

.The Framing of Constitution of India.

Borrowed features of constitution of India

1. **From U.K.** - Nominal Head – President, Cabinet System of Ministers, Post of PM, Parliamentary Type of Govt., Bicameral Parliament, Lower House more powerful, Council of Ministers responsible to Lower House, Provision of Speaker in Lok Sabha.
2. **From U.S.A**- Written constitution, Appointment of Vice President, Fundamental Rights, Supreme court, Head of the state known as president, Provision of states, Judicial review
3. **From Australia**- Concurrent List, Centre-State relationship, Language of the Preamble
4. **From USSR**- Fundamental Duties, Five year plan
5. **From Germany**- Emergency provisions
6. **From Japan**- Law on which the Supreme Court functions
7. **From Canada**- Federal System and Residuary powers
8. **From South Africa**- Procedure of constitutional amendment
9. **From Ireland**- Concept of Directive Principles of state policy.

UNIT-1 ADMINISTRATION OF FRINZ AREA

- 1 Administration Of Union Territories
- 2 The Panchayat And Municipalities
- 3 The Schedule And Tribal Areas

Arrangement of Constitution

- ✚ Contains 444 Amendments Article & divided into XV Parts
- ✚ 12 Schedules
- ✚ 2 Appendix
- ✚ 99th amendment 2014.

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1. Introduction

The part II of Constitution of India has 395 articles, 98th amendment and 12 schedules. This part of Constitution giving an explanation about the federal structure, 3rd form of government, 42nd amendment 1976 (Art 300-A Right to Property) election process and adult suffrage, emergencies provision, employment, trade, commerce and intercourse and amendment. This note is divided into 5 units from Administration of union territories to amendment.

Part VIII of India Constitution dealing with the union territories Amendments Article 239-242

• **239. Administration of Union territories.-**

(1) Save as otherwise provided by Parliament by law, every Union territory shall be administered by the President acting, to such extent as he thinks fit, through an administrator to be appointed by him with such designation as he may specify.

(2) Notwithstanding anything contained in Part VI, the President may appoint the Governor of a State as the administrator of an adjoining Union territory, and where a Governor is so appointed, he shall exercise his functions as such administrator independently of his Council of Ministers.

• **239A. Creation of local Legislatures or Council of Ministers or both for certain Union territories.—**(1) Parliament may by law create for the Union territory of Pondicherry—

(a) a body, whether elected or partly nominated and partly elected, to function as a Legislature for the Union territory, or

(b) a Council of Ministers, or both with such Constitution, powers and functions, in each case, as may be specified in the law.

(2) Any such law as is referred to in clause (1) shall not be deemed to be an amendment of this Constitution for the purposes of Amendments Article 368 notwithstanding that it contains any provision which amends or has the effect of amending this Constitution.

• **239AA. Special provisions with respect to Delhi.—**(1) As from the date of commencement of the Constitution (Sixty-ninth Amendment) Act, 1991, the Union territory of Delhi shall be called the National Capital Territory of Delhi (hereafter in this Part referred to as the National Capital Territory) and the administrator thereof appointed under Amendments Article 239 shall be designated as the Lieutenant Governor.

(2)(a) There shall be a Legislative Assembly for the National Capital Territory and the seats in such Assembly shall be filled by members chosen by direct election from territorial constituencies in the National Capital Territory.

(b) The total number of seats in the Legislative Assembly, the number of seats reserved for Scheduled Castes, the division of the National Capital Territory into territorial constituencies (including the basis for such division) and all other matters relating to the functioning of the Legislative Assembly shall be regulated by law made by Parliament. The National Capital Territory, the Legislative Assembly of the National Capital Territory and the members thereof as they apply, in relation to a State, the Legislative Assembly of a State and the members thereof respectively; and any reference in Amendments Article s 326 and 329 to “appropriate Legislature” shall be deemed to be a reference to Parliament.

(3) (a) Subject to the provisions of this Constitution, the Legislative Assembly shall have power to make laws for the whole or any part of the National Capital Territory with respect to any of the matters enumerated in the State List or in the Concurrent List in so far as any such matter is applicable to Union territories except matters with respect to Entries 1, 2 and 18 of the State List and Entries 64, 65 and 66 of that List in so far as they relate to the said Entries 1, 2 and 18.

(b) Nothing in sub-clause (a) shall derogate from the powers of Parliament under this Constitution to make laws with respect to any matter for a Union territory or any part thereof.

(c) If any provision of a law made by the Legislative Assembly with respect to any matter is repugnant to any provision of a law made by Parliament with respect to that matter, whether passed before or after the law made by the Legislative Assembly, or of an earlier law, other than a law made by the Legislative Assembly, then, in either case, the law made by Parliament, or, as the case may be, such earlier law, shall prevail and the law made by the Legislative Assembly shall, to the extent of the repugnancy, be void:

Provided that if any such law made by the Legislative Assembly has been reserved for the consideration of the President and has received his assent, such law shall prevail in the National Capital Territory:

Provided further that nothing in this sub-clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislative Assembly.

(4) There shall be a Council of Ministers consisting of not more than ten per cent. of the total number of members in the Legislative Assembly, with the Chief Minister at the head to aid and advise the Lieutenant Governor in the exercise of his functions in relation to matters with respect to which the Legislative Assembly has power to make laws, except in so far as he is, by or under any law, required to act in his discretion: Provided that in the case of difference of opinion between the Lieutenant Governor and his Ministers on any matter, the Lieutenant Governor shall refer it to the President for decision and act according to the decision given thereon by the President and pending such decision it shall be competent for the Lieutenant Governor in any case where the matter, in his opinion, is so urgent that it is necessary for him to take immediate action, to take such action or to give such direction in the matter as he deems necessary.

(5) The Chief Minister shall be appointed by the President and other Ministers shall be appointed by the President on the advice of the Chief Minister and the Ministers shall hold office during the pleasure of the President.

(6) The Council of Ministers shall be collectively responsible to the Legislative Assembly.

(7) (a) Parliament may, by law, make provisions for giving effect to, or supplementing the provisions contained in the foregoing clauses and for all matters incidental or consequential thereto.

(b) Any such law as is referred to in sub-clause (a) shall not be deemed to be an amendment of this Constitution for the purposes of Amendments Article 36 notwithstanding that it contains any provision which amends or has the effect of amending, this Constitution.

(8) The provisions of Amendments Article 239B shall, so far as may be, apply in relation to the National Capital Territory, the Lieutenant Governor and the Legislative Assembly, as they apply in relation to the Union territory of Pondicherry, the administrator and its Legislature, respectively; and any reference in that Amendments Article to "clause (1) of Amendments Article 239A" shall be deemed to be a reference to this Amendments Article or Amendments Article 239AB, as the case may be. 239AB. Provision in case of failure of Constitutional machinery.—If the President, on receipt of a report from the Lieutenant Governor or otherwise, is satisfied—

(a) that a situation has arisen in which the administration of the National Capital Territory cannot be carried on in accordance with the provisions of Amendments Article 239AA or of any law made in pursuance of that Amendments Article; or

(b) that for the proper administration of the National Capital Territory it is necessary or expedient so to do, the President may by order suspend the operation of any provision of Amendments Article

- 239AA or of all or any of the provisions of any law made in pursuance of that

Amendments Article for such period and subject to such conditions as may be specified in such law and make such incidental and consequential provisions as may appear to him to be necessary or expedient for administering the National Capital Territory in accordance with the provisions of Amendments Article 239 and Amendments Article 239AA.

- 239-AB provisions in case of failure of constitutional machinery
- 239B. Power of administrator to promulgate Ordinances during

recess of Legislature.—(1) If at any time, except when the Legislature of the Union territory of Pondicherry is in session, the administrator thereof is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require:

Provided that no such Ordinance shall be promulgated by the administrator except after obtaining instructions from the President in that behalf:

Provided further that whenever the said Legislature is dissolved, or its functioning remains suspended on account of any action taken under any such law as is referred to in clause (1) of Amendments

Article 239A, the administrator shall not promulgate any Ordinance during the period of such dissolution or suspension.

(2) An Ordinance promulgated under this Amendments Article in pursuance of instructions from the President shall be deemed to be an Act of the Legislature of the Union territory which has been duly enacted after complying with the provisions in that behalf contained in any such law as is referred to in clause (1) of Amendments Article 239A, but every such Ordinance—

(a) shall be laid before the Legislature of the Union territory and shall cease to operate at the expiration of six weeks from the reassembly of the Legislature or if, before the expiration of that period, a resolution disapproving it is passed by the Legislature, upon the passing of the resolution; and

(b) may be withdrawn at any time by the administrator after obtaining instructions from the President in that behalf.

(3) If and so far as an Ordinance under this Amendments Article makes any provision which would not be valid if enacted in an Act of the Legislature of the Union territory made after complying with the provisions in that behalf contained in any such law as is referred to in clause (1) of Amendments Article 239A, it shall be void.

- 240. Power of President to make regulations for certain Union territories.—(1) The President may make regulations for the peace, progress and good government of the Union territory of—

(a) the Andaman and Nicobar Islands; (b) Lakshadweep;

(c) Dadra and Nagar Haveli;

(d) Daman and Diu;

(e) Pondicherry:

Provided that when anybody is created under Amendments Article 239A to function as a Legislature for the Union territory of Pondicherry, the President shall not make any regulation for the peace, progress and good government of that Union territory with effect from the date appointed for the first meeting of the Legislature:

Provided further that whenever the body functioning as a Legislature for the Union territory of Pondicherry is dissolved, or the functioning of that body as such Legislature remains suspended on account of any action taken under any such law as is referred to in clause (1) of Amendments Article 239A, the President may, during the period of such dissolution or suspension, make regulations for the peace, progress and good government of that Union territory.

(2) Any regulation so made may repeal or amend any Act made by Parliament or any other law, which is for the time being applicable to the Union territory and, when promulgated by the President, shall have the same force and effect as an Act of Parliament which applies to that territory.

- 241. High Courts for Union territories—(1) Parliament may by law constitute a High Court for a Union territory or declare any court in any such territory to be a High Court for all or any of the purposes of this Constitution.

(2) The provisions of Chapter V of Part VI shall apply in relation to every High Court referred to in clause (1) as they apply in relation to a High Court referred to in Amendments Article 214 subject to such modifications or exceptions as Parliament may by law provide.

(3) Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by or under this Constitution, every High Court exercising jurisdiction immediately before the commencement of the Constitution (Seventh Amendment) Act, 1956, in relation to any Union territory shall continue to exercise such jurisdiction in relation to that territory after such commencement. (4) Nothing in this Amendments Article derogates from the power of Parliament to extend or exclude the jurisdiction of a High Court for a State to, or from, any Union territory or part thereof.

- 242 Repealed (7th Amendment 1956)

The Panchayats, Municipal and Tribes

Panchayats and Municipal Part IX and IX a part for municipal

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This part IX and IX-A added in 73rd & 74th, 1993 Constitutional Amendments which known as Panchayati Raj and Nagarpalika Constitutional Amendments Acts. The passing of these Amendments is accordance with Amendments Article 40 of COI.

243. Definitions.—

In this Part, unless the context otherwise requires,—

- (a) 'district' means a district in a State;
- (b) 'Gram Sabha' means a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village level;
- (c) 'Intermediate level' means a level between the village and district levels specified by the Governor of a State by public notification to be the intermediate level for the purposes of this Part;
- (d) 'Panchayat' means an institution (by whatever name called) of self-government constituted under Amendments Article 243B, for the rural areas;
- (e) 'Panchayat area' means the territorial area of a Panchayat;
- (f) 'population' means the population as ascertained at the last preceding census of which the relevant figures have been published;
- (g) 'village' means a village specified by the Governor by public notification to be a village for the purposes of this Part and includes a group of villages so specified.

243A. Gram Sabha.—

A Gram Sabha may exercise such powers and perform such functions at the village level as the Legislature of a State may by law, provide.

243B. Constitution of Panchayats.—

- (1) There shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of this Part.
- (2) Notwithstanding anything in clause (1), Panchayats at the intermediate level may not be constituted in a State having a population not exceeding twenty lakhs.

243C. Composition of Panchayats.—

(1) Subject to the provisions of this Part, the Legislature of a State may, by law, make provisions with respect to the composition of Panchayats:

Provided that the ratio between the population of the territorial area of a Panchayat at any level and the number of seats in such Panchayat to be filled by election shall, so far as practicable, be the same throughout the State,

(2) All the seats in a Panchayat shall be filled by persons chosen by direct election from territorial constituencies in the Panchayat area and, for this purpose, each Panchayat area shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the Panchayat area.

(3) The Legislature of a State may, by law, provide for the representation—

- (a) of the Chairpersons of the Panchayats at the village level, in the Panchayats at the intermediate level or, in the case of a State not having Panchayats at the intermediate level, in the Panchayats at the district level;
- (b) if the Chairpersons of the Panchayats at the intermediate level, in the Panchayats at the district level;
- (c) of the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly a Panchayat area at a level other than the village level, in such Panchayat;
- (d) of the members of the Council of States and the members of the Legislative Council of the State, where they are registered as electors within—

- (i) a Panchayat area at the intermediate level, in Panchayat at the intermediate level;
- (ii) a Panchayat area at the district level, in Panchayat at the district level.
- (4) The Chairperson of a Panchayat and other members of a Panchayat whether or not chosen by direct election from territorial constituencies in the Panchayat area shall have the right to vote in the meetings of the Panchayats.
- (5) The Chairperson of—
 - (a) Panchayat at the village level shall be elected in such manner as the Legislature of a State may, by law, provide; and
 - (b) a Panchayat at the intermediate level or district level, shall be elected by, and from amongst, the elected members thereof.

243D. Reservation of seats.—

(1) Seats shall be reserved for—

- (a) the Scheduled Castes; and
- (b) the Scheduled Tribes,

in every Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the, total number of seats to be filled by direct election in that Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to the total population of that area and such sea

243E. Duration of Panchayats, etc.—

(1) Every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer.

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Panchayat at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause (1).

(3) An election to constitute a Panchayat shall be completed—

- (a) before the expiry of its duration specified in clause (1);
- (b) before the expiration of a period of six months from the date of its dissolution:

Provided that where the remainder of the period for which the dissolved Panchayat would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Panchayat.

(4) A Panchayat constituted upon the dissolution of a Panchayat before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Panchayat would have continued under clause (1) had it not been so dissolved.

243F. Disqualifications for membership.—

(1) A person shall be disqualified for being chosen as, and for being, a member of a Panchayat—

- (a) if he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned:

Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years;

- (b) if he is so disqualified by or under any law made by the Legislature of the State.

(2) If any question arises as to whether a member of a Panchayat has become subject to any of the disqualifications mentioned in clause (1), the question shall be referred for the decision of such authority and in such manner as the Legislature of a State may, by law, provide.

Bhanumati v. State of UP

243G. Powers, authority and responsibilities of Panchayats.—

Subject to the provisions of this Constitution the Legislature of a State may, by law, endow the Panchayats with such powers and authority and may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats, at the appropriate level, subject to such conditions as may be specified therein, with respect to—

- (a) the preparation of plans for economic development and social justice;
- (b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.

243H. Powers to impose taxes by, and funds of, the Panchayats.—

The Legislature of a State may, by law,—

- (a) authorize a Panchayat to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;
- (b) assign to a Panchayat such taxes, duties, tolls and fees levied and collected by the State Government for such purposes and subject to such conditions and limits;
- (c) provide for making such grants-in-aid to the Panchayats from the Consolidated Fund of the State; and
- (d) provide for Constitution of such Funds for crediting all moneys received, respectively, by or on behalf of the Panchayats and also for the withdrawal of such moneys therefrom, as may be specified in the law.

243I. Constitution of finance Commissions to review financial position.—

(1) The Governor of a State shall, as soon as may be within one year from the commencement of the Constitution (Seventy-third Amendment) Act, 1992, and thereafter at the expiration of every fifth year, constitute a Finance Commission to review the financial position of the Panchayats and to make recommendations to the Governor as to—

- (a) the principles which should govern—
 - (i) the distribution between the State and the Panchayats of the net proceeds of the taxes, duties, tolls and fees leviable by the State, which may be divided between them under this Part and the allocation between the Panchayats at all levels of their respective shares of such proceeds;

243J. Audit of accounts of Panchayats.—

The Legislature of a State may, by law, make provisions with respect to the maintenance of accounts by the Panchayats and the auditing of such accounts.

243K. Elections to the Panchayats.—

The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor.

(2) Subject to the provisions of any law made by the Legislature of a State the conditions of service and tenure of office of the State Election Commissioner shall be such as the Governor may by rule determine:

Provided that the State Election Commissioner shall not be removed from his office except in like manner and on the like ground as a Judge of a High Court and the conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment.

(3) The Governor of a State shall, when so requested by the State Election Commission, make available to the State Election Commission such staff as may be necessary for the discharge of the functions conferred on the State Election Commission by clause (1).

(4) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Panchayats.

243L. Application to Union territories.—

The provisions of this Part shall apply to the Union territories and shall, in their application to a Union territory, have effect as if the references to the Governor of a State were references to the Administrator of the Union territory appointed under 239 and references to the Legislature or the Legislative Assembly of a State were references, in relation to a Union territory having a Legislative Assembly, to that Legislative Assembly:

Provided that the President may, by public notification, direct that the provisions of this Part shall apply to any Union territory or part thereof subject to such exceptions and modifications as he may specify in the notification.

243M. Part not to apply to certain areas.—

(1) Nothing in this Part shall apply to the Scheduled Areas referred to in clause (1), and the tribal areas referred to in clause (2), of Amendments Article 244.

(2) Nothing in this Part shall apply to—

(a) the States of Nagaland, Meghalaya and Mizoram;

(b) the Hill areas in the State of Manipur for which District Councils exist under any law for the time being in force.

(3) Nothing in this Part—

(a) relating to Panchayats at the district level shall apply to the Hill areas of the District of Darjeeling in the State of West Bengal for which Darjeeling Gorkha Hill Council exists under any law for the time being in force;

(b) shall be construed to affect the functions and powers of the Darjeeling Gorkha Hill Council constituted under such law.

(4) Notwithstanding anything in this Constitution—

(a) the Legislature of a State referred to in sub-clause (a) of clause (2) may, by law, extend this Part to that State, except the areas, if any, referred to in clause (1), if the Legislative Assembly of that State passes a resolution to that effect by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that house present and voting;

(b) Parliament may, by law, extend the provisions of this Part to the Scheduled Areas and the tribal areas referred to in clause (1) subject to such exceptions and modifications as may be specified in such law and no such law shall be deemed to be an amendment of this Constitution for the purposes of Amendments Article 368.

✚ Indra Sawhney v. UOI

✚ MR Balaji v State of Mysore.

243N. Continuance of existing laws and Panchayats.—

Notwithstanding anything in this Part, any provision of any law relating to Panchayats in force in a State immediately before commencement of the Constitution (Seventy-third Amendment) Act, 1992, which is inconsistent with the provisions of this part, shall continue to be in force until amended or repealed by a competent Legislature other competent authority or until the expiration of one year from such commencement whichever is earlier:

Provided that all the Panchayats existing immediately before such commencement shall continue till the expiration of their duration, unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of that State or, in the case of a State having a Legislative Council, by each house of the Legislature of that State.

243O. Bar to interference by courts in electoral matters.—

Notwithstanding anything in this Constitution—

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies made or purporting to be made under Amendments Article 243K, shall not be called in question in any court;

(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any Law made by the legislature of a State.

PART IX A

The Municipalities

243P. Definitions.—

In this Part, unless the context otherwise requires,—

(a) ‘Committee’ means a Committee constituted under Amendments Article 243S;

(b) ‘district’ means a district in a State;

(c) ‘Metropolitan area’ means an area having a population of ten lakhs or more, comprised in one or more districts and consisting of two or more Municipalities or Panchayats or other contiguous areas, specified by the Governor by public notification to be Metropolitan area for the purposes of this Part;

(d) ‘Municipal area’ means the territorial area of a Municipality as is notified by the Governor;

(e) ‘Municipality’ means an institution of self-government constituted under Amendments Article 243Q;

(f) ‘Panchayat’ means a Panchayat constituted under Amendments Article 243B;

(g) ‘Population’ means the population as ascertained at the last preceding census of which the relevant figures have been published.

243Q. Constitution of Municipalities.—

(1) There shall be constituted in every State,—

(a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area.

(b) a Municipal Council for a smaller urban area; and

(c) a Municipal Corporation for a larger urban area,

in accordance with the provisions of this Part:

Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification, specify to be an industrial township.

(2) In this Amendments Article, ‘a transitional area’, ‘a smaller urban area’ or ‘a larger urban area’ means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part.

243R. Composition of Municipalities.—

(1) Save as provided in clause (2), all the seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area and for this purpose each Municipal area shall be divided into territorial constituencies to be known as wards.

(2) The Legislature of a State may, by law, provide—

(a) for the representation in a Municipality of—

- (i) persons having special knowledge or experience in Municipal administration;
- (ii) the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the Municipal area;
- (iii) the members of the Council of States and the members of the Legislative Council of the State registered electors within the Municipal area;
- (iv) the Chairpersons of the Committees constituted under clause (5) of Amendments Article 243S: Provided that the persons referred to in paragraph (i) shall not have the right to vote in the meetings of the Municipality;
- (b) the manner of election of the Chairperson of a Municipality.

243S. Constitution and composition of wards Committees, etc.—

- (1) There shall be constituted Wards Committees, consisting of one or more Wards, within the territorial area of a Municipality having a population of three lakhs or more.
- (2) The Legislature of a State may, by law, make provision with respect to—
 - (a) the composition and the territorial area of a Wards Committee;
 - (b) the manner in which the seats in a Wards Committee shall be filled.
- (3) A member of a Municipality representing a ward within the territorial area of the Wards Committee shall be a member of that Committee.
- (4) Where a Wards Committee consists of—
 - (a) one ward, the member representing that ward in the Municipality; or
 - (b) two or more wards, one of the members representing such wards in the Municipality elected by the members of the Wards Committee, shall be the Chairperson of that Committee.
- (5) Nothing in this Amendments Article shall be deemed to prevent the Legislature of a State from making any provision for the Constitution of Committees in addition to the Wards Committees.

243T. Reservation of seats.—

- (1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every Municipality and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Municipality as the population of the Scheduled Castes in the Municipal area or of the Scheduled Tribes in the Municipal area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Municipality.
- (2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.
- (3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality.
- (4) The offices of Chairpersons in the Municipalities shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide.
- (5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in Amendments Article 334.
- (6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Municipality or offices of Chairpersons in the Municipalities in favour of backward class of citizens.

243U. Duration of Municipalities, etc.—

- (1) Every Municipality, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer:

Provided that a Municipality shall be given a reasonable opportunity of being heard before its dissolution.

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Municipality at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause (1).

(3) An election to Constitute a Municipality shall be completed,—

(a) before the expiry of its duration specified in clause (1);

(b) before the expiration of a period of six months from the date of its dissolution:

Provided that where the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Municipality for such period.

(4) A Municipality constituted upon the dissolution of a Municipality before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Municipality would have continued, under, clause (1) had it not been so dissolved.

243V. Disqualifications for membership.—

(1) A person shall be disqualified for being chosen as, and for being a member of a Municipality—

(a) if he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned;

Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age, of twenty-one years;

(b) if he is so disqualified by or under any law made by the Legislature of the State.

(2) If any question arises as to whether a member of a Municipality has become subject to any of the disqualifications mentioned in clause (1), the question shall be referred for the decision of such authority and in such manner as the Legislature of a State may, by law, provide.

243W. Powers, authority and responsibilities of Municipalities, etc.—

Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow—

(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to—

(i) the preparation of plans for economic development and social justice;

(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;

(b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule.

243X. Power to impose taxes by, and funds, of, the Municipalities.—

The Legislature of a State may, by law—

(a) authorize a Municipality to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;

(b) assign to a Municipality such taxes, duties, tolls and fees levied and collected by the State-Government for such purposes and subject to such conditions and limits;

(c) provide for making, such grants-in-aid to the Municipalities from the Consolidated Fund of the State; and

(d) provide for Constitution of such Funds for crediting all moneys received, respectively, by or on behalf of the Municipalities and also for the withdrawal of such moneys therefrom, as may be specified in the law.

243Y. Finance Commission.—

(1) The Finance Commission constituted under Amendments Article 243-I shall also review the financial position of the Municipalities and make recommendations to the Governor as to—

(a) the principles which should govern—

(i) the distribution between the State and the Municipalities of the net proceeds of the taxes, duties, tolls and fees leviable by the State, which may be divided between them under this Part and the allocation between the Municipalities at all levels of their respective shares of such proceeds;

(ii) the determination of the taxes, duties, tolls and fees which may be assigned to, or appropriated by, the Municipalities;

(iii) the grants-in-aid to the Municipalities from the Consolidated Fund of the State;

(b) the measures needed to improve the financial position of the Municipalities;

(c) any other matter referred to the Finance Commission by the Governor in the interests of sound finance of the Municipalities.

(2) The Governor shall cause every recommendation made by the Commission under this Amendments Article together with an explanatory memorandum as to the action taken thereon to be laid before the Legislature of the State.

243Z. Audit of accounts of Municipalities.—

The Legislature of a State may, by law, make provisions with respect to the maintenance of accounts by the Municipalities and the auditing of such accounts.

243ZA. Elections to the Municipalities.—

(1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Municipalities shall be vested in the State Election Commission referred to in Amendments Article 243K.

(2) Subject to provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Municipalities.

243ZB. Application to Union territories.—

The Provisions of this Part shall apply to the Union territories and shall, in their application to a Union territory, have effect as if the references to the Governor of a State were references to the Administrator of the Union territory appointed under Amendments Article 239 and references to the Legislature or the Legislative Assembly of a State were references in relation to a Union territory having a Legislative Assembly, to that Legislative Assembly:

Provided that the President may, by public notification, direct that the provisions of this Part shall apply to any Union territory or part thereof subject to such exceptions and modifications as he may specify in the notification.

243ZC. Part not to apply to certain areas.—

(1) Nothing in this Part shall apply to the Scheduled Areas referred to in Clause (1), and the tribal areas referred to in Clause (2), of Amendments Article 244.

(2) Nothing in this part shall be construed to affect the functions and powers of the Darjeeling Gorkha Hill Council constituted under any law for the time being in force for the hill areas of the district of Darjeeling in the State of West Bengal.

(3) Notwithstanding anything in this Constitution, Parliament may, by law, extend the provisions of this Part to the Scheduled Areas and the Tribal Areas referred to in clause (1) subject to such exceptions and modifications as may be specified in such law, and no such law shall be deemed to be an amendment of this Constitution for the purposes of Amendments Article 368.

243ZD. Committee for district planning.—

(1) There shall be constituted in every State at the district level a District Planning Committee to consolidate the plans prepared by the Panchayats and the Municipalities in the district and to prepare a draft development plan for the district as a whole.

(2) The Legislative of a State may, by law, make provision with respect to—

(a) the composition of the District Planning Committees;

(b) the manner in which the seats in such Committees shall be filled:

Provided that not less than four-fifths of the total number of members of such Committee shall be elected by, and from amongst, the elected members of the Panchayat at the district level and of the Municipalities in the district in proportion to the ratio between the population of the rural areas and of the urban areas in the district;

(c) the functions relating to district planning which may be assigned to such Committees;

(d) the manner in which the Chairpersons of such Committees be chosen.

(3) Every District Planning Committee shall, in preparing the draft development plan,—

(a) have regard to—

(i) matters of common interest between the Panchayats and the Municipalities including spatial planning, sharing of water and other physical and natural resources, the integrate development of infrastructure and environmental conservation;

(ii) the extent and type of available resources whether financial or otherwise;

(b) consult such institutions and organizations as the Governor may, by order, specify.

(4) The Chairperson of every District Planning Committee shall forward the development plan, as recommended by such Committee, to the Government of the State.

243ZE. Committee for Metropolitan Planning.—

(1) There shall be constituted in every metropolitan, area a Metropolitan Planning Committee to prepare a draft development plan for the Metropolitan area as a whole.

(2) The Legislature of a State may, by law, make with respect to—

(a) the composition of the Metropolitan Planning Committees;

(b) the manner in which the seats in such Committees shall be filled:

Provided that not less than two-thirds of the members of such Committee shall be elected by, and from amongst, the elected members of the Municipalities and Chairpersons of the Panchayats in the, Metropolitan area in proportion to the ratio between the population of the Municipalities and of the Panchayats in that area;

(c) the representation, in such Committees of the Government of India and the Government of the State and of such organizations and institutions as may be deemed necessary for carrying out the functions assigned to such Committees;

(d) the functions relating to planning and coordination for the Metropolitan area which may be assigned to such Committees;

(e) the manner in which the Chairpersons of such Committees shall be chosen.

(3) Every Metropolitan Planning Committee shall, in preparing the draft development plan,—

(a) have regard to—

(i) the plans prepared by the Municipalities and the Panchayats in the Metropolitan area;

(ii) matters of common interest between the Municipalities and the Panchayats, including co-ordinate spatial planning of the area, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation;

(iii) the overall objectives and priorities set by the Government of India and the Government of the State;

(iv) the extent and nature of investments likely to be made in the Metropolitan area by agencies of the Government of India and of the Government of the State and other available resources whether financial or otherwise;

(b) consult such institutions and organizations as the Governor may, by order, specify.
 (4) The Chairperson of every Metropolitan Planning Committee shall forward the development plan, as recommended by such Committee, to the Government of the State.

243ZF. Continuance of existing laws and Municipalities.—

Notwithstanding anything in this Part, any provision of any law relating to Municipalities in force in a State immediately before the commencement of the Constitution (Seventy-fourth Amendment) Act, 1992, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is earlier:

Provided that all the Municipalities existing immediately before such commencement shall continue till the expiration of their duration, unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of that State or, in the case of a State having a Legislative Council, by each House of the Legislature of that State.

243ZG. Bar to interference by courts in electoral matters.—

Notwithstanding anything in this Constitution,—

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Amendments Article 243ZA shall not be called in question in any court;

(b) no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.

✚ Kishansing Tomar v. municipal Corp of the city Ahmadabad

PART X

The Scheduled And Tribal Areas

THE SCHEDULED AND TRIBAL AREAS

PART X

244	Administration of Scheduled Areas and Tribal Areas
244A	Formation of an autonomous State comprising certain tribal areas in Assam and creation of local Legislature or Council of Ministers or both therefor

244. Administration of Scheduled Areas and Tribal Areas.—

(1) The provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State *** other than the States of Assam Meghalaya, Tripura and Mizoram.

(2) The provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the State of Assam, Meghalaya, Tripura and Mizoram.

244A. Formation of an autonomous State comprising certain tribal areas in Assam and creation of local Legislature or Council of Ministers or both therefor.—

(1) Notwithstanding anything in this Constitution, Parliament may, by law, form within the State of Assam an autonomous State comprising (whether wholly or in part) all or any of the tribal areas specified in Part I of the table appended to paragraph 20 of the Sixth Schedule and create therefor—

(a) a body, whether elected or partly nominated and partly elected, to function as a Legislature for the autonomous State, or

(b) a Council of Ministers, or both with such Constitution, powers and functions, in each case, as may be specified in the law.

(2) Any such law as is referred to in clause (1) may, in particular,—

(a) specify the matters enumerated in the State List or the Concurrent List with respect to which the Legislature of the autonomous State shall have power to make laws for the whole or any part thereof, whether to the exclusion of the Legislature of the State of Assam or otherwise;

(b) define the matters with respect to which the executive power of the autonomous State shall extend; (c) provide that any tax levied by the State of Assam shall be assigned to the autonomous State in so far as the proceeds thereof are attributable to the autonomous State;

(d) provide that any reference to a State in any Amendments Article of this Constitution shall be construed as including a reference to the autonomous State; and (e) make such supplemental, incidental and consequential provisions as may be deemed necessary.

(3) An amendment of any such law as aforesaid in so far as such amendment relates to any of the matters specified in sub-clause (a) or sub-clause (b) of clause (2) shall have no effect unless the amendment is passed in each House of Parliament by not less than two-thirds of the members present and voting.

(4) Any such law as is referred to in this Amendments Article shall not be deemed to be an amendment of this Constitution for the purposes of Amendments Article 368 notwithstanding that it contains any provision which amends or has the effect of amending this Constitution.

Case law

- ✚ Ram kripal bhagat
- ✚ State of Meghalaya v. Kurkalang

UNIT-II Legislative and Administrative Relations

- 1 Relation between the Union and the State
 - 2 Distribution of legislative power
 - 3 Administrative relations
 - 4 Disputes relating to water
 - 5 Freedom of trade, commerce and intercourse within territory of India
- ✚ 245. Extent of laws made by Parliament and by the Legislatures of States.
 - ✚ 246. Subject-matter of laws made by Parliament and by the Legislatures of States.
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 - ✚ 248. Residuary powers of legislation.
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 - ✚ 250. Power of Parliament with respect to any matter in the State List if a Proclamation of Emergency is in operation.
 - ✚ 251. Inconsistency between laws made by parliament under Amendments Article s 249 and 250 and laws made by the Legislatures of States.
 - ✚ 252. Power of Parliament to legislate for two or more States by consent and adoption of such legislation by any other State.
 - ✚ 253. Legislation for giving effect to international agreements.
 - ✚ 254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States.

- ✚ 255. Requirements as to recommendations and previous sanctions to be regarded as matters of procedure only.
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- ✚ 260. Jurisdiction of the Union in relation to territories outside India.
- ✚ 261. Public acts records and judicial proceedings.
- ✚ 262. Adjudication of disputes relating to waters of inter-State rivers or river valleys.
- ✚ 263. Provisions with respect to an inter-State Council.

Union and federal

Both features are listed below:-

Federal Features-

1. Supremacy of the Constitution,
2. Division of power between the Union (central Governments) and State, and
3. The existence of an independent judiciary in the Indian Constitution.

Unitary Features-

1. Single Citizenship
2. Single Constitution
3. Power of union to override on the state matters
4. During emergency the system became virtually unitary
5. Changes in the names and boundaries of the states by the Parliament
6. Integrated Judiciary System
7. Centre appoints the Governors
8. Dependence of states on the centre for economic assistance and grants.

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Introduction

- ❖ K.C. Wheare “federal government as an association of states, which has been formed for certain common purposes, but in which the member states retain a large measure of their original independence. A federal government exists when the powers of the government for a community are divided substantially according to a principle that there is a single independent authority for the whole area in respect of some matters and there are independent regional authorities for other matters, each set of authorities being co-ordinate to and subordinate to the others within its own sphere. The framers of the Indian Constitution attempted to avoid the difficulties faced by the federal Constitutions of U.S.A, Canada and Australia and incorporate certain unique features in the working of the Indian Constitution. Thus, our Constitution contains certain novel provisions suited to the Indian conditions. The doubt which emerges about the federal nature of the Indian Constitution is the power of intervention in the affairs of the states given to the Central Government by the Constitution According to Wheare, in practice the Constitution of India is quasi-federal in nature and not strictly federal.”
- ❖ Sir Ivor Jennings was of the view that “India has a federation with a strong centralizing policy.”

Amendments Article 253

Legislation for giving effect to international agreements notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body

51. Promotion of international peace and security The State shall Endeavour to

- (a) promote international peace and security;
- (b) maintain just and honorable relations between nations;
- (c) foster respect for international law and treaty obligations in the dealings of organized peoples with one another; and encourage settlement of international disputes by arbitration

PART IVA FUNDAMENTAL DUTIES.

Both section is inter linked that the on the basis of international treaty or any agreement which take place between India and any other country that should be resolve by way mention under Amendments Article 51.

Today Indian Union comprises of twenty nine states and seven union territories. Student of Constitution should know nature of Indian federal system.

- ✚ To study about center–state relations.
- ✚ To study about conflicts between the state and resolution mechanism on that.
- ✚ To study about actual working of Indian federal system.

The Constitution in its very first Amendments Article describes India as a Union of States. When the British power was established in India it was highly centralized and unitary. To hold India under its imperial authority, the British had to control it from the Centre and ensure that power remained centralized in their hands. A strong central authority was for the British both an imperial and an administrative necessity. The country continued to be ruled under the 1919 Act by a central authority until 1947. And, since under the 1919 Act, there was a central government, a central legislature, a system of central laws etc., the use of these terms continued under the colonial hangover.

Three List of Legislative Items:

Union List (97)

State list (66)

Concurrent list. (47) {Both can make the legislature}

Union List consists of 97 subjects of all India importance. The most important subjects in the union list are – Defense of India,

Naval, Military and Air forces, Atomic energy, foreign affairs, Railways etc. The subjects of the Union List are placed under the exclusive jurisdiction of the Union government.

State list consists of 66 subject, which are primarily of regional interest .The state governments have full authority to make laws on any of the subjects mentioned in the state list, e.g. public order, police ,prisons, local government ,public health etc

Concurrent list consist of 47 subjects. The subjects included in the concurrent list have varying degrees of local and national interest. Hence both the union and states have powers to make laws on any of the subject included in the concurrent list. In case of a conflict between the union law and the state law over the same subject, the union law would prevail over the state law.

(B) Residuary power with the union:

All the subject and power are divided into three lists. But there may be some subjects who might not have been included in any of the above three list. Such subjects are known as residuary powers .In U.S.A. and AUSTRILA the residuary powers are left to the states and not to the Union. Hence, there the states are stronger than the center. But in India the residuary powers are left to the union. It made the union stronger than the states.

(C) Power of parliament to legislate on state list in the National Interest:

The union can pass a law on any of the subjects of the state list, if Rajyasabha passes a resolution, supported by a majority of 2/3 rd members present and voting, to the effect that, in the national

interest, the Parliament should make a law on a subject included in the state list.

(D) National Emergency:

When proclamation of a national emergency is issued by the President the scheme of division of powers is set aside. Union Parliament has authority to pass a law even on those subjects, which are included in the state list. Thus in case of emergency the Indian Constitution becomes unitary.

(E) State Emergency:

The union can pass law on the state list, if two or more state legislatures so desire and pass a resolution to that effect. Such a law passed by the parliament, will be applicable only to those states, which have asked for it. Such a law is valid for a period of one year.

(F) International Treaties and Agreements:

The parliament has power to make laws on any of the subjects included in the state list to implement any international treaty. It should be noted that no other federal Constitution has such a provision.

(G) During president's rule:

When the president issues a proclamation of the failure of Constitutional machinery in the state, he may declare that the power of the legislature of the state shall be exercisable under the authority of the parliament.

(H) Power of parliament to legislate for union Territories:

The distribution of legislative and executive power does not apply to the union Territories, for which, the parliament is empowered to legislate on any subject included in all the three list.

**Summary Table On Legislative Relations
between the center and States**

- 1) Three lists of legislative subjects
- 2) Residuary powers with the union
- 3) Power of Parliament to legislate on state list in the national interest
- 4) National emergency
- 5) On request from state
- 6) International treaties
- 7) During President's rule
- 8) Power of parliament to legislate for union territory

Federal Structure of Indian Constitution

Central → state → Panchayat

On Legislative Relations between the center and States		
a.	Three lists of legislative subjects	
b.	Residuary powers with the union	
c.	Power of Parliament to legislate on state list in the national interest	
d.	National emergency	
e.	On request from state	
f.	International treaties	
g.	During President's rule	
h.	Power of parliament to legislate for union territories	

Interpretation of the Legislative Lists

(a) Plenary Powers: The first and foremost rule is that if legislative power is granted with respect to a subject and there are no limitations imposed on the power, then it is to be given the widest scope that its words are capable of, without, rendering another item nugatory. In the words of Gajenderagadkar, C.J. "It is an elementary cardinal rule of interpretation that the words used in the Constitution which confer legislative power must receive the most liberal construction and if they are words of wide amplitude, they must be interpreted so as to give effect to that amplitude. A general word used in an entry ... must be construed to extend to all ancillary or subsidiary matters which can fairly and reasonably be held to be included in it (*Jagannath Baksh Singh v. State of U.P.*, AIR 1962 SC 1563). Thus, a legislature to which a power is granted over a particular subject may make law on any aspect or on all aspects of it; it can make a retrospective law or a prospective law and it can also make law on all matters ancillary to that matter. For example, if power to collect taxes is granted to a legislature, the power not to collect taxes or the power to remit taxes shall be presumed to be included within the power to collect taxes.

(b) Harmonious Construction: Different entries in the different lists are to be interpreted in such a way that a conflict between them is avoided and each of them is given effect. It must be accepted that the Constitution does not want to create conflict and make any entry nugatory. Therefore, when there appears a conflict between two entries in the two different lists the two entries should be so interpreted, that each of them is given effect and, for that purpose the scope and meaning of one may be restricted so as to give meaning to the other also.

(c) Pith and Substance Rule: The rule of pith and substance means that where a law in reality and substance falls within an item on which the legislature which enacted that law is competent to legislate, then such law shall not become invalid merely because it incidentally touches a matter outside the competence of legislature. In a federal Constitution, as was observed by Gwyer C.J. "it must inevitably happen from time to time that legislation though purporting to deal with a subject in one list touches also upon a subject in another list, and the different provisions of the enactment may be so closely intertwined that blind adherence to a strictly verbal interpretation would result in a large

number of statutes being declared invalid because the legislature enacting them may appear to have legislated in a forbidden sphere” (*Prafulla Kumar v. Bank of Khulna*, AIR 1947 PC 60). Therefore, where such overlapping occurs, the question must be asked, what is, “pith and substance” of the enactment in question and in which list its true nature and character is to be found. For this purpose the enactment as a whole with its object and effect must be considered. By way of illustration, acting on entry 6 of List II which reads “Public Health and Sanitation”. Rajasthan Legislature passed a law restricting the use of sound amplifiers. The law was challenged on the ground that it dealt with a matter which fell in entry 81 of List I which reads: “Post and telegraphs, telephones, wireless broadcasting and other like forms of communication”, and, therefore, the State Legislature was not competent to pass it. The Supreme Court rejected this argument on the ground that the object of the law was to prohibit unnecessary noise affecting the health of public and not to make a law on broadcasting, etc. Therefore, the pith and substance of the law was “public health” and not “broadcasting” (*G. Chawla v. State of Rajasthan*, AIR 1959 SC 544).

Cases: State of Bombay v. FN Balsara

(d) Colorable Legislation: It is, in a way, a rule of interpretation almost opposite to the one discussed above. The Constitution does not allow any transgression of power by any legislature, either directly or indirectly. However, a legislature may pass a law in such a way that it gives it a color of Constitutionality while, in reality, that law aims at achieving something which the legislature could not do. Such legislation is called colorable piece of legislation and is invalid. To take an example in *Kameshwar Singh v. State of Bihar*, A.I.R. 1952 S.C. 252, the Bihar Land Reforms Act, 1950 provided that the unpaid rents by the tenants shall vest in the state and one half of them shall be paid back by the State to the landlord or zamindar as compensation for acquisition of unpaid rents. According to the provision in the State List under which the above law was passed, no property should be acquired without payment of compensation. The question was whether the taking of the whole unpaid rents and then returning half of them back to them who were entitled to claim, (i.e., the landlords) is a law which provides for compensation. The Supreme Court found that this was a colorable exercise of power of acquisition by the State legislature, because “the taking of the whole and returning a half means nothing more or less than taking off without any return and this is naked confiscation, no matter in whatever specious form it may be clothed or disguised”. The motive of the legislature is, however, irrelevant for the application of this doctrine. Therefore, if a legislature is authorized to do a particular thing directly or indirectly, then it is totally irrelevant as to with what motives – good or bad – it did that. These are just few guiding principles which the Courts have evolved, to resolve the disputes which may arise about the competence of law passed by Parliament or by any State Legislature.

(E) Territorial nexus: Article 254

- **Wallace v. ITC, Bombay**
- **State of Bombay v. RMDC**

(F) Delegated legislation

- ✚ **Pressure on parliamentary time**
- ✚ **Technicality of subject matter**
- ✚ **Opportunity for experimentation**
- ✚ **Unforeseen contingencies**
- ✚ **Emergency power**

Control of delegated legislation

- ✚ **Judicial Control Art 246**
- ✚ **Parliamentary Control**

(H) Retrospectively

(I) Pre Dominance of Union Power

- A. ITC case
- B. Legislative Relations

Based on 2 type

- Territory
- Subject matter

Leading cases:

- ✚ AH Wadia v ITC, Bombay
- ✚ Wallace v. ITC, Bombay
- ✚ State of Bombay vs. RMDC

The Constitution, based on the principle of federalism with a strong and indestructible¹ Union, has a scheme of distribution of legislative powers designed to blend the imperatives of diversity with the drive of a common national Endeavour. In this respect our Constitutional theory as well as practice has kept pace with contemporary developments. The current trends emphasize cooperation and coordination, rather than demarcation of powers, between different levels of government. The basic theme is inter-dependence in orchestrating the balance between autonomy of the States and the inner logic of the Union.

The Constitution adopts a three-fold distribution of legislative powers by placing them in any one of the three lists, namely I (Union List), II (State List) and III (Concurrent List). Amendments Article s 245 and 246 demarcate the legislative domain, subject to the controlling principle of the supremacy of the Union which is the basis of the entire system. The Concurrent List gives power to two legislatures, Union as well as State, to legislate on the same subject. In case of conflict or inconsistency, the rule of repugnancy, as contained in Amendments Article 254, comes into play to uphold the principle of Union power. The Concurrent List expresses and illustrates vividly the underlying process of nation building in the setting of our heterogeneity and diversity. The framers of the Constitution recognized that there was a category of subjects of common interest which could not be allocated exclusively either to the States or the Union.

Nonetheless, a broad uniformity of approach in legislative policy was essential to combine specific requirements of different States with the articulation² of a common national policy objective. Conceived thus, harmonious operation of the Concurrent List could well be considered to be creative federalism at its best. The problems that have attracted attention in the field of Union-State relations have less to do with the structure or the rationale of the Concurrent List than with the manner in which the Union has exercised its powers. In a fundamental political sense, the passing of one party dominance that characterized the first four decades of the Republic has also ended the drive towards over centralization. Even the powers that unquestionably belong to the Union, for example the power to temporarily assume the functions of a State Government under Amendments Article 356, are heavily circumscribed by the political reality of a multi-party system where the States have acquired significant bargaining power vis-à-vis the Government of India. The evolving political system has thus imparted considerable vitality to the federal impulses of the Constitution. However, what has been

¹ Permanent

² Expressions

gained in the actual practice of legislative relations between the Union and the States, in terms of restoring the balance inherent in the Constitutional scheme, has not entered the realm of institutional validation. To this extent, the unilateralism of the Union in regard to the exercise of legislative powers under the Concurrent List remains a potential problem area. The principal critique of concurrency is not that it is not required, but that it is used without consultation, that it is not exercised to deepen inter-dependence and co-operation but to stress dominance of the Union point of view. It has to be conceded that institutional arrangements for facilitating exchange of views between the States and the Union on matters falling within the field of concurrent legislation leave something to be desired. This has happened in spite of the existence of the Inter-State Council under Amendments Article 263. The Council has yet to develop into a mechanism to be relied on for an ongoing process of dialogue on vital socio-economic and political issues between the Union and the States and among the States. It is not as if such consultation is absent. There are Chief Ministers' Conferences on specific issues. There are State Ministers' Conferences on a variety of subjects on which common policy positions have to be formulated, such as Value Added Tax.

There is, however, no formal institutional structure that requires mandatory consultation between the Union and the States in the area of legislation under the Concurrent List which covers several items of crucial importance to national economy and security. Even the National Development Council, whose ambit may occasionally be widened beyond the Five Year and the Annual Plans, is seldom³ convened to test ideas and evaluate experience in policy formulation and implementation in areas where both the Union and the States are interested for the sake of social and economic development. The Concurrent List provides a fine balance between the need for uniformity in the national laws and creating a simultaneous jurisdiction for the States to accommodate the diversities and peculiarities of different regions. This also provides a distinguishing feature in the federal scheme envisaged by the framers of the Constitution. This is further reinforced by placing a mode of altering the provisions in lists I, II and III in the 7th schedule among other matters of provisions substantive in nature and basic to the structure of the Constitution that fall within the purview of the proviso to clause (2) of Amendments Article 368. A bill for amending the list in the 7th schedule has to be passed by Parliament by a majority of the total membership of that House and by a majority of not less than 2/3rd of the members of the House present and voting – and followed by ratification of legislatures of not less than ½ of the States. This mechanism provides a statutory tilt in favour of consultation and cooperation with the States in matters pertaining to the Legislative sphere and inherent balance between flexibility and rigidity. Globalization as a phenomenon has created a great deal of mobility of goods, services, capital, technology; integrating the world trade far more than ever before. There are also related concerns arising out of a need for a better and sustained use of resources of the earth as a planet that call for a much greater coordination in identification and formulation of responses among the nations. This process of cohesive and concurrent action needs to generate, first-of-all within the national context. The geographical climate, environmental, technological diversities amongst States have to be harmonized in order that these may link with global processes for viable sustained, development and growth. A major field of undertaking new initiatives in these spheres would lie in the legislative domain where a certain concurrences and coherence between the States and their different needs have to be harmonized to evolve national policies. This is also reflected in issues that pertain to technology, trade, financial services etc. In the global context. The Commission examined the Constitutional provisions regarding concurrent powers of legislation, analyzing the Constitutional Amendments that had been enacted from time to time and the judicial pronouncements on major issues arising from concurrency. The view that emerged was that there was no ground for change in

³ Rarely

the existing Constitutional provisions. The Commission believes that on the whole the framework of legislative relations between the Union and the States, contained in Amendments Article s 245 to 254, has stood the test of time. In particular, the Concurrent List, List III in the Seventh Schedule under Amendments Article 246 (2), has to be regarded as a valuable instrument for consolidating and furthering the principle of cooperative and creative federalism that has made a major contribution to nation building. The Commission is convinced that it is essential to institutionalize the process of consultation between the Union and the States on legislation under the Concurrent List.

The Commission recommends that individual and collective consultation with the States should be undertaken through the Inter-State Council established under Amendments Article 263 of the Constitution. Further, the Inter-State Council Order, 1990, issued by the President may clearly specify in 4(b) of the order the subjects that should form part of consultation in the Inter-State Council.

A – Finance Article (264-291)

Financial Relations

Division of financial powers and functions among different levels of the federal polity are asymmetrical, with a pronounced bias for revenue taxing powers at the Union level while the States carry the responsibility for subjects that affect the day to day life of the people entailing larger expenditure than can be met from their own resources. On an average, the revenue of States from their own resources suffices only for about 50 to 60 percent of States' current expenditure. Since the insufficiency of the States' fiscal resources had been foreseen at the time of framing the Constitution, a mechanism in the shape of Finance Commission was provided under Amendments Article 280 for financial transfers from the Union. Its function is to ensure orderly and judicious devolution that is deemed necessary from the point of view of avoiding vertical or horizontal imbalances. The Finance Commission is only one stream of transfer of resources from the Union to the States. The Planning Commission advises the Union Government regarding the desirable transfer of resources to the States over and above those recommended by the Finance Commission. Bulk of the transfer of revenue and capital resources from the Union to the States is determined largely on the advice of these two Commissions. By and large, such transfers are formula-based. Then there are some discretionary transfers as well to meet the exigencies of specific situations in individual States. These institutional arrangements served the country well in the first three decades after independence. Testifying to the strength of these institutions neither the Union nor the States suffered from any large imbalance in their budgets, although the size of the public sector in terms of proportion of government expenditure to Gross Domestic Product had nearly doubled during this period. Imbalances have become endemic during the last two decades and have assumed alarming proportions recently. For this state of affairs, the Constitutional provisions can hardly be blamed. Broadly, the causes have to be sought in the working of the political institutions. There are shortcomings in the transfer system. For example, the 'gap-filling' approach adopted by the Finance Commission and the soft budget constraints have provided perverse incentives. The point, however, is that these deficiencies are capable of being corrected without any change in the Constitution.

Article 265 of double taxation policy it can be taken to anyone.

Enlargement of the Scope of the Finance Commission

The institution of the Finance Commission has been one of the major success stories of the Constitution. The broad terms of reference as laid down in Amendments Article 280(3) are unexceptionable. However, other matters in the interest of sound finance can also be referred to the Finance Commission. These would constitute additional terms of reference. It has been suggested that it would be desirable to associate the States more actively in deciding the additional terms of reference, preferably by having the National Development Council (comprising the Prime Minister and the Chief Ministers of States) to endorse the additional terms of reference. The Commission is not in favour of an amendment of Amendments Article 280(3)(d) to enable such enlargement of the scope of

the Finance Commission, However, it is recommended that terms of reference of the Finance Commission should be broader and comprise of matters which would take care, in a comprehensive way, aspects of the financial relations between the Union and the States. The broadening of such terms of reference could also be discussed earlier by the National Development Council. Under Amendments Article 281, the recommendations of the Finance Commission are laid before the Houses of Parliament along with an explanatory memorandum as to the action taken on them. The recommendations are not theoretically binding, although there has been no case so far when the Government of India has deviated from recommendations of successive Finance Commissions. It has been suggested that the Constitution itself should describe the recommendations as an award binding on both the Union and the States. This has been urged in the context of the mechanism of the State Finance Commissions which are set up under Amendments Article s 243-I and 243-Y which too make only recommendations and not awards. The State Finance Commissions are a comparatively new Constitutional mechanism. They would take some time to strike roots in the Constitutional soil. Politicians at the State level have also to find their bearings in the new landscape where the old landmarks of patronage at the State level have yielded place to a non-discriminatory passage of resources from the State exchequer to the local government institutions. Keeping in view the factors pointed out above the Commission does not consider it necessary to recommend the amendment of the Constitution to provide for the recommendations of either the Finance Commission constituted under Amendments Article 280 or of the State Finance Commissions constituted under Amendments Article s 243-I and 243-Y being treated as awards.

Important Article

267-Contingency⁴ Fund

270- Taxes levied b/w Center and States

280-Finace Commission

Leading case law:

- ✚ M/s Chhotabhai vs UOI
- ✚ Commissioner HRE v LT Swaminar
- ✚ Secundrabad and Hyderabad hotel owner case

B - Trade, Commerce and Intercourse

Barriers to Inter-State Trade and Commerce

Free flow of trade without geographical barriers is *sine-qua-non* for economic prosperity nationally as well as internationally. Therefore, progressive removal of such barriers has been a general phenomenon in social evolution in the modern world. Today we are vigorously pursuing the goal of free flow of trade among the nations of the world under the banner of globalization through, for example, the WTO among the nations of the world. Regionally, member states of the European Community, for example, have already achieved that goal almost fully. As economy is the most important source of power and identity in the world of today, the nations or regions that constitute the federation do not want to lose their hold on economic power. Nor do the economically strong States want the economically weak States to become parasites on them. Therefore, an arrangement must be devised which will ensure free flow of trade, encourage fair competition and simultaneously remain capable of discouraging and regulating unfair trade practices. One common arrangement found in all federations in this regard, is the division between the interstate and intrastate trade and commerce. While the regulation of the former is assigned to the federal authority, the States retain the regulation of the latter. Some federations have gone further and made interstate trade free from regulation both by the federal authority as well as the authority of the States. Australia is the foremost

⁴ emergency

example of that. India goes one step further than Australia in so far as it makes flow of interstate as well as intrastate trade free from regulation by the Union as well as the States. However, unlike Australia, after making such a general declaration, the Constitution of India gives adequate powers to the Union and the States, particularly to the former, to regulate trade and commerce.

Trade and Commerce Commission

In order that the country's competitiveness in trade, commerce and industry is enabled to respond to the increasing pressures of globalisation, it is necessary that barriers to Interstate trade and commerce, particularly, the free movement of goods on the inter-state routes should be progressively reduced with a view to their final elimination. A statutory authority contemplated under Amendments Article 307 of the Constitution requires to be set-up. As the effects of such an authority could as well go beyond the purposes of Amendments Article -307, the legislation could be comprehensive drawing on Entry 42 of List -I and, if necessary, Entry 97 of List-I of the Seventh Schedule. The composition of the authority may provide for representation of the FICCI, CII, Railway Board, FSIME (Federation of Small Industries and Micro Enterprises), Indian Society of Automobile Manufacturers, National Highway Authority of India, NCAER, National Institute of Public Finance and Policy, Inter-State Council, School of International Studies (Jawaharlal Nehru University), Planning Commission and Ministry of Surface Transport. For carrying out the objectives of Amendments Article s 301, 302, 303 and 304, and other purposes relating to the needs and requirements of inter-state trade and commerce and for purposes of eliminating barriers to inter-state trade and commerce Parliament should by law establish an authority called the "Interstate Trade and Commerce Commission" under the Ministry of Industry and Commerce under Amendments Article 307 read with Entry 42 of List-I.

Leading case Law

1. James V Commonwealth of Australia
2. Automobile cases
3. State of Mysore v Sanjeeviah
4. GK Krishna v. State of tamil Naidu
5. Indian Cement v. State of AP
6. State of MP vs Bhailal Bhai
7. Sahgir Ahmad v. State of UP.

C - Resolution of Disputes

Inter-State Disputes

In a Constitutional set-up where powers are distributed between the Union and the States, it is natural to expect disputes as to on which side of the boundary a particular matter falls. Where such differences do arise, it is desirable that there should be a well thought out systemic mechanism for the resolution of such inter- State disputes.

Amendments Article 131 relates to the original jurisdiction of the Supreme Court and provides the judicial mechanism for dealing with inter-Governmental disputes involving any questions of law or fact on which existence or extent of a legal right depends between the Government of India and one or more States or between the Government of India and any State or States on the one side and one or more other States on the other or between two or more States. However, a few matters are excluded either by express provisions or by necessary implication. The Commission considered as to whether the Supreme Court should be given exclusive jurisdiction in controversies concerning the distribution of legislative powers. Incidentally, it may be mentioned here that Amendments Article 131A was inserted in the Constitution *vide* the Constitution (Forty-second Amendment) Act, 1976 so as to provide exclusive jurisdiction to the Supreme Court in regard to the questions as to Constitutional validity of Union laws. However, the said provision was repealed by the Constitution (Forty-third

Amendment) Act, 1977. After carefully considering the issues, the Commission is of the view that no exclusive jurisdiction need be conferred on the Supreme Court in matters of controversies concerning distribution of legislative power between the Union and the States. It would deprive non-governmental parties of the facilities and the advantages of seeking remedy in the High Courts. However, there may be situations, which may require that such questions should not undergo a long drawn process of litigation and the Supreme Court should be enabled to dispose of such questions finally and quickly without its being made a court of exclusive jurisdiction. The Commission is of the view that the Supreme Court should be empowered to transfer such cases to itself and decide the same. For this purpose it is not necessary to amend Amendments Article 131. It can be provided for by amending Amendments Article 139A. This will also ensure that the Supreme Court would be able to apply its mind and *prima facie* see as to whether (a) the case really involves some substantial question of law and is not raising untenable or frivolous contentions; and (b) whether the case is such that it should be transferred to it and disposed of expeditiously.

The Commission recommends that Amendments Article 139A, which confers power on the Supreme Court to withdraw cases involving the same or substantially the same question of law, which are pending in Supreme Court and one or more High Courts, should be amended so as to provide that it can withdraw to itself cases even if they are pending in one court where such questions as to the legislative competence of the Parliament or State Legislature are involved.

Inter-State Water Disputes

Water is a prime resource for sustaining life on earth. The domestic, agricultural and industrial uses of water are multiplying day by day and this phenomenal increase in demand for water in diverse fields has resulted in its scarcity. Moreover, availability of water is highly uneven in both space and time as it is dependent upon varying seasons of rainfall and capacity of storage. India is served by two great river systems, i.e. the Great Himalayan Drainage system and the peninsular river network. It has 14 major rivers that are inter-State rivers and 44 medium rivers of which 9 are inter-State rivers. Eighty five per cent of the Indian land mass lies within its major and medium inter-State rivers. The Commission considered the importance of inter-State water sharing as an area of great concern in maintaining the federal spirit and better Union-State and inter-State relations. The Commission accordingly studied the mechanisms available for efficient, productive and sustainable resource management of the country's river systems and allocation of inter-State water resources.

The Constitution does not itself lay down any specific machinery for adjudication of water disputes. Amendments **Article 262(1)** lays down that Parliament may by law provide for the adjudication of any disputes or complaints with respect to use, distribution or control of the waters of, or in, any inter-State river or river valley. The subject "Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power, subject to the provisions of Entry 56 of List I" is a matter enumerated in entry 17 of the State List (List II) of the **Seventh Schedule**. The expression "regulation and development of inter-State rivers and river valleys" in Entry 56 of the Union List in the Seventh Schedule of the Constitution would include the use, distribution and allocation of the waters of the inter-State rivers and river valleys between different riparian States. Otherwise the provision for the Union to take over the regulation and development under its control makes no sense and serves no purpose. The River Boards Act, 1956 which is admittedly enacted under Entry 56 of the Union List for the regulation and development of inter-State rivers and river valleys does cover the field of the use, distribution and allocation of the waters of the inter-State rivers and river valleys. The very basis of a federal Constitution like ours mandates such interpretation and would not bear an interpretation to the contrary which will destroy the Constitutional scheme. Although, therefore, it is possible technically to separate the "regulation and development" of the inter-State rivers and river valleys from the "use, distribution and allocation" of water, yet it is neither warranted nor necessary to do so.

Inter-State Water Disputes Act

Pursuant to the powers conferred by Amendments Article 262 of the Constitution, Parliament enacted the **Inter-State Water Disputes Act, 1956 (Act 33 of 1956)** to provide for adjudication of disputes relating to waters of inter-State river and river valleys. The Union Government has constituted several Tribunals under the aforesaid Act. Section 4(1) of the Inter-States Water Disputes Act, 1956 empowers the Central Government to constitute a Water Disputes Tribunal for adjudication of a water dispute when a request from any State Government in respect of such water dispute is received by it and it is of opinion that the water dispute cannot be negotiated. The process under the Act from the stage of Constitution of the Tribunal to the giving of the award by it normally takes 7 to 10 years. The inordinate delay caused in constituting the Tribunals, delay in passing awards, framing of schemes or plans for giving effect to the decisions, and judicial review by the Supreme Court at times have been contributing factors in developing bitterness and friction between the States involved in the disputes. All these delays were also causing underutilization of water resources and hindering the timely development of the nation. Having regard to the various infirmities and difficulties in speedy and timely resolution of disputes, the Commission on Centre-State Relations (commonly known as Sarkaria Commission) in Chapter XVII of its report (Volume I) gave several recommendations for implementation. Keeping in view the recommendations of the Sarkaria Commission, the Union Government introduced the Inter-State Water Disputes (Amendment) Bill, 2001 in Lok Sabha to ensure the setting up of inter-State Tribunals and submission of reports by the Tribunals in a time bound manner. (See the Background paper on the subject for details). It was passed by Lok Sabha on 03.08.2001 and is still pending in the Rajya Sabha Though the Bill has dealt with some important aspects, particularly the speedier settlement of Inter-State Water Disputes; the momentum of change in technologies requires quicker and larger mobilization of water resources to sufficiently meet the different needs including that of food security. The Commission observed that in case of every water dispute there have been several occasions when one or the other party approached the Supreme Court by way of seeking judicial review both against the interim orders of the tribunal as also against the final decision. Further in the implementation of the decision of the tribunal the ousters or persons on behalf of the ousters resort to enforcing their fundamental rights under Amendments Article 21 by a remedy under Amendments Article 32, consequent on the submergence of their lands due to construction of reservoirs. This leads to adjudication by two forums one as to the use and distribution of water and the other relating to the enforcement of fundamental rights in the process of implementation of the decision of the Tribunal. The Commission is of the view that it is not necessary to exclude Inter-State Water Disputes from the original jurisdiction of the Supreme Court under Amendments Article 131 of the Constitution and that such disputes should also be made to fall within the exclusive jurisdiction of the Supreme Court. It has been noticed that Inter-State Water Disputes Act, 1956 has vested the Tribunal with a very unique jurisdiction under section 3. When a water dispute has arisen or is likely to arise by reason of the fact that the interest of the State or of the inhabitants thereof, in the waters of an inter-State river or river valley have been or are likely to be affected prejudicially by any executive action or legislation taken or passed or proposed to be taken or passed by another State, the aggrieved State Government may request the Union Government to refer the water dispute to a Tribunal for adjudication. Consequently, even a proposed legislation can be the subject matter of a dispute and interdicted by the Tribunal by a *quia timet* action. Courts do not exercise such powers of interdiction of legislative measures. Appropriate provision should be made for conferring such a unique power on the Supreme Court. It is recommended that the Inter-State Water Disputes Act, 1956 be repealed and in its place a more comprehensive parliamentary legislation should be enacted. However, it is necessary to make express provisions that the suit shall be instituted in the Supreme Court, which shall have exclusive jurisdiction. It is not necessary to repeal Amendments Article 262 of the Constitution for shifting the jurisdiction from the Tribunal to the Supreme Court. Amendments Article 262 is a very important provision and the said provision being a part of the Constitution as originally enacted and having come up before the courts several times, it is

unlikely to successfully challenge the same. Once it is omitted or repealed, difficulties would arise if after experimenting on the changed form of adjudication, it is later felt or desired to have a Tribunal with a modified or changed jurisdiction or even if it is felt that the system of adjudication by a Tribunal as in the Act of 1956 would be better. Amendments Article 131 is subject to the provisions of the Constitution. It may be noticed that Amendments Article 262(2) is only an enabling provision and Parliament is not bound to enact a legislation constituting a Tribunal. A parliamentary legislation is sufficient to substitute the forum of the Supreme Court to the Tribunal. No amendment to the provisions of the Constitution may be required. This will enable Parliament to change the law, from time to time, as it may deem fit and proper by resorting to its power under Amendments Article 262. The Commission feels that as river water disputes being important disputes between two or more States and/or the Union, they should be heard and disposed by a bench of not less than three Judges and if necessary, a bench of five Judges of the Supreme Court for the final disposal of the suit. Appropriate provisions may be made as envisaged by Amendments Article 145(1) in consultation with the Supreme Court or if the Supreme Court so opts to provide for the same by the Supreme Court Rules to appoint Commissioners or Masters and to have the evidence recorded not by the Supreme Court itself but by the Commissioners or Masters so that the precious time of the Supreme Court is saved. While a more radical suggestion has been made to place all the inter-State rivers under the jurisdiction of an authority appointed to administer them in national interest by law enacted by Union Parliament, it is a fact that in relation to regulation and development of inter-State waters, the River Boards Act, 1956 has remained a dead letter. Further, as and when occasions arose, different River Boards have been constituted under different Acts of Parliament to meet the needs in a particular river system according to the exigencies, facts and the circumstances. The Commission, therefore, recommends that appropriate Parliamentary legislation should be made for repealing the River Boards Act, 1956 and replacing it by another comprehensive enactment under Entry 56 of List I. The new enactment should clearly define the Constitution of the River Boards and their jurisdiction so as to regulate, develop and control all inter-State rivers keeping intact the adjudicated and the recognized rights of the States through which the inter-State river passes and their inhabitants. While enacting the legislation, national interest should be the paramount consideration as inter-State rivers are 'material resources' of the community and are national assets. Such enactment should be passed by Parliament after having effective and meaningful consultation with all the State Governments.

Leading case

- Cauvery Water Disputes Tribunal Re.

Inter-State Council

Amendments Article 263 provides a mechanism for resolving problems by collective thinking, persuasion and discussion through a high level coordinating forum, namely the inter-State Council. In view of frequent friction between the Union and the States and between the States, the Amendments Article has become more relevant. Amendments Article 263 empowers the President to establish an Inter-State Council at any time if it appears to him that the establishment of such a Council would serve the public interest. The Council could be charged with the duty of - (a) inquiring into and advising upon disputes which may have arisen between States; (b) investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States, have a common interest; or (c) making recommendations upon any such subject and, in particular, recommendations for the better coordination of policy and action with respect to that subject. An Inter-State Council was established in 1990 but it met for the first time in 1996. Under the States Reorganization Act, 1956 five zonal Councils were set up. Besides this, North-Eastern Council has been setup under the North-Eastern Council Act, 1971. The Commission observes that Amendments Article 263 has vast potential and the same has not yet been fully utilized for resolving various problems concerning more than one State. Of late, it has been observed that where a treaty is entered into by the Union Government concerning a matter in the State List vitally affecting the interests of the States no prior consultation is

made with them. The forum of inter-State Council could be very well utilized for discussion of policy matters involving more than one State and arriving at a decision expeditiously. The Commission issued a consultation paper on “Constitutional mechanism for the settlement of inter-State disputes” and elicited opinion of the general public. The responses were most helpful. The Commission, while endorsing the recommendations of the Commission on Centre-State Relations (Sarkaria Commission), recommends that in resolving problems and coordinating policy and action, the Union as well as the States should more effectively utilize the forum of inter-State Council. This will be in tune with the spirit of cooperative federalism requiring proper understanding and mutual confidence and resolution of problems of common interest expeditiously.

Treaty Making

Entering into treaties and agreements with foreign powers is one of the attributes of State sovereignty. No State can insulate itself from the rest of the world whether it be in the matter of foreign relations, trade, commerce, economy, communications, environment or ecology. The advent of globalization and the enormous advances made in communication and information technology have rendered independent States more inter-dependent.

Amendments Article 246 (1) read with Entry 14 of List I- Union List of the Seventh Schedule empowers Parliament to make laws with respect to “entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries”. As per the provisions contained in Amendments Article 253, Parliament has, notwithstanding anything contained in Amendments Article 245 to 252, power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body. This Amendments Article (Amendments Article 253), therefore, overrides the distribution of legislative powers provided for by Amendments Article 246 read with Lists in the Seventh Schedule to the Constitution. The Commission recommends that for reducing tension or friction between States and the Union and for expeditious decision-making on important issues involving States, the desirability of prior consultation by the Union Government with the inter-State Council may be considered before signing any treaty vitally affecting the interests of the States regarding matters in the State List.

Administrative Relations

256. Obligation of States and the Union.—

The executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.

257. Control of the Union over States in certain cases.—

(1) The executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.

(2) The executive power of the Union shall also extend to the giving of directions to a State as to the construction and maintenance of means of communication declared in the direction to be of national or military importance:

Provided that nothing in this clause shall be taken as restricting the power of Parliament to declare highways or waterways to be national highways or national waterways so declared or the power of the Union to construct and maintain means of communication as part of its functions with respect to naval, military and air force works.

(3) The executive power of the Union shall also extend to the giving of directions to a State as to the measures to be taken for the protection of the railways within the State.

(4) Where in carrying out any direction given to a State under clause (2) as to the construction or maintenance of any means of communication or under clause (3) as to the measures to be taken for the protection of any railway, costs have been incurred in excess of those which would have been incurred in the discharge of the normal duties of the State if such direction had not been given, there shall be paid by the Government of India to the State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of the extra costs so incurred by the State.

258. Power of the Union to confer powers, etc., on States in certain cases.—

(1) Notwithstanding anything in this Constitution, the President may, with the consent of the Governor of a State, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the Union extends.

(2) A law made by Parliament which applies in any State may, notwithstanding that it relates to a matter with respect to which the Legislature of the State has no power to make laws, confer powers and impose duties, or authorize the conferring of powers and the imposition of duties, upon the State or officers and authorities thereof.

(3) Where by virtue of this article powers and duties have been conferred or imposed upon a State or officers or authorities thereof, there shall be paid by the Government of India to the State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of any extra costs of administration incurred by the State in connection with the exercise of those powers and duties.

Case Law

- Jayanti Lal Amritlal Shodhan v. FN Rana
- Anwar V. State of J&K
- Samsher Singh v. State of Punjab

258A. Power of the States to entrust functions to the Union.—

Notwithstanding anything in this Constitution, the Governor of a State may, with the consent of the Government of India, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the State extends.

260. Jurisdiction of the Union in relation to territories outside India.—

The Government of India may by agreement with the Government of any territory not being part of the territory of India undertake any executive, legislative or judicial functions vested in the Government of such territory, but every such agreement shall be subject to, and governed by, any law relating to the exercise of foreign jurisdiction for the time being in force.

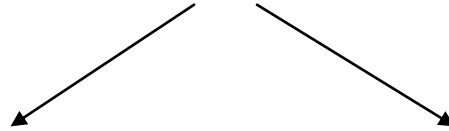
261. Public acts, records and judicial proceedings.—

Full faith and credit shall be given throughout the territory of India to public acts, records and judicial proceedings of the Union and of every State.

(2) The manner in which and the conditions under which the acts, records and proceedings referred to in clause (1) shall be proved and the effect thereof determined shall be as provided by law made by Parliament.

(3) Final judgments or orders delivered or passed by civil courts in any part of the territory of India shall be capable of execution anywhere within that territory according to law.

Form of Government



- Single government
- Written or unwritten
- Rigid or flexible
- No special judiciary
- Concentration of power

- Division of power
- Separate form of Govt.
- Written
- Rigid
- Special judiciary

Renaissance
Law College

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The State Liability 299-300

Leading case

- ✚ Steam navigation co. v Secretary of State for India
- ✚ Kasturi Lal v State of UP
- ✚ UOI v. Sugrabai
- ✚ N.Nagendra Rao & Co. State of AP
- ✚ Rudal Shah v. Bihar
- ✚ Nilbati Behra V. State of Orissa

The Liability of State in Contracts - Art. 299

Amendments Article 299 narrates about "The Liability of State in Contracts"

299. Contracts.—(1) All contracts made in the exercise of the executive power of the Union or of a State shall be expressed to be made by the President, or by the Governor of the State, as the case may be, and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor by such persons and in such manner as he may direct or authorize.

(2) Neither the President nor the Governor shall be personally liable in respect of any contract or assurance made or executed for the purposes of this Constitution, or for the purposes of any enactment relating to the Government of India heretofore in force, nor shall any person making or executing any such contract or assurance on behalf of any of them be personally liable in respect thereof.

Essentials of Amendments Article 299

All contracts made in the exercise of the executive power of the Union or of a State shall be expressed to be made by the President or by the Governor of the State, as the case may be.

All such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor by such persons and in such manner as he may direct or authorize.

No liability of the President or Governor: Neither the President nor the Governor shall be personally liable in respect of any contract or assurance made or executed for the purposes of this Constitution, or for the purposes of any enactment relating to the Government of India heretofore in force, nor shall any person making or executing any such contract or assurance on behalf of any of them be personally liable in respect thereof.

Amendments Article 299 is mandatory

If the requirements of Amendments Article 299 are not complied with, the officer executing the contract would be personally liable.

Quantum merit or quantum valebat (service or goods received): If the Government enjoys the benefit of performance by the other party to the contract, shall be bound to give recompense on the principles of Quantum merit or quantum valebat. The principles as laid down in Sections 65 to 70 (Quasi-contracts) of the Indian Contract Act, 1872 shall also apply in the Government Contracts also.

Depending upon the facts and circumstances, the Doctrine of Estoppels may also apply in the Government Contracts under Amendments Article 299.

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

✚ Union of India v Rallia Ram

The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. v Sipani Singh and others

Promissory Estoppels

The Doctrine of Promissory Estoppels has been variously called 'Promissory Estoppels', 'Requisite Estoppels', and 'Quasi-Estoppels'

Services Under Union & State Article (308-323)

The idea of establishing a Public Service Commission for the recruitment of Public Services in the country was first formulated in the memorandum presented by the Government of India in 1919 to the Committee on the division of functions. It is provided that "there shall be established in India a Public Service Commission which shall discharge in regard to the recruitment and control of the public services in India., such other functions as may be assigned thereto by rules made by the secretary of State in council" The Government of India considered this question and forwarded its recommendations to the Provincial Governments of their views. It also said that competitive examinations were going to be introduced; it must be subject to the following conditions.

First the candidates must be graduates; there should be a preliminary selection of candidates by a Committee to be constituted for the purpose; the Provincial Governments should decide upon the recommendations of the Committee; there should be some age limit. In 1924, the Royal Commission on public Services (Lee Commission) laid stress on the necessity for constituting without delay a Public Service Commission under the Government of India Act, 1919. They proposed to assign to the Commission four distinct functions; First, the recruitment of personnel for public services; Second, the establishment and the maintenance of proper standards of qualifications for admission to the services; Third, quasi-judicial functions relating to disciplinary control and protection of services and finally, advisory functions in regard to the general service problems.

The Government of India Act, 1935 accordingly provided in section 264 that, "there shall be a Public Service

Commission for the Federation and a Public Service Commission for each Province. After India attained her Independence in 1947 and proceeded to frame a Constitution according to her own ideals, the Constituent Assembly, entrusted with this

Public Service Commission

The Constitution of India, unlike the Constitution of many other countries, has provided for public service commission at the Centre as well as in the States. In most Countries of the world such agencies are created by the legislature; they have no Constitutional existence. Considered from this point of view, the commissions are only advisory bodies, and the governments may disregard their advice with impunity. Experience, however, reveals that the governments both at centre and in the states have been implementing the recommendations of the Commissions with all sincerity.

In a democratic state, like India, it is desirable that the government should be guided in respect of appointment and control of its officials by an impartial body of experts like the public service commission. It has been observed from the discussion in parliament and in state legislature over the years on the reports of the Commissions that only in a very few cases the government failed to accept the recommendations of the Commissions, and even for such few cases the government concerned has been bitterly criticized.

Recruitment and Conditions of Service

Under the provisions of Article 309, Parliament is empowered to regulate the recruitment and conditions of service of persons appointed to public service and posts in connection with the affairs of the Union. Similarly, State Legislatures are empowered to regulate recruitment and conditions of service of persons appointed to public service or posts in connection with the affairs of the states. But according to the opinion of the Supreme Court, In the case of *Rajinder Singh v State of Punjab* AIR, 2001 S.C 1769, the executive instructions cannot amend the rules, where appointment or promotion is made without requisite qualifications prescribed by Rules only; relying upon notification the appointment or promotion shall be illegal. Article 311 expressly imposes restrictions upon the pleasure of the president or the Governor, as the case may be, and provisions of clause (1) and (2) of it come within the ambit of the words "Except as otherwise provided by this Constitution" which qualify Article 310(1). However, opening words of Article 309 make it expressly subject to other provisions of the Constitution and therefore it cannot operate as an exception to pleasure doctrine. Rules made under the proviso to article 309 or Acts referable to it would be subject to both Articles 310 and 311 decided in *Union of India v Tulsiram Patel*, AIR, and 1985 S.C. 1416. Where however, no law is made by Parliament or State Legislature for such regulation, President can make rules in connection with the Union Public Services and posts and Governor in connection with State Public Services and posts. The President and Governors have also been given power to delegate their rule making power to any other person.

Doctrine of Pleasure

In England the rule is that a civil servant of the Crown holds office during the pleasure of the Crown and his services can be terminated by the Crown at any time without assigning any reason and without giving any compensation except where it is otherwise provided by a statute. The Crown is not bound by the contract of employment between it and a civil servant and therefore in the case of dismissal, a civil servant is not entitled to damages for premature termination of his services. The doctrine of pleasure is based on the public policy. Its operation, however, can be modified by an act of Parliament.

In India the doctrine of pleasure has been incorporated in Article 310 of the Constitution of India. Article 310 provides that except as expressly provided by the Constitution, every person, who is a member of defense service or of a civil service of the Union or of an All India Service or holds any post connected with defense or any civil post under the Union, holds office during the pleasure of the President and every person who is a member of a civil service of a State or holds any civil post under a state holds office during the pleasure of the Governor of the State.

It was decided in the case of *Shyam v Union of India* AIR, 1987 S.C. 1137, Pleasure under Article 310 is not required to be exercised by the president or the Governor personally. It may be exercised by the president or the Governor acting on the advice of the Council of Ministers. In another case of *Union of India v Tulsiram*, AIR 1985 SC 1416, it was decided that pleasure of the President or the Governor under Article 310 is not subject to any contract and cannot be fettered by contract, ordinary legislation or the rules made under Article 309.

Exceptions to Doctrine of Pleasure

The Doctrine of pleasure is subject to other express provisions of the Constitution. Article 310(1) will not apply where the Constitution expressly provides for secured tenure. Article 124 and Article 217 guarantee a secured tenure to the judges of the Supreme Court and the High Courts. Similarly, the Comptroller and Auditor-General of India (Article 148), Chairman and Members of Public Service Commission (Article 317) and the Chief Election Commissioner (Article 324) also have constitutionally secured tenure. Doctrine of pleasure does not apply to the holders of these offices. They can be removed from office on the ground of 'Proved misbehavior' or 'incapacity' by observing the procedure contemplated by the Constitution.

Other Offices Subject to Doctrine of Pleasure

The executive power of the Union and of a state has been vested in the President and the Governor of the State concerned respectively. The President has a fixed term and he does not hold office at pleasure. The Governor is the executive head of a state and has a term of five years. But he can be removed from his office earlier because he holds his office during the pleasure of the president. This doctrine of pleasure has no safeguards and in a number of cases the Governors have been dismissed by the president arbitrarily.

There are no safeguards available to him. The ministers of the Union and of various States have real executive powers with respect to their ministers. But all the ministers hold office during the pleasure of the president or a Governor as the case may be. Factually, all ministers hold office during the pleasure of the Prime Minister or the Chief Minister which is exercised formally in the name of the President or Governor.

The Council of Ministers of National Capital Territory of Delhi holds office during the pleasure of the President though it is accountable to the Legislative Council. The Attorney General of India and the Advocate General of each state also hold office during the pleasure of the President or the Governor as the case may be.

Doctrine of Pleasure under Article 310 and Common Law

In Britain, the doctrine of pleasure is a common law doctrine. It can be modified by parliament by law. In India, it is a Constitutional doctrine and cannot be changed by ordinary legislation (decided in the case of *Sampuran Singh v State of Punjab*, AIR 1982 SC 1407). In Britain, a civil servant has no right to bring suit against the Crown for arrears of salary. In India, a civil servant will get his arrears of salary if his dismissal is found to be unlawful. The pleasure of the President/Governor is subject to other provisions of the Constitution. In our Republic where the rule of law prevails, even pleasure is canalized. Viewed from this perspective, security of tenure is a value itself.

Clause (2) of Article 310 again makes an exception to the doctrine of pleasure. The state can enter into service contracts with new entrants, other than those covered by Clause (1), having special qualifications and such agreements will not be subject to the doctrine of pleasure where such contracts make provision for compensation in case of premature termination of contract,, except the cases of misconduct on the part of the employee, the Government shall be bound to pay compensation.

Payment of compensation under clause (2) of Article 310 is not implicit. It can be made only when the contract of service makes specific provision for such compensation. Being an enabling provision in the matter of payment of compensation on the basis of a contractual obligation, it cannot be said that even when there is no stipulation in a contract of employment, the same is implicit, decided in the case of *J.P. Bansal v State of Rajasthan*, AIR 2003 SC 1405.

Save Guards to Civil Servants (Article 311)

Article 311 is a bulwark of civil servants. This is an important guarantee which severely restricts the doctrine of pleasure contained in Article 310 (1) of the Constitution. Article 311 envisages three major penalties which may be inflicted on a civil servant. They are dismissal, removal and reduction in rank. Dismissal and removal from service are grave penalties which end the services of an employee. Article 311 gives more protection to a civil servant against these penalties. Reduction in rank does not end the services of an employee and, has been treated differently. Article 311 (1) provides that no person who is a member of a civil service of a state or holds a civil post under the union or a state shall be dismissed or removed by an authority subordinate to that by which he was appointed.

Reasonable Opportunity of Hearing

(a) A civil servant cannot be dismissed, removed or reduced in rank unless: (a) an inquiry is made in which

(b) he is informed of the charges against him; and (c) given a reasonable opportunity of being heard in respect of those charges. Procedural defect in the inquiry proceedings does not set aside the order of dismissal etc. and reinstate the employee. In such cases, the enquiry proceedings shall continue from the stage where it stood before the alleged vulnerability surfaced. Decided in the case of (*Union of India v Y.S. Sandhu*, Air 2009 SC 162; *U P State Spinning Co. Ltd. V R.S Pandey*, (2005) 8 SCC 264) The protection given to a civil servant by Article 311 (2) is that he cannot be dismissed, removed or reduced in rank by way of punishment without : (a) an inquiry informing him of (b) the charges against him and without

(c) giving a reasonable opportunity of being heard in respect of those charges. In cases where the basis on which the employee obtained the employment is false, no inquiry is required. In *Superintendent of Post Offices v R. Valasina Babu*, AIR 2007 SC 1126, the respondent secured Government Job by producing false certificate. On inquiry the Collector cancelled the certificate. After disciplinary proceedings he was dismissed from service. It was held that in case of this nature, it might not have been necessary to initiate any disciplinary proceedings against the respondent. He could be dismissed without an inquiry.

Departmental proceedings are said to have been initiated only when a charge-sheet is issued (*Coal India Ltd. V Saroj Kumar Mishra*, AIR 2007 SC 1707) Departmental proceedings and criminal proceedings are different. Unless the charge in criminal trial is of grave nature with complicated facts and law, departmental inquiry can be held separately, decided in the case of *NOIDA Entrepreneurs Association v NOIDA*, AIR 2007 SC 1161.

In India

- ◆ Doctrine of Pleasure in India is controlled by the President and Governor according to the provisions of Article 310 of Constitution of India that deals with the Tenure of office of persons serving the Union or a State.
- ◆ Certain tenures such as Judges of Supreme Court of India, Judges of High Court, Auditor-General of India, Chief Election Commissioner, Chairman and Member of Public Service Commission are expressly excluded from this Doctrine.
- ◆ The Doctrine is subject to Fundamental Rights

Reasonable Opportunity

Reasonable Opportunity is a facet of natural justice. Natural Justice has no fixed meaning. The basic object is to ensure fairness, impartiality and reasonableness. In the case of *Uma Nath Pandey v State of U.P.* AIR 2009 SC 2375, it was held by the Supreme Court that the very purpose of the following principles of natural justice is the prevention of miscarriage of justice. Broadly reasonable opportunity may include the following:

- ✚ The employee against whom action for either of three punishments (removal, dismissal or reduction in rank) is proposed should be informed of the charges;
- ✚ The charges must be clear, precise and accurate;
- ✚ The delinquent employee should be informed of the evidence by which those charges are sought to be substantiated against him;
- ✚ Copies of relevant document must be supplied to the employee;
- ✚ If charges are framed on the basis of evidence of witnesses examined in the absence of delinquent employee, copies of statements of witnesses must be given to him;
- ✚ Personal hearing if demanded by the delinquent servant, must be given; The employee charged must be given an opportunity to cross-examine the witnesses produced against him;

- ✚ The employee against whom an inquiry is being held has a right to argue his own case. It is a part of personal hearing;
- ✚ Inquiry officer should not be biased;
- ✚ Reasons must be given by an inquiry officer for his decision;
- ✚ Inquiry officer cannot be witnesses himself.

Service Tribunals

One of the recommendations of the Swaran Singh Committee was to have special tribunals for resolving the disputes of civil servants which had resulted in backlog of cases in High Courts. Article 323-A was inserted in the Constitution as a follow-up measures by the Constitution (forty-Second Amendment) Act, 1976. The purpose of service Tribunals is to deal exclusively with service matters and to provide to persons covered by them, speedy relief in respect of their grievances. Article 323-A is not self-executor. Parliament 'may', by law provide for the adjudication of or trial by administrative tribunals of disputes and complaints with respect to recruitment and condition of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation owned or controlled by the Government. By virtue of this authorization Parliament in 1985 has enacted The Administrative Tribunals Act providing for the establishment Central/State/Joint Administrative Tribunals. It is clear from the language of Article 323-A that Parliament alone has power to establish such tribunals. The object was to equate these tribunals with the High Court so that the burden of the later could be reduced.

Right to property

Pre 1978 Amendment ACT

Article 19(1)(f)

Post 1978 Amendment Act

Articles 31(a), 31(a), 31(a), 300 A

The Indian Constitution does not recognize property right as a fundamental right. In the year 1977, the 44th amendment eliminated the right to **acquire, hold and dispose of property** as a fundamental right. However, in another part of the Constitution, Article 300 (A) was inserted to affirm that no person shall be deprived of his property save by authority of law. The result is that the right to property as a fundamental right is now substituted as a statutory right. The amendment expanded the power of the state to appropriate property for social welfare purposes. In other words, the amendment bestowed upon the Indian socialist state a license to indulge in what Fredric Bastiat termed legal plunder. This is one of the classic examples when the law has been perverted in order to make plunder look just and sacred to many consciences.

Indian experiences and conception of property and wealth have a very different historical basis than that of western countries. The fact the present system of property as we know arises out of the peculiar developments in Europe in the 17th to 18th century and therefore its experiences were universally not applicable. A still more economic area in which the answer is both difficult and important is the definition of property rights. The notion of property as it has developed over centuries and it has embodied in our legal codes, has become so much a part of us that we tend to take it for granted, and fail to recognize the extent to which just what constitutes property and what rights the ownership of property confers are complex social creations rather than self evident propositions. This also seems to be the hidden reason why the right to property is suddenly much contested throughout India today and why the state is coming up unexpectedly against huge resistance from unexpected quarters in attempting to acquire land in India. The action of the state to assert the Eminent Domain over subsidiary claims on property and the clash which resulted there from Singur, Nandigram and other parts of India is precisely a manifestation of a clash of cultures. To put in Samuel Huntingtons words, the ideas of the west of development and liberalization propagated by the present ruling elite and the old Indic ideas which shape the views of the majority of the people. Whereas the new **A.300 A** imposes only one limitation on this power (i.e.,) **Authority of Law**

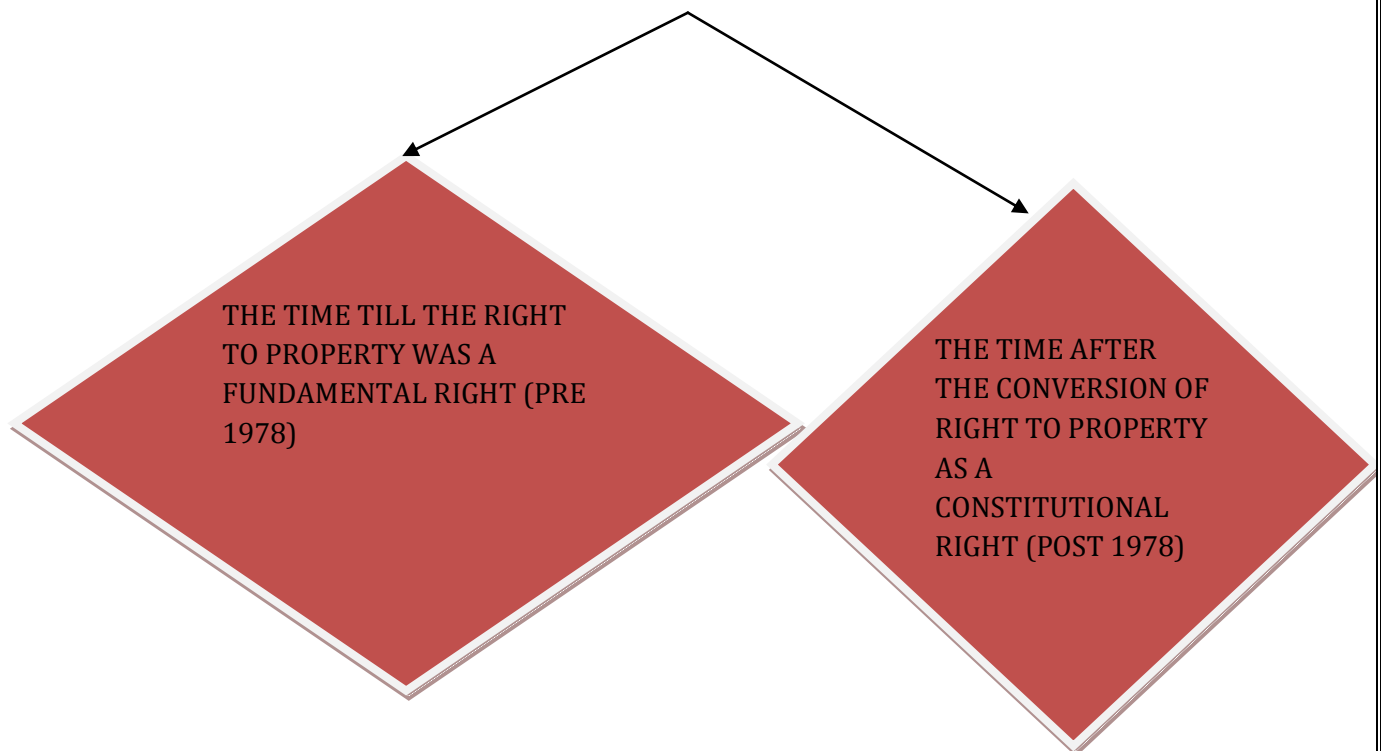
MAXIMS

The doctrine is based on the following two Latin maxims

- i. Salus Populi est Suprema Lex Welfare Of The People Of The Public Is The Paramount Law;
- ii. Necessita Public Major est Quam Public Necessity Is Greater Than Private Necessity. Also right to property against the state.

However, when the state realized that an absolute property and the aspirations of the people were not the same the legislature was subsequently forced to make the said right to property subject to social welfare amid amendments to the Constitution. Articles 31-A, 31-B and 31-C are the indicators of the change and the counter pressure of the state when it realized the inherent problems in granting a clear western style absolute fundamental right to property (even though it was balanced by reasonable

restrictions in the interest of the public), specially Article 31-C, which for the first time brought out the social nature of property. It is another matter that the said provisions were misused, and what we are discussing today, but the abuse of the socialist state in India is not the scope of the present article and the articles are considered on their face value only. Supreme Court Approach to the Right to Property
The Supreme Courts approach to the right to property can be divided into two phases:-



Pre 1978 The Fundamental Right to Property

The Ninth Schedule was inserted in the Constitution by the Constitution (First Amendment) Act, 1951 along with two new Articles 31 A & 31 B so as to make laws acquiring zamindaris unchallengeable in the courts. Thirteen State Acts named in this schedule were put beyond any challenge in courts for contravention of fundamental rights. These steps were felt necessary to carry out land reforms in accordance with the economic philosophy of the state to distribute the land among the land workers, after taking away such land from the land lords.

By the Fourth Amendment Act, 1955, Art 31 relating to right to property was amended in several respects. The purpose of these amendments related to the power of the state o compulsory acquisition and requisitioning of private property. The amount of compensation payable for this purpose was made unjustifiable to overcome the effect of the Supreme Court judgment in the decision of State of West Bengal v. Bella Banerjee. By the Constitution (Seventeenth Amendment) Act, 1964, article 31 A was amended with respect to meaning of expression estate and the Ninth Schedule was amended by including therein certain state enactments.

During this period the Supreme Court was generally of the view that land reforms need to be upheld even if they did strictly clash against the right to property, though the Supreme Court was itself skeptical about the way the government went about exercising its administrative power in this regard. The Supreme Court was insistent that the administrative discretion to appropriate or infringe property rights should be in accordance with law and cannot be by mere fact. The court however really clashed with the socialist executive during the period of nationalization, when the court

admirably stood up for the right to property in however a limited manner against the over reaches of the socialist state

In this juncture the court in this Bank Nationalization case has clearly pointed out the following two points:

- ✓ The Constitution guarantees the right to compensation which is equivalent in money to the value of the property has been compulsorily acquired. This is the basic guarantee. The law must therefore provide compensation and for determining compensation relevant principles must be specified: if the principles are not relevant the ultimate value determined is not compensation.
- ✓ The Constitution guarantees that the expropriate owner must be given the value of his property (the reasonable compensation for the loss of the property). That reasonable compensation must not be illusory and not reached by the application of an undertaking as a unit after awarding compensation for some items which go to make up the undertaking and omitting important items amounts to adopting an irrelevant principle in the determination of the value of the undertaking and does not furnish compensation to the expropriated owner.

Post 1978 The Constitutional Right to Property

It was at this period the Supreme Court had gone out of its way to hold against the right to property and the right to accumulate wealth and also held that with regard to Article 39, the distribution of material resources to better serve the common good and the restriction on the concentration of wealth. The court however is also responsible in toning down the excesses on the right to property and wealth by the socialist state. During the period of Liberalization, the Supreme Court has attempted to get back to reinterpret the provisions which give protection to the right to property so as to make the protection real and not illusory and dilute the claim of distribution of wealth. However, this has been an incremental approach and much more needs to be done to shift the balance back to the original in the Constitution. This means that the acquisition of property is not merely temporal but to be accepted as valid it must conform to spiritual guidelines as well as the Indian conceptions recognize quite clearly that though property can be enjoyed which has not been acquired strictly in terms of the law, it cannot be called real property of the person concerned. Property therefore is not merely an individual right but a construction and part of social and spiritual order. The basis of conception of property in the societies of India is not a rigid and clear demarcation of claims belonging to an individual but is a sum total of societal and individual claims all of which need not be based on clear individual legal demarcation.

44th Amendment to the Constitution & the present scenario

The outburst against the Right to Property as a Fundamental Right in Articles 19 (1) (f) and 31 started immediately after the enforcement of the Constitution in 1950. Land reforms, zamindari abolition laws, disputes relating to compensation, several rounds of Constitutional amendments, litigations and adjudications ultimately culminated first in the insertion of the word socialist in the Preamble by the 42nd Amendment in 1977 and later in the omission of the Right to Property as a FR and its reincarnation as a bare Constitutional right in Article 300-A by the 44th Amendment in 1978.

Today, the times have changed radically. India is no more seen through the eyes of only political leaders with a socialist bias. It is India Shining seen through the corporate lenses of financial giants like the Tatas, Ambanis and Mahindras, with an unfathomable zeal for capitalism, money and markets. There is another angle. There is a scramble by industrialists and developers for land all over the country for establishment of Special Economic Zones. Violent protests by poor agriculturists have taken place to defend their meager land-holdings against compulsory acquisition by the State. In particular, the riots and killings in Singur, Nandigram etc. in a State (of West Bengal) ruled by

communists has turned the wheel full circle. Socialism has become a bad word and the Right to Property has become a necessity to assure and assuage the feelings of the poor more than those of the rich. Soon after the abolition of the Fundamental Right to property, in *Bhim Singh v. UOI*, the Supreme Court realised the worth of the Right to Property as a Fundamental Right. In the absence of this Fundamental Right to property, it took recourse to the other Fundamental Right of Equality which is absolutely the concept of Reasonableness under Article 14 for invalidating certain aspects of the urban land ceiling legislation. Today, the need is felt to restore the right to property as a Fundamental Right for protecting at least the elementary and basic proprietary rights of the poor Indian citizens against compulsory land acquisition. Very recently, the Supreme Court, while disapproving the age-old Doctrine of Adverse Possession, as against the rights of the real owner, observed that The right to property is now considered to be not only a Constitutional right or statutory right but also a human right. Thus, the trend is unmistakable. By 2050, if the Constitution of India is to be credited with a sense of sensibility and flexibility in keeping with the times, the bad word socialist inserted in the Preamble in 1977 shall stand omitted and the Right to Property shall stand resurrected to its original position as a Fundamental Right.

Judiciary over 300-A

Constitutionality of A. 31A

In *Ambika Mishra v State of UP*, the Supreme Court upheld the Constitutionality of clause (a) of Article 31A (1) on the test of basic structure. In *Minerva Mills v Union of India*, the Court held that the whole of Art. 31A is unassailable on the basis of stare decisis, a quietus that should not allowed to be disturbed. In *Waman Rao and I R Coelho* case, the First Amendment in which the Art. 31A was introduced and Fourth Amendment which substituted new clauses to this Article has been held Constitutional. Therefore relying on the judgments of *Minerva Mills*, *Waman Rao* and *Coelho* case Article 31A can be stated as constitutionally valid.

Emergence of Article 31 B: Validation of certain Laws

Art.31A was added to the Constitution by the Constitution (First Amendment) Act, 1951. It was added as a Constitutional device to protect the specified statutes from any attack on the ground that they infringe Part III of the Constitution . It has retrospective effect which is clear from the words “ever to have become void” . The introduction of this provision has cure the defects in various acts of the Ninth schedule as regards to the unconstitutionality alleged on the grounds of infringement of Part III of the Constitution, these acts even if void or inoperative at the time, they were inactive by reason of infringement of Article 13(2) of the Constitution assumes full force from the respective dates of their enactment after their inclusion in the Ninth schedule read with Article 31B of the Constitution. The Ninth schedule consists of 284 legislations until the Constitution (78th amendment) act, 1995 but article 31B did not empower the legislatures to amend these acts inconsistently with the provisions of the Constitution or to take away the rights conferred by the Constitution. The amendments must be consistent with the provision of the Constitution or be saved under Article 31A of the Constitution, if not they must be held void. A question was raised in *Prag Ice And Oil Mills v. Union Of India* whether article 31B saved the orders and notifications issued under Section 3 of the Essential Commodities Act 1955 which was already included in the Ninth schedule but as was already decided in *Godavari Sugar Mills Ltd. v. S.B Kamble* that the amendments to ac act subsequent to an inclusion of an act in the Ninth schedule were not entitled to the protection of Article 31B. The Supreme Court dismissed the petition as the act did not violate the petitioner’s rights under Article 14 and 19, it was explained by the court that when a particular act or regulation is placed in the Ninth schedule, the parliament may be assumed to have applied its mind to the provisions of the particular act and the desirability, propriety or necessity of placing it in the Ninth schedule and such an assumption cannot in the very nature of things be made in the case of an order issued under an Act or Regulation placed in the Ninth schedule.

Constitutional Validity of Article 31B

In *Waman Rao v. Union of India*, the court held that amendments in the Ninth schedule made before the decision of *Keshavananda Bharti v. State of Kerala* that is before 24.04.1973 were beyond challenge but the amendments made afterwards could be tested on the grounds of amendment of basic structure. Similar views were given by the court in *Minerva Mills v. Union of India* and *Bhim Singhji v. Union of India*. In *I.R. Coelho v. State of Tamil Nadu* the nine judge bench of the Supreme Court unanimously decided that as held in *Keshavananda Bharti* case and later clarified in *Waman Rao* case while the laws included in the Ninth schedule before the decision in *Keshavananda Bharti* case are immune from any challenge on the grounds of violation of fundamental rights or basic structure and the Acts included after the decision shall be open to challenge. The Court reaffirmed that Article 31B did not destroy or damage the basic structure of the Constitution.

Emergence of Article 31 C

Insertion of Article 31-C by the Twenty-Fifth Amendment Article 31-C “Notwithstanding anything contained in Article 13, no law giving effect to the policy of the state towards securing [all or any of the principles laid down in Part IV] shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by [Article 14 or Article 19] and [no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy]. Provided that where such law is made by the Legislature of a State, the provisions of this Article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent Right to Constitutional Remedies.” The insertion of this article made A. 14, 19 and 31 inapplicable to certain laws made by Parliament or any legislature. Along with this it was also added that a declaration in the law that is to implement the directive principles enshrined in A. 39(b) and (c) cannot be questioned in a court of law. Therefore, the insertion of this article granted complete immunity to a law from judicial scrutiny if the President certified that it was enacted to promote the policy laid down in A. 39(a) and (b). The provisions of this Article would apply only if the law had received the assent of the President.

History behind Article 31C

This article was inserted by the 25th Constitutional Amendment to get over the difficulties placed by judicial decisions in the way of giving effect to the Directive Principles in Part IV. It provided immunity from any challenge on the grounds of violation of Article 14, 19 and 31 any law enacted for implementing the directives in clause (b) and (c) of Article 39. In the 25th amendment it was further provided that such law made to give effect to the policy under Article 39(b) and (c), would not be open to judicial review. However, this second part was struck down in *Keshavananda Bharti v State of Kerala*, but rest of the Article was held valid. After this amendment 42nd Constitutional Amendment Act was passed by the Parliament which replaced Article 39(b)-(c) by all Directives contained in Part IV of the Constitution. The part which was held unconstitutional in the *Keshavananda* Case was not omitted from the official text of the Constitution, since later cases seem to restrict the scope of judicial review of the statutory declaration only to the narrow question whether there is a reasonable nexus between the act passed and the objects of the directive it seeks to implement. But in the *Minerva Mills v Union of India*, it was held that extending the immunity of Article 31C to all the Directives of Part IV by the 42nd amendment was unconstitutional, thus, Article 31C is confined to its pre 1976 position, which has not been overruled by any larger bench yet.

Decisions given by court on the Constitutionality of Article 31C

The validity of the 25th Constitutional Amendment was questioned in *Keshavananda Bharti v State of Kerala*, *Sikri C.J.* held that since Parliament cannot under article 368 abrogate fundamental rights; equally it cannot enable the legislature to abrogate them. Therefore article 31C must be declared unconstitutional. The second part of Article 31C was held unconstitutional on the ground that it ousted

the jurisdiction of the Courts which is a basic feature of the Constitution and which cannot be done away with a amendment under Article 368.

Minerva Mills Ltd. v. Union of India, The extended version of article 31C was struck down by the Supreme Court. The Court ruled that the extension of the shield of article 31C to all the Directive Principles was beyond the amending power of Parliament under article 368 because by giving primacy to all Directive Principles over the Fundamental Rights in articles 14 and 19, the basic or essential features of the Constitution viz., judicial review has been destroyed.

Waman Rao v. Union of India , The Supreme Court maintained that article 31C as it stood prior to the 42nd Amendment Act made in 1978, was valid as its Constitutionality had been upheld in Keshavananda Bharti case.

Sanjeev Coke Manufacturing Company v. M/s. Bharat Coking Coal Ltd. , The Supreme Court struck down article 31C as unconstitutional (Amended portion in 42nd Amendment Act) on the ground that it destroys the "basic features" of the Constitution. The goal set out in Part IV has to be achieved without abrogating the means provided for by Part III. Thus there is no conflict between the directive principles and the fundamental rights. These are meant to supplement one another. The Court held that article 31C as originally introduced by the 25th Amendment is constitutionally valid. I.R. Coelho v. State of Tamil Nadu, the Supreme Court held that any law which infringes basic structure of the Constitution can be struck down. Parliament has power to amend Part III so as to abridge or take away fundamental rights but that power is subject to the limitation of basic structure doctrine. There should be a balance between fundamental rights and Directive Principles of State Policy.

Conditions for applicability of Article 31C

There are two conditions which must be fulfilled for the application of Article 31 C

1. A law for giving effect to the policy of the state to implement a Directive Principle in Article 39(b) or (c).

2. The Legislature making a declaration to that effect.

But the question that whether the act is intended to secure the object contained in Article 39(b)-(c) does not depend upon the declaration made by the legislature but upon the contents of the act as found by the court.

Unit 4

1	Tribunals
2	Elections
3	Special provisions-relating to certain classes
4	Official language

PART XIVA

TRIBUNALS

323A. Administrative tribunals.—

Parliament may, by law, provide for the adjudication or trial by administrative tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation owned or controlled by the Government.

(2) A law made under clause (1) may—

- (a) provide for the establishment of an administrative tribunal for the Union and a separate administrative tribunal for each State or for two or more States;
- (b) specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of the said tribunals;
- (c) provide for the procedure (including provisions as to limitation and rules of evidence) to be followed by the said tribunals;
- (d) exclude the jurisdiction of all courts, except the jurisdiction of the Supreme Court under article 136, with respect to the disputes or complaints referred to in clause (1);
- (e) provide for the transfer to each such administrative tribunal of any cases pending before any court or other authority immediately before the establishment of such tribunal as would have been within the jurisdiction of such tribunal if the cause of action on which such suits or proceedings are based had arisen after such establishment;
- (f) repeal or amend any order made by the President under clause (3) of article 371D;
- (g) contain such supplemental, incidental and consequential provisions (including provisions as to fees) as Parliament may deem necessary for the effective functioning of, and for the speedy disposal of cases by, and the enforcement of the orders of, such tribunals.

(3) The provisions of this article shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force.

323B. Tribunals for other matters.—

(1) The appropriate Legislature may, by law, provide for the adjudication or trial by tribunals of any disputes, complaints, or offences with respect to all or any of the matters specified in clause (2) with respect to which such Legislature has power to make laws.

(2) The matters referred to in clause (1) are the following, namely:—

- (a) levy, assessment, collection and enforcement of any tax;
- (b) foreign exchange, import and export across customs frontiers;
- (c) industrial and labor disputes;
- (d) land reforms by way of acquisition by the State of any estate as defined in article 31A or of any rights therein or the extinguishment or modification of any such rights or by way of ceiling on agricultural land or in any other way;

- (e) ceiling on urban property;
- (f) elections to either House of Parliament or the House or either House of the Legislature of a State, but excluding the matters referred to in article 329 and article 329A;
- (g) production, procurement, supply and distribution of foodstuffs (including edible oilseeds and oils) and such other goods as the President may, by public notification, declare to be essential goods for the purpose of this article and control of prices of such goods;
- (h) rent, its regulation and control and tenancy issues including the rights, title and interest of landlords and tenants—,
- (i) offences against laws with respect to any of the matters specified in sub-clause (a) to (h) and fees in respect of any of those matters;
- (j) any matter incidental to any of the matters specified in sub-clause (a) to (i).
- (3) A law made under clause (1) may—
- (a) provide for the establishment of a hierarchy of tribunals;
- (b) specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of the said tribunals;
- (c) provide for the procedure (including provisions as to limitation and rules of evidence) to be followed by the said tribunals;
- (d) exclude the jurisdiction of all courts except the jurisdiction of the Supreme Court under article 136 with respect to all or any of the matters falling within the jurisdiction of the said tribunals;
- (e) provide for the transfer to each such tribunal of any cases pending before any court or any other authority immediately before the establishment of such tribunal as would have been within the jurisdiction of such tribunal if the causes of action on which such suits or proceedings are based had arisen after such establishment;
- (f) contain such supplemental, incidental and consequential provisions (including provisions as to fees) as the appropriate Legislature may deem necessary for the effective functioning of, and for the speedy disposal of cases by, and the enforcement of the orders of, such tribunals.
- (4) The provisions of this article shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force.
- Explanation.*—In this article, "appropriate Legislature", in relation to any matter, means Parliament or, as the case may be, a State Legislature competent to make laws with respect to such matter in accordance with the provisions of Part XI.

Important case law

- ✚ **UOI V. Deep Chand Pandey**
- ✚ **SP Sampat Kumar v. UOI**
- ✚ **L.chandra v. UOI**

Elections

Article 326 of the Constitution of India provides universal adult suffrage. The voting age has now come down from 21 to 18. Anybody who has completed 18 years of age, irrespective of his caste, creed, sex or religion, is eligible to vote in general elections. This is one of the most revolutionary aspects of Indian democracy. UNIVERSAL ADULT FRANCHISE

- ✚ Under *Article 324 (1)*, the superintendence, direction and control of elections is in the hands of the Election Commission, which is to conduct all elections to the offices of the President, Vice-President, and the Parliament and state legislatures. Since it enjoys the status of an independent Constitutional body, there were even proposals to authorize it to conduct elections to the Panchayats and Nagar Palikas as well, but these did not take the shape of law. The entire process of conducting elections (including preparation of electoral rolls) is done by the Commission. This provision being fairly widely worded enables the Commission to exercise its authority in relation to all those issues in connection with elections.
- ✚ Under *Article 324 (2)* the President may appoint ECs in consultation with the CEC. With respect to their appointment, it should be noted their appointment is not mandatory. It shall be done keeping in mind the requirements of the Commission from time to time. For this reason, their number is not fixed. They are thus intended to assist the CEC in discharging his functions. An increased work burden in itself will not justify their appointment. The duties to be performed have to be of such nature so as to warrant their appointment. Their appointment has to be on justifiable grounds that the judiciary may call into question. The appointment of ECs shall be subject to the provisions of any law passed by the Parliament in this respect. They shall be appointed upon the recommendations of the CEC, but this does not place him at a higher position. Drawing an analogy, in the Supreme Court, and even in the High Courts, the judges are appointed by the President in consultation with the Chief Justice. But this does not mean the Chief Justice is at a higher position as compared to the judges. His decisions are not binding upon the other judges, they being free to decide a case as they please in accordance with the relevant legal principles.
- ✚ Under *Article 324 (3)* in a multi-member Commission, the President shall act as the Chairman of the body. By virtue of being the Chairman, to what extent may he control the ECs in discharge their functions? In the first place, should he be allowed to control the ECs in performing their functions, the independence of the Commission shall stand directly affected. The very purpose for which the ECs are appointed shall thereby be defeated. The appointment of ECs ensures there is a system of checks and balances in force to check the CEC, to ensure that he does not exceed his jurisdiction. Their independence is therefore a must.
- ✚ The relevant Constitutional provisions have taken adequate care to ensure the independence of this body from all kinds of executive influences. Under *Article 324 (5)*, the CEC can be dismissed only in the same manner as a judge of the Supreme Court. Further, his conditions of service cannot be changed to his disadvantage after his appointment. The same Constitutional protections have not been expressly extended to the ECs, as they can be removed only on the recommendations of the CEC. The Commission may require staff to help it in discharging its function of conducting elections. Under *Article 324 (6)*, the President or the Governor of a state shall ensure all necessary staff is provided to it for this purpose. However, there is a distinction between ordinary staff and ECs, the latter may be appointed only when the work burden of the Commission is such that it cannot be discharged by using ordinary staff.
- ✚ Considering the nature of functions to be performed by it, the Commission has been armed with widest possible powers. Since it is beyond the scope of this article to discuss all these powers, the writer shall deal with them in brief. The Commission can go to the extent of ordering a repoll in those constituencies wherein elections have not been conducted fairly. The final word as to which symbol shall be allotted to which party shall be decided by the Commission itself. In all contingencies that have not been provided for by the law, the Commission may pass necessary orders.
- ✚ The conduct of free and fair elections is what is intended to be achieved. Therefore, if the conditions in a state are conducive due to breakdown of law and order, or due to other factors that in the opinion of the appropriate authorities shall prevent the people from choosing their candidates in a fair manner, the Commission may postpone elections, but only for a reasonable

period of time. In *Yadav Reddy v. Election Commission of India*, a Division Bench of the Supreme Court refused to interfere with the Election Commission's order for postponing elections for the Bihar Assembly for a definite period of time, due to the conditions prevailing in Bihar at that point of time.

- In recent years, there has been a lot of concern about the manner in which elections are to be funded. In this respect, the Commission has the authority to issue directions, in the process of conducting elections, requiring all political parties to provide details of their expenditure in the elections, and the sources of their funds. (Held in *Common Cause (A Registered Society) v. Union of India*).

FACTS OF THE SS DHANOA CASE

- On 16th October 1989, by a subsequent notification issued in exercise of the same power, he appointed SS Dhanoa (the petitioner) and VS Seigell as the Election Commissioners. By another notification issued on the same day, he made rules to regulate regulated their conditions of service.
- According to these rules, an EC shall hold office for a term of 5 years or till he attains the age of 65 years, whichever happens earlier.
- On 1st January 1990, the President issued another notification in exercise of the same power rescinding the previous notifications with immediate effect.
- The petitioner challenged the notification of 1st January 1990 in his writ petition.

FACTS OF THE TN SESHAN CASE

I. In exercise of his powers under *Article 123* of the Constitution, the President promulgated an Ordinance (No. 32 of 1993) called "*The Chief Election Commissioner and Other Election Commissioners (Conditions of Service) Amendment Ordinance, 1993*" in order to amend "*The Chief Election Commissioner and Other Commissioners (Conditions of Service) Act, 1991*".

II. On 1st October 1993, the day on which this Ordinance had been issued, he issued another notification under *Article 324 (2)* by which he fixed the number of ECs at two, and under another notification appointed Mr. MS Gill and Mr. GVG Krishnamurthy as the ECs w.e.f. the said date.

III. The first writ petition was filed by a journalist, Mr. S Ramaswamy who prayed for a declaration that the Ordinance was arbitrary, unconstitutional and void. He also prayed for the writ of certiorari to quash the said notifications.

IV. The second writ petition was filed by the CEC himself (Mr. TN Seshan) claiming similar relief. The other two writ petitions were filed challenging the Constitutionality of the Ordinance and the said notifications.

V. In the course of the pendency of these petitions, the Ordinance became an Act without any change. Since the petitions involved an interpretation of *Article 324* of the Constitution, they were placed before a Constitution Bench that decided upon the petitions.

Important Case Law

Common Cause (A Registered Society) v. Union of India, (1996) 2 SCC 752

Mohinder Singh Gill v. Chief Election Commissioner, AIR 1978 SC 851

NP Ponnuswami v. Returning Officer, Namakkal Constituency, AIR 1952 SC 64

SS Dhanoa v. Union of India, (1991) 3 SCC 567, 584

SS Party v. Election Commission of India, AIR

TN Seshan v. Union of India, (1995) 4 SCC 611

1967 SC 898

*Yadav Reddy v. Election
Commission of India*

SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES

The Constitution of India has listed the special provisions relating to certain classes in Part XVI. From Article 330 to Article 342, the special provisions have been clearly indicated. Below is a detailed list of all the special provisions relating to certain classes:

- ✚ **Article 330:** Reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the People - this Article states that a certain number of seats should be reserved in the House of the People for both the Schedule Castes and Schedule Tribes. However, clause b of the Article includes Schedule Tribes excluding those who live in the autonomous districts of Assam. Clause c of the Article includes the Schedule Tribes belonging to the autonomous Assam districts. It is also mentioned in this Article that the total number of such seats assigned to the Schedule Tribes of autonomous Assam districts should match the total number of seats allotted in the House of the People. The seats allotted to the Schedule Castes and Schedule Tribes of a particular state or Union Territory should be proportional to the total number of seats reserved for such state or Union Territory in the house of the People.
- ✚ **Article 331:** Representation of the Anglo-Indian Community in the House of the People - it is specified in this Article of the Indian Constitution that the President of India has the sole right to elect a maximum of 2 members belonging to the Anglo-Indian section to represent the entire community.
- ✚ **Article 332:** Reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States - This Article of the Constitution states that a definite number of seats in every state's Legislative Assembly should be allotted to the Schedule Castes and Schedule Tribes. The Schedule Castes and Schedule Tribes of the autonomous districts of Assam are also given seats in the Legislative Assembly. It is also specified that a person not belonging to the Schedule Tribes category of Assam state cannot contest the Legislation Assembly election from any of the constituencies of the districts of the state. Also, all areas outside the periphery of the districts of Assam should not hold any constituency of the Legislative Assembly of the Assam state. The total seats allotted to the state Legislative Assembly of Assam should be in proportion of the total population and the share of the SC/ST in such population. As per Article 332, the number of seats allotted to the SC/STs of a state should follow a proportion to the total number of seats assigned in the Assembly as the total population of the SC/STs in that state with respect to the total state population.
- ✚ In case of such states as Nagaland, Mizoram, Meghalaya and Arunachal Pradesh, as per the Constitution Act 1987, if all the seats of the Legislative Assembly after the first census of 2000, belong to the Schedule Tribes, then only one seat shall be allotted to other communities. Also, the total number of seats allotted to the Schedule Tribes shall not be less than the existing number of seats in the Assembly of the state. The Article suggests that the total number of seats of Schedule Tribes in the Legislative Assembly of Tripura state should be proportional to the total number of existing seats in the Assembly. As per the Constitution Act 1992, the number of the Schedule Tribe members in the Legislative Assembly of Tripura shall not be less than the total number of seats already available in the Assembly.
- ✚ **Article 333:** Representation of the Anglo-Indian community in the Legislative Assemblies of the States - according to this Article of the Constitution of India if the Governor of any state thinks it necessary to elect one representative of the Anglo-Indian community for the Legislative Assembly of that state then he can do the same. Also, if the governor feels that Anglo-Indian community does not have sufficient representation in the state Legislative Assembly then also he can elect one member of that community for the Assembly.

- ✚ **Article 334:** Reservation of seats and special representation to cease after 289A - This Article holds the fact that after 60 years of the enactment of the Indian Constitution, certain provisions shall become ineffective. However, it is also specified that the Article will not be applied until and unless the House of the People or the Legislative Assembly gets dissolved because of some significant reason. The Provisions with which this Article deals with include reserving seats for Anglo-Indian community, Schedule Castes and Schedule Tribes in the House of the People or in the Legislative Assembly.
- ✚ **Article 335:** Claims of Scheduled Castes and Scheduled Tribes to services and posts - The Article states that the various claims of the Schedule Castes and Schedule Tribes shall be regarded accordingly. Relaxation of age, lower cut off marks and easier parameters of evaluation for the purpose of selecting SC/ST candidates to different posts and services will remain intact irrespective of the provisions mentioned in this Article.
- ✚ **Article 336:** Special provision for Anglo-Indian community in certain services - as per this Article, for such posts of Union as postal and telegraph, customs and railway, the members of the Anglo-Indian community will be selected, for the first two years of the initiation of the Constitution, following the rules prevailing before 15th August, 1947. It is also specified that in every two years the total number of seats allotted to the Anglo-Indian community in different services and posts will go down by 10%. The Article states that these provisions will become ineffective after 10 years of the enactment of the Indian Constitution. However, clause 2 of this Article clearly mentions that if a candidate of the concerned community is eligible for any post other than the ones mentioned above then he will be selected with immediate effect.
- ✚ **Article 337:** Special provision with respect to educational grants for the benefit of Anglo-Indian community - the provisions of this Article deal with the fact that grants to the Anglo-Indian community shall be offered in the first three years of the enactment of the Constitution following the same rules made on 31st March 1948. It is also stated that the amount of such grants will reduce by 10% in every three succeeding years. It is mentioned that after 10 years of the initiation of the Constitution of India all such grants will cease to exist. Moreover, the Article states that only when at least 40% of the admissions in educational units belong to communities other than Anglo-Indians, such grants will be offered to the said community.
- ✚ **Article 338:** National Commission for Scheduled Castes and Scheduled Tribes - This Article covers the issues to be dealt with by the said Commission exclusively made for the Schedule Castes and Schedule Tribes. As per the Constitution of India, the Article holds that the Commission should include a Chairperson, Vice-Chairperson and other members all of whom are elected by the President of India. The Commission, according to the Article, has the power to investigate all matters that are related to the safeguard of the Sc/STs. The commission can also exercise its power by summoning any person from any part of the nation to interrogate him regarding a particular issue of the SC/STs. The Commission shall also take necessary measures to improve the socio-economic status of the Schedule Castes and Schedule Tribes. A report specifying whether the safeguards of the ST/SCs are maintained properly shall be submitted to the President of India every year by the Commission.
- ✚ **Article 339:** Control of the Union over the administration of Scheduled Areas and the welfare of Scheduled Tribes - the Article suggests that a Commission specifying the administration of Scheduled Areas and Welfare of Scheduled Tribes shall be formed by Order of the President after 10 years of the Indian Constitution's enactment. The various procedures and powers of the commission are to be included in the said Order. Planning and execution of various schemes pertaining to the development of the Schedule Tribes included in the executive power of the Union is also mentioned in the Article.
- ✚ **Article 340:** Appointment of a Commission to investigate the conditions of backward classes - this Article specifies that the President of India can form a Commission by Order that will look

into the overall condition of the people belonging to the backward classes. This Commission is also supposed to recommend any state or union the necessary steps through which the underprivileged classes can improve their social and economic status. On the basis of the investigation done, the Commission shall submit a report to the President of India. The President, in turn, shall present such report with a memorandum to both of the Houses of the Indian Parliament and will prescribe the necessary steps to be taken to develop the condition of the backward classes.

- ✚ **Article 341:** Scheduled Castes - this Article states that the President of India after taking the advice of the Governor of any state or Union Territory, has the right to demarcate tribes, races or castes or a part of any group as Scheduled Castes, in accordance with the law of the Constitution. The president can do the same by issuing a public notification. However, the Parliament of India can, by law, accept or reject the list containing the Scheduled Caste groups.
- ✚ **Article 342:** Scheduled Tribe - a group belonging to a tribe or an entire tribal community of a state or an Union Territory can be declared as Scheduled Tribe by the President of India through issuing a public notice. The President consults with the Governor of the concerned state or Union Territory before specifying a tribe as Scheduled Tribe. The Parliament of India can decide upon canceling or keeping the particular ST in the list of Scheduled Tribes. However, the public notification issued for declaration of the Scheduled Tribe can be saved by the Parliament.

OFFICIAL LANGUAGE (343-351) Article

India is a country where different languages are spoken in various parts. Hindi and English have been made official languages of the central government. A state can adopt the language spoken by its people in that state also as its official language. Although India is a multi-lingual state, the constitution provides that Hindi in Devnagri script will be the national language. It shall be the duty of the union to promote and spread Hindi language. LANGUAGE POLICY

343. Official language of the Union.

- ✚ The Indian Constitution, in 1950, declared Hindi in Devanagari script to be the official language of the union. Unless Parliament decided otherwise, the use of English for official purposes was to cease 15 years after the Constitution came into effect, i.e., on 26 January 1965. The prospect of the changeover, however, led to much alarm in the non Hindi-speaking areas of India, especially Dravidian-speaking states whose languages were not related to Hindi at all. As a result, Parliament enacted the Official Languages Act, 1963, which provided for the continued use of Hindi for official purposes along with English, even after 1965. In late 1964, an attempt was made to expressly provide for an end to the use of English, but it was met with protests from states such as Maharashtra, Tamil Nadu, Punjab, Karnataka, Pondicherry and Andhra Pradesh. Some of these protests also turned violent. As a result, the proposal was dropped, and the Act itself was amended in 1967 to provide that the use of English would not be ended until a resolution to that effect was passed by the legislature of every state that had not adopted Hindi as its official language, and by each house of the Indian Parliament.
- ✚ The current position is thus that the Union government continues to use English in addition to Hindi for its official purposes as a "subsidiary official language," but is also required to prepare and execute a programme to progressively increase its use of Hindi. The exact extent

to which, and the areas in which, the Union government uses Hindi and English, respectively, is determined by the provisions of the Constitution, the Official Languages Act, 1963, the Official Languages Rules, 1976, and instruments made by the Department of Official Language under these laws.

Parliamentary proceedings and law	Judiciary	Administration
	Legislature	Implementation

Renaissance
Law College

UNIT-V Emergency provisions and Amendment

- 1 **Emergency provisions: Proclamation of emergency, effect of emergency, Financial emergency**
- 2 **Amendment in the Constitutions**

PART XVIII	EMERGENCY PROVISIONS
352	Proclamation of Emergency
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354	Application of provisions relating to distribution of revenues while a Proclamation of Emergency is in operation
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357	Exercise of legislative powers under Proclamation issued under article 356
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PART XX	AMENDMENT OF THE CONSTITUTION
368	Power of Parliament to amend the Constitution and procedure therefore

Amendment article 368 of Constitution of India

368. Power of Parliament to amend the Constitution and procedure therefore

(1) Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article

(2) An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House present and voting, it shall be presented to the President who shall give his assent to the Bill and thereupon the Constitution shall stand amended in accordance with the terms of the Bill: Provided that if such amendment seeks to make any change in

(a) Article 54, Article 55, Article 73, Article 162 or Article 241, or

(b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or

(c) any of the Lists in the Seventh Schedule, or

(d) the representation of States in Parliament, or

(e) the provisions of this article, the amendment shall also require to be ratified by the Legislature of not less than one half of the States by resolution to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent

(3) Nothing in Article 13 shall apply to any amendment made under this article

(4) No amendment of this Constitution (including the provisions of Part III) made or purporting to have been made under this article whether before or after the commencement of Section 55 of the Constitution (Forty second Amendment) Act, 1976 shall be called in question in any court on any ground

(5) For the removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of this Constitution under this article

PART XXI TEMPORARY, TRANSITIONAL AND SPECIAL PROVISIONS

Indian Constitution is a balanced Constitution. The framers of the Constitution desired to secure balance and moderation in incorporating various provisions in our Constitution. As far as the amendment of the Constitution is concerned, a balance is struck in making the Constitution partly rigid and partly flexible.

A flexible Constitution is one, which can be easily amended like ordinary law of the land. On the contrary, a rigid Constitution is one whose amendment is very difficult and where there is a distinction between the amendment of Constitutional law and ordinary law. Both the types of Constitutions had their merits and demerits.

But the framers of the Indian Constitution did not go to the extreme. They incorporated a unique procedure of amendment which combines both rigidity and flexibility. Amendments Article 368 of Constitution deals with procedure of amendment of the Constitution. The Constitution can be amended in three different ways:-

(a) Some categories of amendment like creation of new States, creation or abolition of second chamber of the States, changes in the citizenship, etc., require only a simple majority in both the Houses of the Union Parliament. In this case amendment of the Constitution is made in a flexible manner.

(b) Certain other provisions of the Constitution in order to be amended, require a majority of the total membership in each House of Parliament and a majority of not less than two-thirds of the members present and voting in each House of parliament. The bulk of the Constitution can be amended in this way.

(c) Certain categories of amendment like the Presidential powers and mode of election, the extent of the Executive and Legislative Powers of the Union or the States, the provision regarding the Supreme Court and the High Court, the representation of States in Parliament etc. require

Type of amendments

Simple	Special	Majority and ratification by states
Majority	2/3	Special majority and 1/*52 vote in favour by state legislature
Article 5,168,239-A	All Constitutional amendments	Fundamental article 54,55,162,124-147,214-231,241,245-255, 7 th schedule representation of parliament in IV schedule, 368

The Emergency Provisions

Need of Emergency Powers – kinds of Emergency – Arts. 352 – 360

Emergency is a unique feature of Indian Constitution that allows the center to assume wide powers so as to handle special situations. In emergency, the center can take full legislative and executive control of any state. It also allows the center to curtail or suspend freedom of the citizens. Existence of emergency is a big reason why academicians are hesitant to call Indian Constitution as fully federal.

Emergency can be of three types –

- ✚ Due to war, external aggression or armed rebellion (Amendments Article 352)
- ✚ Failure of Constitutional machinery in a state (Amendments Article 356), or
- ✚ Financial emergency (Amendments Article 360).

However, technically, Proclamation of Emergency is only done upon external aggression or armed rebellion. In the second case, it is called Presidential Rule, and in the third case it is called “Proclamation of Financial Emergency:

Proclamation of Emergency

Art 352 says that if the President is satisfied that a grave emergency exists whereby the security of India or any part of India is threatened due to outside aggression or armed rebellion, he may make a proclamation to that effect regarding whole of India or a part thereof.

However, sub clause 3 says that President can make such a proclamation only upon the written advice of the Union Cabinet. Such a proclamation must be placed before each house of the parliament and must be approved by each house within one month otherwise the proclamation will expire.

An explanation to art 352 says that it is not necessary that external aggression or armed rebellion has actually happened to proclaim emergency. It can be proclaimed even if there is a possibility of such thing happening.

In the case of *Minerva Mills vs Union of India* AIR 1980, SC held that there is no bar to judicial review of the validity of the proclamation of emergency issued by the president under 352(1). However, court's power is limited only to examining whether the limitations conferred by the Constitution have been observed or not. It can check if the satisfaction of the president is valid or not. If the satisfaction is based on mala fide or absurd or irrelevant grounds, it is no satisfaction at all.

Prior to 44th amendment, duration of emergency was two months initially and then after approval by the houses, it would continue indefinitely until ended by another proclamation. However after 44th amendment, the period is reduced to 1 month and then 6 months after approval.

Effects of Proclamation of emergency

The following are the effects arising out of proclamation of emergency in art 352.

On Executive – declared only a part of the country, the powers in 1 and 2 shall extend to any other part if that is also threatened.

State Government is not dismissed when National Emergency is proclaimed but brought under the effective control of the Union.

As soon as National Emergency Art 353 executive power of the Union shall extend to giving directions to any state. Parliament will get power to make laws on subjects that are not in Union list. if the emergency is proclaimed distribution of power between Centre and States gets automatically suspended. Hence, Union Executive is free to give directions on all the subjects and such directions are binding on the States.

On Legislature – Art 354

Provisions of art 268 to 279, which are related to taxation, can be subjected to exceptions as deem fit by the president. Every law such made shall be laid before each house of the parliament.

Art 355 says that it is the duty of the Union to protect States against external aggression.

Judicial Review – Art 358

While proclamation of emergency declaring that security of India or any part of the territory of India is threatened due to war or external aggression, is in operation, the state shall not be limited by art 19. In other words, govt may make laws that transgress upon the freedoms given under art 19 during such emergency. However, such a law will cease to have effect as soon as emergency ends. Further, every such law or very executive action that transgresses upon freedoms granted by art 19 must recite that it is in relation to the emergency otherwise, it cannot be immune from art 19.

It also says that any acts done or omitted to be done under this provision cannot be challenged in the courts after the end of emergency.

In the case of *M M Pathak vs Union of India* AIR 1978, SC held that the rights granted by 14 to 19 are not suspended during emergency but only their operation is suspended. This means that as soon as emergency is over, rights transgressed by a law will revive and can be enforced. In this case, a settlement that was reached before emergency between LIC and its employees was rendered ineffective by a law during emergency. After emergency was over, SC held that the previous settlement

will revive. This is because the emergency law only suspended the operation of the existing laws. It cannot completely wash away the liabilities that pre existed the emergency.

The Impact of Emergency on Federalism and Fundamental Rights – Arts. 353 – 360

Art 359

This Amendments Article provides additional power to the president while proclamation of emergency is in operation, using which the president can, by an order, declare that the right to move any court for the enforcement of rights conferred by part III except art 20 and 21, shall be suspended for the period the proclamation is in operation of a shorter period as mentioned in the order. Further, every such law or every executive action recite that it is in relation to the emergency.

In the case of Makhan Singh vs State of Punjab AIR 1964, SC distinguished between art 358 and 359 as shown below:

Art 358	Art 359
Freedoms given by art 19 are suspended.	Fundamental rights are not suspended. Only the courts cannot be moved to enforce fundamental rights.
Any actions done or omitted to be done cannot be challenged even after emergency.	Any action done by the legislature or executive can be challenged after the suspension is over.
Art 19 is suspended for the period of emergency.	Right to move courts is suspended for the period of emergency or until the proclamation of the president to remove suspension.
Effective all over the country.	May be confined to an area.

Art 83(2) while the proclamation is in operation, the president may extend the normal life of the Lok Sabha by one year each time up to a period not exceeding beyond 6 months after proclamation ceases to expire.

State Emergency on failure of Constitutional Machinery in a State / Centre-State Relations – Arts. 356 – 357

Provisions in case of failure of Constitutional machinery in States

Art 356 says that if, upon the report of the Governor of a state, the president is satisfied that the govt. of the state is cannot function according to the provisions of the Constitution, he may, by proclamation, assume to himself all or any of the functions of the govt, or all or any of the powers vested in the governor, or anybody or any authority in the state except the legislature of the state. The power of the legislature of the state shall be exercised by the authority of the parliament.

Under this Amendments Article, president can also make such incidental and consequential provisions which are necessary to give effect to the objectives of the proclamation. This includes suspension of any provision of this Constitution relating to anybody or authority in the state.

However, this Amendments Article does not authorize the president to assume the powers vested in the High Courts.

Art 357 provides that in the case of proclamation under art 356 Parliament can confer upon the president the power of legislature of the state to make laws or the power to delegate the power to make laws to anybody else. The parliament or the president can confer power or impose duties on the Union or Union officers or Union authorities. President can authorize the expenditure from the consolidated fund of the stat pending sanction of such expenditure by the parliament.

The Financial Emergency – Art. 360

Under Amendments Article 360 the President enjoys the power to proclaim the financial Emergency. If he is satisfied that a situation has arisen that financial stability and credit of India or any part thereof is threatened he may proclaim emergency to that effect. All such proclamations

(a) Can be varied or revoked by the President.

(b) Financial Emergency must be approved by the Parliament within 2 months after its proclamation. Once it is approved, it will remain till the President revokes it.

This Amendments Article has never been invoked.

Effects of Financial Emergency

President is empowered to suspend the distribution of financial resources with States.

President can issue directions to States to follow canons of financial propriety.

He can direct State Government to decrease salaries allowances of Civil Servants and other Constitutional dignitaries.

President can direct the government to resume all the financial and Money Bills passed by legislature for his consideration.

The President can issue directions for the reduction of salaries and allowances of Judges of the Supreme Court and the High Courts.

Changes made by 44th Amendment

44th amendment substantially altered the emergency provisions of the Constitution to ensure that it is not abused by the executive as done by Indira Gandhi in 1975. It also restored certain changes that were done by 42nd amendment. The following are important points of these Amendments - "Internal disturbance" was replaced by "armed rebellion" under art 352.

The decision of proclamation of emergency must be communicated by the Cabinet in writing.

Proclamation of emergency must be by the houses within one month.

To continue emergency, it must be re approved by the houses every six month.

Emergency can be revoked by passing resolution to that effect by a simple majority of the houses present and voting. 1/10 of the members of a house can move such a resolution.

Art 358 - Under this Amendments Article art 19 will be suspended only upon war or external aggression and not upon armed rebellion. Further, every such law that transgresses art 19 must recite that it is connected to art 358. All other laws can still be challenged if they violate art 19.

- Art 359, under this Amendments Article, suspension of the right to move courts for violation of part III will not include art 20 and 21.
- Reversed back the term of Lok Sabha from 6 to 5 years.
- Services under the State (the Doctrine of Pleasure) – Arts. 308 – 314

2. Amendment 368

1. A majority of the total membership in each House of Parliament.
2. A majority of not less than two-thirds of all the members present and voting in each House of Parliament, and
3. Ratification by the legislatures of at least one half of the States.

National Emergency

The 21-month period between 1975 and 1977 is considered one of the darkest phases of Indian democracy when a state of emergency was declared across the country. Such a provision of imposing national emergency is guaranteed in the Article 352 of Indian Constitution. National emergency is imposed during "war, external aggression or armed rebellion in the whole of India or a part of its territory."

The President declares national emergency based on the official request from the Prime Minister and the Council of Ministers. The state of emergency expires after a month unless it's approved by the

Parliament within that stipulated timeframe. According to Article 352(6), the majority of both the houses is needed to approve emergency. The emergency period can be extended indefinitely by passing resolutions every six months.

During a national emergency, several Fundamental Rights are suspended along with the Right to Freedom. However, citizens are allowed to enjoy their Right to Life and Personal Liberty. When national emergency is imposed in the country, a unitary form of governance comes into effect with Parliament wielding the power to establish laws mentioned in the State List. Moreover, the state money bills are referred to the Parliament for its approval. During national emergency, the term of the Lok Sabha can be extended for up to one year.

State Emergency or the President's Rule

When a state government is deemed unfit to function as per the Constitution and its political machinery collapses, it comes under direct control of the Union government. The power of running the state administration shifts from the Chief Minister to the Governor. He administers the state in the name of the President. Also known as the President's rule, the purpose of 'state emergency' is elaborately documented in the Article 356 of the Constitution.

The state emergency comes into effect under different circumstances with one of them being the breakdown of a coalition government. Elections getting postponed or the state legislature failing to elect a leader as Chief Minister could be other viable reasons for the imposition of the President's rule. During this phase, the Governor has the authority to appoint ex-civil servants or other bureaucrats to assist him in discharging his duties.

Initially, such emergency is imposed for a period of six months and it can be extended for a period of three years provided the Parliament gives its approval for the same. In the past, the state emergency has been imposed for more than three years in states such as Jammu & Kashmir and Punjab. The extension was made possible only after Constitutional amendment.

Sometimes, "arbitrary" imposition of President's rule" by the Union government has received criticism from all quarters. Under Article 356, the purpose of giving wide powers to Union government is to maintain law and order in the country and "preserve the unity and integrity of the nation." However, that power has often been misused. Imposition of state emergency for 39 times between 1966 and 1977 is a classic example. Be it the Indira Gandhi's government or the Janata Party government, both used this power to dissolve state governments ruled by opposition parties.

The Supreme Court has reduced the scope for misuse of Article 356 by establishing strict guidelines for imposing state emergency. Since early 2000, the incidents of imposition of President's rule have dropped substantially. The Sarkaria Commission has opined that Article 356 must be used "very sparingly" and "in extreme cases" wherein there are no other viable alternatives to prevent complete failure of Constitutional machinery in the state.

Financial Emergency

The Article 360 of the Indian Constitution has the provision for imposing financial emergency when the President is convinced that the economy is vulnerable and the financial stability of the country is under threat. The Parliament has to approve financial emergency within two months. Such emergency remains enforced till it is revoked by the President.

During financial emergency, the President gives directions to the state to adopt certain economic measures as he may deem necessary and adequate. He can reduce the salaries of all government officials, including judges of the Supreme Court and High Courts. The President has to approve all money bills passed by the State legislatures. Although India has witnessed economic volatility in the past, financial emergency was never imposed. The country had bailed itself out by putting its gold assets as collateral for foreign credit.

Emergency Provision

Emergency is a unique feature of Indian Constitution that allows the center to assume wide powers so as to handle special situations. In emergency, the center can take full legislative and executive control of any state. It also allows the center to curtail or suspend freedom of the citizens. Existence of emergency is a big reason why academicians are hesitant to call Indian Constitution as fully federal. Emergency can be of three types - Due to war, external aggression or armed rebellion, failure of Constitutional machinery in a state, or financial emergency. However, technically, Proclamation of Emergency is only done upon external aggression or armed rebellion. In the second case, it is called Presidential Rule, and in the third case it is called "Proclamation of Financial Emergency

Proclamation of Emergency

Art 352 says that if the President is satisfied that a grave emergency exists whereby the security of India or any part of India is threatened due to outside aggression or armed rebellion, he may make a proclamation to that effect regarding whole of India or a part thereof. However, sub clause 3 says that President can make such a proclamation only upon the written advice of the Union Cabinet. Such a proclamation must be placed before each house of the parliament and must be approved by each house within one month otherwise the proclamation will expire.

An explanation to art 352 says that it is not necessary that external aggression or armed rebellion has actually happened to proclaim emergency. It can be proclaimed even if there is a possibility of such thing happening.

- In the case of **Minerva Mills vs Union of India AIR 1980, SC** held that there is no bar to judicial review of the validity of the proclamation of emergency issued by the president under 352(1). However, court's power is limited only to examining whether the limitations conferred by the Constitution have been observed or not. It can check if the satisfaction of the president is valid or not. If the satisfaction is based on mala fide or absurd or irrelevant grounds, it is no satisfaction at all.
- Prior to 44th amendment, duration of emergency was two months initially and then after approval by the houses, it would continue indefinitely until ended by another proclamation. However after 44th amendment, the period is reduced to 1 month and then 6 months after approval.

Effects of Proclamation of emergency

The following are the effects arising out of proclamation of emergency in art 352.

Art 353

1. Executive power of the Union shall extend to giving directions to any state.
2. Parliament will get power to make laws on subjects that are not in Union list.
3. if the emergency is declared only a part of the count, the powers in 1 and 2 shall extend to any other part if that is also threatened.

Art 354

Provisions of art 268 to 279, which are related to taxation, can be subjected to exceptions as deem fit by the president. Every law such made shall be laid before each house of the parliament.

Art 355 says that it is the duty of the Union to protect States against external aggression.

Art 358

While proclamation of emergency declaring that security of India or any part of the territory of India is threatened due to war or external aggression, is in operation, the state shall not be limited by art 19. In other words, govt may make laws that transgress upon the freedoms given under art 19 during such

emergency. However, such a law will cease to have effect as soon as emergency ends. Further, every such law or every executive action that transgresses upon freedoms granted by art 19 must recite that it is in relation to the emergency otherwise, it cannot be immune from art 19. It also says that any acts done or omitted to be done under this provision cannot be challenged in the courts after the end of emergency. In the case of **M M Pathak vs Union of India AIR 1978**, SC held that the rights granted by 14 to 19 are not suspended during emergency but only their operation is suspended. This means that as soon as emergency is over, rights transgressed by a law will revive and can be enforced. In this case, a settlement that was reached before emergency between LIC and its employees was rendered ineffective by a law during emergency. After emergency was over, SC held that the previous settlement will revive. This is because the emergency law only suspended the operation of the existing laws. It cannot completely wash away the liabilities that preexisted the emergency.

Art 359

This Amendment Article provides additional power to the president while proclamation of emergency is in operation, using which the president can, by an order, declare that the right to move any court for the enforcement of rights conferred by part III except art 20 and 21, shall be suspended for the period the proclamation is in operation of a shorter period as mentioned in the order. Further, every such law or every executive action recite that it is in relation to the emergency. In the case of **Makhan Singh vs. State of Punjab AIR 1964**, SC distinguished between art 358 and 359 as shown below:

Article 358	Article 359
Freedoms given by art 19 are suspended.	Fundamental rights are not suspended. Only the courts cannot be moved to enforce Fundamental rights.
Any actions done or omitted to be done cannot be challenged even after emergency.	Any action done by the legislature or executive can be challenged after the suspension is over.
Art 19 is suspended for the period of emergency.	Right to move courts is suspended for the period of emergency or until the proclamation of the president to remove suspension.
Effective all over the country.	May be confined to an area.

Provisions in case of failure of Constitutional machinery in States

Art 356 says that if, upon the report of the Governor of a state, the president is satisfied that the govt. of the state is cannot function according to the provisions of the Constitution, he may, by proclamation, assume to himself all or any of the functions of the govt, or all or any of the powers vested in the governor, or anybody or any authority in the state except the legislature of the state. The power of the legislature of the state shall be exercised by the authority of the parliament. Under this Amendment Article, president can also make such incidental and consequential provisions which are necessary to give effect to the objectives of the proclamation. This includes suspension of any provision of this Constitution relating to anybody or authority in the state. However, this Amendment Article does not authorize the president to assume the powers vested in the High Courts.

Art 357 provides that in the case of proclamation under art 356

- parliament can confer upon the president the power of legislature of the state to make laws or the power to delegate the power to make laws to anybody else.
- the parliament or the president can confer power or impose duties on the Union or Union officers or Union authorities.

- president can authorize the expenditure from the consolidated fund of the state pending sanction of such expenditure by the parliament.

Important instances of invocation of Art 356

This Amendment Article has been invoked over a hundred times.

1. Dissolution of 9 state assemblies in 1977 by Janata Party Govt.

This was challenged in the case of **State of Rajasthan vs Union of India AIR 1977**. In this case, SC held that the decision of the president is not only dependent on the report of the governor but also on other information. The decision is entirely political and rests with the executive. So it is not unconstitutional per se. However, courts can validate the satisfaction of the president that it is no mala fide.

2. Dissolution of 9 state assemblies in 1980 by Congress party govt.

3. Dissolution of BJP govt in MP, HP, and Raj. in 1992.

This was challenged in the case of **SR Bommai vs Union of India AIR 1994**. In this case SC held that secularism is a basic feature of the Constitution and a state govt. can be dismissed on this ground. It further observed that no party can simultaneously be a religious party as well as a political party.

Financial Emergency

Art 360 provides that if the president is satisfied that a situation has arisen whereby the financial security of India or the credit of India or of any part of India is threatened, he may make a declaration to that effect. Under such situation, the executive and legislative powers will go to the center. This Amendment Article has never been invoked.

Changes made by 44th Amendment

44th amendment substantially altered the emergency provisions of the Constitution to ensure that it is not abused by the executive as done by Indira Gandhi in 1975. It also restored certain changes that were done by 42nd amendment. The following are important points of these Amendments -


42nd 1976 Amendments under Article 352-356

- ❖ "Internal disturbance" was replaced by "armed rebellion" under art 352.
- ❖ The decision of proclamation of emergency must be communicated by the Cabinet in writing.
- ❖ Proclamation of emergency must be by the houses within one month.
- ❖ To continue emergency, it must be re approved by the houses every six month.
- ❖ Emergency can be revoked by passing resolution to that effect by a simple majority of the houses present and voting. 1/10 of the members of a house can move such a resolution.
- ❖ Art 358 - Under this Amendment Article art 19 will be suspended only upon war or external aggression and not upon armed rebellion. Further, every such law that transgresses art 19 must recite that it is connected to art 358. All other laws can still be challenged if they violate art 19.
- ❖ Art 359, under this Amendment Article, suspension of the right to move courts for violation of part III will not include art 20 and 21.

Comparison Chart between Emergencies

Headings	National Emergency	State Emergency	Financial Emergency
Article	352	356	360
When	Army Rebellion(replaced by Internal Disturbance) War External aggression	Failure of Constitutional machinery and its report submitted to president by governor	Final stability credit of India
Tenure	1 month (prior amendment 2 month)	2 month (prior amendment 2 month)	2 month (prior amendment 2 month)
Notice	14 day	-----	-----
Maximum period	6 month on passed on 2/3 majority special majority (no limit prior 44 th Amend)	6 month on passed on 2/3 majority(1 yr in a row) (68 th Amend 5 year in row for Punjab)	6 month on passed on 2/3 majority
Exist	30 day	30 day	30 day
Passed by	1/10 of total member of Lok Sabha	Both house agree	Both house agree
Amendment	Internal disturbance amended Maximum period is not there but now 6 month FR suspended (except 19-21) prior not exception	42 nd and 44 th the time period	42 nd and 44 th the time period
Unitary / Federal Form of govt.	Transforms from federal to Unitary	Transforms from federal to Unitary	Transforms from federal to Unitary
Maximum limit of enforcement`	Not fixed	3 year and in Punjab 5 year	Not fixed
Limitation	FR 14 & 21 Not suspended	Functions of State Legislature and Executive vests in Union Legislature and Executive	Reduction of salaries of CJI,SC,HC all bill and financial bills work with permission of President after they passed by legislature of state
Major amendment	42 nd and 44 th	42 nd and 44 th	42 nd and 44 th
Apply	1 time by Late PM Mrs. Indira Gandhi	1 or more	Never

Important case law	<ul style="list-style-type: none"> ➤ Minerva mills case ➤ MM Pathak case ➤ Makhan Singh case ➤ Mohd. Yaqub case ➤ ADM Jabalpur case 	<ul style="list-style-type: none"> ➤ SR Bommai case ➤ State of Rajasthan v. UOI ➤ Rameshwar Prasad v UOI ➤ President rule ➤ Delhi, Punjab, Jharkhaand, Karnataka etc. 	No case law
Satisfied by	President		
Proclamation	With permission of PM and Cabinet	With report of governor and Council of state	
Without approval exist	30 Days	30 Days	30 Days
Lok Sabha Tenure	6 yr.		

Amendment

Shankari Prasad vs. Union of India AIR 1951	1 st amendment that inserted of Art 31-A and 31-B by was challenged. SC held that "Law" in Art 13 refers to ordinary law made under legislative power and does not include amendment of the constitution. Art 368 gives complete power to the parliament to amend the constitution including fundamental rights.	Art 368/13 Amendment of the constitution
Sajjan Singh vs. State of Raj. AIR 1965	17 th amendment was challenged. SC followed the judgment in Shankari Prasad case and held that "amendment of the constitution" means amendment of all the provisions of the constitution.	Art 368/13 Amendment of the constitution
Golak Nath vs. State of Pun. AIR 1971	17 th amendment that inserted certain state acts in the 9 th schedule was again challenged. SC overruled the previous judgment and held that the parliament does not have the power amend part III so as to take away fundamental rights. It held that art 368 merely describes the procedure of amendment and the actual power of amendment comes from art 245 and entry 97 of List 1. "Amendment" is a "law" with in art 13 (1).	Art 368/13 Amendment of the constitution
Keshavanand Bharati vs. Union of India AIR 1973	In order to overcome difficulties posed by SC decision in Golak Nath case, parliament added clause 13(3) by 24 th amendment, which says that art 13 will not apply to any amendments made under art 368.	Art 368/13 Amendment of the constitution

Further, it added a new clause to art 368 saying nothing in art 13 shall apply to amendment made under this article. In this case, this amendment was challenged. SC overruled Golak Nath case and held the following –

- ☐ “Law” in art 13 means ordinary law made under legislative power.
- ☐ 24th amendment is only clarifying that point and so it valid.
- ☐ Parliament has wide power of amending the constitution but it is not unlimited.
- ☐ The usage of the word “amendment” in the constitution means that the basic framework of the constitution must survive after the amendment. It does not allow destruction of the basic structure of the constitution.
- ☐ Power to amend the constitution does not include abrogating the constitution.
- ☐ C J Sikri said that basic features of the constitution include –
 - o Supremacy of the judiciary
 - o Republic and democratic character

Emergency

<p>Minerva Mills vs. Union of India AIR 1980</p>	<p>Proclamation of emergency by the president falls under judicial preview. However, court's power is limited only to examining whether the limitations conferred by the constitution have been observed or not. It can check if the satisfaction of the president is valid or not. If the satisfaction is based on mala-fide or absurd or irrelevant grounds, it is no satisfaction at all.</p>	<p>Art 352</p>				
<p>State of Raj. vs. Union of India AIR 1977</p>	<p>Dissolution of 9 state assemblies in 1977 was held valid. SC held that it is a political decision and rests with the executive. Satisfaction of the president can be reviewed by the court.</p>	<p>Art 356</p>				
<p>S R Bommai vs. Union of India AIR 1994</p>	<p>Secularism is a basic feature and a govt. may be dismissed on this ground. It gave detailed guidelines on invocation of art 356.</p>	<p>Art 356</p>				
<p>Makhan Singh vs. State of Punjab AIR 1964</p>	<p>In this case SC identified the difference between art 358 and art 359.</p> <table border="1" style="width: 100%;"> <tr> <td data-bbox="555 1861 922 2056"> <p>Art 358 Freedoms given by art 19 are suspended.</p> </td> <td data-bbox="922 1861 1289 2056"> <p>Art 359 Fundamental rights are not suspended. Only that courts cannot be moved to enforce fundamental rights.</p> </td> </tr> <tr> <td data-bbox="555 2056 922 2105"> <p>Any actions done or omitted to</p> </td> <td data-bbox="922 2056 1289 2105"> <p>Any action done by the</p> </td> </tr> </table>	<p>Art 358 Freedoms given by art 19 are suspended.</p>	<p>Art 359 Fundamental rights are not suspended. Only that courts cannot be moved to enforce fundamental rights.</p>	<p>Any actions done or omitted to</p>	<p>Any action done by the</p>	<p>Art 358/359</p>
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<p>Any actions done or omitted to</p>	<p>Any action done by the</p>					

	<p>be done cannot be challenged even after emergency.</p> <p>Art 19 is suspended for the period of emergency.</p> <p>Effective all over the country.</p>	<p>legislature or executive can be challenged after the suspension is over.</p> <p>Right to move courts is suspended for the period of emergency or until the proclamation of the president to remove suspension.</p> <p>May be confined to an area.</p>	
<p>MM Pathak vs. Union of India AIR 1978</p>	<p>LIC entered into a settlement with its employee before emergency. During emergency this settlement was scrapped by a law. This was defended on the ground that since fundamental rights were suspended during emergency it cannot be challenged on the ground that it violates fundamental rights in the courts. SC held that rights given under art 14 to 19 are not suspended under emergency. Only their operation is suspended. Therefore as soon as emergency ends, those rights are revived again. Also, liabilities incurred before emergency cannot be quashed by a law made in emergency. They are revived after emergency.</p>		<p>Art 359</p>