it be proclaimed? Explain its Consequences.

The Constitution of India establishes a federal system of government in which powers are divided between the Union and the States. However, the Constitution also contains provisions to deal with situations where the constitutional machinery in a State breaks down and the State Government is unable to function in accordance with the Constitution. To address such situations, the Constitution provides for **State Emergency**, commonly known as **President's Rule**, under **Article 356**. State Emergency is one of the three types of emergencies provided under the Constitution, the other two being National Emergency under Article 352 and Financial Emergency under Article 360.

The purpose of Article 356 is to ensure that constitutional governance continues in a State even when its elected government fails to function according to constitutional requirements.

Because of its far-reaching impact on federalism and democratic governance, Article 356 has been one of the most debated provisions of the Constitution.

Meaning of State Emergency

State Emergency refers to a situation in which the President of India assumes control over the administration of a State because the constitutional machinery of that State has failed.

It is popularly known as **President's Rule**.

When President's Rule is imposed:

- The elected State Government may be dismissed.
- The Governor acts on behalf of the President.
- Parliament assumes legislative powers of the State Legislature.
- The administration of the State comes under the control of the Union Government.

Thus, State Emergency results in temporary suspension of normal constitutional governance in a State.

Constitutional Provisions

The provisions relating to State Emergency are contained in:

- Article 355
- Article 356
- Article 357

Article 355 : Article 355 imposes a duty upon the Union Government to: Protect every State against external aggression and internal disturbance and ensure that the government of every State is carried on in accordance with the Constitution.

This Article forms the constitutional basis for intervention by the Union Government.

Article 356 - Article 356 empowers the President to proclaim President's Rule if satisfied that the government of a State cannot be carried on in accordance with the Constitution.

Article 357- Article 357 deals with the exercise of legislative powers during President's Rule.

Circumstances under Which State Emergency May Be Proclaimed

The Constitution does not provide an exhaustive list of situations constituting failure of constitutional machinery.

However, judicial decisions and constitutional practice have identified several circumstances.

Breakdown of Constitutional Machinery

The primary ground is failure of constitutional governance.

This occurs when the State Government acts contrary to constitutional provisions and becomes incapable of functioning according to the Constitution.

Loss of Majority in the Legislative Assembly

If the Chief Minister and Council of Ministers lose the confidence of the Legislative Assembly and refuse to resign, constitutional machinery may be said to have failed.

The Governor may report such circumstances to the President.

Hung Assembly

After elections, if no political party or coalition is able to form a stable government, President's Rule may be imposed temporarily.

Such situations often arise when no party secures a clear majority.

Failure to Comply with Union Directions

Articles 256 and 257 empower the Union Government to issue directions to States.

If a State deliberately refuses to comply with constitutional directions issued by the Union, Article 356 may be invoked.

Political Instability

Frequent changes of government, defections, and inability to maintain stable administration may create conditions justifying President's Rule.

However, political instability alone is not sufficient unless constitutional governance becomes impossible.

Breakdown of Law and Order

If widespread violence, insurgency, communal disturbances, or constitutional paralysis make governance impossible, Article 356 may be invoked.

Constitutional Violations by State Government

If a State Government acts against constitutional principles, secularism, democracy, or rule of law, it may justify invocation of Article 356.

Procedure for Proclamation of State Emergency

Governor's Report

Generally, the Governor sends a report to the President stating that constitutional machinery has failed.

The Governor acts as the constitutional link between the Centre and the State.

President's Satisfaction

On receiving the Governor's report or otherwise, the President may be satisfied that the government of the State cannot be carried on in accordance with the Constitution.

The expression "or otherwise" means that the President is not bound to act solely on the Governor's report.

Proclamation by the President

The President issues a proclamation imposing President's Rule in the State.

Parliamentary Approval

The proclamation must be approved by both Houses of Parliament within two months.

If not approved, it automatically lapses.

Approval requires a simple majority of members present and voting.

Duration of State Emergency

Initially, President's Rule remains in force for six months.

It may be extended for a maximum period of three years subject to constitutional conditions.

Beyond one year, extension is permissible only when:

- A National Emergency is in operation; or
- The Election Commission certifies that elections cannot be conducted.

These safeguards were introduced by the **44th Constitutional Amendment Act, 1978**.

Consequences of State Emergency

The proclamation of President's Rule produces significant constitutional consequences.

Effect on State Executive

The President may assume all or any functions of the State Government.

The Governor administers the State on behalf of the President.

The Council of Ministers headed by the Chief Minister is dismissed.

Thus, executive power effectively shifts from the State Government to the Union Government.

Effect on State Legislature

The President may:

- Dissolve the Legislative Assembly, or
- Keep it under suspended animation.

When the Assembly is dissolved, Parliament exercises legislative powers for the State.

This ensures continuity of governance.

Effect on Legislative Powers

Under Article 357, Parliament acquires authority to legislate on matters contained in the State List for that State.

Parliament may also authorize the President or any other authority to make laws for the State.

This represents a temporary transfer of legislative authority from the State to the Union.

Effect on Financial Administration

The President gains authority to control the financial affairs of the State.

Budgetary and financial matters are managed under Parliamentary supervision.

Necessary expenditure may be authorized to ensure uninterrupted administration.

Effect on High Courts

The powers and jurisdiction of the High Court remain unaffected.

The Constitution deliberately protects judicial independence during President's Rule.

Unlike executive and legislative organs, the judiciary continues to function normally.

Effect on Federal Structure

President's Rule temporarily converts the federal relationship into a more centralized arrangement.

The autonomy of the State Government is suspended for the duration of the Emergency.

However, the constitutional existence of the State is not abolished.

Misuse of Article 356

Article 356 has often been criticized for political misuse.

For several decades, successive Union Governments used President's Rule to dismiss State Governments controlled by rival political parties.

Before 1994, Article 356 was invoked more than ninety times, often for political considerations rather than genuine constitutional breakdown.

This led to demands for judicial safeguards.

Case Laws

S.R. Bommai v. Union of India

Citation: (1994) 3 SCC 1

Bench: Nine-Judge Constitution Bench

Facts: The Central Government dismissed several State Governments under Article 356 on the ground that they had lost majority support. The dismissed Governments challenged the proclamations before the Supreme Court.

Issue: Whether the President's satisfaction under Article 356 is subject to judicial review.

Judgment: The Supreme Court held that the President's satisfaction is not absolute and can be reviewed by courts. The Court further held that:

- Federalism is part of the Basic Structure of the Constitution.
- Majority should ordinarily be tested on the floor of the House.
- Arbitrary dismissal of State Governments is unconstitutional.

Significance: This is the most important judgment on Article 356 and significantly restricted its misuse.

State of Rajasthan v. Union of India

Citation: (1977) 3 SCC 592

Bench: Seven-Judge Constitution Bench

Facts: Several State Governments challenged the Union Government's direction recommending dissolution of Legislative Assemblies.

Issue: Whether the exercise of power under Article 356 could be questioned.

Judgment: The Court adopted a limited approach to judicial review.

Significance: The case highlighted constitutional tensions between the Centre and the States before the stricter standards evolved in **S.R. Bommai**.

Rameshwar Prasad v. Union of India

Citation: (2006) 2 SCC 1

Facts: The Bihar Legislative Assembly was dissolved before it could meet and elect a government.

Issue: Whether the dissolution was constitutional.

Judgment: The Supreme Court held that the dissolution was unconstitutional.

Significance: The decision reaffirmed judicial control over misuse of Article 356.

Safeguards Against Misuse

Several constitutional safeguards now exist:

- Parliamentary approval within two months.
- Maximum duration of three years.
- Judicial review by courts.
- Floor test requirement established in S.R. Bommai.
- Constitutional restrictions introduced by the 44th Constitutional Amendment.

These safeguards strengthen federalism and democratic governance.

State Emergency is necessary to protect constitutional governance and ensure stability when a State Government fails to function according to constitutional requirements.

However, because it suspends democratic government at the State level, it must be used only as a measure of last resort.

The Supreme Court's intervention in S.R. Bommai transformed Article 356 from a political weapon into a constitutionally regulated power.

Today, President's Rule is subject to strict constitutional and judicial scrutiny.

Conclusion : State Emergency under Article 356 is an extraordinary constitutional mechanism designed to address the failure of constitutional machinery in a State. It may be proclaimed when governance cannot be carried on in accordance with the Constitution, resulting in temporary transfer of executive and legislative authority to the Union Government. While Article 356 is essential for preserving constitutional order, its misuse in the past necessitated judicial safeguards. Landmark decisions such as S.R.

Bommai v. Union of India, State of Rajasthan v. Union of India, and Rameshwar Prasad v. Union of India have ensured that President's Rule remains consistent with democratic values, federalism, and constitutional governance.

Q.8 Explain the Procedure for Election of the President of India and Discuss His Powers and Functions.

The President of India is the constitutional head of the Union Executive and occupies the highest office in the Republic of India. The office of the President was established under **Article 52** of the Constitution, which provides that there shall be a President of India.

India follows the Parliamentary system of government, and therefore the President acts as the nominal or constitutional executive, while the real executive power is exercised by the Council of Ministers headed by the Prime Minister. Nevertheless, the President occupies a position of great dignity and importance as the symbol of national unity, integrity, and continuity of the State.

The Constitution confers extensive powers and functions upon the President relating to executive administration, legislation, finance, judiciary, diplomacy, military affairs, and emergencies.

The election of the President is governed by **Articles 54 and 55** of the Constitution and reflects the federal character of the Indian polity.

Constitutional Provisions Relating to the President

The provisions relating to the President are contained in **Articles 52 to 62** of the Constitution.

Important provisions include:

- Article 52 – President of India
- Article 53 – Executive power of the Union

- Article 54 – Election of President
- Article 55 – Manner of election
- Article 56 – Term of office
- Article 57 – Eligibility for re-election
- Article 58 – Qualifications
- Article 61 – Impeachment

Qualifications for Election as President

According to **Article 58**, a person must satisfy the following qualifications:

Citizenship: He must be a citizen of India.

Age: He must have completed thirty-five years of age.

Qualification for Lok Sabha: He must be qualified to be elected as a member of the Lok Sabha.

Office of Profit: He should not hold any office of profit under the Government of India, State Government, or any local authority.

Exceptions include:

- President
- Vice-President
- Governor
- Minister

Electoral College for Presidential Election

Article 54: The President is not directly elected by the people. He is elected by an Electoral College consisting of:

Elected Members of Parliament

- Elected members of the Lok Sabha.
- Elected members of the Rajya Sabha.

Elected Members of State Legislative Assemblies

- Elected members of all State Legislative Assemblies.

Union Territories

Following the 70th Constitutional Amendment Act, elected members of the Legislative Assemblies of:

- Delhi
- Puducherry

also participate in the election.

Members Not Included

The following do not participate:

- Nominated members of Rajya Sabha.
- Nominated members of Lok Sabha.
- Members of State Legislative Councils.
- Nominated members of State Legislatures.

This system balances the principle of federalism and democratic representation.

Procedure for Election of the President

The election of the President is conducted by the Election Commission of India.

Principle of Proportional Representation

Under Article 55, the President is elected according to:

- Proportional Representation System,
- By means of Single Transferable Vote,
- Through Secret Ballot.

This method ensures broad national support.

Value of Votes

The Constitution provides a special formula to maintain parity between the Union and the States.

Value of Vote of an MLA

The value of the vote of each elected MLA is calculated as follows:

Value of MLA Vote = $\frac{\text{Total Elected MLAs} \times 1000 \text{ Population of State}}{\text{Total Population of State}}$

Fractions exceeding one-half are counted as one and the remainder is ignored.

The population used is based on the last census accepted for this purpose by constitutional provisions.

Value of Vote of an MP

The value of votes of MPs is determined by dividing the total value of votes of all MLAs by the total number of elected MPs.

This ensures equality between Parliament and State Legislatures.

Voting Process

The election follows the Single Transferable Vote System.

Each elector marks preferences:

- First Preference
- Second Preference
- Third Preference and so on

A candidate must secure the required quota of votes to be elected.

If no candidate secures the quota in the first count, the candidate with the lowest votes is eliminated and votes are transferred according to next preferences.

The process continues until one candidate secures the required majority.

Term of Office

Article 56: The President holds office for five years from the date of entering office. However, he continues until his successor assumes office.

Re-Election

Article 57: The President is eligible for re-election any number of times.

Example

Dr. Rajendra Prasad was elected twice and remains the only President to serve two full terms.

Oath of Office

Article 60: Before entering office, the President takes an oath before the Chief Justice of India to:

- Preserve, protect, and defend the Constitution.
- Devote himself to the service and welfare of the people.

Impeachment of the President

Article 61: The President may be removed for violation of the Constitution.

The impeachment process may be initiated in either House of Parliament.

A notice signed by at least one-fourth of the members must be given.

The resolution must be passed by a two-thirds majority of the total membership of the House.

The other House investigates the charges.

If both Houses pass the resolution by a two-thirds majority of the total membership, the President stands removed.

No President of India has been impeached so far.

Powers and Functions of the President

Executive Powers

Article 53: The executive power of the Union is vested in the President. All executive actions of the Government of India are formally taken in his name.

Appointment Powers

The President appoints:

- Prime Minister,
- Union Ministers,
- Governors of States,
- Attorney General of India,
- Comptroller and Auditor General,
- Chief Election Commissioner,
- Chairpersons of Constitutional Bodies,
- Judges of the Supreme Court and High Courts.

Administrative Powers

The President supervises administration through constitutional mechanisms and receives information regarding governmental affairs.

Legislative Powers

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

Summoning and Proroguing Parliament

The President summons and prorogues sessions of Parliament.

Dissolution of Lok Sabha

The President may dissolve the Lok Sabha.

Address to Parliament

Under Article 87, the President addresses Parliament at the commencement of the first session after each general election and every year.

Assent to Bills

A Bill becomes law only after Presidential assent.

The President may:

- Give assent,
- Withhold assent,
- Return an ordinary bill for reconsideration.

Ordinance-Making Power

Article 123: When Parliament is not in session, the President may promulgate Ordinances. Ordinances have the same force as Parliamentary laws.

D.C. Wadhwa v. State of Bihar

Citation: (1987) 1 SCC 378

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

Issue: Whether repeated re-promulgation was constitutional.

Judgment: The Supreme Court held that repeated re-promulgation was unconstitutional.

Significance: The case emphasized that ordinance-making power is only a temporary emergency power.

Financial Powers

No Money Bill can be introduced in Parliament without the President's recommendation.

The President:

- Causes the Annual Budget to be laid before Parliament.
- Recommends demands for grants.
- Appoints the Finance Commission under Article 280.

These powers ensure financial discipline and constitutional accountability.

Judicial Powers

The President exercises important judicial powers.

Power of Pardon – Article 72

The President may grant:

- Pardon,
- Reprieve,
- Respite,
- Remission,
- Suspension,
- Commutation.

These powers may be exercised in:

- Court-martial cases,
- Union law offences,
- Death sentence cases.

Kehar Singh v. Union of India

Citation: (1989) 1 SCC 204

Facts: The petitioner challenged the scope of Presidential pardon.

Issue: Whether the President could examine the merits of a case while deciding a mercy petition.

Judgment: The Court held that the President may examine the entire record while exercising pardon powers.

Significance: The case clarified the scope of Article 72.

Diplomatic Powers

The President represents India in international relations.

He:

- Appoints ambassadors and diplomats.
- Receives foreign diplomats.
- Concludes treaties and agreements on behalf of India.

International agreements require Parliamentary approval where necessary.

Military Powers

The President is the Supreme Commander of the Defence Forces.

He appoints:

- Chief of Army Staff,
- Chief of Naval Staff,
- Chief of Air Staff.

The power to declare war or conclude peace is exercised in accordance with Parliamentary authority.

Emergency Powers

The President possesses extensive emergency powers.

National Emergency – Article 352

May be proclaimed during:

- War,
- External Aggression,
- Armed Rebellion.

State Emergency – Article 356

May be imposed when constitutional machinery fails in a State.

Financial Emergency – Article 360

May be proclaimed when financial stability or credit of India is threatened.

Case Laws

Ram Jawaya Kapur v. State of Punjab

Citation: AIR 1955 SC 549

Facts: The scope of executive power was questioned.

Issue: Nature of executive authority under the Constitution.

Judgment: The Court explained the relationship between executive and legislative powers.

Significance: Clarified the constitutional position of the executive headed by the President.

Shamsher Singh v. State of Punjab

Citation: (1974) 2 SCC 831

Bench: Seven-Judge Constitution Bench

Facts: The powers of the President and Governors were challenged.

Issue: Whether the President can exercise powers independently.

Judgment: The Supreme Court held that the President acts on the aid and advice of the Council of Ministers except in limited situations.

Significance: This is the leading authority on the constitutional position of the President.

Although the Constitution vests extensive powers in the President, India follows a Parliamentary form of government. Therefore, most powers are exercised on the aid and advice of the Council of Ministers headed by the Prime Minister.

Nevertheless, the President remains an important constitutional authority who ensures continuity of governance, constitutional stability, and protection of democratic institutions.

The President serves as the guardian of constitutional propriety and acts as a balancing institution within the constitutional framework.

Conclusion: The President of India is the constitutional head of the Union and occupies the highest office in the Republic. Elected indirectly through an Electoral College under Articles 54 and 55, the President symbolizes the unity, integrity, and sovereignty of the nation. Through executive, legislative, financial, judicial, diplomatic, military, and emergency powers, the President plays a crucial role in constitutional governance. Landmark decisions such as *Shamsher Singh v. State of Punjab*, *Kehar Singh v. Union of India*, and *D.C. Wadhwa v. State of Bihar* have clarified the scope of Presidential authority. Thus, while the President ordinarily acts on ministerial advice, the office remains indispensable to the functioning of India's parliamentary democracy and constitutional system.

Q.9 Explain the Powers and Functions of the Speaker of Lok Sabha.

The Speaker of the Lok Sabha is one of the most important constitutional authorities in the Indian parliamentary system. The office of the Speaker occupies a position of dignity, authority, and impartiality. The Speaker is the presiding officer of the Lok Sabha and is responsible for maintaining order, conducting proceedings, safeguarding parliamentary privileges, and ensuring the smooth functioning of the House.

The office of the Speaker is derived from the British parliamentary tradition and is recognized under the Constitution of India. The Speaker acts as the guardian of the rights and privileges of the House and serves as the principal spokesperson of the Lok Sabha.

The Speaker is often described as the "custodian of the dignity and prestige of the House."

Constitutional Provisions Relating to the Speaker

The provisions relating to the Speaker are contained in:

- Article 93 – Election of Speaker and Deputy Speaker.
- Article 94 – Vacation, resignation, and removal.
- Article 95 – Power of Deputy Speaker.
- Article 100 – Voting in the House.
- Article 101 – Resignation and disqualification of members.
- Tenth Schedule – Anti-Defection Law.

Election of the Speaker

Article 93: The Lok Sabha elects one of its members as the Speaker. The election is usually held soon after the first meeting of the newly constituted Lok Sabha.

The Speaker continues in office until:

- He resigns,

- He ceases to be a member of the House,
- He is removed by a resolution passed by a majority of all the then members of the Lok Sabha.

Removal of the Speaker

Article 94: The Speaker may be removed by a resolution passed by an effective majority of the House. A notice of at least fourteen days must be given before moving such a resolution. During the discussion of the removal motion, the Speaker cannot preside over the proceedings.

Position and Importance of the Speaker

The Speaker occupies a position of neutrality and impartiality. Once elected, the Speaker is expected to rise above party politics and function as an impartial guardian of parliamentary democracy.

The Speaker represents:

- Authority of the House,
- Independence of Parliament,
- Parliamentary traditions and conventions.

The prestige of Parliament largely depends upon the dignity and impartiality of the Speaker.

Powers and Functions of the Speaker

The powers and functions of the Speaker may be classified into:

1. Presiding Powers
2. Administrative Powers
3. Disciplinary Powers
4. Legislative Powers
5. Financial Powers
6. Judicial and Quasi-Judicial Powers

7. Committee-Related Powers

8. Miscellaneous Powers

Presiding Powers

The Speaker presides over the sittings of the Lok Sabha.

His primary duty is to conduct the proceedings of the House in an orderly manner.

Maintenance of Order

The Speaker ensures discipline and decorum during debates. He prevents disorderly conduct and maintains parliamentary dignity.

Regulation of Debates

The Speaker decides:

- Who shall speak,
- Duration of speeches,
- Order of discussion.

No member may address the House without the permission of the Speaker.

Interpretation of Rules

The Speaker interprets the Rules of Procedure and Conduct of Business in the Lok Sabha.

His decisions on procedural matters are generally final.

Adjournment of House

The Speaker may adjourn the House or suspend its sitting in cases of disorder or lack of quorum.

Administrative Powers

The Speaker exercises extensive administrative control over the Lok Sabha Secretariat.

Control over Secretariat

The Lok Sabha Secretariat functions under the authority of the Speaker.

He supervises:

- Staff appointments,
- Administration,
- Parliamentary services.

Custodian of Parliamentary Records

The Speaker preserves records, proceedings, and documents of the House.

Acceptance of Resignations

Under Article 101, the Speaker decides whether the resignation of a member is voluntary and genuine before accepting it.

Disciplinary Powers

The Speaker possesses significant disciplinary authority to maintain discipline within the House.

Suspension of Members

The Speaker may suspend members for disorderly conduct.

Expunction of Remarks

Unparliamentary, defamatory, or objectionable remarks may be ordered to be expunged from parliamentary records.

Ensuring Parliamentary Decorum

The Speaker can direct members to withdraw from the House for misconduct. These powers ensure orderly functioning of parliamentary proceedings.

Legislative Powers

The Speaker plays a central role in the legislative process.

Conduct of Legislative Business

The Speaker regulates discussions on Bills and resolutions.

Permission for Motions

Various motions such as:

- Adjournment Motions,
- No-Confidence Motions,
- Censure Motions,

require the permission of the Speaker.

Casting Vote

Article 100 : The Speaker ordinarily does not vote. However, in case of a tie, the Speaker exercises a casting vote. This vote determines the final outcome of the matter.

Joint Sitting of Parliament

Article 108 : The Speaker presides over a joint sitting of both Houses of Parliament. Joint sittings are convened to resolve deadlocks between the Lok Sabha and Rajya Sabha.

Financial Powers

The Speaker enjoys exclusive powers in financial matters.

Certification of Money Bills

Article 110: The Speaker decides whether a Bill is a Money Bill. His certification is final. This is one of the most important powers of the Speaker.

Once certified as a Money Bill:

- Rajya Sabha can only make recommendations.
- Lok Sabha has overriding authority.

Financial Control

The Speaker regulates discussions relating to:

- Budget,
- Demands for Grants,
- Appropriation Bills,
- Finance Bills.

Judicial and Quasi-Judicial Powers

The Speaker performs several quasi-judicial functions.

Anti-Defection Law

Under the Tenth Schedule, the Speaker decides questions regarding disqualification of members on the ground of defection.

This power has significant constitutional importance.

Decision on Parliamentary Privileges

The Speaker may refer questions of breach of privilege to the appropriate committee.

Final Authority on House Procedures

The Speaker's procedural decisions are generally regarded as final within the House.

Committee-Related Powers

Parliamentary committees function under the supervision of the Speaker.

Appointment of Committee Chairpersons

The Speaker appoints Chairpersons of various parliamentary committees.

Nomination of Members

The Speaker nominates members to several committees.

Supervision of Committees

Committees such as:

- Business Advisory Committee,
- Rules Committee,
- General Purposes Committee,

operate under the Speaker's guidance.

These committees facilitate efficient parliamentary functioning.

Miscellaneous Powers

Representative of the House

The Speaker acts as the official representative and spokesperson of the Lok Sabha.

Communication with the President

All communications between the President and the Lok Sabha are transmitted through the Speaker.

International Representation

The Speaker represents the Lok Sabha at national and international parliamentary conferences.

Protection of Privileges

The Speaker safeguards the privileges and immunities of Members of Parliament.

Case Laws

Kihoto Hollohan v. Zachillhu

Citation: 1992 Supp (2) SCC 651

Facts: The constitutional validity of the Anti-Defection Law was challenged. The petitioners argued that vesting adjudicatory power in the Speaker violated judicial independence.

Issue: Whether the Speaker's power under the Tenth Schedule is constitutional.

Judgment: The Supreme Court upheld the validity of the Anti-Defection Law. The Court held that the Speaker acts as a tribunal while deciding defection disputes. However, his decisions are subject to judicial review.

Significance: This is the leading case regarding the Speaker's quasi-judicial powers.

Nabam Rebia v. Deputy Speaker

Citation: (2016) 8 SCC 1

Facts: The Speaker of the Arunachal Pradesh Legislative Assembly initiated disqualification proceedings while a notice for his removal was pending.

Issue: Whether the Speaker could exercise disqualification powers during pendency of a removal motion.

Judgment: The Supreme Court held that the Speaker should not decide disqualification matters while a removal motion against him is pending.

Significance: The judgment emphasized the requirement of impartiality in exercising quasi-judicial powers.

Mohd. Saeed Siddiqui v. State of Uttar Pradesh

Citation: (2014) 11 SCC 415

Facts: The validity of certification of a Bill as a Money Bill was challenged.

Issue: Whether courts can ordinarily interfere with certification by the Speaker.

Judgment: The Court recognized the constitutional significance of the Speaker's certification.

Significance: The case highlighted the Speaker's special authority in financial matters.

Role of the Speaker in Parliamentary Democracy

The Speaker serves as:

- Guardian of parliamentary procedures,
- Protector of members' rights,
- Custodian of House privileges,
- Neutral presiding authority.

The effectiveness of parliamentary democracy largely depends upon the impartiality and integrity of the Speaker.

A strong and independent Speaker contributes to:

- Democratic accountability,
- Efficient law-making,

- Parliamentary discipline,
- Constitutional governance.

The office of the Speaker is central to the functioning of parliamentary democracy. While the Constitution expects the Speaker to remain neutral and impartial, controversies have occasionally arisen regarding the exercise of powers under the Anti-Defection Law and certification of Money Bills. Judicial decisions have sought to balance parliamentary autonomy with constitutional accountability. Despite such challenges, the Speaker remains one of the most important constitutional functionaries in India.

Conclusion: The Speaker of the Lok Sabha occupies a pivotal position in the Indian parliamentary system. As the presiding officer of the House, the Speaker exercises extensive presiding, administrative, legislative, financial, disciplinary, and quasi-judicial powers. Through these functions, the Speaker ensures orderly conduct of business, protects parliamentary privileges, and upholds democratic traditions. Landmark decisions such as *Kihoto Hollohan v. Zachillhu*, *Nabam Rebia v. Deputy Speaker*, and *Mohd. Saeed Siddiqui v. State of Uttar Pradesh* have clarified the constitutional role of the Speaker. Thus, the Speaker acts as the guardian of the dignity, independence, and effective functioning of the Lok Sabha and plays an indispensable role in India's parliamentary democracy.

Q.10 Explain the Constitution, Composition and Powers of Panchayats.

Panchayati Raj Institutions constitute the foundation of rural local self-government in India. They embody the principle of **democratic decentralization**, enabling people at the grassroots level to participate directly in governance and development. The Panchayati Raj system seeks to bring administration closer to the people and promote local self-governance.

The Constitution originally contained only Directive Principles regarding village panchayats. **Article 40** directs the State to organize village panchayats and endow them with powers necessary to function as units of self-government.

However, Panchayats lacked constitutional status until the enactment of the **73rd Constitutional Amendment Act, 1992**, which came into force on **24 April 1993**. This amendment inserted **Part IX (Articles 243 to 243-O)** and the **Eleventh Schedule** into the Constitution, granting constitutional recognition to Panchayats.

The 73rd Constitutional Amendment is regarded as a landmark in the history of local self-government because it transformed Panchayats into constitutionally protected democratic institutions.

Historical Background of Panchayati Raj

The concept of village self-government has existed in India since ancient times.

After Independence, several committees examined rural local governance.

Balwant Rai Mehta Committee (1957)

The Committee recommended:

- Democratic decentralization.
- Three-tier Panchayati Raj system.
- Direct participation of people in local administration.

It became the foundation of modern Panchayati Raj.

Ashok Mehta Committee (1978)

The Committee recommended:

- Strengthening Panchayats.
- Greater financial autonomy.
- Constitutional recognition.

Many of its recommendations later influenced the 73rd Constitutional Amendment.

G.V.K. Rao Committee (1985)

The Committee emphasized the importance of Panchayats in rural development.

L.M. Singhvi Committee (1986)

The Committee strongly recommended constitutional status for Panchayats. These recommendations ultimately led to the enactment of the 73rd Constitutional Amendment Act, 1992.

Constitutional Provisions Relating to Panchayats

The provisions relating to Panchayats are contained in:

- Part IX (Articles 243 to 243-O)
- Eleventh Schedule

The Eleventh Schedule contains **29 subjects** that may be entrusted to Panchayats.

Examples include:

- Agriculture,
- Rural housing,
- Drinking water,
- Roads,
- Poverty alleviation,
- Rural electrification,
- Education,
- Health and sanitation.

Constitution of Panchayats

Article 243B: Article 243B mandates the constitution of Panchayats at the village, intermediate, and district levels. Every State shall establish Panchayats in accordance with the constitutional scheme. However, States

with a population below twenty lakhs may choose not to establish Panchayats at the intermediate level.

The constitutional objective is to ensure democratic participation at every level of rural governance.

Three-Tier Structure of Panchayats

The Constitution establishes a three-tier Panchayati Raj system.

Village Level – Gram Panchayat

The Gram Panchayat is the basic unit of rural local government. It functions at the village level. It directly addresses local needs and development activities.

Intermediate Level – Panchayat Samiti

The Panchayat Samiti operates at the block or taluk level. It coordinates activities of Gram Panchayats and implements development programmes. This level may not exist in States having a population below twenty lakhs.

District Level – Zila Parishad

The Zila Parishad functions at the district level. It supervises and coordinates the activities of Panchayat Samitis and Gram Panchayats. It serves as the highest rural local government institution in the district.

Gram Sabha

Article 243A: The Gram Sabha is the foundation of the Panchayati Raj system. It consists of all registered voters within a village.

Functions of Gram Sabha

- Approves village development plans.
- Reviews functioning of Gram Panchayat.

- Promotes accountability.
- Encourages direct participation of citizens.

The Gram Sabha represents direct democracy at the village level.

Composition of Panchayats

Article 243C : The Legislature of a State determines the composition of Panchayats through legislation. However, the Constitution provides certain mandatory requirements.

Direct Elections

Members of Panchayats are elected directly by the people.

The electorate consists of registered voters within the territorial area of the Panchayat.

Direct elections ensure democratic legitimacy.

Chairpersons

The Chairperson of a Panchayat may be elected directly or indirectly depending upon State legislation.

At different levels, Chairpersons are commonly known as:

- Sarpanch (Village Level)
- President/Chairperson (Intermediate Level)
- President/Chairperson (District Level)

Representation of Members of Parliament and Legislatures

State laws may provide representation to:

- Members of Parliament,
- Members of State Legislatures,

in Panchayats at appropriate levels.

Reservation in Panchayats

The Constitution ensures inclusive representation.

Reservation for Scheduled Castes and Scheduled Tribes

Article 243D : Seats are reserved for Scheduled Castes and Scheduled Tribes in proportion to their population. This provision promotes social justice and political participation.

Reservation for Women

At least one-third of the total seats must be reserved for women. This includes seats reserved for SC and ST women. Reservation also applies to the offices of Chairpersons. Many States have increased reservation to 50%. This provision has significantly enhanced women's participation in grassroots democracy.

Duration of Panchayats

Article 243E : Every Panchayat enjoys a term of five years. If dissolved earlier, fresh elections must be conducted within six months. This provision ensures continuity and stability of local governance.

State Election Commission

Article 243K: The superintendence, direction, and control of Panchayat elections are vested in the State Election Commission. The State Election Commissioner is appointed by the Governor. The Commission ensures free and fair elections.

State Finance Commission

Article 243I

The Governor constitutes a State Finance Commission every five years.

Functions

- Review financial position of Panchayats.
- Recommend distribution of revenues.
- Suggest grants and financial measures.

The Finance Commission strengthens fiscal decentralization.

Powers and Functions of Panchayats

Article 243G

Article 243G authorizes State Legislatures to endow Panchayats with powers and authority necessary to function as institutions of self-government.

These powers may relate to:

- Economic development,
- Social justice,
- Local administration,
- Implementation of development schemes.

Administrative Powers

Panchayats administer local affairs and public services.

Their responsibilities include:

- Maintenance of roads,
- Street lighting,
- Water supply,
- Sanitation,
- Public health,
- Village infrastructure.

These functions improve rural living conditions.

Developmental Powers

Panchayats play a crucial role in rural development.

They implement programmes relating to:

- Agriculture,
- Rural employment,
- Housing,
- Irrigation,
- Poverty alleviation.

The objective is to promote sustainable rural development.

Welfare Functions

Panchayats implement social welfare schemes relating to:

- Women and child welfare,
- Education,
- Health care,
- Nutrition,
- Social security.

They serve as important agencies for social transformation.

Financial Powers

To perform their functions effectively, Panchayats are granted financial powers.

Taxation Powers

Panchayats may levy and collect:

- Property tax,
- Water tax,

- Market fees,
- User charges.

Subject to State legislation.

Grants-in-Aid

Panchayats receive financial assistance from:

- State Governments,
- Central Government,
- Finance Commissions.

Management of Funds

Panchayats prepare budgets and manage local funds for development activities.

Planning Functions

Panchayats prepare local development plans based on community needs.

These plans contribute to district and State development planning.

The Constitution emphasizes decentralized planning through local participation.

Powers under the Eleventh Schedule

The Eleventh Schedule contains twenty-nine subjects that may be entrusted to Panchayats.

Important subjects include:

- Agriculture,
- Minor irrigation,
- Animal husbandry,
- Fisheries,

- Rural housing,
- Drinking water,
- Roads and bridges,
- Education,
- Health,
- Women and child development,
- Poverty alleviation programmes,
- Public distribution system.

The Schedule provides the constitutional framework for rural self-government.

Case Laws

Kishan Singh Tomar v. Municipal Corporation of Ahmedabad

Citation: (2006) 8 SCC 352

Facts: The issue concerned delay in conducting local body elections.

Issue : Whether elections to local bodies can be indefinitely postponed.

Judgment : The Supreme Court held that timely elections are mandatory under the Constitution.

Significance : The judgment strengthened democratic governance in local bodies including Panchayats.

Union of India v. R.C. Jain

Citation: AIR 1981 SC 951

Facts: The Court examined the characteristics of local self-government institutions.

Issue : Whether local bodies perform governmental functions.

Judgment: The Court recognized local authorities as important institutions of governance.

Significance: The case highlighted the importance of local self-government.

Rajendra Singh Rana v. Swami Prasad Maurya

Citation: (2007) 4 SCC 270

Significance: The Supreme Court emphasized democratic principles and representative governance, which are equally relevant to Panchayat institutions.

Significance of Panchayati Raj Institutions

Panchayats have transformed rural governance by:

- Bringing government closer to people.
- Encouraging participatory democracy.
- Promoting social justice.
- Enhancing women's political participation.
- Strengthening rural development.
- Improving accountability and transparency.

The Panchayati Raj system is often described as the foundation of Indian democracy.

Challenges Faced by Panchayats

Despite constitutional status, Panchayats face several challenges:

- Inadequate financial resources.
- Dependence on State Governments.
- Political interference.
- Lack of administrative capacity.
- Delay in devolution of powers.
- Insufficient technical expertise.

These challenges affect effective local governance.

The 73rd Constitutional Amendment marked a revolutionary step toward democratic decentralization. By granting constitutional status to Panchayats, it strengthened grassroots democracy and empowered rural communities.

However, true decentralization requires effective transfer of functions, finances, and functionaries. Many Panchayats continue to depend heavily on State Governments for funds and administrative support.

Strengthening Panchayats remains essential for achieving inclusive development and participatory governance.

Conclusion: Panchayats constitute the foundation of rural local self-government in India. Established under Part IX of the Constitution through the 73rd Constitutional Amendment Act, 1992, they operate through a three-tier structure comprising Gram Panchayat, Panchayat Samiti, and Zila Parishad. Through their administrative, developmental, financial, and welfare powers, Panchayats promote democratic decentralization and rural development. Judicial decisions such as *Kishan Singh Tomar v. Municipal Corporation of Ahmedabad* and *Union of India v. R.C. Jain* have reinforced the constitutional importance of local self-government. Thus, Panchayats serve as vital instruments of grassroots democracy and play an indispensable role in realizing the constitutional vision of democratic self-governance and social justice.

Q.11 Explain the Constitution, Powers and Responsibilities of Panchayats and Municipalities in India.

Local Self-Government is an essential feature of democratic governance. It enables people to participate directly in administration and decision-making at the grassroots level. The Constitution of India recognizes local self-government institutions as instruments of democratic decentralization and participatory governance.

Rural local government is administered through **Panchayats**, while urban local government is administered through **Municipalities**. To strengthen these institutions, Parliament enacted the **73rd Constitutional Amendment Act, 1992** relating to Panchayats and the **74th Constitutional Amendment Act, 1992** relating to Municipalities.

These amendments gave constitutional status to local bodies by inserting:

- **Part IX (Articles 243–243O)** – Panchayats
- **Part IX-A (Articles 243P–243ZG)** – Municipalities
- **Eleventh Schedule** – 29 subjects for Panchayats
- **Twelfth Schedule** – 18 subjects for Municipalities

The objective was to promote democratic decentralization, local participation, social justice, and efficient administration.

Panchayats in India

Meaning

Panchayats are institutions of rural local self-government established for administration and development of villages and rural areas.

The constitutional provisions relating to Panchayats are contained in Part IX of the Constitution.

Constitutional Basis

Article 40: Article 40 of the Directive Principles of State Policy provides: "The State shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government." This constitutional vision was realized through the 73rd Constitutional Amendment Act, 1992.

Constitution of Panchayats

Article 243B: Article 243B provides for the constitution of Panchayats at different levels. The Constitution establishes a **three-tier Panchayati Raj System**.

Gram Panchayat (Village Level)

The Gram Panchayat functions at the village level and serves as the basic unit of rural administration.

Panchayat Samiti (Intermediate Level)

The Panchayat Samiti functions at the block or taluk level and coordinates activities of Gram Panchayats.

Zila Parishad (District Level)

The Zila Parishad functions at the district level and supervises rural development programmes throughout the district.

States having a population below twenty lakhs may not establish the intermediate tier.

Gram Sabha

Article 243A: The Gram Sabha consists of all registered voters in a village. It is the foundation of Panchayati Raj and represents direct democracy.

Functions of Gram Sabha

- Approves development plans.
- Reviews Panchayat performance.
- Monitors expenditure.
- Ensures accountability of local authorities.

Composition of Panchayats

Article 243C: Members of Panchayats are directly elected by the people. The State Legislature determines the composition and territorial constituencies.

Reservation

Article 243D

The Constitution provides reservation for:

Scheduled Castes and Scheduled Tribes

Seats are reserved in proportion to population.

Women

Not less than one-third of seats are reserved for women.

Many States provide 50% reservation.

This has significantly increased women's participation in local governance.

Duration of Panchayats

Article 243E

Every Panchayat has a term of five years.

Fresh elections must be held before expiry of the term or within six months of dissolution.

Powers and Responsibilities of Panchayats

Article 243G

State Legislatures may endow Panchayats with powers necessary to function as institutions of self-government.

The powers broadly include:

Administrative Powers

Panchayats administer local services such as:

- Roads,
- Water supply,
- Sanitation,
- Public health,
- Street lighting,
- Village infrastructure.

Developmental Functions

Panchayats implement rural development programmes relating to:

- Agriculture,
- Irrigation,
- Animal husbandry,
- Fisheries,
- Rural housing,
- Poverty alleviation.

Welfare Functions

Panchayats implement schemes relating to:

- Education,
- Women and child welfare,
- Health care,
- Nutrition,
- Social justice.

Financial Powers

Panchayats may:

- Levy local taxes,

- Collect fees,
- Receive grants from governments,
- Prepare local budgets.

Planning Functions

Panchayats prepare local development plans and contribute to district planning.

Eleventh Schedule

The Eleventh Schedule contains 29 subjects including:

- Agriculture,
- Minor irrigation,
- Animal husbandry,
- Fisheries,
- Rural housing,
- Drinking water,
- Roads,
- Education,
- Health,
- Poverty alleviation,
- Women and child development.

These subjects form the basis of Panchayat responsibilities.

Municipalities in India

Meaning

Municipalities are institutions of urban local self-government responsible for administration of cities and towns.

The provisions relating to Municipalities are contained in **Part IX-A** of the Constitution.

The **74th Constitutional Amendment Act, 1992** gave constitutional status to urban local bodies.

Constitution of Municipalities

Article 243Q

The Constitution provides three types of Municipalities.

Nagar Panchayat

Established for transitional areas moving from rural to urban status.

Municipal Council

Established for smaller urban areas.

Municipal Corporation

Established for larger urban areas and metropolitan cities.

Examples include:

- Bengaluru Municipal Corporation
- Mumbai Municipal Corporation
- Delhi Municipal Corporation

Composition of Municipalities

Article 243R

Members of Municipalities are directly elected by the people of the urban area.

The Legislature of the State determines:

- Composition,
- Wards,
- Election procedures.

Reservation

Article 243T

Reservation is provided for:

- Scheduled Castes,
- Scheduled Tribes,
- Women.

At least one-third of seats are reserved for women.

Duration of Municipalities

Article 243U

Every Municipality has a term of five years.

Fresh elections must be conducted before expiry or within six months after dissolution.

Powers and Responsibilities of Municipalities

Article 243W

State Legislatures may endow Municipalities with powers necessary to function as institutions of self-government.

Administrative Functions

Municipalities administer:

- Urban roads,
- Water supply,
- Drainage,
- Street lighting,
- Public sanitation,
- Urban planning.

Public Health Functions

Municipalities maintain:

- Public hospitals,
- Health centres,
- Waste management systems,
- Environmental sanitation.

Urban Planning Functions

Municipalities regulate:

- Land use,
- Building construction,
- Town planning,
- Urban infrastructure development.

Welfare Functions

Municipalities undertake:

- Slum improvement,
- Urban poverty alleviation,
- Social welfare programmes,
- Public amenities.

Financial Powers

Municipalities may levy:

- Property tax,
- Water tax,
- Advertisement tax,
- User charges,
- Licensing fees.

They also receive grants from State Governments and Finance Commissions.

Twelfth Schedule

The Twelfth Schedule contains 18 functions including:

- Urban planning,
- Regulation of land use,
- Water supply,
- Public health,
- Fire services,
- Urban forestry,
- Environmental protection,
- Slum improvement,
- Poverty alleviation,
- Public amenities.

These subjects constitute the core responsibilities of Municipalities.

State Election Commission

Articles 243K and 243ZA

The State Election Commission conducts elections to Panchayats and Municipalities.

The Commission ensures free, fair, and regular elections.

State Finance Commission

Articles 243I and 243Y

The Governor constitutes a State Finance Commission every five years.

Functions

- Review finances of local bodies.

- Recommend revenue sharing.
- Suggest grants and financial reforms.

This strengthens fiscal decentralization.

Case Laws

Kishan Singh Tomar v. Municipal Corporation of Ahmedabad

Citation: (2006) 8 SCC 352

Facts: Local body elections were delayed.

Issue: Whether elections to local bodies could be postponed indefinitely.

Judgment: The Supreme Court held that timely elections are mandatory.

Significance: Strengthened democratic governance of Panchayats and Municipalities.

Union of India v. R.C. Jain

Citation: AIR 1981 SC 951

Facts: The Court examined the nature of local authorities.

Issue: Whether local bodies perform governmental functions.

Judgment: The Court recognized local bodies as important instruments of governance.

Significance: Highlighted the constitutional importance of local self-government institutions.

Bondu Ramaswamy v. Bangalore Development Authority

Citation: (2010) 7 SCC 129

Facts: Issues relating to urban planning and development authorities arose.

Issue: Extent of municipal functions in urban governance.

Judgment: The Court emphasized proper planning and regulation in urban administration.

Significance: Reinforced the importance of urban local governance.

Difference Between Panchayats and Municipalities

Basis	Panchayats	Municipalities
Constitutional Part	Part IX	Part IX-A
Amendment	73rd Amendment	74th Amendment
Area	Rural Areas	Urban Areas
Schedule	Eleventh Schedule	Twelfth Schedule
Levels	Three-tier system	Nagar Panchayat, Municipal Council, Municipal Corporation
Objective	Rural Development	Urban Administration

The 73rd and 74th Constitutional Amendments marked a historic step toward democratic decentralization. They empowered local communities, strengthened grassroots democracy, and improved participation of women and marginalized groups.

However, many local bodies continue to face challenges such as:

- Inadequate financial resources,
- Dependence on State Governments,
- Lack of administrative autonomy,
- Insufficient technical expertise.

Effective decentralization requires greater devolution of powers, finances, and personnel to local institutions.

Conclusion: Panchayats and Municipalities constitute the foundation of local self-government in India. Through the 73rd and 74th Constitutional Amendments, they have become constitutionally recognized institutions responsible for grassroots governance and development. Panchayats promote rural development through the Eleventh Schedule, while Municipalities manage urban administration through the Twelfth Schedule. Their powers and responsibilities encompass planning, development, welfare, public health, infrastructure, and local administration. Landmark decisions such as *Kishan Singh Tomar v. Municipal Corporation of Ahmedabad* and *Union of India v. R.C. Jain* have strengthened the constitutional framework of local self-government. Thus, Panchayats and Municipalities play a vital role in realizing the constitutional ideals of democracy, decentralization, participation, and social justice.

Q.12 Explain the Tortious Liability of the State with Decided Cases.

The concept of **State Liability in Tort** deals with the responsibility of the Government for wrongful acts committed by its servants or agents. In a welfare state, governmental functions have expanded enormously, increasing interactions between citizens and public authorities. Consequently, situations frequently arise where government officials cause injury, loss, or damage to individuals while performing their duties.

The law of torts seeks to provide compensation to persons who suffer damage due to wrongful acts. The question arises whether the State can be held liable for torts committed by its servants.

Historically, under English law, the doctrine of "**The King can do no wrong**" granted immunity to the Crown. However, in India, the Constitution and judicial decisions have evolved a different approach, balancing governmental immunity with citizens' rights.

The law relating to State liability in India is governed by:

- Article 300 of the Constitution,
- Principles inherited from common law,
- Judicial precedents of the Supreme Court and High Courts.

Meaning of Tortious Liability of the State

Tortious liability of the State means the legal responsibility of the Government to compensate individuals for injuries caused by wrongful acts or omissions of its servants while acting in the course of employment.

Such liability may arise due to:

- Negligence,
- Mifeasance,
- Wrongful detention,
- Trespass,
- Conversion of property,
- Abuse of authority.

The issue is whether the State itself can be sued and compelled to pay damages.

Constitutional Basis

Article 300 of the Constitution

Article 300 provides: The Government of India and the Governments of the States may sue or be sued in the same manner as the Dominion of India and the corresponding Provinces could sue or be sued before the commencement of the Constitution.

Thus, Article 300 recognizes the legal personality of the Government and permits suits against the State.

However, Article 300 does not define the extent of State liability. Therefore, courts have evolved principles through judicial interpretation.

Historical Development

The law relating to State liability in India originated from the decision of the Supreme Court in the famous case of:

Peninsular and Oriental Steam Navigation Co. v. Secretary of State for India

Citation: (1861) 5 Bom HCR App 1

Facts: Government employees engaged in road construction negligently left a heavy iron funnel on a public road. The plaintiff's horse carriage struck the obstruction and suffered damage.

Issue: Whether the Government could be held liable for negligence of its servants.

Judgment: The Court held the Government liable.

The Court distinguished between:

- Sovereign Functions
- Non-Sovereign Functions

The Government was held liable when the wrongful act occurred in the course of non-sovereign functions.

Significance: This case laid down the foundation of tortious liability of the State in India.

Sovereign and Non-Sovereign Functions

The distinction between sovereign and non-sovereign functions became central to determining State liability.

Sovereign Functions

These are functions that can be performed only by the State.

Examples:

- Defence,
- Maintenance of armed forces,
- Administration of justice,
- Police functions,
- Foreign affairs,
- Legislative activities.

Traditionally, the State enjoyed immunity for acts committed while performing sovereign functions.

Non-Sovereign Functions

These are functions that can also be performed by private individuals or corporations.

Examples:

- Commercial activities,
- Transport services,
- Public works,
- Welfare activities,
- Industrial undertakings.

For such functions, the State may be held liable like any private employer.

Vicarious Liability of the State

The State may be held vicariously liable for wrongful acts committed by its servants during the course of employment.

The principle is similar to that applicable to private employers.

However, liability depends upon whether the act relates to sovereign or non-sovereign functions.

Case Laws

State of Rajasthan v. Vidyawati

Citation: AIR 1962 SC 933

Bench: Three-Judge Bench

Facts: A government vehicle maintained by the State of Rajasthan was driven negligently by a government driver.

The vehicle hit a pedestrian, resulting in his death.

The legal representatives of the deceased claimed compensation.

Issue: Whether the State was liable for negligence of its employee.

Judgment: The Supreme Court held the State liable.

The Court observed that after the commencement of the Constitution, the doctrine of complete governmental immunity was inconsistent with democratic governance. The maintenance and operation of a government vehicle was not a sovereign function.

Significance: This case considerably expanded State liability and favored compensation to victims.

Kasturi Lal Ralia Ram Jain v. State of Uttar Pradesh

Citation: AIR 1965 SC 1039

Facts: The plaintiff was arrested by police officers. Gold seized from him was kept in police custody. A police constable misappropriated the gold and absconded. The plaintiff sued the State for recovery of the value of the gold.

Issue: Whether the State was liable for negligence of police officers.

Judgment: The Supreme Court held that the State was not liable. The Court reasoned that seizure and custody of property by police constituted a sovereign function. Therefore, governmental immunity applied.

Significance: This decision reaffirmed the distinction between sovereign and non-sovereign functions. It has been heavily criticized for denying compensation to citizens.

N. Nagendra Rao & Co. v. State of Andhra Pradesh

Citation: (1994) 6 SCC 205

Fact: The authorities seized certain goods belonging to the appellant. Due to negligence of officials, the goods deteriorated and became unusable.

Issue: Whether the State could claim immunity.

Judgment: The Supreme Court held the State liable. The Court observed that in a welfare state, governmental immunity should be limited. Only very limited sovereign functions deserve immunity.

Significance: The Court significantly narrowed the scope of sovereign immunity.

Common Cause v. Union of India

Citation: (1999) 6 SCC 667

Facts: The case involved arbitrary exercise of governmental power causing public injury.

Judgment: The Supreme Court emphasized accountability of public authorities.

Significance: The case reinforced the principle that governmental power must be exercised responsibly.

Constitutional Tort and Public Law Liability

Modern Indian jurisprudence has developed the concept of **Constitutional Tort**, under which compensation may be awarded for violation of Fundamental Rights.

This liability is distinct from traditional tort law.

The Supreme Court has held that compensation can be granted directly under Articles 32 and 226.

Cases on Constitutional Tort

Rudul Sah v. State of Bihar

Citation: (1983) 4 SCC 141

Bench: Three-Judge Bench

Facts: The petitioner remained in jail for several years even after acquittal.

Issue: Whether compensation could be awarded for violation of personal liberty.

Judgment: The Supreme Court awarded monetary compensation.

Significance: For the first time, compensation was granted for violation of Fundamental Rights. The case established the doctrine of constitutional compensation.

Bhim Singh v. State of Jammu and Kashmir

Citation: (1985) 4 SCC 677

Facts: The petitioner, a Member of the Legislative Assembly, was illegally arrested and prevented from attending Assembly proceedings.

Issue: Whether compensation could be awarded for illegal detention.

Judgment: The Supreme Court awarded compensation.

Significance: The Court emphasized protection of personal liberty under Article 21.

Nilabati Behera v. State of Orissa

Citation: (1993) 2 SCC 746

Bench: Three-Judge Bench

Facts: The son of the petitioner died in police custody. The State denied responsibility.

Issue: Whether compensation could be granted for custodial death.

Judgment: The Supreme Court awarded compensation. The Court held that sovereign immunity is not a defence where Fundamental Rights are violated.

Significance: This case firmly established the doctrine of constitutional tort.

D.K. Basu v. State of West Bengal

Citation: (1997) 1 SCC 416

Facts

The case concerned custodial violence and deaths in police custody.

Issue: Whether guidelines were necessary to prevent abuse by police.

Judgment: The Supreme Court laid down detailed guidelines regarding arrest and detention.

Significance: The case strengthened protection of human rights and recognized State accountability for custodial abuse.

Present Position of Law

The modern judicial trend favors accountability rather than immunity.

The Supreme Court has progressively restricted sovereign immunity and expanded citizens' rights.

Current principles include:

- State can be sued under Article 300.
- State is liable for torts committed in non-sovereign functions.
- Sovereign immunity has a limited scope.
- Compensation may be awarded for violation of Fundamental Rights.
- Public authorities are accountable for abuse of power.

Distinction Between Private Tort Liability and Constitutional Tort

Basis	Private Tort Liability	Constitutional Tort
Source	Law of Torts	Constitution
Forum	Civil Courts	Supreme Court/High Courts
Purpose	Compensation for civil wrong	Enforcement of Fundamental Rights
Basis	Negligence or wrongful act	Constitutional violation
Remedy	Damages	Compensation and constitutional remedies

The traditional doctrine of sovereign immunity originated in monarchical systems and is difficult to justify in a democratic republic governed by the rule of law.

Modern governance requires accountability of public authorities. The expansion of constitutional tort jurisprudence reflects the judiciary's

commitment to protecting citizens against arbitrary State action. While decisions such as *Kasturi Lal* protected governmental immunity, later judgments have substantially reduced its scope and emphasized compensation for violations of rights. The present trend is towards balancing administrative efficiency with protection of individual liberties.

Conclusion: The tortious liability of the State represents an important aspect of administrative accountability and constitutional governance. Under Article 300, the State may be sued for wrongful acts committed by its servants. Judicial decisions have evolved from the traditional doctrine of sovereign immunity towards greater governmental responsibility. Landmark cases such as *State of Rajasthan v. Vidyawati*, *Kasturi Lal Ralia Ram Jain v. State of Uttar Pradesh*, *Nilabati Behera v. State of Orissa*, *Rudul Sah v. State of Bihar*, and *D.K. Basu v. State of West Bengal* have shaped the law relating to State liability. Today, the principle that the Government is accountable for wrongful acts and violations of Fundamental Rights forms an integral part of the constitutional commitment to justice, rule of law, and protection of individual rights.

Q.14 Examine the Extent of Government Liability in Contract with Decided Cases.

In a modern welfare state, the Government enters into numerous contracts for carrying out administrative, developmental, commercial, and welfare activities. These contracts may relate to construction of roads, supply of goods, public works, transportation, defense procurement, and various governmental projects.

Like private individuals, the Government can enter into contracts and can sue or be sued for breach of contractual obligations. However, since public funds and public interests are involved, the Constitution imposes special requirements regarding Government contracts.

The law relating to Government liability in contracts is governed primarily by:

- Article 298 of the Constitution

- Article 299 of the Constitution
- Article 300 of the Constitution
- Judicial decisions of the Supreme Court and High Courts

The constitutional provisions seek to protect public funds from unauthorized commitments while ensuring fairness and accountability in governmental dealings.

Meaning of Government Liability in Contract

Government liability in contract refers to the legal responsibility of the Union or State Government arising from contractual obligations entered into with private individuals, companies, or organizations. If a valid contract exists and the Government fails to perform its obligations, it may be held liable for breach of contract and may be required to compensate the aggrieved party. However, such liability arises only when the contract satisfies constitutional requirements.

Constitutional Provisions

Article 298 – Power to Carry on Trade and Business

Article 298 provides that: The executive power of the Union and the States extends to carrying on trade, business, acquisition, holding, and disposal of property and making contracts. Thus, both the Union and State Governments possess contractual capacity similar to private persons.

Article 299 – Formal Requirements of Government Contracts

Article 299 lays down mandatory requirements for Government contracts.

Every Government contract must satisfy three conditions:

Expressed in the Name of the President or Governor

A contract made by the Central Government must be expressed to be made in the name of the President. A contract made by a State Government must be expressed to be made in the name of the Governor.

Executed on Their Behalf

The contract must be executed by a person authorized by the President or Governor.

Proper Authorization

The person executing the contract must possess authority granted by the Government. Failure to comply with these constitutional requirements renders the contract unenforceable.

Object of Article 299

The purpose of Article 299 is:

- To protect public funds.
- To prevent unauthorized contracts.
- To avoid fraudulent claims against the Government.
- To ensure governmental accountability.
- To maintain transparency in public administration.

The provisions are mandatory and not merely directory.

Article 300 – Suits by and Against Government

Article 300 provides that: The Government of India and State Governments may sue and be sued. Accordingly, a person may institute legal proceedings against the Government for breach of a valid contract.

Essential Requirements of a Valid Government Contract

For a Government contract to be enforceable:

Competent Parties

The Government and the other party must be legally competent.

Free Consent

Consent must be free and voluntary.

Lawful Consideration

The contract must have lawful consideration and lawful object.

Compliance with Article 299

The constitutional formalities prescribed under Article 299 must be strictly followed.

Absence of any of these requirements may render the contract invalid.

Consequences of Non-Compliance with Article 299

If constitutional requirements are not fulfilled:

- No binding contract comes into existence.
- Government cannot be sued for breach.
- Specific performance cannot be claimed.
- Damages generally cannot be recovered on the basis of the contract.

However, courts have developed equitable principles to prevent unjust enrichment.

Doctrine of Quantum Meruit

Where a person has supplied goods or rendered services to the Government under an invalid contract, compensation may sometimes be awarded on the basis of:

"Quantum Meruit" (as much as deserved).

This principle prevents the Government from enjoying benefits without paying for them.

Extent of Government Liability

Liability Under Valid Contracts

When Article 299 is complied with, the Government is liable in the same manner as a private individual.

The Government may be held liable for:

- Breach of contract,
- Non-performance,
- Wrongful termination,
- Failure to pay contractual dues.

Courts may award damages or other contractual remedies.

Liability Under Invalid Contracts

If constitutional requirements are not satisfied, contractual liability generally does not arise.

However, compensation may be awarded where:

- Government has received benefits.
- Justice requires restitution.

Personal Liability of Government Officers

Government officers executing contracts are generally not personally liable if:

- They act within authority.
- They act on behalf of the Government.

Article 299 specifically protects public officials from personal liability.

Case Laws

Bhikraj Jaipuria v. Union of India

Citation: AIR 1962 SC 113

Facts: The Government entered into an arrangement for supply of materials. Certain formal requirements under Article 299 were questioned.

Issue: Whether non-compliance with constitutional requirements would invalidate the contract.

Judgment: The Supreme Court held that Article 299 is mandatory. Contracts not executed according to constitutional requirements are unenforceable.

Significance: The case emphasized strict compliance with Article 299.

K.P. Chowdhry v. State of Madhya Pradesh

Citation: AIR 1967 SC 203

Facts: The Government accepted a bid at an auction but the formal contract required under Article 299 was not executed.

Issue: Whether damages could be claimed for breach of contract.

Judgment : The Supreme Court held that in absence of a valid contract complying with Article 299, damages could not be claimed.

Significance: The case reaffirmed the mandatory nature of Article 299.

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

Citation: AIR 1962 SC 779

Facts: A contractor constructed structures at the request of government authorities. The formal requirements of Article 299 were not fulfilled. The Government nevertheless utilized the completed work.

Issue: Whether compensation could be claimed despite the invalid contract.

Judgment: The Supreme Court granted compensation under Section 70 of the Indian Contract Act, 1872. The Court held that the Government could not retain benefits without paying for them.

Significance: The case established the principle of restitution against unjust enrichment.

Mulamchand v. State of Madhya Pradesh

Citation: AIR 1968 SC 1218

Facts: A contract with the Government did not satisfy Article 299 requirements.

Issue: Whether an invalid Government contract could be enforced.

Judgment

The Supreme Court held that an agreement violating Article 299 is void and unenforceable.

Significance: The case strongly reaffirmed the mandatory nature of Article 299.

Union of India v. A.L. Rallia Ram

Citation: AIR 1963 SC 1685

Facts: A dispute arose regarding a Government procurement contract.

Issue: Whether the Government was bound by contractual obligations.

Judgment: The Supreme Court recognized that once a valid Government contract exists, ordinary contractual principles apply.

Significance: The case clarified the contractual liability of Government under valid agreements.

Shrilekha Vidyarthi v. State of Uttar Pradesh

Citation: (1991) 1 SCC 212

Facts: The State Government terminated appointments of Government Counsel through a mass order.

Issue: Whether governmental contractual actions are subject to constitutional scrutiny.

Judgment: The Supreme Court held that State action even in contractual matters must satisfy Article 14. Arbitrariness is unconstitutional.

Significance: The case expanded judicial review over Government contracts.

Government Contracts and Article 14

Modern constitutional law requires fairness in governmental dealings.

The Government cannot act:

- Arbitrarily,
- Discriminatorily,
- Unreasonably.

Even contractual decisions are subject to judicial review when public law elements are involved.

The Government must act fairly because it is a public authority.

Judicial Review of Government Contracts

Courts generally do not interfere with commercial decisions of the Government.

However, judicial review is available where:

- Action is arbitrary.
- Action is mala fide.
- Constitutional provisions are violated.
- Public interest is adversely affected.

This principle ensures accountability in public administration.

Distinction Between Private Contracts and Government Contracts

Basis	Private Contract	Government Contract
Governing Law	Indian Contract Act	Contract Act + Constitution
Formal Requirements	Ordinary requirements	Article 299 requirements
Constitutional Control	Limited	Subject to Articles 14 and 299
Public Interest	Generally private	Public interest involved
Judicial Review	Limited	Wider judicial scrutiny

The Constitution grants the Government extensive contractual powers while imposing safeguards through Article 299. These safeguards protect public funds and prevent unauthorized commitments. At the same time, courts have developed equitable principles such as restitution and quantum meruit to ensure fairness where individuals have acted in good faith. The modern trend emphasizes transparency, accountability, and non-arbitrariness in governmental contracts. The Supreme Court has repeatedly held that the Government cannot escape constitutional obligations merely because it is acting in a contractual sphere.

Conclusion: Government liability in contract is governed by Articles 298, 299, and 300 of the Constitution. While the Government enjoys the power to enter into contracts like any private person, such contracts must strictly comply with constitutional requirements. Failure to satisfy Article 299 renders a contract unenforceable, though equitable remedies may still be available. Landmark decisions such as *State of West Bengal v. B.K. Mondal & Sons*,

Bhikraj Jaipuria v. Union of India, Mulamchand v. State of Madhya Pradesh, K.P. Chowdhry v. State of Madhya Pradesh, and Shrilekha Vidyarthi v. State of Uttar Pradesh have shaped the law relating to Government contracts. Thus, the extent of Government liability balances protection of public funds with fairness, accountability, and constitutional governance.

Q.15 “Freedom of Trade, Commerce and Intercourse throughout the Territory of India shall be Free.” Discuss.

The Constitution of India seeks to establish not only political unity but also economic unity throughout the country. Economic integration is essential for national development, free movement of goods, services, and persons, and the creation of a common national market.

To achieve this objective, the Constitution guarantees **Freedom of Trade, Commerce and Intercourse** throughout the territory of India under **Part XIII (Articles 301 to 307)**.

Article 301 embodies the principle that India should function as one economic unit without artificial barriers between States. The freedom guaranteed under Article 301 promotes economic integration, prevents regional discrimination, and facilitates the free flow of trade and commerce.

However, this freedom is not absolute. The Constitution permits reasonable restrictions in certain circumstances to protect public interest and maintain national economic stability.

Constitutional Scheme of Part XIII

Part XIII of the Constitution contains Articles 301 to 307 dealing with trade, commerce, and intercourse.

The relevant provisions are:

- Article 301 – Freedom of trade, commerce and intercourse.
- Article 302 – Power of Parliament to impose restrictions.
- Article 303 – Restrictions regarding discriminatory laws.

- Article 304 – Restrictions by States.
- Article 305 – Saving of existing laws and State monopolies.
- Article 307 – Authority for carrying out the provisions of Part XIII.

The objective of these provisions is to preserve economic unity and prevent internal trade barriers.

Meaning of Trade, Commerce and Intercourse

Trade: Trade means buying and selling of goods for profit.

Examples:

- Sale of agricultural products.
- Industrial and commercial transactions.
- Import and export within India.

Commerce

Commerce refers to transmission, transportation, and exchange of goods and services.

It includes:

- Transport by road.
- Railways.
- Shipping.
- Air transport.

Commerce may occur even without profit motive.

Intercourse: Intercourse means movement and communication between different parts of the country.

It includes:

- Movement of persons.

- Movement of goods.
- Commercial interactions.

Thus, Article 301 covers all forms of economic movement and transactions.

Article 301 – Freedom of Trade, Commerce and Intercourse

Article 301 provides:

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

The Article guarantees freedom from barriers that directly impede the movement of goods and commercial activities across India.

The purpose is to create:

- Economic unity.
- National market.
- Free movement of goods.
- Uniform economic development.

The freedom applies to:

- Inter-State trade.
- Intra-State trade.
- Movement of goods.
- Commercial activities.

Scope of Article 301

The freedom guaranteed under Article 301 extends to:

Free Movement of Goods

Goods should move freely from one State to another.

Freedom of Commercial Transactions

Business and commercial activities should not face unreasonable barriers.

Economic Integration

The provision seeks to eliminate regional economic isolation.

National Economic Unity

India is treated as a single economic unit.

However, the freedom is not absolute and remains subject to Articles 302 to 305.

Restrictions on Freedom of Trade and Commerce

Article 302 – Power of Parliament to Impose Restrictions

Article 302 authorizes Parliament to impose restrictions on freedom of trade, commerce, and intercourse in the public interest.

Parliament may restrict trade when necessary for:

- Public welfare.
- National security.
- Economic stability.
- Equitable distribution of resources.

Example

Restrictions on movement of essential commodities during shortages.

Article 303 – Prohibition Against Discrimination

Article 303(1) prohibits Parliament and State Legislatures from making laws that:

- Give preference to one State over another.
- Discriminate between States.

The purpose is to maintain economic equality among States.

Exception

Article 303(2) permits Parliament to make discriminatory laws if necessary to deal with scarcity of goods in any part of India.

Article 304 – Power of States to Impose Restrictions

Article 304 empowers State Legislatures to impose certain restrictions.

Article 304(a)

States may impose taxes on goods imported from other States provided:

- Similar local goods are taxed equally.
- No discrimination exists between imported and local goods.

The provision ensures tax equality.

Article 304(b)

States may impose reasonable restrictions on trade in the public interest.

However:

- Prior sanction of the President is mandatory.
- Restrictions must be reasonable.

Article 305 – Saving of Existing Laws and State Monopolies

Article 305 protects:

- Existing laws.
- Laws creating State monopolies.

The State may establish monopoly businesses in public interest.

Examples:

- State transport undertakings.
- Government-controlled industries.

Article 307

Article 307 empowers Parliament to establish authorities for implementing Part XIII.

Although Parliament has not created any specific authority under this Article, it remains constitutionally available.

Tests for Determining Violation of Article 301

The Supreme Court has developed certain principles.

A law violates Article 301 if it:

- Directly restricts movement of goods.
- Creates barriers to trade.
- Impedes commercial activities.

Incidental or indirect effects on trade generally do not violate Article 301.

Case Laws

Atiabari Tea Co. Ltd. v. State of Assam

Citation: AIR 1961 SC 232

Facts: The Assam Government imposed a tax on transportation of tea through Assam. Tea companies challenged the validity of the tax.

Issue: Whether the tax violated Article 301.

Judgment: The Supreme Court held that Article 301 guarantees freedom of movement of trade and commerce. A tax that directly and immediately restricts movement of goods violates Article 301.

Significance: The case laid down the "Direct and Immediate Effect Test." It is regarded as the leading authority on Article 301.

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

Citation: AIR 1962 SC 1406

Facts: Rajasthan imposed a tax on motor vehicles using public roads. The tax was challenged as violating Article 301.

Issue: Whether regulatory taxes violate freedom of trade.

Judgment: The Supreme Court upheld the tax. The Court held that compensatory and regulatory taxes facilitating trade do not violate Article 301.

Significance: The case introduced the doctrine of:

- Regulatory Restrictions.
- Compensatory Taxes.

State of Madras v. Nataraja Mudaliar

Citation: AIR 1969 SC 147

Facts: The validity of certain sales tax provisions affecting inter-State trade was challenged.

Issue: Whether taxation affecting trade necessarily violates Article 301.

Judgment: The Court held that not every tax affecting trade violates Article 301. Only restrictions that directly hamper trade attract Article 301.

Significance: The case refined the interpretation of economic freedom.

Jindal Stainless Ltd. v. State of Haryana

Citation: (2017) 12 SCC 1

Bench: Nine-Judge Constitution Bench

Facts: Various States imposed entry taxes on goods entering their territories. The constitutional validity of entry tax was challenged.

Issue : Whether entry tax violated Articles 301 and 304.

Judgment: The Supreme Court held that taxes are not automatically restrictions on trade. However, discriminatory taxes are unconstitutional.

Significance: The judgment clarified the constitutional validity of entry taxes and emphasized non-discrimination.

Relationship Between Article 19(1)(g) and Article 301

Article 19(1)(g)	Article 301
Fundamental Right	Constitutional Freedom
Available only to citizens	Available to citizens and non-citizens
Protects profession, trade, occupation	Protects free flow of trade and commerce
Subject to Article 19(6)	Subject to Articles 302–305

Both provisions collectively promote economic freedom.

Importance of Freedom of Trade and Commerce

The constitutional guarantee serves several purposes:

Economic Unity

Promotes national integration through a common market.

Removal of Trade Barriers

Prevents unnecessary restrictions among States.

Industrial Growth

Encourages free movement of goods and resources.

Consumer Welfare

Facilitates availability of goods at competitive prices.

National Development

Supports balanced economic progress throughout the country.

The framers of the Constitution recognized that political unity would be ineffective without economic unity. Therefore, Part XIII was enacted to create a common national market. At the same time, complete freedom could sometimes conflict with public welfare. Hence, Articles 302 to 305 permit reasonable restrictions in the interests of the nation. Judicial decisions have consistently attempted to strike a balance between economic freedom and governmental regulation. The introduction of the Goods and Services Tax (GST) has further strengthened the constitutional objective of "One Nation, One Market" by reducing fiscal barriers among States.

Conclusion: Article 301 embodies the constitutional commitment to economic unity by guaranteeing that trade, commerce, and intercourse throughout the territory of India shall be free. While the freedom is broad, it is subject to reasonable restrictions under Articles 302 to 305 to protect public interest and national welfare. Landmark decisions such as *Atiabari Tea Co. Ltd. v. State of Assam*, *Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan*, *State of Madras v. Nataraja Mudaliar*, and *Jindal Stainless Ltd. v. State of Haryana* have shaped the interpretation of Part XIII. Thus, the constitutional guarantee of free trade, commerce, and intercourse remains a vital instrument for preserving India's economic unity, federal harmony, and national development.

Q.16 Explain in Detail the Principles/Norms of Constitutional Interpretation.

A Constitution is the supreme law of the land. It establishes the framework of government, distributes powers among different organs of the State, and guarantees the rights of citizens. Since constitutional provisions are often broadly worded and intended to endure for generations, courts are frequently required to interpret their meaning and scope.

Constitutional Interpretation refers to the process by which courts determine the meaning, purpose, scope, and application of constitutional provisions. The Supreme Court of India, as the guardian and interpreter of the Constitution under Articles 32, 131, 136, 141, and 142, plays a crucial role in constitutional interpretation.

The Indian judiciary has evolved several principles or norms of constitutional interpretation to preserve constitutional supremacy, protect fundamental rights, maintain federal balance, and uphold democratic governance.

Meaning of Constitutional Interpretation

Constitutional interpretation is the judicial process of explaining the meaning of constitutional provisions and applying them to specific situations.

Its objectives are:

- To give effect to constitutional provisions.
- To resolve ambiguities.
- To protect constitutional values.
- To ensure constitutional supremacy.
- To adapt the Constitution to changing social conditions.

Need for Constitutional Interpretation

Constitutional interpretation becomes necessary because:

- Constitutional language is often broad and general.
- New situations arise that were not anticipated by the framers.
- Conflicts may arise between different constitutional provisions.

- Rights and governmental powers require judicial clarification.
- Social, economic, and technological changes require constitutional adaptation.

Principles/Norms of Constitutional Interpretation

1. Doctrine of Harmonious Construction

This principle requires that when two constitutional provisions appear to conflict, they should be interpreted in a manner that gives effect to both rather than rendering either ineffective. The Constitution must be read as an integrated whole.

Features

- Avoids conflict between provisions.
- Preserves constitutional balance.
- Gives effect to every provision.

Case Law

Kesavananda Bharati v. State of Kerala

Citation: (1973) 4 SCC 225

Bench: 13-Judge Constitution Bench

Facts: The validity of constitutional amendments affecting Fundamental Rights was challenged.

Issue: Whether Parliament's amending power under Article 368 was unlimited.

Judgment: The Supreme Court harmonized Articles 13 and 368 and held that Parliament could amend the Constitution but could not destroy its Basic Structure.

Significance: The Court adopted harmonious construction to reconcile constitutional provisions.

2. Doctrine of Pith and Substance

This doctrine is mainly applied in federal disputes involving legislative competence.

When a law appears to encroach upon another legislative field, courts examine its true nature and substance.

Objective

To determine the real character of legislation.

Case Law

State of Bombay v. F.N. Balsara

Citation: AIR 1951 SC 318

Facts: The Bombay Prohibition Act was challenged as encroaching upon Union powers.

Issue: Whether the legislation was within the competence of the State Legislature.

Judgment: The Court examined the true nature of the law and held it valid.

Significance: The doctrine helps preserve federal balance.

3. Doctrine of Colourable Legislation

The doctrine is based on the principle:

"What cannot be done directly cannot be done indirectly."

A legislature cannot indirectly exercise powers that it does not possess.

Case Law

K.C. Gajapati Narayan Deo v. State of Orissa

Citation: AIR 1953 SC 375

Facts: The validity of land reform legislation was challenged.

Issue: Whether the legislation was a disguised attempt to exercise unauthorized power.

Judgment: The Supreme Court explained the doctrine of colourable legislation and upheld the law.

Significance: The doctrine prevents legislative fraud on the Constitution.

4. Doctrine of Basic Structure

The Constitution has certain fundamental features that cannot be destroyed even through constitutional amendments.

Important Features

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

Case Law

Kesavananda Bharati v. State of Kerala

Citation: (1973) 4 SCC 225

Judgment: Parliament can amend any provision of the Constitution but cannot alter its Basic Structure.

Significance: This is the most important principle of constitutional interpretation in India.

5. Doctrine of Severability

If a part of a law is unconstitutional and can be separated from the valid part, only the invalid portion is struck down.

Objective

To preserve valid legislation wherever possible.

Case Law

R.M.D. Chamarbaugwala v. Union of India

Citation: AIR 1957 SC 628

Facts: Certain provisions regulating prize competitions were challenged.

Issue: Whether the entire law should be invalidated.

Judgment: The Court applied the doctrine of severability and preserved the valid portions.

Significance: The doctrine saves legislation from complete invalidation.

6. Doctrine of Eclipse

A law inconsistent with Fundamental Rights does not become void completely but remains dormant and can revive if the constitutional defect is removed.

Case Law

Bhikaji Narain Dhakras v. State of Madhya Pradesh

Citation: AIR 1955 SC 781

Facts: Certain pre-Constitution laws became inconsistent with Fundamental Rights.

Issue: Whether such laws became permanently void.

Judgment: The Supreme Court held that the laws were merely eclipsed and not dead.

Significance: The doctrine applies primarily to pre-Constitution laws.

7. Doctrine of Progressive or Dynamic Interpretation

The Constitution is considered a living document.

Its provisions must be interpreted according to changing social conditions.

Objective

To ensure constitutional adaptability.

Case Law

Maneka Gandhi v. Union of India

Citation: (1978) 1 SCC 248

Facts: The petitioner's passport was impounded without adequate reasons.

Issue: Scope of personal liberty under Article 21.

Judgment: The Supreme Court expanded the meaning of "personal liberty" and adopted a liberal interpretation.

Significance: The case established dynamic constitutional interpretation.

8. Doctrine of Liberal Interpretation of Fundamental Rights

Fundamental Rights should receive a broad and purposive interpretation.

Objective

To maximize individual freedom.

Case Law

Maneka Gandhi v. Union of India

Citation: (1978) 1 SCC 248

Judgment: Articles 14, 19, and 21 were interpreted together to expand protection of liberty.

Significance: The judgment transformed Indian constitutional law.

9. Doctrine of Presumption of Constitutionality

Every legislation is presumed constitutional until proven otherwise. The burden of proving unconstitutionality lies upon the person challenging the law.

Case Law

Ram Krishna Dalmia v. Justice Tendolkar

Citation: AIR 1958 SC 538

Judgment: The Court held that laws enjoy a presumption of constitutionality.

Significance: The doctrine reflects judicial restraint.

10. Purposive Interpretation

Constitutional provisions must be interpreted in light of their object and purpose. The spirit of the Constitution is more important than mere literal meaning.

Case Law

S.R. Bommai v. Union of India

Citation: (1994) 3 SCC 1

Bench: Nine-Judge Bench

Facts: Several State Governments were dismissed under Article 356.

Issue: Scope of federalism and secularism.

Judgment: The Supreme Court interpreted constitutional provisions purposively and held that secularism is part of the Basic Structure.

Significance: The case illustrates purposive constitutional interpretation.

11. Doctrine of Reading Down

Where a provision is capable of two interpretations, courts adopt the interpretation that makes it constitutional.

Objective

To preserve legislative validity.

Case Law

Kedar Nath Singh v. State of Bihar

Citation: AIR 1962 SC 955

Facts: The constitutionality of the law of sedition was challenged.

Issue: Whether the provision violated freedom of speech.

Judgment: The Supreme Court read down the provision and restricted its application to acts involving incitement to violence.

Significance: The doctrine saved the provision from invalidation.

12. Doctrine of Judicial Review

Judicial review is the power of courts to examine the constitutional validity of laws and executive actions. It is the cornerstone of constitutional interpretation.

Case Law

Minerva Mills v. Union of India

Citation: (1980) 3 SCC 625

Facts

Certain constitutional amendments sought to exclude judicial review.

Issue: Whether judicial review could be restricted.

Judgment: The Supreme Court held that judicial review is part of the Basic Structure.

Significance: The case strengthened constitutional supremacy.

Role of the Supreme Court in Constitutional Interpretation

The Supreme Court:

- Protects Fundamental Rights.
- Maintains federal balance.
- Preserves constitutional supremacy.
- Reviews legislative and executive actions.
- Develops constitutional doctrines.
- Acts as guardian of the Constitution.

Through judicial interpretation, the Court has expanded rights relating to:

- Privacy,
- Dignity,
- Environment,
- Education,
- Legal aid,
- Fair procedure.

The Indian Constitution is both rigid and flexible. Judicial interpretation has enabled it to adapt to changing circumstances without frequent amendments. Through doctrines such as Basic Structure, Harmonious Construction, Reading Down, and Judicial Review, the judiciary has protected constitutional values and democratic governance. However, debates continue regarding the limits of judicial activism and judicial restraint. Nevertheless, constitutional interpretation remains essential for preserving the Constitution as a living and dynamic instrument.

Conclusion: Constitutional interpretation is the process through which courts give meaning and effect to constitutional provisions. Over the years, the Supreme Court has evolved several important principles such as Harmonious Construction, Pith and Substance, Colourable Legislation, Basic Structure, Severability, Eclipse, Reading Down, Purposive Interpretation, and Judicial Review. Landmark decisions such as *Kesavananda Bharati v. State of Kerala*, *Maneka Gandhi v. Union of India*, *S.R. Bommai v. Union of India*, *Minerva Mills v. Union of India*, and *Kedar Nath Singh v. State of Bihar* have shaped these principles. These doctrines ensure that the Constitution remains a living document capable of meeting the needs of changing times while preserving its fundamental values, democratic character, and constitutional supremacy.

Q.17 What are the Autonomies Given to Jammu and Kashmir under Article 370 of the Constitution?

Article 370 was one of the most significant and unique provisions of the Constitution of India. It granted a special autonomous status to the State of

Jammu and Kashmir. The provision recognized the special circumstances under which Jammu and Kashmir acceded to India in 1947.

The State enjoyed a degree of autonomy not available to other States in the Indian Union. Article 370 limited the legislative and executive powers of the Union Government over Jammu and Kashmir and allowed the State to have its own Constitution, flag, and substantial control over internal administration.

However, on **5 August 2019**, the Government of India effectively abrogated Article 370 through a Presidential Order and the enactment of the **Jammu and Kashmir Reorganisation Act, 2019**, reorganizing the State into two Union Territories:

1. Jammu and Kashmir
2. Ladakh

Nevertheless, Article 370 remains an important topic in Indian constitutional law and federalism.

Historical Background

Accession of Jammu and Kashmir

At the time of Independence in 1947, princely states were given the option to join either India or Pakistan.

The ruler of Jammu and Kashmir, **Maharaja Hari Singh**, initially chose to remain independent.

In October 1947, tribal forces from Pakistan invaded Kashmir.

To obtain military assistance from India, the Maharaja executed the:

Instrument of Accession (26 October 1947)

Under this Instrument, Jammu and Kashmir acceded to India only in respect of:

- Defence
- External Affairs
- Communications

The special nature of this accession formed the basis for Article 370.

Constitutional Position of Article 370

Article 370 was placed in **Part XXI** of the Constitution dealing with:

"Temporary, Transitional and Special Provisions."

The Article came into force on 26 January 1950.

It established a special constitutional relationship between India and Jammu and Kashmir.

Nature of Article 370

Article 370 was unique because:

- It limited Parliament's powers over Jammu and Kashmir.
- It preserved the State's autonomy.
- It allowed the State to have its own Constitution.
- It required concurrence of the State Government for many Union laws.

The Article was intended to recognize the special political circumstances prevailing in Jammu and Kashmir.

Autonomies Granted under Article 370

1. Separate Constitution of Jammu and Kashmir

The most important autonomy was the power to have its own Constitution.

Position

Unlike other Indian States, Jammu and Kashmir had:

- Its own Constituent Assembly.
- Its own Constitution.

The Constitution of Jammu and Kashmir came into force on 26 January 1957.

No other State in India possessed a separate Constitution. This reflected the unique constitutional status of Jammu and Kashmir.

2. Limited Applicability of the Indian Constitution

Initially, only limited provisions of the Indian Constitution applied to Jammu and Kashmir.

Union laws could be extended only through:

- Presidential Orders.
- Consultation or concurrence of the State Government.

The State enjoyed greater legislative autonomy than any other State.

3. Limited Legislative Power of Parliament

Under Article 370(1)(b), Parliament could legislate only on matters specified in the Instrument of Accession.

These included:

- Defence
- Foreign Affairs
- Communications

For subjects outside these areas, the consent of the State Government was required. This significantly restricted Parliamentary power.

4. Separate Flag

Jammu and Kashmir had its own State Flag in addition to the National Flag. The Constitution of Jammu and Kashmir recognized the State Flag. This symbolized the State's autonomous identity within the Indian Union.

5. Residual Powers Vested in the State

In ordinary Indian federalism, residuary powers belong to Parliament under Article 248.

However, in Jammu and Kashmir:

- Residuary powers belonged to the State Legislature.

This represented a major departure from the general constitutional scheme.

6. Restriction on Emergency Provisions

The Union Government's emergency powers were restricted.

National Emergency

Article 352 could apply only under certain conditions.

Initially, emergency on grounds of internal disturbance required concurrence of the State Government. The State enjoyed greater protection from central intervention.

7. Limited Application of Financial Provisions

Many constitutional provisions relating to:

- Finance,
- Taxation,
- Property,

did not automatically apply.

They required separate Presidential Orders. The State retained greater control over financial matters.

8. Special Protection Regarding Property Rights

Through Article 35A (introduced by Presidential Order of 1954), the State Legislature was empowered to define:

- Permanent residents,
- Property ownership rights,
- Employment rights,
- Educational benefits.

Only permanent residents could:

- Purchase immovable property,
- Obtain certain government jobs,
- Receive specified welfare benefits.

This protected the demographic and cultural identity of the State.

9. Limited Jurisdiction of Parliament

Parliament could not unilaterally extend all Central laws to Jammu and Kashmir.

Extension of many laws required:

- Consultation,
- Concurrence,
- Presidential Orders.

The State enjoyed substantial legislative autonomy.

10. Separate Constitutional Machinery

Jammu and Kashmir had its own constitutional offices.

Historically:

- Governor was known as Sadr-i-Riyasat.
- Chief Minister was known as Prime Minister of Jammu and Kashmir.

Though these designations were later changed, they reflected the State's special status.

Presidential Orders and Gradual Erosion of Autonomy

Although Article 370 granted extensive autonomy, numerous Presidential Orders progressively extended provisions of the Indian Constitution to Jammu and Kashmir.

Most notably:

Constitution (Application to Jammu and Kashmir) Order, 1954

This Order extended many constitutional provisions to the State.

Over time:

- Fundamental Rights,
- Supreme Court jurisdiction,
- Election Commission powers,
- Comptroller and Auditor General's powers,

were extended to Jammu and Kashmir.

As a result, much of the original autonomy was gradually reduced.

Case Laws

Prem Nath Kaul v. State of Jammu and Kashmir

Citation: AIR 1959 SC 749

Facts: The validity of certain constitutional arrangements relating to Jammu and Kashmir was challenged.

Issue: Nature and scope of Article 370.

Judgment: The Supreme Court emphasized the special constitutional position of Jammu and Kashmir and the importance of its Constituent Assembly.

Significance: The case highlighted the autonomous character of the State.

Sampat Prakash v. State of Jammu and Kashmir

Citation: AIR 1970 SC 1118

Facts: The continuing validity of Article 370 was questioned.

Issue: Whether Article 370 had ceased to operate after the dissolution of the State Constituent Assembly.

Judgment: The Supreme Court held that Article 370 remained operative.

Significance: The judgment affirmed the continuing existence of Article 370.

State Bank of India v. Santosh Gupta

Citation: (2017) 2 SCC 538

Facts: The applicability of Central legislation to Jammu and Kashmir was challenged.

Issue: Extent of Union powers in relation to the State.

Judgment: The Supreme Court observed that Article 370 had acquired permanent characteristics because the Constituent Assembly no longer existed.

Significance: The judgment recognized the special constitutional position of Jammu and Kashmir before 2019.

Abrogation of Article 370 (2019)

On **5 August 2019**, the President issued:

Constitution (Application to Jammu and Kashmir) Order, 2019

This extended all provisions of the Constitution of India to Jammu and Kashmir.

Subsequently:

Jammu and Kashmir Reorganisation Act, 2019

The State was reorganized into:

- Union Territory of Jammu and Kashmir.
- Union Territory of Ladakh.

As a consequence:

- Separate Constitution ceased to operate.
- Separate flag ceased to exist.
- Special legislative autonomy ended.
- Article 35A became inoperative.

Constitutional Validity

In **2023**, the Supreme Court upheld the constitutional validity of the 2019 measures.

In Re: Article 370 Cases

Citation: (2023) Constitution Bench Decision

Bench: Five-Judge Constitution Bench

Judgment : The Court upheld the abrogation of Article 370 and held that the provision was temporary in nature.

Significance: The judgment marked the end of Jammu and Kashmir's special constitutional status.

Article 370 represented a unique experiment in Indian federalism. Supporters argued that it protected the distinct identity, culture, and political aspirations of Jammu and Kashmir. Critics contended that it encouraged separatism and hindered complete integration with the rest of India. The gradual extension of Central laws reduced much of the original autonomy even before 2019. The abrogation of Article 370 transformed the constitutional relationship between the Union and Jammu and Kashmir and remains one of the most significant constitutional developments in modern India.

Conclusion: Article 370 granted Jammu and Kashmir a unique autonomous status within the Indian Union. The State enjoyed several special privileges, including a separate Constitution, separate flag, residuary legislative powers, restrictions on Parliamentary legislation, and special protections relating to property and permanent residents. Landmark decisions such as *Prem Nath Kaul v. State of Jammu and Kashmir*, *Sampat Prakash v. State of Jammu and Kashmir*, and *In Re: Article 370 Cases* shaped the constitutional understanding of the provision. Although Article 370 was effectively abrogated in 2019 and upheld by the Supreme Court in 2023, its study remains crucial for understanding Indian federalism, constitutional autonomy, and Centre–State relations.

Q.18 Explain the Safeguards Available to Minorities, Scheduled Castes, Scheduled Tribes and Backward Classes under the Constitution of India.

The Constitution of India is committed to establishing a social order based on **justice, equality, liberty, and fraternity**. Recognizing the historical disadvantages suffered by minorities, Scheduled Castes (SCs), Scheduled Tribes (STs), and socially and educationally backward classes, the

Constitution incorporates several protective provisions to ensure their advancement and equal participation in national life.

These safeguards are intended to achieve:

- Social justice,
- Equality of opportunity,
- Protection against discrimination,
- Educational and economic advancement,
- Political representation,
- Preservation of cultural identity.

The Constitution therefore combines **Fundamental Rights, Directive Principles of State Policy, and special provisions** to protect weaker sections of society.

Meaning of Minorities

The Constitution does not expressly define the term "minority."

Generally, minorities are groups distinguished by:

- Religion,
- Language,
- Culture.

Examples include religious minorities such as Muslims, Christians, Sikhs, Buddhists, Parsis, and Jains and linguistic minorities in different States.

The Constitution grants special protection to preserve their identity and culture.

Constitutional Safeguards for Minorities

1. Right to Equality

Article 14: Article 14 guarantees equality before law and equal protection of laws. Minorities are entitled to equal treatment and protection against arbitrary discrimination.

2. Prohibition of Discrimination

Article 15(1): The State shall not discriminate on grounds of:

- Religion,
- Race,
- Caste,
- Sex,
- Place of birth.

This provision protects minorities from discriminatory treatment.

3. Equality of Opportunity

Article 16(1): Equal opportunity in public employment is guaranteed to all citizens. Minorities cannot be denied employment merely on religious or linguistic grounds.

4. Freedom of Religion

Articles 25 to 28: The Constitution guarantees religious freedom.

Article 25: Freedom of conscience and free profession, practice, and propagation of religion.

Article 26: Right to manage religious affairs.

Article 27: Freedom from payment of taxes for promotion of any particular religion.

Article 28: Freedom relating to religious instruction in educational institutions.

These provisions safeguard religious minorities.

5. Cultural and Educational Rights

Article 29: Protects the language, script, and culture of minorities. Article 29(1) provides: Any section of citizens having a distinct language, script, or culture has the right to conserve the same.

Article 30 : Article 30 grants minorities the right:

- To establish educational institutions.
- To administer educational institutions of their choice.

This is one of the most important minority safeguards.

Case Law

St. Xavier's College v. State of Gujarat

Citation: (1974) 1 SCC 717

Bench: Nine-Judge Bench

Facts: Government regulations imposed restrictions on minority educational institutions.

Issue: Extent of minority rights under Article 30.

Judgment: The Supreme Court held that minorities have a constitutional right to establish and administer educational institutions.

Significance: The case strengthened minority educational rights.

6. Special Officer for Linguistic Minorities

Article 350B: The President appoints a Special Officer for Linguistic Minorities.

Functions

- Investigate safeguards for linguistic minorities.
- Submit reports to the President.

This provision protects linguistic diversity.

Constitutional Safeguards for Scheduled Castes and Scheduled Tribes

The Constitution provides extensive protections because SCs and STs historically suffered discrimination, social exclusion, and economic deprivation.

1. Abolition of Untouchability

Article 17: Article 17 abolishes untouchability. It declares: "Untouchability is abolished and its practice in any form is forbidden." Violation is punishable under law.

Significance

This is a revolutionary constitutional safeguard for Scheduled Castes.

Case Law

State of Karnataka v. Appa Balu Ingale

Citation: (1995) 2 SCC 273

Facts : Members of Scheduled Castes were denied access to public facilities.

Issue: Whether such practices violated Article 17.

Judgment: The Supreme Court strongly condemned untouchability practices.

Significance: The Court reinforced constitutional commitment to social equality.

2. Prohibition of Discrimination

Article 15(2): Prohibits denial of access to:

- Shops,
- Restaurants,
- Hotels,
- Public places.

SCs and STs are protected against social exclusion.

3. Reservation in Educational Institutions

Article 15(4): Inserted by the First Constitutional Amendment.

Permits special provisions for:

- Scheduled Castes,
- Scheduled Tribes,
- Socially and Educationally Backward Classes.

4. Reservation in Public Employment

Article 16(4): Allows reservation in public employment for backward classes inadequately represented in services.

This includes SCs and STs.

Article 16(4A): Provides reservation in promotion for SCs and STs under specified circumstances.

Case Law

Indra Sawhney v. Union of India

Citation: 1992 Supp (3) SCC 217

Bench: Nine-Judge Constitution Bench

Facts: The validity of reservations based on the Mandal Commission recommendations was challenged.

Issue: Extent of reservation under Article 16.

Judgment: The Supreme Court upheld reservations for backward classes. The Court generally fixed a ceiling of 50% on reservations.

Significance: The case is the leading authority on reservation policy.

5. Directive Principles

Article 46: Article 46 directs the State: To promote the educational and economic interests of Scheduled Castes, Scheduled Tribes and weaker sections.

The State must protect them from:

- Social injustice,
- Exploitation.

6. Political Representation

Articles 330 and 332

Provide reservation of seats for SCs and STs in:

- Lok Sabha,
- State Legislative Assemblies.

Ensures political participation and representation.

7. National Commissions

Article 338

Provides for the National Commission for Scheduled Castes.

Functions

- Investigate safeguards.
- Monitor implementation.
- Advise Government.

Article 338A

Provides for the National Commission for Scheduled Tribes.

Functions

- Protect ST rights.
- Monitor welfare measures.

8. Tribal Welfare

Fifth Schedule

Provides special administration for Scheduled Areas in most States.

Sixth Schedule

Provides autonomous district councils in tribal areas of:

- Assam,
- Meghalaya,
- Tripura,
- Mizoram.

Protects tribal customs, culture, and self-governance.

Case Law

Samatha v. State of Andhra Pradesh

Citation: (1997) 8 SCC 191

Facts: Mining leases were granted in tribal areas.

Issue: Whether tribal land could be transferred to private entities.

Judgment: The Supreme Court protected tribal land rights.

Significance: The case strengthened constitutional protection of Scheduled Tribes.

Constitutional Safeguards for Backward Classes

Backward Classes include socially and educationally disadvantaged communities that are not necessarily Scheduled Castes or Scheduled Tribes.

1. Article 15(4): Permits special educational provisions for backward classes.

2. Article 15(5): Permits reservation in educational institutions, including private institutions (except minority institutions).

3. Article 16(4): Permits reservation in public employment.

4. Article 340: Provides for appointment of a Commission to investigate conditions of backward classes.

Example

The **Mandal Commission** was constituted under Article 340.

Case Law

M.R. Balaji v. State of Mysore

Citation: AIR 1963 SC 649

Facts: The State reserved a large percentage of educational seats for backward classes.

Issue: Whether excessive reservation was constitutional.

Judgment: The Supreme Court held that reservation should remain reasonable.

Significance: The judgment laid the foundation for later reservation jurisprudence.

Economically Weaker Sections (EWS)

Article 15(6): Introduced by the 103rd Constitutional Amendment Act, 2019. Provides reservation for Economically Weaker Sections.

Article 16(6): Provides reservation in public employment for EWS.

Case Law

Janhit Abhiyan v. Union of India

Citation: (2023) 5 SCC 1

Bench: Five-Judge Constitution Bench

Facts: The constitutional validity of the 103rd Constitutional Amendment was challenged.

Issue : Whether EWS reservation violated the Basic Structure.

Judgment: The Supreme Court upheld the amendment.

Significance: The case expanded affirmative action policies.

Role of Constitutional Bodies

Several constitutional institutions protect weaker sections:

National Commission for Scheduled Castes (Article 338)

National Commission for Scheduled Tribes (Article 338A)

National Commission for Backward Classes (Article 338B)

Special Officer for Linguistic Minorities (Article 350B)

These bodies monitor implementation of constitutional safeguards.

The Constitution seeks to balance formal equality with substantive equality. Mere declaration of equality would not be sufficient for communities that have suffered centuries of discrimination and exclusion.

Therefore, the Constitution adopts affirmative action measures such as:

- Reservations,
- Educational safeguards,
- Political representation,
- Cultural protection,
- Economic welfare measures.

At the same time, courts have emphasized that such measures must promote equality without destroying merit or constitutional balance.

Conclusion: The Constitution of India contains a comprehensive framework of safeguards for minorities, Scheduled Castes, Scheduled Tribes, and backward classes. Through Fundamental Rights, Directive Principles, reservation policies, political representation, cultural protections, and constitutional commissions, it seeks to achieve social justice and equality. Landmark decisions such as *St. Xavier's College v. State of Gujarat*, *Indra Sawhney v. Union of India*, *Samatha v. State of Andhra Pradesh*, *State of Karnataka v. Appa Balu Ingale*, and *Janhit Abhiyan v. Union of India* have strengthened these protections. These safeguards reflect the constitutional commitment to equality, dignity, social justice, and inclusive development, ensuring that historically disadvantaged communities participate fully in the democratic and socio-economic life of the nation.

Q.19 Reservation of the Post of Chairman of Municipalities in Favour of SC/ST Elected Women Members – Discuss Constitutionality.

The Constitution of India aims to establish a democratic society based on equality, social justice, and inclusive governance. Historically, women, Scheduled Castes (SCs), and Scheduled Tribes (STs) have suffered social, political, and economic disadvantages, resulting in their underrepresentation in public institutions.

To remedy this historical inequality, the Constitution permits **affirmative action** through reservations in educational institutions, public employment, legislatures, Panchayats, and Municipalities.

One such measure is the reservation of the office of **Chairperson (Chairman/President/Mayor) of Municipalities** in favour of SC/ST women members. The constitutional validity of such reservation has been upheld because it seeks to ensure adequate representation of socially disadvantaged groups and women in local self-government institutions.

The issue involves interpretation of **Articles 14, 15, 16, 243T, and the principles of social justice and democratic decentralization.**

Constitutional Background

74th Constitutional Amendment Act, 1992

The **74th Constitutional Amendment Act, 1992** inserted **Part IX-A (Articles 243P to 243ZG)** relating to Municipalities.

The objective was:

- Strengthening urban local self-government.
- Promoting democratic decentralization.
- Ensuring representation of weaker sections.
- Enhancing participation of women in governance.

The Amendment gave constitutional status to Municipalities and introduced reservation provisions.

Constitutional Provisions Relating to Reservation in Municipalities

Article 243T: Article 243T specifically deals with reservation in Municipalities.

Article 243T(1): Provides reservation of seats for Scheduled Castes and Scheduled Tribes in proportion to their population.

Article 243T(2): Provides reservation of seats for women belonging to SCs and STs.

Article 243T(3): Not less than one-third of the total seats shall be reserved for women.

Article 243T(4): Provides: "The offices of Chairpersons in the Municipalities shall be reserved for the Scheduled Castes, Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide." This clause is the constitutional foundation for reservation of the office of Chairperson in favour of SC/ST women.

Meaning of Reservation of Chairperson Post

The office of Chairperson includes:

- Mayor,
- President,
- Chairperson,
- Municipal Chairman,

depending upon the type of Municipality.

Reservation means that only eligible members belonging to specified categories can contest and occupy the office during a particular term.

For example:

- A Municipality may reserve the Chairperson's post for SC women.

- Only elected women members belonging to Scheduled Castes can contest that office.

Constitutional Basis for Such Reservation

The reservation is constitutionally justified on several grounds.

1. Social Justice

The Preamble promises:

- Justice—social, economic, and political.
- Equality of status and opportunity.

Reservation promotes substantive equality by empowering historically marginalized groups.

2. Equality Does Not Mean Uniform Treatment

Article 14: Article 14 permits reasonable classification. The Constitution recognizes that unequal persons may require special treatment to achieve real equality.

Reservation for SC/ST women is based on:

- Historical disadvantage,
- Social backwardness,
- Political underrepresentation.

Thus, the classification is reasonable.

3. Protective Discrimination

Article 15(3) : Permits special provisions for women.

Article 15(4): Permits special provisions for SCs, STs, and backward classes. The reservation of Chairperson posts combines these constitutional protections.

4. Democratic Decentralization

The purpose of local self-government is not merely administration but also participation.

Reservation ensures participation of marginalized groups in decision-making processes.

Triple Disadvantage Faced by SC/ST Women

SC/ST women often suffer:

Gender Disadvantage

Due to patriarchal social structures.

Caste-Based Disadvantage

Due to historical discrimination.

Economic Disadvantage

Due to poverty and social exclusion.

Reservation seeks to address these multiple disadvantages.

Judicial Approach Towards Reservation in Local Bodies

The Supreme Court has consistently upheld reservation provisions intended to promote political participation of weaker sections.

Case Law

Kasambhai F. Ghanchi v. Chandubhai D. Rajput

Citation: (1998) 1 SCC 285

Facts: The validity of reservation of the office of President of a Municipality for Scheduled Castes was challenged.

Issue: Whether reservation of Chairperson posts violated constitutional equality.

Judgment: The Supreme Court upheld the reservation. The Court held that Article 243T specifically authorizes reservation of offices of Chairpersons.

Significance: The judgment recognized the constitutional validity of reserving leadership positions in Municipalities.

Saraswati Devi v. Shanti Devi

Citation: (1997) 1 SCC 122

Facts: The issue concerned reservation of offices in local self-government institutions.

Issue: Whether reservation of leadership positions was constitutional.

Judgment: The Supreme Court upheld such reservations.

Significance: The Court emphasized the objective of political empowerment of women and weaker sections.

K. Krishna Murthy v. Union of India

Citation: (2010) 7 SCC 202

Bench: Constitution Bench

Facts: The constitutional validity of reservations in local bodies was challenged.

Issue: Whether reservations in local self-government institutions violate equality principles.

Judgment: The Supreme Court upheld reservations for SCs, STs, and women in local bodies.

The Court observed that local self-government institutions are instruments of participatory democracy.

Significance: The judgment strongly supported political empowerment of marginalized communities.

Constitutional Validity of Reservation for SC/ST Women Chairpersons

The reservation is constitutionally valid because:

Express Constitutional Authorization

Article 243T(4) expressly authorizes reservation of Chairperson posts.

Promotion of Substantive Equality

The reservation advances real equality rather than merely formal equality.

Social Justice Objective

It fulfills constitutional goals under:

- Preamble,
- Articles 14,
- 15,
- 38,
- 46

Democratic Representation

It ensures participation of groups traditionally excluded from governance.

Protection of Marginalized Women

The Constitution permits special measures for women and weaker sections.

Criticisms of Such Reservation

Certain criticisms have been raised:

Alleged Violation of Merit

Some argue that reservation may reduce emphasis on merit.

Rotation Problems

Frequent rotation of reserved offices may affect continuity in governance.

Proxy Representation

In some cases, elected women representatives may be influenced by male relatives.

Administrative Challenges

Experience and administrative expertise may vary among representatives.

Counter-Arguments

These criticisms do not undermine constitutional validity because:

- Social justice is a constitutional objective.
- Political participation is essential for empowerment.
- Reservation creates opportunities for leadership development.
- Democracy requires representation of all sections of society.

The Supreme Court has repeatedly emphasized that reservation in local bodies serves constitutional goals.

Relationship with Directive Principles

Reservation of Chairperson posts also promotes:

Article 38: Social order based on justice.

Article 39: Equal opportunity.

Article 46: Promotion of educational and economic interests of weaker sections. Thus, reservation aligns with constitutional directives.

Impact of Reservation

Reservation of Chairperson posts has resulted in:

- Greater participation of women in politics.
- Increased representation of SCs and STs.
- Grassroots leadership development.
- Improved inclusiveness in urban governance.
- Strengthening of democratic decentralization.

It has transformed local self-government into a more representative institution. The reservation of the office of Chairperson of Municipalities for SC/ST women reflects the constitutional commitment to social justice and inclusive democracy. It recognizes that formal equality alone cannot remove centuries of exclusion and discrimination. By ensuring representation in leadership positions, the Constitution seeks to empower marginalized communities and enhance democratic participation. Judicial decisions have consistently upheld such reservations as legitimate forms of affirmative action aimed at achieving substantive equality.

Conclusion: Reservation of the post of Chairperson of Municipalities in favour of SC/ST elected women members is constitutionally valid and derives direct authority from Article 243T(4) of the Constitution. It is consistent with the principles of equality, social justice, democratic decentralization, and empowerment of weaker sections. Landmark decisions such as *Kasambhai F. Ghanchi v. Chandubhai D. Rajput*, *Saraswati Devi v. Shanti Devi*, and *K. Krishna Murthy v. Union of India* have affirmed the constitutional legitimacy of such reservations. Therefore, reservation of Chairperson posts for SC/ST women is a valid constitutional mechanism for achieving substantive equality, political empowerment, and effective participation in local self-government.

Q.20 Appointment of Supreme Court Judges by the President without Consulting the Chief Justice of India – Whether Constitutional?

The independence of the judiciary is one of the fundamental features of the Indian Constitution and forms part of its **Basic Structure**. An independent judiciary ensures the protection of Fundamental Rights, maintenance of constitutional supremacy, and preservation of the rule of law.

The appointment of judges to the Supreme Court is therefore a matter of great constitutional importance. The Constitution entrusts the power of appointment of Supreme Court Judges to the President of India, but this power is not absolute. The President must act in accordance with the constitutional scheme laid down under **Article 124** and the principles evolved through judicial decisions.

The question arises whether the President can appoint a Supreme Court Judge without consulting the Chief Justice of India (CJI). The answer requires an examination of constitutional provisions and landmark judgments known as the Judges Cases.

Constitutional Provisions

Article 124(2): Article 124(2) provides: "Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such Judges of the Supreme Court and of the High Courts as the President may deem necessary and shall always consult the Chief Justice of India in the appointment of a Judge other than the Chief Justice." Thus, the Constitution expressly mandates consultation with the Chief Justice of India for the appointment of Supreme Court Judges.

Purpose of Consultation

The requirement of consultation seeks to:

- Protect judicial independence.
- Ensure selection based on merit.

- Prevent political interference.
- Maintain public confidence in the judiciary.
- Preserve separation of powers.

The Chief Justice of India, being the head of the Indian judiciary, is considered best placed to assess the competence, integrity, and suitability of candidates.

Meaning of Consultation

The word "consultation" became the subject of constitutional controversy. The central issue was: Whether consultation means merely seeking advice or obtaining concurrence of the Chief Justice of India. The Supreme Court addressed this issue through a series of landmark decisions.

First Judges Case

S.P. Gupta v. Union of India

Citation: AIR 1982 SC 149

Bench: Seven-Judge Bench

Facts: Several issues relating to judicial appointments and transfers were challenged.

Issue: Whether the opinion of the Chief Justice of India had primacy in judicial appointments.

Judgment: The Supreme Court held:

- Consultation does not mean concurrence.
- The President (acting through the Executive) had the final say.
- The opinion of the Chief Justice was not binding.

Significance: The judgment gave primacy to the Executive in judicial appointments.

Criticism of the First Judges Case

The decision was criticized because:

- It weakened judicial independence.
- It increased executive influence.
- It threatened separation of powers.

These concerns led to reconsideration by a larger Bench.

Second Judges Case

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

Citation: (1993) 4 SCC 441

Bench: Nine-Judge Constitution Bench

Facts: The constitutional validity of executive dominance in judicial appointments was challenged.

Issue: Whether the opinion of the Chief Justice of India should have primacy.

Judgment: The Supreme Court overruled the First Judges Case.

The Court held:

- Judicial independence is part of the Basic Structure.
- The opinion of the Chief Justice of India has primacy.
- Appointments should be made through a collegial process.

Significance: The Court introduced the **Collegium System**. The Chief Justice's opinion became decisive.

Birth of the Collegium System

The Court held that the Chief Justice should consult senior Supreme Court Judges before recommending appointments.

Thus, judicial appointments became a collective judicial function rather than an executive function.

Third Judges Case

Re Presidential Reference (Special Reference No. 1 of 1998)

Citation: (1998) 7 SCC 739

Bench: Nine-Judge Constitution Bench

Facts: The President sought clarification regarding the Collegium System.

Issue: How many judges should participate in the consultation process?

Judgment: The Supreme Court expanded the Collegium.

For appointment of Supreme Court Judges:

- Chief Justice of India.
- Four senior-most Supreme Court Judges.

must collectively participate.

Significance : The present Collegium System was established.

Present Constitutional Position

Today, Supreme Court Judges are appointed through the Collegium System consisting of:

- Chief Justice of India.
- Four senior-most Judges of the Supreme Court.

The President acts on the recommendation of the Collegium.

Whether the President Can Appoint Judges Without Consulting the Chief Justice of India?

Constitutional Position

The answer is **No**.

The President cannot constitutionally appoint a Supreme Court Judge without consulting the Chief Justice of India.

This is because: Article 124(2) Makes Consultation Mandatory

The Constitution expressly requires consultation with the Chief Justice of India.

Judicial Independence

Judicial independence is part of the Basic Structure.

Ignoring the Chief Justice would undermine judicial independence.

Collegium System

The Second and Third Judges Cases have made consultation with the Chief Justice and Collegium indispensable.

Constitutional Convention

Judicial appointments have consistently followed the consultative process.

Consequences of Ignoring Consultation

If the President appoints a Judge without consulting the Chief Justice:

- The appointment may be challenged.
- It may violate Article 124.
- It may violate the Basic Structure Doctrine.
- The appointment may be declared unconstitutional by the Supreme Court.

Fourth Judges Case (NJAC Case)

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

Citation: (2016) 5 SCC 1

Bench: Five-Judge Constitution Bench

Facts: The Constitution (99th Amendment) Act, 2014 and the National Judicial Appointments Commission (NJAC) Act, 2014 sought to replace the Collegium System.

Issue: Whether the NJAC violated judicial independence.

Judgment: The Supreme Court struck down the NJAC.

The Court held:

- Judicial independence is part of the Basic Structure.
- Executive participation could compromise judicial autonomy.
- The Collegium System would continue.

Significance: The judgment reaffirmed the central role of the Chief Justice of India in judicial appointments.

Role of the President in Judicial Appointments

The President's role is important but not absolute.

The President:

- Formally appoints judges.
- Acts on Collegium recommendations.
- May return recommendations once for reconsideration.

However, if the Collegium reiterates its recommendation, the Government is constitutionally bound to accept it.

Importance of Consultation with the Chief Justice of India

Consultation with the CJI ensures:

Judicial Independence

Protects courts from political influence.

Merit-Based Appointments

Selection based on competence and integrity.

Separation of Powers

Maintains balance between Executive and Judiciary.

Constitutional Governance

Strengthens public confidence in the judicial system.

The framers originally intended a consultative process rather than complete judicial control. However, concerns regarding executive interference led the Supreme Court to develop the Collegium System through judicial interpretation. While the Collegium System has been criticized for lack of transparency, the Supreme Court has consistently maintained that judicial primacy is necessary to protect judicial independence, which forms part of the Basic Structure of the Constitution. Consequently, consultation with the Chief Justice of India is no longer viewed as a mere formality but as an essential constitutional requirement.

Conclusion: The appointment of Supreme Court Judges by the President without consulting the Chief Justice of India is unconstitutional. Article 124(2) expressly requires consultation with the Chief Justice of India, and judicial decisions have elevated this consultation into a system of judicial primacy through the Collegium. Landmark decisions such as *S.P. Gupta v. Union of India*, *Supreme Court Advocates-on-Record Association v. Union of India*, *Re Presidential Reference (Special Reference No. 1 of 1998)*, and *Supreme Court Advocates-on-Record Association v. Union of India* have firmly

established that consultation with the Chief Justice of India is indispensable for valid judicial appointments. Therefore, any appointment made by the President without such consultation would violate Article 124, judicial independence, and the Basic Structure of the Constitution.

Q.21 Liability of the Central Government for Death Caused by a Military Vehicle Accident Involving Jawans

The liability of the Government for wrongful acts committed by its servants is an important aspect of Constitutional and Administrative Law. When a person dies due to the negligence of Government employees, the question arises whether the Government can be held liable to pay compensation.

In cases involving military vehicles driven by army personnel (jawans), the issue becomes more complex because the armed forces perform functions closely connected with national defence, which is traditionally regarded as a **sovereign function** of the State.

The liability of the Central Government in such situations depends upon:

- Article 300 of the Constitution,
- Principles of tortious liability,
- Doctrine of sovereign immunity,
- Judicial precedents,
- Constitutional remedies under Articles 21, 32, and 226.

Modern judicial trends favor compensation to victims, especially where negligence causes loss of life.

Constitutional Basis

Article 300 of the Constitution

Article 300 provides: The Government of India may sue and be sued in the same manner as the Dominion of India before the commencement of the Constitution. Thus, the Union Government can be sued for wrongful acts committed by its servants.

Meaning of Government Liability

Government liability means the legal responsibility of the State to compensate persons who suffer injury, death, or loss due to acts of Government employees acting in the course of their employment.

The liability may arise:

- Under private law (law of torts),
- Under public law (constitutional tort),
- Under statutory provisions such as the Motor Vehicles Act.

Sovereign and Non-Sovereign Functions

Historically, Government liability depended upon the distinction between sovereign and non-sovereign functions.

Sovereign Functions

Functions that can be performed only by the State:

- Defence of the country,
- Maintenance of armed forces,
- Foreign affairs,
- Administration of justice,
- Internal security.

Non-Sovereign Functions

Functions similar to those performed by private persons:

- Commercial activities,
- Transport services,
- Welfare activities,
- Public works.

Traditionally, the State enjoyed immunity for sovereign functions.

Military Operations as Sovereign Functions

The activities of the armed forces generally fall within sovereign functions because:

- Defence is an exclusive governmental responsibility.
- Military operations relate directly to national security.
- Armed forces exercise sovereign power.

However, courts have increasingly distinguished between:

- Actual military operations, and
- Ordinary negligence unrelated to combat activities.

Liability for Military Vehicle Accidents

When a military truck or army vehicle causes an accident resulting in death, courts examine:

- Whether the vehicle was engaged in combat operations.
- Whether the accident resulted from negligence.
- Whether the activity was administrative or operational.

If the death results from negligent driving of a military vehicle on a public road, the Government may be held liable.

Case Law

Union of India v. Sugrabai

Citation: AIR 1969 Bom 13

Facts : A military vehicle driven by army personnel caused a fatal accident resulting in the death of a civilian.

Issue: Whether the Union Government was liable despite the vehicle belonging to the armed forces.

Judgment: The Bombay High Court held the Union Government liable. The Court observed that negligent driving of a vehicle on a public road could not claim absolute immunity merely because the vehicle belonged to the military.

Significance: The case restricted the scope of sovereign immunity.

State of Rajasthan v. Vidyawati

Citation: AIR 1962 SC 933

Bench: Three-Judge Bench

Facts: A government jeep driven negligently by a government driver caused the death of a pedestrian.

Issue: Whether the Government was liable for negligence of its servant.

Judgment: The Supreme Court held the Government liable.

The maintenance and operation of a vehicle was considered a non-sovereign activity.

Significance: The case expanded State liability and promoted compensation for victims.

Kasturi Lal Ralia Ram Jain v. State of Uttar Pradesh

Citation: AIR 1965 SC 1039

Facts :Police officers negligently lost gold seized from a citizen.

Issue: Whether the State was liable for acts committed in exercise of sovereign functions.

Judgment: The Supreme Court granted immunity to the State.

Significance: The case recognized sovereign immunity for acts connected with sovereign functions. However, later judgments have narrowed its application.

N. Nagendra Rao & Co. v. State of Andhra Pradesh

Citation: (1994) 6 SCC 205

Facts: Government officials negligently handled seized goods causing loss.

Issue: Extent of sovereign immunity.

Judgment: The Supreme Court held that sovereign immunity should be confined to limited governmental functions.

Significance: The Court emphasized accountability in a welfare state.

Constitutional Tort and Right to Life

The modern approach focuses on Article 21.

Article 21 guarantees: "No person shall be deprived of his life or personal liberty except according to procedure established by law." If negligent State action causes death, compensation may be awarded as a constitutional remedy.

Constitutional Tort Cases

Rudul Sah v. State of Bihar

Citation: (1983) 4 SCC 141

Facts: The petitioner was illegally detained even after acquittal.

Judgment: The Supreme Court awarded compensation.

Significance: The Court recognized compensation for violation of Fundamental Rights.

Nilabati Behera v. State of Orissa

Citation: (1993) 2 SCC 746

Bench: Three-Judge Bench

Facts: A young man died in police custody.

Issue: Whether sovereign immunity could defeat compensation claims.

Judgment : The Supreme Court awarded compensation. The Court held that sovereign immunity is not a defence against violation of Fundamental Rights.

Significance: The case firmly established the doctrine of constitutional tort.

Motor Vehicles Act and Government Liability

Military vehicles operating on public roads are also subject to principles under the Motor Vehicles Act.

Where negligence causes death:

- Legal representatives may seek compensation.
- Claims may be filed before the Motor Accident Claims Tribunal (MACT).
- The Union Government may be directed to pay damages.

The fact that the vehicle belongs to the armed forces does not automatically exempt the Government.

Whether the Central Government is Liable?

Situation 1: Military Operation During Combat

If death occurs during actual military operations or wartime activities, sovereign immunity may be available.

The Government may not be held liable in ordinary tort proceedings.

Situation 2: Negligent Driving of Military Vehicle

If a military vehicle negligently causes death on a public road:

- The activity is administrative rather than combat-related.
- Courts generally hold the Government liable.
- Compensation can be awarded.

Situation 3: Violation of Article 21

Where negligence results in deprivation of life:

- Constitutional remedies may be invoked.
- Compensation may be awarded under Articles 32 or 226.

Judicial Trend

The modern trend of the Supreme Court is:

- To reduce sovereign immunity.
- To expand governmental accountability.
- To protect victims' rights.
- To ensure compensation for wrongful death.

The emphasis has shifted from protecting governmental immunity to protecting citizens.

The doctrine of sovereign immunity originated in colonial and monarchical systems where the State was considered above legal responsibility. In a democratic republic governed by the rule of law, such immunity cannot be unlimited. While military operations essential for national defence may justify immunity, negligent driving of a military vehicle on public roads bears little connection with combat functions. Denying compensation in such cases would be inconsistent with constitutional principles of justice and equality. Modern constitutional jurisprudence therefore favors compensation to victims and accountability of public authorities.

Conclusion - The Central Government may be held liable for death caused by a military vehicle accident involving jawans where the accident results from negligence and is not directly connected with combat or wartime operations. Under Article 300, the Government can be sued, and modern judicial decisions have significantly restricted the doctrine of sovereign immunity. Landmark cases such as *State of Rajasthan v. Vidyawati*, *Union of India v. Sugrabai, Kasturi Lal Ralia Ram Jain v. State of Uttar Pradesh*, *N. Nagendra Rao & Co. v. State of Andhra Pradesh*, and *Nilabati Behera v. State of Orissa* establish that compensation can be awarded where negligent State action causes loss of life. Therefore, in ordinary road accidents involving military vehicles, the Central Government is generally liable to compensate the victim's family.

Q.22 Prisoner Informed Jail Authorities About Danger to His Life, But No Action Was Taken and He Was Killed – Plea of Sovereign Immunity by Government. Decide.

The Constitution of India guarantees the right to life and personal liberty under **Article 21**. This protection is available not only to free citizens but also to prisoners. A person does not lose his Fundamental Rights merely because he is incarcerated. The State has a constitutional and legal duty to protect the life, safety, and dignity of every prisoner in its custody.

Where a prisoner specifically informs jail authorities that his life is in danger and the authorities fail to take preventive measures, resulting in his death, the State may be held liable for negligence and violation of Fundamental Rights. In such cases, the Government often raises the defence of **sovereign immunity**, claiming that maintenance of prisons is a sovereign function.

The issue is whether the plea of sovereign immunity can absolve the Government from liability for the custodial death of a prisoner.

Issues Involved

The legal issues are:

1. Whether the State owes a duty of care to prisoners.
2. Whether failure to protect a prisoner amounts to negligence.
3. Whether such failure violates Article 21.
4. Whether the Government can escape liability by pleading sovereign immunity.
5. Whether compensation can be awarded to the victim's family.

Constitutional Provisions

Article 21 – Right to Life and Personal Liberty

Article 21 provides:

"No person shall be deprived of his life or personal liberty except according to procedure established by law."

The Supreme Court has repeatedly held that Article 21 applies equally to prisoners.

A prisoner retains all Fundamental Rights except those necessarily curtailed by imprisonment.

Article 14 – Equality Before Law

The State must act fairly, reasonably, and non-arbitrarily towards all persons, including prisoners.

Article 32 and Article 226

The Supreme Court and High Courts may award compensation for violation of Fundamental Rights.

Duty of the State Towards Prisoners

When a person is lodged in prison, the State assumes responsibility for his safety and security.

The State has a duty:

- To protect prisoners from violence.
- To prevent attacks by fellow inmates.
- To provide adequate security.
- To respond to threats to life.
- To maintain law and order inside prisons.

Failure to discharge these duties amounts to negligence and constitutional violation.

Sovereign Immunity

Historically, the doctrine of sovereign immunity was based on the principle:

"The King can do no wrong."

Under this doctrine, the State was immune from liability for acts performed in exercise of sovereign functions.

Examples:

- Defence,
- Foreign affairs,
- Police powers,
- Prison administration.

However, modern constitutional jurisprudence has substantially limited this doctrine.

Whether Prison Administration is a Sovereign Function?

Maintenance of prisons is undoubtedly a governmental function.

However, even if it is treated as a sovereign function, the State cannot violate Fundamental Rights.

The Supreme Court has consistently held that:

Sovereign immunity is not available where there is violation of Fundamental Rights.

Case Law

Nilabati Behera v. State of Orissa

Citation: (1993) 2 SCC 746

Bench: Three-Judge Bench

Facts: The petitioner's son was taken into police custody. The next day, his dead body was found on a railway track with multiple injuries. The State denied responsibility and raised the defence of sovereign immunity.

Issue: Whether compensation could be awarded for custodial death and whether sovereign immunity was a valid defence.

Judgment: The Supreme Court awarded compensation.

The Court held:

- Custodial death violates Article 21.
- Sovereign immunity is not available in cases involving violation of Fundamental Rights.
- Compensation can be granted under public law remedies.

Significance: This is the leading authority rejecting sovereign immunity in cases of custodial death.

Rudul Sah v. State of Bihar

Citation: (1983) 4 SCC 141

Facts: The petitioner remained in jail for many years after acquittal.

Issue: Whether compensation could be awarded for violation of personal liberty.

Judgment: The Supreme Court awarded compensation.

Significance: The Court recognized compensation as a constitutional remedy.

D.K. Basu v. State of West Bengal

Citation: (1997) 1 SCC 416

Facts: The case dealt with custodial violence and deaths in police custody.

Issue: Whether the State was liable for custodial abuse.

Judgment: The Supreme Court issued guidelines for protection of persons in custody.

Significance: The Court emphasized State accountability for custodial safety.

Sunil Batra v. Delhi Administration

Citation: AIR 1978 SC 1675

Facts: A prisoner complained of torture and inhuman treatment in jail.

Issue: Whether prisoners possess Fundamental Rights.

Judgment: The Supreme Court held that prisoners retain Fundamental Rights and are entitled to protection under Article 21.

Significance: The Court declared that prison walls do not keep out Fundamental Rights.

Application to the Present Problem

Facts Given

- A prisoner informed jail authorities that his life was in danger.

- The authorities were aware of the threat.
- No protective measures were taken.
- The prisoner was subsequently killed.
- The Government pleads sovereign immunity.

Liability of Jail Authorities

The authorities had prior knowledge of the danger.

Reasonable steps should have been taken, such as:

- Transferring the prisoner.
- Providing separate accommodation.
- Increasing security.
- Monitoring hostile inmates.

Failure to act amounts to negligence and dereliction of duty.

Violation of Article 21

The prisoner's death occurred while in State custody.

The State had a constitutional obligation to protect him.

Failure to prevent the foreseeable danger resulted in deprivation of life.

Therefore: Article 21 has been violated.

Whether Sovereign Immunity is Available?

The plea of sovereign immunity is not sustainable because:

Constitutional Tort

The death constitutes a violation of Fundamental Rights.

Nilabati Behera Principle

The Supreme Court expressly held that sovereign immunity is not a defence in public law claims involving Article 21 violations.

Custodial Responsibility

The prisoner was under the exclusive control of the State.

The State cannot escape responsibility for failure to protect him.

Public Law Remedy

Compensation can be awarded directly under Articles 32 or 226.

Public Law Compensation

The victim's family can claim compensation for:

- Violation of Article 21.
- Negligence of prison authorities.
- Failure to protect life in custody.

The Court may also direct:

- Departmental inquiry.
- Criminal prosecution of responsible officials.
- Institutional reforms.

Modern Judicial Position

The Supreme Court has consistently held:

- Custodial deaths attract State liability.
- Human rights of prisoners must be protected.
- Sovereign immunity cannot override Fundamental Rights.
- Compensation is an appropriate constitutional remedy.

The doctrine of sovereign immunity originated in monarchical systems and has limited relevance in a democratic republic governed by the rule of law.

When the State takes custody of an individual, it assumes a special duty to protect that person's life and safety.

Allowing sovereign immunity in custodial death cases would undermine constitutional guarantees and encourage official negligence. Therefore, modern constitutional jurisprudence prioritizes human rights over governmental immunity.

Conclusion - The plea of sovereign immunity raised by the Government must fail. The prisoner had specifically informed jail authorities about the threat to his life, and the authorities negligently failed to take preventive measures. As a result, the prisoner's death constitutes a violation of Article 21 of the Constitution. Following the principles laid down in *Nilabati Behera v. State of Orissa*, *Rudul Sah v. State of Bihar*, *D.K. Basu v. State of West Bengal*, and *Sunil Batra v. Delhi Administration*, the Government is liable to compensate the victim's family. Therefore, the defence of sovereign immunity is not available, and the State must be held responsible for the custodial death caused by its negligence and failure to protect the prisoner.

Q.23 Gold Seized by Police Could Not Be Returned Because the Head Constable Absconded with the Gold – Discuss Liability of the State.

The liability of the State for wrongful acts committed by its servants is one of the most important topics in Constitutional and Administrative Law. A recurring issue is whether the Government can be held liable when public officials, acting in the course of their official duties, cause loss or damage to citizens.

The classic example is where police officers seize property during the exercise of their statutory powers and the property is subsequently lost, stolen, or misappropriated by police personnel. The question then arises whether the State is liable to compensate the owner.

This issue was directly considered by the Supreme Court in the landmark case of **Kasturi Lal Ralia Ram Jain v. State of Uttar Pradesh**, which remains the leading authority on sovereign immunity in India.

Facts of the Problem

- Gold belonging to a citizen was seized by police officers.
- The seizure was made in exercise of police powers.

- The gold was kept in police custody.
- A Head Constable absconded with the gold.
- The owner demanded return of the gold or compensation.
- The State denied liability.

The issue is whether the State is responsible for the loss caused by its employee.

Constitutional Basis

Article 300 of the Constitution

Article 300 provides: The Government of India and the Governments of the States may sue and be sued in the same manner as the Dominion of India and Provinces could sue and be sued before the commencement of the Constitution. Therefore, the State can be sued for wrongful acts committed by its servants. However, the extent of liability depends upon judicial principles governing sovereign immunity.

Concept of State Liability

State liability means the legal responsibility of the Government to compensate persons who suffer injury or loss due to wrongful acts of government servants.

Liability may arise:

- In tort,
- Under statutory provisions,
- Under constitutional remedies.

However, historically, liability depended on whether the act was performed in a sovereign or non-sovereign capacity.

Doctrine of Sovereign Immunity

The doctrine is based on the old English principle:

"The King can do no wrong."

Under this doctrine:

- The State is immune from liability for acts performed in exercise of sovereign powers.
- The State may be liable for acts connected with non-sovereign functions.

Sovereign Functions

Functions that are exclusively governmental in nature:

- Police administration,
- Defence,
- Maintenance of law and order,
- Administration of justice,
- Taxation,
- Foreign affairs.

Non-Sovereign Functions

Functions which can also be performed by private persons:

- Commercial activities,
- Transport services,
- Industrial activities,
- Public works.

The distinction became crucial in determining State liability.

Case

Kasturi Lal Ralia Ram Jain v. State of Uttar Pradesh

Citation: AIR 1965 SC 1039

Bench: Constitution Bench (Five Judges)

Facts : The plaintiff, Kasturi Lal, was a dealer in gold and silver. While travelling, he was arrested by police officers on suspicion of possessing stolen property. The police seized a large quantity of gold from him under their statutory powers.

The gold was kept in police custody.

Subsequently, a Head Constable entrusted with the custody of the gold absconded to Pakistan carrying the gold with him.

The gold could not be recovered.

The plaintiff filed a suit against the State of Uttar Pradesh seeking compensation.

Issues

1. Whether the State was liable for the loss of gold.
2. Whether the negligence of police officers created liability for the Government.
3. Whether sovereign immunity protected the State.

Judgment : The Supreme Court held:

The State Was Not Liable

The Court ruled in favour of the Government.

Police Powers Are Sovereign Functions

The seizure and custody of property by police officers were exercises of statutory powers relating to maintenance of law and order.

These powers were sovereign functions.

Sovereign Immunity Applied

Since the wrongful act occurred during the exercise of sovereign powers, the State was protected by sovereign immunity.

Negligence of Officers Does Not Create Liability

Even though police officers were negligent, the State could not be held liable because the act arose from sovereign functions.

Ratio Decidendi

The Court stated: When a tortious act is committed by a government servant while performing sovereign functions, the State is immune from liability.

Significance of the Judgment

The decision became the leading authority on sovereign immunity in India.

It established:

- Distinction between sovereign and non-sovereign functions.
- Immunity for acts connected with sovereign functions.
- Limited liability of the State in tort.

Criticism of Kasturi Lal

The judgment has been widely criticized.

Injustice to Citizens

The owner lost his property due to police negligence but received no compensation.

Outdated Doctrine

The doctrine of sovereign immunity was borrowed from monarchical systems and is inconsistent with modern democracy.

Welfare State Concept

In a welfare state, Government accountability should be greater rather than lesser.

Contradiction with Rule of Law

No authority should be above the law.

Later Judicial Developments

Subsequent Supreme Court decisions narrowed the scope of sovereign immunity.

State of Rajasthan v. Vidyawati

Citation: AIR 1962 SC 933

Facts : A government vehicle negligently caused the death of a pedestrian.

Judgment: The State was held liable.

Significance: The Court adopted a more liberal approach towards State liability.

N. Nagendra Rao & Co. v. State of Andhra Pradesh

Citation: (1994) 6 SCC 205

Facts: Government officials negligently handled seized goods causing damage.

Issue: Extent of sovereign immunity.

Judgment : The Supreme Court restricted the scope of sovereign immunity. The Court observed: In a welfare State, sovereign immunity should be confined to rare and limited functions.

Significance : The Court criticized the broad approach adopted in *Kasturi Lal*.

Nilabati Behera v. State of Orissa

Citation: (1993) 2 SCC 746

Facts: A young man died in police custody.

Judgment

Compensation was awarded. The Court held:

Sovereign immunity is not available where Fundamental Rights are violated.

The decision significantly weakened the doctrine of sovereign immunity.

Application to the Present Problem

Under Kasturi Lal Principle

If the facts are examined strictly according to Kasturi Lal:

- Police lawfully seized the gold.
- Custody of seized property was part of police functions.
- Police functions are sovereign functions.
- The State would not be liable.

Therefore, compensation would be denied.

Under Modern Constitutional Jurisprudence

Modern judicial thinking is different.

Courts now emphasize:

- Accountability,
- Rule of law,
- Protection of citizens,
- Compensation for governmental negligence.

If the loss amounts to violation of constitutional rights, courts may award compensation despite sovereign immunity.

Present Legal Position

Although Kasturi Lal has not been formally overruled, its authority has been considerably weakened by later judgments.

Modern courts generally prefer:

- Restricting sovereign immunity,
- Expanding governmental accountability,
- Protecting victims of official negligence.

Nevertheless, for examination purposes, the direct answer to the given problem remains governed by Kasturi Lal.

Critical Evaluation

The Kasturi Lal decision represents the traditional approach of sovereign immunity. While legally significant, it has been criticized as inconsistent with constitutional principles of equality and justice. Later decisions such as Nilabati Behera and Nagendra Rao have shifted the focus from governmental immunity to governmental accountability.

Today, the judiciary increasingly recognizes that citizens should not suffer because of negligence or misconduct by public officials.

Conclusion

In the given case, where gold seized by police could not be returned because a Head Constable absconded with it, the issue is directly governed by the landmark decision of *Kasturi Lal Ralia Ram Jain v. State of Uttar Pradesh*. The Supreme Court held that seizure and custody of property by police are sovereign functions, and therefore the State is protected by sovereign immunity and cannot be held liable for the loss caused by a police officer. However, subsequent decisions such as *N. Nagendra Rao & Co. v. State of Andhra Pradesh* and *Nilabati Behera v. State of Orissa* have substantially narrowed the scope of sovereign immunity and emphasized State accountability. Thus, while the traditional legal answer is that the State is not liable under *Kasturi Lal*, modern constitutional jurisprudence increasingly favours compensation and governmental responsibility.

SHORT NOTES:

Q.1 Discuss the Doctrine of Judicial Review.

The Doctrine of Judicial Review is one of the most significant features of the Indian Constitution. It empowers the Judiciary to examine the constitutional validity of legislative enactments and executive actions and to declare them unconstitutional if they violate the Constitution.

Judicial Review acts as a safeguard against arbitrary exercise of power by the Legislature and Executive. It ensures the supremacy of the Constitution, protects Fundamental Rights, and maintains the balance of power among the organs of the State.

The Supreme Court has repeatedly held that Judicial Review forms part of the **Basic Structure of the Constitution** and therefore cannot be abolished even by a Constitutional Amendment.

Meaning of Judicial Review

Judicial Review means:

The power of the courts to examine the legality and constitutionality of legislative enactments, executive actions, and constitutional amendments and to invalidate them if they violate the Constitution.

In simple words, Judicial Review enables courts to determine:

- Whether a law is constitutional.
- Whether executive action is lawful.
- Whether Constitutional Amendments violate the Basic Structure.

Definition

According to Chief Justice Marshall in the famous American case:

"It is emphatically the province and duty of the judicial department to say what the law is."

The doctrine originated in the United States and was adopted in India through constitutional provisions and judicial interpretation.

Constitutional Basis of Judicial Review in India

Unlike the U.S. Constitution, the Indian Constitution expressly provides several provisions empowering courts to exercise Judicial Review.

Article 13

Article 13 provides: Any law inconsistent with or in derogation of Fundamental Rights shall be void.

This is the foundation of Judicial Review in India.

- Laws violating Fundamental Rights can be struck down.
- Legislature cannot enact unconstitutional laws.

Article 32: Article 32 empowers the Supreme Court to enforce Fundamental Rights.

Dr. **B. R. Ambedkar** described Article 32 as: "The Heart and Soul of the Constitution." Citizens can directly approach the Supreme Court against unconstitutional actions.

Article 226: High Courts can issue writs for:

- Enforcement of Fundamental Rights.
- Enforcement of other legal rights.

This makes High Courts important guardians of constitutional rights.

Article 131–136: These provisions confer extensive jurisdiction on the Supreme Court, enabling constitutional scrutiny of laws and actions.

Article 137: The Supreme Court has power to review its own judgments.

Articles 245 and 246: These provisions distribute legislative powers between the Union and States. Courts may strike down laws enacted beyond legislative competence.

Article 368: Constitutional Amendments are also subject to Judicial Review after the Basic Structure Doctrine.

Objectives of Judicial Review

The main objectives are:

1. Supremacy of the Constitution

The Constitution is the supreme law of the land.

Judicial Review ensures that:

- Legislature remains within constitutional limits.
- Executive acts according to law.

2. Protection of Fundamental Rights

Courts protect citizens from unconstitutional laws and actions.

3. Maintenance of Federalism

The Judiciary ensures that:

- Parliament does not encroach upon State powers.
- States do not invade Union powers.

4. Rule of Law

Judicial Review prevents arbitrary governmental action.

5. Separation of Powers

It maintains constitutional balance among:

- Legislature,
- Executive,
- Judiciary.

Grounds of Judicial Review

A law may be struck down on the following grounds:

1. Violation of Fundamental Rights

If a law violates Part III of the Constitution.

Example:

A law restricting freedom of speech beyond constitutional limits.

2. Lack of Legislative Competence

If Parliament or State Legislature legislates outside its allotted field.

Example:

A State legislating on a Union List subject.

3. Violation of Constitutional Provisions

Any law contrary to constitutional mandates can be invalidated.

4. Arbitrariness

Executive actions that are arbitrary or unreasonable may be struck down.

5. Violation of Basic Structure

Constitutional Amendments violating the Basic Structure may be declared unconstitutional.

Types of Judicial Review

1. Review of Legislative Actions

Courts examine whether statutes enacted by Parliament or State Legislatures are constitutional.

Example:

Laws violating Fundamental Rights.

2. Review of Executive Actions

Executive decisions may be reviewed to ensure legality and fairness.

Example:

Illegal administrative orders.

3. Review of Constitutional Amendments

Courts examine whether amendments violate the Basic Structure Doctrine.

Evolution of Judicial Review Through Case Laws

1. A.K. Gopalan v. State of Madras

Citation: AIR 1950 SC 27

Bench: Six-Judge Bench

Facts: The petitioner challenged preventive detention laws.

Issue: Whether the law violated Fundamental Rights.

Judgment: The Supreme Court adopted a narrow interpretation of rights.

Significance: The case marked the early exercise of Judicial Review.

2. Shankari Prasad v. Union of India

Citation: AIR 1951 SC 458

Bench: Five-Judge Bench

Facts: The First Constitutional Amendment was challenged.

Issue: Whether Parliament could amend Fundamental Rights.

Judgment: The Court upheld Parliament's amending power.

Significance: The first major case on Judicial Review of Constitutional Amendments.

3. Golak Nath v. State of Punjab

Citation: AIR 1967 SC 1643

Bench: Eleven-Judge Bench

Facts: Constitutional amendments affecting property rights were challenged.

Issue: Whether Parliament could amend Fundamental Rights.

Judgment: The Court held that Parliament could not amend Fundamental Rights.

Significance: The decision expanded Judicial Review.

4. Kesavananda Bharati v. State of Kerala

Citation: (1973) 4 SCC 225

Bench: Thirteen-Judge Bench (Largest Bench in Indian History)

Facts : Several Constitutional Amendments affecting property rights were challenged.

Issue: Whether Parliament's amending power was unlimited.

Judgment: The Supreme Court evolved the Basic Structure Doctrine.

The Court held:

- Parliament can amend the Constitution.
- Parliament cannot destroy its Basic Structure.

Significance: This is the most important case in Indian Constitutional Law.

The Court declared Judicial Review itself to be part of the Basic Structure.

Basic Structure Doctrine

According to Kesavananda Bharati, certain features cannot be destroyed:

- Supremacy of Constitution.
- Rule of Law.
- Federalism.
- Secularism.
- Separation of Powers.

- Judicial Review.

5. Indira Nehru Gandhi v. Raj Narain

Citation: 1975 Supp SCC 1

Facts: The validity of the 39th Constitutional Amendment was challenged.

Issue: Whether Parliament could exclude judicial scrutiny of election disputes.

Judgment: The Court struck down the amendment.

Significance: The Court reaffirmed Judicial Review as part of the Basic Structure.

6. Minerva Mills v. Union of India

Citation: (1980) 3 SCC 625

Bench: Five-Judge Bench

Facts: Sections of the 42nd Constitutional Amendment were challenged.

Issue: Whether Parliament could exclude Judicial Review.

Judgment: The Court struck down the amendment.

The Court held Limited Government and Judicial Review are Basic Structure features.

7. L. Chandra Kumar v. Union of India

Citation: (1997) 3 SCC 261

Bench: Seven-Judge Constitution Bench

Facts: The constitutional validity of tribunal provisions was challenged.

Issue: Whether tribunal decisions could exclude High Court jurisdiction.

Judgment: The Court held

- Judicial Review by High Courts and Supreme Court cannot be excluded.
- Articles 32 and 226 form part of the Basic Structure.

The judgment strongly reinforced Judicial Review.

Judicial Review of Constitutional Amendments

Today, Constitutional Amendments are reviewable under the Basic Structure Doctrine.

If an amendment destroys:

- Democracy,
- Federalism,
- Secularism,
- Judicial Review,

it may be struck down.

Judicial Review and Judicial Activism

Judicial Review differs from Judicial Activism.

Judicial Review

Concerned with constitutional validity.

Judicial Activism

Concerned with proactive judicial intervention in governance matters.

However, Judicial Review often provides the foundation for Judicial Activism.

Criticism of Judicial Review

Judicial Overreach

Some argue that courts interfere excessively in legislative and executive functions.

Counter-Majoritarian Difficulty

Unelected judges may invalidate laws enacted by elected representatives.

Delay in Governance

Frequent judicial intervention may slow administrative action.

Importance of Judicial Review

Despite criticisms, Judicial Review:

- Protects constitutional supremacy.
- Safeguards Fundamental Rights.
- Prevents abuse of power.
- Strengthens democracy.
- Maintains federal balance.
- Preserves the Basic Structure.

Without Judicial Review, constitutional limitations on governmental power would become ineffective.

Conclusion: The Doctrine of Judicial Review is the cornerstone of Indian constitutional democracy. It empowers courts to ensure that all laws, executive actions, and constitutional amendments conform to the Constitution. Through landmark decisions such as *Kesavananda Bharati v. State of Kerala*, *Minerva Mills v. Union of India*, *L. Chandra Kumar v. Union of India*, and *Indira Nehru Gandhi v. Raj Narain*, the Supreme Court has firmly established Judicial Review as an essential feature of the Constitution and a part of its Basic Structure. It remains the most effective constitutional

mechanism for protecting rights, enforcing constitutional limitations, and preserving the rule of law in India.

Q.2 Explain the Transfer of Judges

The independence of the judiciary is a basic feature of the Constitution of India. At the same time, the Constitution provides a mechanism for the transfer of High Court Judges from one High Court to another to maintain efficiency, national integration, impartiality, and better administration of justice.

The power to transfer judges is vested in the President of India under Article 222 of the Constitution. However, this power cannot be exercised arbitrarily and must be exercised after consultation with the Chief Justice of India (CJI).

The issue of transfer of judges has generated considerable constitutional debate and has been the subject of several landmark Supreme Court decisions known as the Judges Cases.

Constitutional Provision

Article 222 – Transfer of Judges

Article 222(1) provides: "The President may, after consultation with the Chief Justice of India, transfer a Judge from one High Court to any other High Court." Thus, the power of transfer belongs to the President but must be exercised after consultation with the Chief Justice of India.

Article 222(2) : Provides compensatory allowance to a transferred Judge. It states that Parliament may determine compensatory allowances payable to a transferred Judge.

Purpose of Transfer of Judges

The transfer of judges is not intended as punishment.

Its objectives include:

1. National Integration

Transfer promotes a sense of national judicial outlook rather than regional loyalty.

2. Maintaining Independence

It helps prevent local pressures and influences affecting judicial functioning.

3. Better Administration of Justice

Transfer may be necessary for efficient distribution of judicial manpower.

4. Public Confidence

It helps ensure impartiality and integrity of the judicial system.

5. Preventing Local Bias

A judge serving for long periods in one State may develop local associations.

Transfer reduces such possibilities.

Procedure for Transfer of Judges

Under the present Collegium System, transfer is initiated through consultation among senior judges.

The process generally includes:

Step 1: Proposal

The Chief Justice of India proposes the transfer.

Step 2: Collegium Consultation

The matter is considered by the Collegium consisting of:

- Chief Justice of India.

- Four senior-most Supreme Court Judges.

Step 3: Consultation with Concerned Authorities

The CJI consults:

- Chief Justices of the concerned High Courts.
- Other relevant judges having knowledge of the situation.

Step 4: Recommendation

The Collegium recommends transfer.

Step 5: Presidential Order

The recommendation is forwarded to the President through the Union Government.

The President then issues the transfer order.

Whether Consent of the Judge is Necessary?

The Constitution does not require consent of the Judge.

A High Court Judge may be transferred even without his or her consent.

However, the transfer must be made:

- In public interest.
- For bona fide reasons.
- Following constitutional procedure.

Judicial Interpretation of Transfer Power

The constitutional validity and scope of transfer power have been examined in several landmark cases.

1. Union of India v. Sankalchand Himatlal Sheth

Citation: (1977) 4 SCC 193

Bench: Five-Judge Constitution Bench

Facts: Justice Sankalchand Sheth of the Gujarat High Court was transferred to the Andhra Pradesh High Court. The transfer was challenged.

Issue: Whether a Judge can be transferred without his consent.

Judgment: The Supreme Court held:

- Consent of the Judge is not necessary.
- Transfer can be made in public interest.
- Consultation with the Chief Justice of India is mandatory.

The case upheld the constitutional validity of transfer without consent.

2. S.P. Gupta v. Union of India (First Judges Case)

Citation: AIR 1982 SC 149

Bench: Seven-Judge Bench

Facts: The case involved judicial appointments and transfers.

Issue: Nature of consultation with the Chief Justice of India.

Judgment: The Court held

- Executive had primacy.
- Opinion of the Chief Justice was not binding.

The decision gave greater power to the Executive regarding transfers. This position was later overruled.

3. Supreme Court Advocates-on-Record Association v. Union of India (Second Judges Case)

Citation: (1993) 4 SCC 441

Bench: Nine-Judge Constitution Bench

Facts: The validity of executive dominance in judicial appointments and transfers was challenged.

Issue: Who has primacy in matters of appointment and transfer of judges?

Judgment: The Supreme Court held

- Judicial independence is part of the Basic Structure.
- The Chief Justice of India has primacy.
- Transfers must be based on collective judicial opinion.

The Collegium System was introduced.

4. Re Presidential Reference (Third Judges Case)

Citation: (1998) 7 SCC 739

Bench: Nine-Judge Constitution Bench

Facts: The President sought clarification regarding judicial appointments and transfers.

Issue: Procedure for transfer of judges.

Judgment: The Court held For transfer of High Court Judges, the Chief Justice of India must consult:

- Four senior-most Supreme Court Judges.
- Chief Justices of concerned High Courts.

The present transfer procedure was established.

Principles Governing Transfer of Judges

The Supreme Court has laid down important safeguards:

Public Interest

Transfer must be made only in public interest.

Bona Fide Exercise of Power

Transfer cannot be punitive.

Effective Consultation

Consultation with the Chief Justice of India must be meaningful and effective.

Judicial Independence

Transfer should not be used to influence judicial decisions.

Collegium Recommendation

Transfer must ordinarily be based on Collegium advice.

Can Transfer Be Used as Punishment?

No.

The Supreme Court has repeatedly emphasized: Transfer is not a disciplinary measure.

If a judge is transferred as punishment:

- The transfer may be challenged.
- The action may be declared unconstitutional.

Disciplinary action against judges is governed by the removal procedure under Articles 124(4) and 217, not by transfer.

Transfer and Judicial Independence

Judicial independence is a Basic Structure feature recognized in:

Kesavananda Bharati v. State of Kerala

Citation: (1973) 4 SCC 225

The Court held that independence of the judiciary forms part of the Basic Structure. Therefore, transfer powers cannot be exercised in a manner that threatens judicial independence.

Advantages of Transfer Policy

- **Promotes National Outlook**

Judges gain exposure to different legal cultures.

- **Prevents Local Influence**

Reduces possibility of favoritism and pressure.

- **Strengthens Judicial Administration**

Allows better distribution of judicial resources.

- **Improves Public Confidence**

Ensures impartial administration of justice.

Criticisms of Transfer Policy

- **Lack of Transparency**

Reasons for transfer are often not publicly disclosed.

- **Potential Misuse**

Transfers may create apprehensions regarding judicial independence.

- **Personal Hardship**

Judges may face difficulties due to relocation.

- **Family and Social Concerns**

Transfer may affect family life and children's education.

- **Recent Practice**

The Collegium frequently recommends transfers to:

- Improve judicial administration.
- Maintain independence.
- Ensure balanced distribution of judges.

Such transfers continue to be governed by the principles laid down in the Second and Third Judges Cases.

The power of transfer serves an important constitutional purpose by promoting impartiality and national integration. However, because transfer affects judicial independence, it must be exercised cautiously and transparently. Judicial decisions have therefore shifted the power away from executive dominance and vested primacy in the judiciary through the Collegium System. The present framework seeks to balance administrative efficiency with the constitutional guarantee of an independent judiciary.

Conclusion- The transfer of High Court Judges is governed by Article 222 of the Constitution. The President may transfer a Judge from one High Court to another after consultation with the Chief Justice of India. Judicial decisions have clarified that the consent of the Judge is not necessary, but the transfer must be made in public interest and not as a punishment. Landmark cases such as *Union of India v. Sankalchand Himatlal Sheth*, *S.P. Gupta v. Union of India*, *Supreme Court Advocates-on-Record Association v. Union of India*, and *Re Presidential Reference (Special Reference No. 1 of 1998)* have shaped the law relating to judicial transfers. Today, transfer of judges is an important constitutional mechanism designed to promote judicial independence,

efficiency, impartiality, and national integration while safeguarding the autonomy of the judiciary.

Q.3 Explain Election Disputes

Free and fair elections are the foundation of democracy. The Constitution of India establishes a democratic system in which representatives are elected by the people through periodic elections. Since elections determine the composition of legislative bodies, disputes relating to elections are of great constitutional significance. An election dispute arises when the validity of an election is challenged on grounds such as corrupt practices, improper acceptance or rejection of nominations, electoral malpractices, illegal counting of votes, or non-compliance with electoral laws. The Constitution and the Representation of the People Act, 1951 provide a detailed mechanism for resolving election disputes through election petitions before the High Courts.

Meaning of Election Dispute

An election dispute means: A dispute concerning the validity, legality, conduct, or result of an election to Parliament, State Legislatures, or other elected bodies. Such disputes arise when a candidate, voter, or interested party alleges that the election has not been conducted according to constitutional or statutory requirements.

Constitutional Provisions Relating to Election Disputes

Article 324 vests the superintendence, direction, and control of elections in the Election Commission of India. The Election Commission ensures free and fair elections.

Article 329 is the most important constitutional provision relating to election disputes.

Article 329(a): validity of laws relating to delimitation of constituencies cannot be questioned in courts.

Article 329(b) Provides No election shall be called in question except by an election petition presented in such manner as provided by law. This means that election disputes can be challenged only through election petitions after the election process is completed.

Purpose of Article 329

The objective is:

- To prevent interruption of elections.
- To ensure smooth completion of electoral processes.
- To avoid excessive judicial interference during elections.

Courts generally refrain from intervening until elections are completed.

Election Petition

An election petition is the statutory remedy provided to challenge an election.

It is governed by:

Representation of the People Act, 1951

Part VI of the Act deals with election disputes.

Who Can File an Election Petition?

Under Section 81 of the Representation of the People Act, 1951:

The following may file an election petition:

- A candidate.
- An elector of the constituency.

Where Is It Filed?

Election petitions are filed before the High Court having territorial jurisdiction over the constituency concerned.

Time Limit

The petition must be filed within:

45 Days

from the date of declaration of election results.

Failure to file within the prescribed period results in dismissal.

Grounds for Challenging an Election

The Representation of the People Act provides several grounds.

1. Corrupt Practices

One of the most important grounds.

Examples:

- Bribery.
- Undue influence.
- Booth capturing.
- Appeal based on religion, caste, community, or language.
- Distribution of money or gifts to voters.

Section 123: Defines corrupt practices.

2. Improper Acceptance of Nomination

If a candidate's nomination is wrongly accepted.

Example:

A disqualified candidate is permitted to contest.

3. Improper Rejection of Nomination

If a valid nomination is unlawfully rejected.

4. Non-Compliance with Election Laws

Violation of:

- Constitutional provisions.
- Representation of the People Act.
- Election Rules.

5. Improper Counting of Votes

Wrong counting may materially affect election results.

6. Disqualification of Returned Candidate

If the elected candidate was not qualified to contest.

Examples:

- Office of profit.
- Citizenship issues.
- Statutory disqualifications.

Powers of the High Court

The High Court may:

Declare Election Void

If serious irregularities are proved.

Declare Another Candidate Elected

Where evidence clearly establishes entitlement.

Dismiss the Petition

If allegations are not proved.

Appeal

An appeal lies to the Supreme Court under Section 116A of the Representation of the People Act, 1951.

Doctrine of Election Completion

Courts generally follow the principle:

Once the election process begins, courts should not interfere until completion.

This principle ensures uninterrupted elections.

Case Laws

N.P. Ponnuswami v. Returning Officer

Citation: AIR 1952 SC 64

Bench: Six-Judge Bench

Facts: A candidate's nomination paper was rejected by the Returning Officer. The candidate approached the Court before completion of the election.

Issue: Whether courts could interfere during the election process.

Judgment : The Supreme Court held

- Elections should proceed uninterrupted.
- Judicial intervention during elections is generally barred.
- Challenges must be made through election petitions after completion of elections.

This case laid down the foundation of election dispute law in India.

Mohinder Singh Gill v. Chief Election Commissioner

Citation: (1978) 1 SCC 405

Facts: The Election Commission cancelled polling in a constituency due to electoral irregularities.

Issue: Extent of powers of the Election Commission.

Judgment: The Supreme Court upheld the broad powers of the Election Commission under Article 324.

The Court emphasized free and fair elections as a basic democratic requirement.

Indira Nehru Gandhi v. Raj Narain

Citation: 1975 Supp SCC 1

Bench: Constitution Bench

Facts: The election of Prime Minister **Indira Gandhi** was challenged by **Raj Narain**. Parliament enacted the 39th Constitutional Amendment to immunize the election from judicial scrutiny.

Issue: Whether Parliament could exclude judicial review of election disputes.

Judgment: The Supreme Court struck down the amendment.

The Court held

- Free and fair elections are part of the Basic Structure.
- Judicial review of election disputes cannot be completely excluded.

Kihoto Hollohan v. Zachillhu

Citation: 1992 Supp (2) SCC 651

Facts: constitutional validity of the Tenth Schedule (anti-defection law) was challenged.

Issue: Whether decisions affecting elected representatives were subject to judicial review.

Judgment: The Supreme Court upheld judicial review. The case reaffirmed the importance of judicial scrutiny in democratic governance.

Corrupt Practices in Elections

Under Section 123 of the Representation of the People Act, corrupt practices include:

Bribery

Offering money or gifts for votes.

Undue Influence

Threatening or coercing voters.

Religious Appeals

Seeking votes in the name of religion.

Promotion of Enmity

Creating hatred among communities.

False Statements

Publishing false information regarding candidates.

Booth Capturing

Illegal seizure of polling stations.

Proof of corrupt practices may lead to:

- Setting aside election.
- Disqualification of candidate.

Election Commission and Election Disputes

The Election Commission:

- Conducts elections.
- Enforces Model Code of Conduct.
- Monitors electoral malpractices.
- Ensures fairness.

However, the Commission itself does not finally adjudicate election disputes; such disputes are decided by courts through election petitions.

Importance of Election Dispute Mechanism

The mechanism ensures:

Free and Fair Elections

Protects democratic legitimacy.

Rule of Law

Ensures compliance with election laws.

Accountability

Prevents misuse of electoral processes.

Public Confidence

Strengthens faith in democracy.

Election disputes are essential safeguards against electoral fraud and abuse. At the same time, excessive judicial intervention during elections may disrupt democratic processes. Therefore, the Constitution strikes a balance by postponing judicial scrutiny until elections are completed and providing a specialized remedy through election petitions. The Supreme Court has

consistently emphasized that electoral integrity is a basic feature of democracy and must be protected through effective judicial review.

Conclusion: Election disputes refer to challenges regarding the validity of elections and are governed primarily by Article 329 of the Constitution and the Representation of the People Act, 1951. Such disputes can be raised only through election petitions before the High Courts after completion of the election process. Grounds include corrupt practices, improper acceptance or rejection of nominations, electoral irregularities, and disqualifications. Landmark cases such as *N.P. Ponnuswami v. Returning Officer, Mohinder Singh Gill v. Chief Election Commissioner, Indira Nehru Gandhi v. Raj Narain*, and *Kihoto Hollohan v. Zachillhu* have shaped the law relating to election disputes in India. The system ensures that elections remain free, fair, transparent, and consistent with constitutional democracy.

Q.4 Explain the Supersession and Suspension of Board of Co-operative Societies.

Co-operative societies play a vital role in India's socio-economic development by promoting self-help, mutual assistance, and democratic participation. To strengthen the co-operative movement, the Constitution (97th Amendment) Act, 2011 inserted **Part IX-B (Articles 243ZH to 243ZT)** dealing with Co-operative Societies.

The management of a co-operative society is vested in its elected Board. However, in exceptional circumstances, the State Government may supersede or suspend the Board. Since supersession affects the democratic functioning of co-operative societies, the Constitution imposes strict limitations on such power.

The provisions relating to supersession and suspension are contained in **Article 243ZL** of the Constitution.

Meaning of Supersession

Supersession means:

Removal of the elected Board of a Co-operative Society before the expiry of its term and appointment of an administrator or administrative committee to manage the affairs of the society.

When the Board is superseded:

- The elected members cease to function.
- Management vests in an administrator.
- Fresh elections are conducted within the prescribed period.

Meaning of Suspension

Suspension means: Temporary disabling of the Board from exercising its powers pending corrective measures or further action. Unlike supersession, suspension is generally temporary in nature.

Constitutional Basis

Article 243ZL specifically regulates the supersession and suspension of Boards of Co-operative Societies. The Article was introduced to prevent arbitrary governmental interference in the democratic management of co-operative societies.

General Rule

The Constitution discourages supersession of elected Boards.

The democratic management of co-operatives is the rule.

Supersession or suspension is the exception.

Therefore, it can be exercised only under limited circumstances.

Grounds for Supersession or Suspension

Under Article 243ZL, the Board may be superseded or suspended only in the following situations:

1. Persistent Default

Where the Board continuously fails to perform its statutory duties.

Examples:

- Failure to conduct meetings.
- Failure to maintain accounts.
- Failure to perform mandatory functions.

Significance

Occasional mistakes are insufficient.

The default must be continuous and persistent.

2. Negligence in Performance of Duties

Where the Board negligently performs its responsibilities.

Examples:

- Failure to safeguard society funds.
- Mismanagement of resources.
- Failure to protect members' interests.

Significance

Negligence affecting the functioning of the society may justify intervention.

3. Acts Prejudicial to the Interests of the Society

If the Board acts against the interests of the co-operative society.

Examples:

- Misappropriation of funds.
- Unauthorized transactions.

- Decisions causing substantial loss.

Significance

The power is intended to protect the society and its members.

4. Stalemate in Constitution or Functioning of the Board

A situation may arise where the Board becomes incapable of functioning.

Examples:

- Internal disputes.
- Mass resignations.
- Lack of quorum.

Significance

Administrative intervention becomes necessary to ensure continuity.

5. Failure to Conduct Elections

If the Board fails to conduct elections in accordance with law.

Significance

Democratic governance must be maintained through regular elections.

Time Limit for Supersession

Article 243ZL imposes a strict limitation.

The period of supersession or suspension:

Shall Not Exceed Six Months

This constitutional safeguard prevents prolonged governmental control.

Appointment of Administrator

Upon supersession or suspension:

- An administrator or administrative committee may be appointed.
- The administrator manages the affairs of the society during the interim period.

Duties of Administrator

- Manage day-to-day affairs.
- Protect assets of the society.
- Conduct elections.
- Hand over administration to the newly elected Board.

Requirement of Elections

The Constitution mandates that:

Elections Must Be Conducted Before Expiry of Six Months

The objective is to restore democratic management as early as possible.

Exception – Co-operative Societies Carrying on Banking Business

Article 243ZL provides an important exception.

The restrictions regarding supersession do not apply in the same manner to:

Co-operative Banks

Where banking regulation laws require intervention.

In such cases, action may be taken under:

- Banking Regulation Act,
- Reserve Bank of India regulations.

Multi-State Co-operative Societies

Multi-State Co-operative Societies are governed by:

Multi-State Co-operative Societies Act, 2002

The principles of democratic management and limited governmental interference apply similarly.

Objectives Behind Constitutional Restrictions

The constitutional limitations seek to achieve:

Democratic Functioning

Co-operatives are democratic institutions.

Autonomy

Protection from unnecessary governmental interference.

Accountability

Ensuring responsible management.

Transparency

Preventing misuse of powers.

Member Participation

Promoting active involvement of members.

Judicial Approach

Courts have consistently emphasized:

- Democratic control of co-operatives.
- Limited governmental intervention.
- Strict adherence to statutory requirements before supersession.

Any arbitrary supersession may be challenged before courts.

Case Law

Union of India v. Rajendra N. Shah

Citation: (2021) 9 SCC 1

Bench: Three-Judge Constitution Bench

Facts: The constitutional validity of several provisions introduced by the 97th Constitutional Amendment was challenged.

Issue: Whether Parliament could legislate regarding State Co-operative Societies without ratification by States.

Judgment The Supreme Court partially struck down Part IX-B insofar as it applied to State Co-operative Societies for want of ratification under Article 368(2). However, provisions relating to Multi-State Co-operative Societies were upheld. The judgment reaffirmed the importance of federalism and democratic governance in co-operatives.

Safeguards Against Arbitrary Supersession

The Constitution provides several safeguards:

Limited Grounds

Supersession can occur only on specified grounds.

Maximum Six Months

Government control cannot continue indefinitely.

Mandatory Elections

Fresh elections must be conducted promptly.

Judicial Review

Arbitrary action can be challenged before courts.

Democratic Restoration

The elected Board must be restored through elections.

The power of supersession and suspension is necessary to prevent mismanagement and protect members' interests. However, excessive governmental intervention can undermine the autonomy and democratic character of co-operative societies.

Article 243ZL therefore strikes a balance between Administrative accountability and Democratic self-governance. The constitutional restrictions ensure that supersession remains an exceptional remedy rather than a routine administrative tool.

Conclusion : Supersession and suspension of the Board of Co-operative Societies are governed by Article 243ZL of the Constitution. The Board may be superseded or suspended only on limited grounds such as persistent default, negligence, acts prejudicial to the society, stalemate in functioning, or failure to conduct elections. The period of supersession cannot exceed six months, and fresh elections must be conducted within that period. Judicial decisions such as *Union of India v. Rajendra N. Shah* emphasize democratic governance and autonomy of co-operative societies. Thus, the Constitution protects co-operatives from arbitrary State interference while ensuring accountability and efficient administration.

Q.5 Explain the Theory of Basic Structure of the Constitution.

The Theory of Basic Structure is one of the most important constitutional doctrines developed by the Supreme Court of India. It limits the amending power of Parliament and ensures that the essential features of the Constitution remain intact.

The doctrine holds that while Parliament has wide powers to amend the Constitution under Article 368, it cannot alter, destroy, or abrogate the basic features or fundamental framework of the Constitution.

The doctrine was evolved to preserve the identity of the Constitution and to prevent any organ of the State from exercising unlimited power. Today, the Basic Structure Doctrine is regarded as the cornerstone of Indian Constitutional Law and a unique contribution of the Indian judiciary to constitutional jurisprudence.

Meaning of Basic Structure

The term "Basic Structure" is not defined in the Constitution.

The doctrine means: Certain fundamental features of the Constitution are so essential to its identity and existence that they cannot be destroyed or altered even by a Constitutional Amendment.

Thus, Parliament's power to amend the Constitution is not absolute but limited.

Constitutional Basis

Article 368 grants Parliament the power to amend the Constitution. It provides the procedure for constitutional amendments. The controversy arose regarding the extent of this power:

Whether Parliament can amend every provision of the Constitution?

Whether Fundamental Rights can be amended?

Whether Parliament's amending power is unlimited?

The answers to these questions evolved through judicial decisions.

Evolution of the Basic Structure Doctrine

1. Shankari Prasad v. Union of India

Citation: AIR 1951 SC 458

Bench: Five-Judge Bench

Facts : The validity of the Constitution (First Amendment) Act, 1951 was challenged. The amendment curtailed the right to property.

Issue: Whether Parliament could amend Fundamental Rights.

Judgment : The Supreme Court held

- Parliament could amend Fundamental Rights.
- Constitutional amendments are not "law" under Article 13.

The Court recognized unlimited amending power.

2. Sajjan Singh v. State of Rajasthan

Citation: AIR 1965 SC 845

Bench: Five-Judge Bench

Facts: The Constitution (Seventeenth Amendment) Act was challenged.

Issue: Whether Fundamental Rights could be amended.

Judgment: The Court upheld Parliament's power. The Court continued the view that Parliament possessed broad amending powers. However, doubts regarding unlimited power began to emerge.

3. Golak Nath v. State of Punjab

Citation: AIR 1967 SC 1643

Bench: Eleven-Judge Bench

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

Issue: Whether Parliament could amend Fundamental Rights.

Judgment: The Supreme Court held

- Parliament cannot amend Fundamental Rights.
- Constitutional amendments are included within the term "law" under Article 13.

The decision drastically restricted Parliament's amending power.

Parliamentary Response

In response to Golak Nath, Parliament enacted:

24th Constitutional Amendment Act, 1971

The amendment:

- Affirmed Parliament's power to amend any part of the Constitution.
- Made it mandatory for the President to give assent to constitutional amendments.

This amendment led to the most important constitutional case in Indian history.

Landmark Case

Kesavananda Bharati v. State of Kerala

Citation: (1973) 4 SCC 225

Bench: Thirteen-Judge Constitution Bench (Largest Bench in Indian Judicial History)

Facts: His Holiness **Kesavananda Bharati**, head of a religious institution in Kerala, challenged land reform laws and constitutional amendments affecting property rights.

The validity of:

- 24th Amendment,
- 25th Amendment,
- 29th Amendment was questioned.

Issues

1. Whether Parliament's power under Article 368 is unlimited.
2. Whether Parliament can amend every part of the Constitution.
3. Whether there are implied limitations on the amending power.

Judgment

By a narrow majority of 7:6, the Supreme Court held:

Parliament Can Amend Any Provision Including Fundamental Rights.

Parliament Cannot Destroy the Basic Structure

Parliament cannot alter or destroy the essential features of the Constitution.

Doctrine of Basic Structure Established

The Court evolved the Basic Structure Doctrine.

The judgment struck a balance between:

- Parliamentary sovereignty, and
- Constitutional supremacy.

It is regarded as the most important constitutional decision in India.

Features Recognized as Part of the Basic Structure

The Supreme Court did not provide an exhaustive list.

Instead, various features have been identified through different judgments.

1. Supremacy of the Constitution

The Constitution is the supreme law of the land.

All authorities derive power from it.

2. Republican and Democratic Form of Government

India must remain a democratic republic.

3. Secularism

Equal respect for all religions is a basic feature.

4. Federalism

Distribution of powers between Union and States is fundamental.

5. Separation of Powers

Legislature, Executive, and Judiciary have separate functions.

6. Rule of Law

Government must act according to law.

7. Judicial Review

Courts possess power to review laws and executive actions.

8. Independence of Judiciary

An independent judiciary is essential for constitutional governance.

9. Free and Fair Elections

Democracy requires genuine electoral processes.

10. Dignity of the Individual

Human dignity is a constitutional value.

11. Unity and Integrity of India

National unity cannot be destroyed.

12. Parliamentary System

India's parliamentary form of government is protected.

13. Fundamental Rights

The core values underlying Fundamental Rights form part of the Basic Structure.

Subsequent Cases Expanding the Doctrine

Indira Nehru Gandhi v. Raj Narain

Citation: 1975 Supp SCC 1

Facts: The election of Prime Minister **Indira Gandhi** was challenged. Parliament enacted the 39th Constitutional Amendment to exclude judicial scrutiny.

Issue: Whether Parliament could remove judicial review of election disputes.

Judgment : The Supreme Court struck down the amendment.

Basic Features Identified

- Free and fair elections.
- Democracy.
- Rule of law.

- Judicial review.

The Court expanded the Basic Structure Doctrine.

Minerva Mills v. Union of India

Citation: (1980) 3 SCC 625

Bench: Five-Judge Bench

Facts: Sections of the 42nd Constitutional Amendment sought to give unlimited amending power to Parliament.

Issue: Whether Parliament could enlarge its amending power without limitation.

Judgment: The Supreme Court struck down the amendment.

Basic Features Recognized

- Limited amending power.
- Judicial review.
- Harmony between Fundamental Rights and Directive Principles.

The Court reaffirmed the Basic Structure Doctrine.

Waman Rao v. Union of India

Citation: (1981) 2 SCC 362

Judgment : The Court held that laws inserted into the Ninth Schedule after 24 April 1973 could be tested on the touchstone of Basic Structure.

I.R. Coelho v. State of Tamil Nadu

Citation: (2007) 2 SCC 1

Bench: Nine-Judge Constitution Bench

Facts: The validity of laws placed in the Ninth Schedule was challenged.

Issue: Whether Ninth Schedule laws are immune from judicial review.

Judgment: The Supreme Court held

- Ninth Schedule laws are subject to Basic Structure review.
- Parliament cannot escape judicial scrutiny by placing laws in the Ninth Schedule.

The doctrine was further strengthened.

Importance of the Basic Structure Doctrine

1. Protects Constitutional Identity

Prevents destruction of essential constitutional values.

2. Limits Parliamentary Power

Ensures that Parliament remains within constitutional boundaries.

3. Protects Democracy

Prevents authoritarian constitutional amendments.

4. Preserves Fundamental Rights

Ensures constitutional liberties remain protected.

5. Strengthens Judicial Review

Empowers courts to protect the Constitution.

6. Maintains Constitutional Supremacy

Ensures that the Constitution remains superior to all State organs.

Criticism of the Doctrine

No Express Constitutional Provision

The doctrine is not expressly mentioned in the Constitution.

Judicial Creativity

Critics argue that the judiciary created the doctrine without textual support.

Uncertainty

There is no exhaustive list of basic features.

Judicial Supremacy

Some scholars argue that the doctrine gives excessive power to judges.

Merits of the Doctrine

Despite criticism, the doctrine has:

- Protected democracy during constitutional crises.
- Prevented abuse of amending power.
- Preserved constitutional values.
- Maintained balance among State organs.

It is now firmly embedded in Indian constitutional law.

Present Position

Today, it is settled law that:

Parliament Can Amend the Constitution.

Parliament Cannot Destroy the Basic Structure.

Any amendment violating the Basic Structure may be struck down by the Supreme Court.

Conclusion: The Theory of Basic Structure is the most significant judicial innovation in Indian Constitutional Law. Evolved in the landmark decision of *Kesavananda Bharati v. State of Kerala*, it limits Parliament's amending power under Article 368 and protects the essential features of the Constitution. Subsequent decisions such as *Indira Nehru Gandhi v. Raj Narain*, *Minerva Mills v. Union of India*, *Waman Rao v. Union of India*, and *I.R. Coelho v. State of Tamil Nadu* have expanded and strengthened the doctrine. It ensures that while the Constitution remains flexible through amendments, its fundamental identity, values, and democratic character remain permanently protected.

Q.6 Explain the Importance of Constituent Assembly Debates.

The Constitution of India was framed by the Constituent Assembly between December 1946 and November 1949. During this period, extensive discussions, deliberations, and debates took place regarding every provision of the Constitution. These discussions are recorded in what are known as the Constituent Assembly Debates (CAD).

The Constituent Assembly Debates are an invaluable source for understanding the philosophy, objectives, intentions, and spirit behind the Constitution. Although they are not law by themselves, courts frequently refer to them as an aid to constitutional interpretation when the language of a constitutional provision is ambiguous. The debates reveal the vision of the framers and provide insight into the social, political, economic, and constitutional principles that guided the drafting of the Constitution.

Meaning of Constituent Assembly Debates

Constituent Assembly Debates refer to The official records of discussions, speeches, arguments, and deliberations that took place in the Constituent Assembly while framing the Constitution of India between 1946 and 1949.

The debates include contributions of eminent members such as:

- B. R. Ambedkar
- Jawaharlal Nehru

- Sardar Vallabhbhai Patel
- Alladi Krishnaswami Ayyar
- K. M. Munshi
- H. V. Kamath

Historical Background

The Constituent Assembly first met on 9 December 1946. The Constitution was finally adopted on 26 November 1949. The Constitution came into force on 26 January 1950

During this period, the Assembly held numerous sessions and debated every aspect of the Constitution.

The debates covered:

- Fundamental Rights
- Directive Principles
- Federalism
- Judiciary
- Executive
- Emergency Provisions
- Citizenship
- Language
- Minority Rights
- Parliamentary Democracy

Importance of Constituent Assembly Debates

1. Aid to Constitutional Interpretation

The most important function of the debates is assisting courts in interpreting constitutional provisions.

When constitutional language is:

- Ambiguous,
- Unclear,
- Capable of multiple interpretations,

courts may examine the debates to discover the intention of the framers.

The debates help judges understand:

- Purpose of a provision.
- Historical context.
- Constitutional objectives.

2. Reveals the Intent of the Framers

The debates disclose what the framers intended while drafting constitutional provisions.

This helps answer questions such as:

- Why was a particular provision included?
- Why was a specific amendment accepted or rejected?
- What mischief was sought to be prevented?

Example

The debates on Fundamental Rights reveal the framers' commitment to liberty, equality, and justice.

3. Helps Understand Constitutional Philosophy

The debates explain the philosophical foundations of the Constitution.

They reflect:

Democracy

Government by elected representatives.

Secularism

Equal respect for all religions.

Social Justice

Protection of weaker sections.

Rule of Law

Government according to law.

Equality

Equal treatment before law.

Thus, they reveal the constitutional vision of independent India.

4. Clarifies Ambiguous Provisions

Several constitutional provisions contain broad expressions such as:

- Public order,
- Equality,
- Liberty,
- Reasonable restrictions,
- Due process principles.

The debates help clarify the intended meaning of these expressions.

5. Historical Evidence

The debates provide valuable historical material regarding:

- Conditions prevailing before independence.
- Problems faced by the nation.
- Objectives of constitution-makers.

Thus, they are an important source of constitutional history.

6. Understanding Rejected Proposals

The debates reveal proposals that were suggested but ultimately rejected.

This helps courts understand what the framers deliberately chose not to include.

Rejected proposals may indicate constitutional limitations.

7. Academic and Research Value

For lawyers, judges, scholars, and students, the debates are an indispensable source of constitutional study.

They help in:

- Legal research.
- Constitutional analysis.
- Understanding constitutional evolution.

8. Preservation of Constitutional Morality

The debates emphasize values such as:

- Democracy,
- Tolerance,
- Equality,
- Accountability,
- Constitutional governance.

These values collectively form constitutional morality.

Judicial Use of Constituent Assembly Debates

The Supreme Court has repeatedly referred to the Constituent Assembly Debates while interpreting constitutional provisions.

Kesavananda Bharati v. State of Kerala

Citation: (1973) 4 SCC 225

Bench: Thirteen-Judge Constitution Bench

Facts: The validity of constitutional amendments affecting Fundamental Rights was challenged.

Issue: Extent of Parliament's amending power under Article 368.

Judgment: The Supreme Court evolved the Basic Structure Doctrine.

Use of Constituent Assembly Debates

The Court examined debates relating to Article 368 and constitutional amendments.

The debates helped the Court understand the intentions of the framers regarding constitutional amendments.

S.R. Bommai v. Union of India

Citation: (1994) 3 SCC 1

Bench: Nine-Judge Constitution Bench

Facts: Several State Governments were dismissed under Article 356.

Issue: Scope of President's Rule and secularism.

Judgment: The Court held secularism to be part of the Basic Structure.

Use of Constituent Assembly Debates

The Court referred to debates concerning secularism and federalism.

The debates assisted the Court in identifying constitutional values.

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

Citation: (2016) 5 SCC 1

Facts: The validity of the National Judicial Appointments Commission was challenged.

Issue: Whether judicial independence forms part of the Basic Structure.

Judgment: The NJAC Act was struck down.

Use of Constituent Assembly Debates

The Court examined debates concerning judicial independence and separation of powers. The debates helped determine the constitutional status of judicial independence.

Value of Debates in Constitutional Interpretation

The debates are generally used:

To Explain

A constitutional provision.

To Clarify

Legislative intent behind constitutional provisions.

To Resolve Ambiguity

When constitutional language is unclear.

To Understand Historical Context

Of constitutional provisions.

Limitations of Constituent Assembly Debates

Despite their importance, the debates are not binding law.

1. Not a Source of Law

The Constitution itself is the law, not the debates.

2. Diverse Opinions

Members often expressed conflicting views.

It may be difficult to identify a single intention.

3. Constitution Prevails

If the constitutional text is clear, courts rely primarily on the text rather than debates.

4. Dynamic Interpretation

The Constitution is a living document.

Modern interpretation cannot be restricted entirely to historical intentions.

Views of Dr. B.R. Ambedkar

Dr. Ambedkar emphasized that:

The success of the Constitution depends not merely on its provisions but on the people and institutions operating it.

His speeches during the debates remain among the most cited constitutional materials in India.

The Constituent Assembly Debates are often described as the "travaux préparatoires" of the Constitution. They illuminate the minds of the framers and provide a reliable guide to constitutional interpretation. However, constitutional interpretation must balance historical intent with

contemporary needs. Therefore, while the debates are persuasive and highly valuable, they cannot override the clear language of the Constitution.

Conclusion: The Constituent Assembly Debates constitute one of the most important sources for understanding the Constitution of India. They reveal the intentions of the framers, explain constitutional philosophy, assist in resolving ambiguities, and serve as a valuable aid to judicial interpretation. Landmark cases such as *Kesavananda Bharati v. State of Kerala*, *S.R. Bommai v. Union of India*, *Indira Sawhney v. Union of India*, and *Supreme Court Advocates-on-Record Association v. Union of India* demonstrate the judicial importance of these debates. Although not legally binding, the Constituent Assembly Debates remain an indispensable guide for understanding the spirit, objectives, and fundamental values of the Indian Constitution.

Q.7 Explain the Constitutional Provisions Relating to Jammu and Kashmir.

The constitutional relationship between the Union of India and Jammu & Kashmir has been one of the most distinctive and debated aspects of Indian Constitutional Law. At the time of accession to India in 1947, Jammu and Kashmir was granted a special constitutional status under Article 370 of the Constitution.

Article 370 conferred a degree of autonomy upon Jammu and Kashmir that was not available to other States. Subsequently, Article 35A was introduced to provide special rights and privileges to permanent residents of the State.

However, on 5 August 2019, the Government of India fundamentally altered the constitutional position of Jammu and Kashmir by effectively abrogating Article 370 and reorganizing the State into two Union Territories. Therefore, the constitutional provisions relating to Jammu and Kashmir must be studied both in their historical context and in light of the present constitutional framework.

Historical Background

Before Independence, Jammu and Kashmir was a princely State ruled by Maharaja **Hari Singh**.

Following partition in 1947:

- Pakistan-supported tribal forces invaded Kashmir.
- The Maharaja sought military assistance from India.
- India agreed on the condition that Jammu and Kashmir accede to India.

Accordingly, on 26 October 1947, the Maharaja executed the:

Instrument of Accession

By this instrument, Jammu and Kashmir acceded to India only in respect of:

- Defence
- External Affairs
- Communications

This special arrangement eventually led to the incorporation of Article 370 in the Constitution.

Article 370 – Temporary Provision

Text of Article 370

Article 370 was included in Part XXI of the Constitution titled: "Temporary, Transitional and Special Provisions." It granted special autonomous status to Jammu and Kashmir.

Purpose of Article 370

The Article was intended to:

- Recognize the special circumstances of accession.
- Preserve autonomy of Jammu and Kashmir.
- Facilitate gradual constitutional integration with India.

Special Features of Article 370

1. Separate Constitution

Jammu and Kashmir had its own Constitution.

The Constitution of Jammu and Kashmir, 1957 came into force on 26 January 1957. Unlike other States, Jammu and Kashmir possessed a separate constitutional framework.

2. Limited Applicability of Indian Constitution

Originally, only selected provisions of the Constitution of India applied to Jammu and Kashmir.

Other provisions could be extended only through Presidential Orders.

3. Restricted Legislative Power of Parliament

Parliament could legislate on:

- Defence,
- Foreign Affairs,
- Communications,

and matters specified in the Instrument of Accession.

For other matters, concurrence of the State Government was required.

4. Separate Flag

Jammu and Kashmir possessed its own State Flag in addition to the National Flag.

5. Residuary Powers

Unlike other States where residuary powers belong to Parliament, in Jammu and Kashmir residuary powers belonged to the State Legislature.

6. Emergency Provisions

Certain emergency provisions applied differently to Jammu and Kashmir.

Initially:

- National Emergency on grounds of war or external aggression could apply.
- Emergency on grounds of internal disturbance required concurrence of the State Government.

Article 35A was introduced through the Constitution (Application to Jammu and Kashmir) Order, 1954.

It empowered the State Legislature to define:

Permanent Residents

and confer special rights upon them.

Special Rights

Permanent residents enjoyed privileges regarding:

- Employment under State Government.
- Acquisition of immovable property.
- Scholarships.
- Public welfare benefits.

Persons who were not permanent residents were denied these privileges.

Constitutional Position Before 2019

Before 2019:

- Jammu and Kashmir enjoyed special autonomy.
- It had its own Constitution.
- It had a separate flag.

- Parliament's powers were restricted.
- Article 35A protected special resident rights.

Nevertheless, over time, numerous provisions of the Indian Constitution were extended to Jammu and Kashmir through Presidential Orders.

Constitutional Changes of 2019

On 5 August 2019, the Government of India introduced significant constitutional changes.

Constitution (Application to Jammu and Kashmir) Order, 2019

The President issued a Constitutional Order applying all provisions of the Constitution of India to Jammu and Kashmir.

Resolution Under Article 370(3)

The Government recommended that Article 370 cease to operate.

Jammu and Kashmir Reorganisation Act, 2019

The State was reorganized into:

Union Territory of Jammu and Kashmir

(with Legislature) and

Union Territory of Ladakh

(without Legislature)

Effects of the 2019 Changes

1. Article 370 Effectively Abrogated

The special status of Jammu and Kashmir came to an end.

2. Constitution of Jammu and Kashmir Ceased to Operate

The separate Constitution became inoperative.

3. Article 35A Removed

Special privileges of permanent residents ceased.

4. Full Applicability of Indian Constitution

The Constitution of India became fully applicable.

5. Separate Flag Abolished

Only the National Flag remains constitutionally recognized.

6. Parliamentary Powers Extended

Parliament now exercises legislative authority in the same manner as with other Union Territories.

Constitutional Provisions Applicable Today

Presently, Jammu and Kashmir is governed by:

- Constitution of India.
- Jammu and Kashmir Reorganisation Act, 2019.
- Laws enacted by Parliament.

The constitutional position is substantially similar to other Union Territories with legislatures.

Judicial Review of Abrogation of Article 370

In Re: Article 370 (2023)

Citation: 2023 SCC OnLine SC 1647

Bench: Five-Judge Constitution Bench

Facts: Several petitions challenged:

- Abrogation of Article 370.
- Reorganisation of Jammu and Kashmir.

Issues:

1. Whether Article 370 was permanent.
2. Whether the President could revoke its operation.
3. Whether reorganisation into Union Territories was constitutional.

Judgment: The Supreme Court upheld the constitutional validity of the abrogation.

Findings

- Article 370 was a temporary provision.
- Jammu and Kashmir did not retain internal sovereignty.
- The President's actions were constitutionally valid.

The judgment confirmed the constitutional changes introduced in 2019.

Important Constitutional Provisions Relating to Jammu and Kashmir

Article 1: Jammu and Kashmir is an integral part of India.

Article 370 (Historical Importance): Provided special status and autonomy.

Article 35A (Historical Importance): Granted special rights to permanent residents.

Part XXI : Contained special provisions relating to Jammu and Kashmir.

Jammu and Kashmir Reorganisation Act, 2019: Reorganized the former State into two Union Territories.

Significance of Constitutional Integration

The Government justified the 2019 reforms on grounds of:

- National integration.
- Uniform application of constitutional rights.
- Economic development.
- Better governance.
- Equality before law.

Supporters viewed the move as strengthening constitutional unity.

Critics argued that it reduced regional autonomy and altered the federal balance.

The constitutional history of Jammu and Kashmir reflects the tension between federal autonomy and national integration. Article 370 represented a unique constitutional compromise arising from historical circumstances. Its abrogation marked one of the most significant constitutional developments in modern India. The debate continues regarding the balance between democratic self-governance, federalism, national security, and constitutional unity. Nevertheless, following the Supreme Court's decision, the current constitutional position is that Jammu and Kashmir is fully integrated within the constitutional framework of India.

Conclusion: The constitutional provisions relating to Jammu and Kashmir were historically governed by Article 370 and Article 35A, which granted the State special autonomy, a separate Constitution, separate flag, and special rights for permanent residents. Following the Constitution (Application to Jammu and Kashmir) Order, 2019 and the Jammu and Kashmir Reorganisation Act, 2019, these special provisions were effectively abolished, and the State was reorganized into the Union Territories of Jammu and Kashmir and Ladakh. The constitutional validity of these changes was upheld by the Supreme Court in *In Re: Article 370*. Thus, Jammu and Kashmir is now governed fully by the Constitution of India, marking a significant step in the constitutional integration of the region with the Union of India.

Q.8 Explain the National Commission for Women (NCW).

Women constitute nearly half of India's population and play a vital role in social, economic, political, and cultural development. Despite constitutional guarantees of equality, women have historically faced discrimination, violence, exploitation, and denial of opportunities.

To safeguard women's rights and ensure effective implementation of constitutional and legal protections, the Government of India established the National Commission for Women (NCW) as a statutory body.

The National Commission for Women was constituted under the **National Commission for Women Act, 1990** and came into existence on **31 January 1992**. It acts as a watchdog for the protection and promotion of women's rights in India.

Meaning of National Commission for Women

The National Commission for Women is a statutory body established to review constitutional and legal safeguards for women, address grievances, recommend remedial measures, and promote gender justice and equality. It serves as the apex national institution for the protection of women's rights.

Historical Background

Before the establishment of the NCW:

- Increasing crimes against women were reported.
- Women's organizations demanded a specialized institution.
- The Government recognized the need for a body dedicated exclusively to women's issues.

Consequently:

National Commission for Women Act, 1990

was enacted by Parliament. The Commission began functioning in 1992.

Constitutional Basis

Although the NCW is a statutory body, it derives support from various constitutional provisions protecting women.

Article 14: Equality before law and equal protection of laws.

Article 15(1): Prohibits discrimination on grounds of sex.

Article 15(3): Permits special provisions for women and children.

Article 16: Equality of opportunity in public employment.

Article 21: Protection of life and personal liberty.

Article 39(a): Equal right to livelihood.

Article 39(d): Equal pay for equal work.

Article 42: Just and humane conditions of work and maternity relief.

Article 51A(e): Fundamental duty to renounce practices derogatory to women's dignity.

Composition of the National Commission for Women

The composition is provided under the National Commission for Women Act, 1990.

The Commission consists of:

1. Chairperson

A distinguished woman committed to women's welfare and empowerment.

2. Five Members

Persons having experience in:

- Law,
- Women's welfare,

- Administration,
- Labour organizations,
- Social work,
- Economic development,
- Health,
- Education.

3. Member-Secretary

An expert in management, administration, organizational structure, or social movements.

Appointment

The Chairperson, Members, and Member-Secretary are appointed by the Central Government.

Tenure

The tenure is generally:

Three Years

unless otherwise specified by the Government.

Objectives of the National Commission for Women

The main objectives are:

- **Protection of Women's Rights**
- **Gender Equality**
- **Elimination of Discrimination**
- **Legal Reforms**
- **Women Empowerment**
- **Monitoring Government Policies**
- **Redressal of Women's Grievances**

Functions of the National Commission for Women

The functions are provided under Section 10 of the National Commission for Women Act, 1990.

1. Review Constitutional and Legal Safeguards

The Commission examines:

- Constitutional provisions.
- Existing laws.
- Government policies.

to ensure effective protection of women.

Helps identify legal deficiencies.

2. Recommend Legislative Reforms

The Commission recommends amendments to laws affecting women.

Examples include laws relating to:

- Domestic violence,
- Sexual harassment,
- Dowry,
- Child marriage,
- Human trafficking.

3. Investigate Complaints

The NCW receives complaints relating to:

- Domestic violence,
- Dowry harassment,
- Sexual harassment,
- Workplace discrimination,

- Property disputes,
- Cruelty by husband or relatives.

Provides a forum for grievance redressal.

4. Suo Motu Action

The Commission may act on its own initiative.

It can investigate:

- Media reports,
- Public incidents,
- Human rights violations against women.

without receiving a formal complaint.

5. Inspection of Institutions

The Commission may inspect:

- Jails,
- Remand homes,
- Women's shelters,
- Protective homes.

to ensure humane treatment of women.

6. Research and Studies

The Commission undertakes research concerning:

- Women's rights,
- Gender discrimination,
- Employment,
- Education,
- Health.

7. Awareness and Education

The Commission promotes:

- Legal literacy,
- Women's awareness,
- Gender sensitization programs.

8. Participation in Policy Formulation

The NCW advises Governments regarding:

- Women's welfare policies,
- Social justice programs,
- Gender-sensitive legislation.

Powers of the National Commission for Women

While investigating matters, the Commission enjoys powers similar to a Civil Court.

It may:

- **Summon Witnesses**
- **Examine Persons on Oath**
- **Require Production of Documents**
- **Receive Evidence**
- **Requisition Public Records**
- **Conduct Investigations**

These powers enable effective inquiry into complaints.

Procedure for Complaints

A woman may approach the Commission regarding:

- Harassment,

- Violence,
- Discrimination,
- Violation of legal rights.

The Commission:

1. Receives the complaint.
2. Conducts preliminary inquiry.
3. Seeks reports from authorities.
4. Recommends corrective action.
5. Monitors compliance.

Major Areas of Intervention

The Commission frequently deals with:

Domestic Violence

Protection of women from abuse.

Dowry Harassment

Cases under Dowry Prohibition laws.

Sexual Harassment

Protection of women at workplaces.

Human Trafficking

Rescue and rehabilitation efforts.

Property Rights

Protection of inheritance rights.

Cyber Crimes Against Women

Online harassment and abuse.

Important Legislations Monitored by NCW

The Commission monitors implementation of:

- **Dowry Prohibition Act, 1961**
- **Protection of Women from Domestic Violence Act, 2005**
- **Sexual Harassment of Women at Workplace Act, 2013**
- **Prohibition of Child Marriage Act, 2006**
- **Immoral Traffic (Prevention) Act, 1956**
- **Indian Penal Code provisions relating to crimes against women**

Limitations of the National Commission for Women

Despite its importance, certain limitations exist.

Recommendatory Nature

The Commission can make recommendations but cannot enforce them directly.

Lack of Binding Powers

Its decisions are not legally binding.

Resource Constraints

Limited manpower and resources affect effectiveness.

Delay in Disposal

Large numbers of complaints may lead to delays.

Important Judicial Decisions Relating to Women's Rights

Vishaka v. State of Rajasthan

Citation: (1997) 6 SCC 241

Bench: Three-Judge Bench

Facts: A social worker was subjected to sexual harassment at her workplace.

Issue: Whether protection against workplace sexual harassment is a Fundamental Right.

Judgment: The Supreme Court framed the Vishaka Guidelines. Strengthened protection of women's dignity and workplace safety.

Shayara Bano v. Union of India

Citation: (2017) 9 SCC 1

Facts: The constitutional validity of Triple Talaq was challenged.

Issue: Whether instant Triple Talaq violated constitutional rights.

Judgment: The Supreme Court declared Triple Talaq unconstitutional. Advanced gender justice and equality.

Importance of the National Commission for Women

The NCW plays an important role in:

- **Protecting Women's Rights**
- **Monitoring Gender Justice**
- **Influencing Law Reforms**
- **Providing Grievance Redressal**
- **Promoting Equality**
- **Strengthening Constitutional Values**

It serves as a bridge between women and governmental institutions.

The National Commission for Women has significantly contributed to women's empowerment by addressing grievances, recommending legal reforms, and promoting awareness of rights. However, its effectiveness is often limited because its recommendations are not binding. Many scholars advocate granting stronger enforcement powers and greater institutional autonomy to enhance its role. Nevertheless, the NCW remains the principal statutory body dedicated to the protection and advancement of women's rights in India.

Conclusion: The National Commission for Women is a statutory body established under the National Commission for Women Act, 1990 and functioning since 1992. It is entrusted with reviewing legal safeguards, investigating complaints, recommending reforms, promoting awareness, and protecting women's rights. The Commission derives support from constitutional guarantees of equality and dignity under Articles 14, 15, 16, and 21. Judicial decisions such as *Vishaka v. State of Rajasthan*, *Shayara Bano v. Union of India*, and *Joseph Shine v. Union of India* reflect the constitutional commitment to women's rights that the Commission seeks to advance. Thus, the NCW plays a crucial role in ensuring gender justice, empowerment, and protection of women in India.