UNIT I

Introduction to Indian Constitution

The framing of the Constitution was completed on November 26, 1949 when the Constituent Assembly formally adopted the new Constitution. The Constitution came into force with effect from January 26, 1950.

The Constitution contains the fundamental law of the land. It is the source of all powers of, and limitations on, the three organs of State, viz. the executive, legislature and judiciary. No action of the state would be valid unless it is permissible under the Constitution. Therefore, it is imperative to have a clear understanding of the nature and working of the Constitution.

Objectives of The Constitution

The Constitution of Independent India was framed in the background of about 200 years of colonial rule, mass-based freedom struggle, the national movement, partition of the country and spread of communal violence. Therefore, the framers of the Constitution were concerned about the aspirations of the people, integrity and unity of the country and establishment of a democratic society. Their main was to give India a ‘Constitution’ which will fulfill the cherished ideas and ideals of the people of this country.

The Constitution begins with a Preamble which declares India to be a Sovereign, Socialist, Secular, Democratic, Republic. The Preamble also mentions the goals of securing justice, liberty and equality for all its citizens and promotion of national unity and integrity on the basis of fraternity among the people assuring dignity of the individual.

Salient Features of the Indian Constitution

The main features of Indian Constitution are the following:

1. A written Constitution: The Indian Constitution is mainly a written constitution. A written constitution is framed at a given time and comes into force or is adopted on a fixed date as a document. As you have already read that our constitution was framed over a period of 2 years, 11 months and 18 days, it was adopted on 26th November, 1949 and enforced on January 26, 1950. Certain conventions have gradually
evolved over a period of time which have proved useful in the working of the constitution.

2. **Federal Policy:** The Constitution of India does not use the term ‘federal state’. It says that India is a ‘Union of States’. There is a distribution of powers between the Union/Central Government and the State Governments. Since India is a federation, such distribution of functions becomes necessary. There are three lists of powers such as Union List, State List and the Concurrent List.

3. **Parliamentary Democracy:** India has a parliamentary form of democracy. This has been adopted from the British system. In a parliamentary democracy there is a close relationship between the legislature and the executive. The Cabinet is selected from among the members of legislature. The cabinet is responsible to the latter. In fact the Cabinet holds office so long as it enjoys the confidence of the legislature. In this form of democracy, the Head of the State is nominal. In India, the President is the Head of the State. Constitutionally the President enjoys numerous powers but in practice the Council of Ministers headed by the Prime Minister, which really exercises these powers. The President acts on the advice of the Prime Minister and the Council of Ministers.

4. **Fundamental Rights and Duties:** Fundamental Rights are one of the important features of the Indian Constitution. The Constitution provides for six Fundamental Rights about which you will read in the following lesson. Fundamental Rights are justiciable and are protected by the judiciary. In case of violation of any of these rights one can move to the court of law for their protection. Fundamental Duties were added to our Constitution by the 42nd Amendment. It lays down a list of ten Fundamental Duties for all citizens of India. While the rights are given as guarantees to the people, the duties are obligations which every citizen is expected to perform.

5. **Directive Principles of State Policy:** The Directive Principles of State Policy which have been adopted from the Irish Constitution, is another unique feature of the Constitution of India. The Directive Principles were included in our Constitution in order to provide social and economic justice to our people. Directive Principles aim at establishing a welfare state in India where there will be no concentration of wealth in the hands of a few.

6. **Partly rigid and Partly flexible:** A constitution may be called rigid or flexible on the basis of its amending procedure. The Constitution of India provides for three categories of amendments. In the first category, amendment can be done by the two houses of Parliament simple majority of the members present and voting of before sending it for the President’s assent. In the second category amendments require a special majority. Such an amendment can be passed by each House of Parliament by a
majority of the total members of that House as well as by the 2/3rd majority of the members present and voting in each house of Parliament and send to the President for his assent which cannot be denied. In the third category besides the special majority mentioned in the second category, the same has to be approved also by at least 50% of the State legislatures.

7. **Language Policy:** India is a country where different languages are spoken in various parts of the country. 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.

8. **Special Provisions for Scheduled Castes and Scheduled Tribes:** The Constitution provides for giving certain special concessions and privileges to the members of these castes. Seats have been reserved for them in Parliament, State legislature and local bodies, all government services and in all professional colleges.

9. **A Constitution Derived from Many Sources:** The framers of our constitution borrowed many things from the constitutions of various other countries and included them in our constitution. That is why; some writers call Indian Constitution a ‘bag of borrowings’.

10. **Independent Judiciary:** Indian judiciary is independent and impartial. The Indian judiciary is free from the influence of the executive and the legislature. The judges are appointed on the basis of their qualifications and cannot be removed easily.

11. **Single Citizenship:** In India there is only single citizenship. It means that every Indian is a citizen of India, irrespective of the place of his/her residence or place of birth. He/she is not a citizen of the Constituent State like Jharkhand, Uttaranchal or Chattisgarh to which he/she may belong to but remains a citizen of India. All the citizens of India can secure employment anywhere in the country and enjoy all the rights equally in all the parts of India.

12. **Universal Adult Franchise:** Indian democracy functions on the basis of ‘one person one vote’. Every citizen of India who is 18 years of age or above is entitled to vote in the elections irrespective of caste, sex, race, religion or status. The Indian Constitution establishes political equality in India through the method of universal adult franchise.

13. **Emergency Provisions:** The Constitution makers also foresaw that there could be situations when the government could not be run as in ordinary times. To cope with such situations, the Constitution elaborates on emergency provisions. There are three types of emergency; a) emergency caused by war, external aggression or armed rebellion; b) emergency arising out of the failure of constitutional machinery in states; and c) financial emergency.
Theory of Basic Structure

1. Supremacy of Constitution
2. Republican and Democratic form of Government
3. Secular Character of Constitution
4. Separation of Powers between the Legislature, the Executive and the Judiciary
5. Federal Character of Constitution

Nature of the Indian Constitution – Federal, Unitary, Quasi-federal

In a Democratic government, Constitution plays a primary role in efficient governance. Constitution is a set of fundamental principles or established precedents according to which a State can be governed. Constitutions may be classified into two categories. Such as: Federal or Unitary.

What is Federal and Unitary Constitution?

In a Unitary Constitution, all the powers of a Government are concentrated in a central authority. The States or the different constituents of the Country are subordinate to such central authority. However, in Federal Constitution, powers are distributed among the center and the States. States are not subordinates of the central government. Constitution of USA, Australia are considered to be federal in nature.

Is Indian Constitution a federal or unitary in nature?

Indian Constitution is an hybrid of both federal and unitary nature of a Constitution and hence rightly termed as ‘Quasi-federal’ Constitution. It means a federal set up where despite having two clear sets of government – central and the states, more powers are given to the Central Government.

Prof. Wheare put-forth his view that to say a Constitution is federal in nature, it should displays federal character predominantly.

Following are the defining features of federalism:

- Distribution of Powers between center and states
- Supremacy of the Constitution
- Written Constitution
- Rigidity of the Constitution
- Independent Judiciary

Factors that affect the federal character of the Constitution of India are:
• Appointment of the Governor of a State
• Power of the parliament to make laws on subjects in the State list.
• Power to form new states and to change existing boundaries
• Emergency Provisions

The debate whether India has a ‘Federal Constitution’ and ‘Federal Government’ has been grappling the Apex court in India because of the theoretical label given to the Constitution of India, namely, federal, quasi-federal, unitary. The first significant case where this issue was discussed at length by the apex Court was **State of West Bengal V. Union of India**. The main issue involved in this case was the exercise of sovereign powers by the Indian states. The legislative competence of the Parliament to enact a law for compulsory acquisition by the Union of land and other properties vested in or owned by the state and the sovereign authority of states as distinct entities was also examined. The apex court held that the Indian Constitution did not propound a principle of absolute federalism. Though the authority was decentralized this was mainly due to the arduous task of governing the large territory. The court outlined the characteristics, which highlight the fact that the Indian Constitution is not a “traditional federal Constitution”.

Thus, it can be said that Indian Constitution is primarily federal in nature even though it has unique features that enable it to assume unitary features upon the time of need.

**Principles of Federalism**

The Indian Constitution is basically federal in form and is marked by the traditional characteristics of a federal system, namely, supremacy of the Constitution, division of power between the Union and State Governments, existence of an independent judiciary and a rigid procedure for the amendment of the Constitution.

There is an independent judiciary to determine issues between the Union and the States, to be exercised in fields assigned to them respectively. However, there are marked differences between the American federation and the Indian federation. They are:

1. America has a dual citizenship, while in India, there is single citizenship
2. States in America have a right to make their own Constitutions, whereas no such power is given to States in India
3. Indian Constitution exhibits a centralizing tendency in several of its provisions
4. In certain circumstances, the Union is empowered to supersede the authority of the State or to exercise powers otherwise vested in the States.
CASE LAWS

2. S. R. Bommai v. Union of India, AIR 1994 SC 1918
3. State of West Bengal v. Union of India, AIR 1963 SC 1241
5. Kuldip Nayar v. Union of India, AIR 2006 SC 3127

Preamble

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

JUSTICE, social, economic and political;
LIBERTY of thought, expression, belief, faith and worship;
EQUALITY of status and of opportunity;
and to promote among them all
FRATERNITY assuring the dignity of the individual and the [unity and integrity of the Nation];

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

Part I – The Union and Its Territory

Article 1: Name and territory of the Union

Article 2: Admission or establishment of new states

Article 3: Formation of new States and alteration of areas, boundaries or names of existing States

Article 4: Laws made under articles 2 and 3 to provide for the amendment of the First and the Fourth Schedules and supplemental, incidental and consequential matters

CASE LAWS

1. In re Berubari Union and Exchange of Enclaves, AIR 1960 SC 845
2. Ram Kishore Sen v. Union of India, AIR 1966 SC 644
3. Union of India v. Sukumar Sengupa, AIR 1990 SC 1692
4. N. Masthan Sahib v. Chief Commissioner Pondicherry, AIR 1962 SC 797
5. R. C. Poudyal v. Union of India, AIR 1993 SC 1804

Part II – Citizenship

Article 5: Citizenship at the commencement of the Constitution

Article 6: Rights of citizenship of certain persons who have migrated to India from Pakistan

Citizenship by Birth

Article 7: Rights of citizenship of certain migrants to Pakistan

Rights of Overseas Citizens

Article 8: Rights of citizenship of certain persons of Indian origin residing outside India

Article 9: Persons voluntarily acquiring citizenship of a foreign State not to be citizens

Article 10: Continuance of the rights of citizenship

Article 11: Parliament to regulate the right of citizenship by law

Commonwealth Citizenship

Every person who is a citizen of a Commonwealth country specified in the First Schedule shall, by virtue of that citizenship, have the status of a Commonwealth citizen in India.

Whether a Corporation a citizenship or not

The freedom under article 19 are limited to citizens and if literally constructed these freedoms would not be available to corporations, because corporations cannot be talked of as having or possessing citizenship. But it has been held that shareholders can challenge the validity of a law on the grounds of violation of their fundamental rights and the company may be joined in such proceeding with proper pleading. The decisions relevant to the point are following:

A company is not a citizen and cannot invoke article 19(1)(g).
Case Laws:

1. Tata Engineering and Locomotive Co. Ltd. v. State of Bihar, AIR 1965 SC 40 (48)

Domicile – Meaning

The country that a person treats as their permanent home, or lives in and has a substantial connection with. The state in which a person has his/her permanent residence or intends to make his/her residence, as compared to where the person is living temporarily.

Kinds of Domicile

1. Domicile of origin
2. Domicile of choice
3. Domicile by operating of law

Elements constituting Domicile

Domicile depends on intent, location of a home where a person regularly sleeps, and some conduct.

One Domicile

Under the Indian Constitution, there is only one domicile viz. the domicile of the country and there is no separate domicile for a State.

Case Law:


Citizenship by Migration

Migration must be with intention to reside permanently in India. Such intention may be formed even later.
Part III – Fundamental Rights

Kinds of Rights

- Natural or Human Rights
- Moral Rights
- Legal Rights – Civil and Political Rights
- Fundamental Rights in India

Natural Rights

Natural Rights are those rights that are available to each and every being, including human beings. Rights that are specific to human beings are also called as Human Rights. Natural rights deals with right to life, right to movement, etc.

Article 21 deals with right to protection of life and personal liberty.

At the same time, when a person lives alone in an island, he does not have right but freedom. Only when a man lives as a group or in a community, rights evolve. Because, when a man lives in a group, there is always conflict and absolute freedom cannot be assured. Hence, the concept of right is correlated with duties.

Every right has an obligation to duty. Recognition of freedom of others forms the basis of rights. Our rights is based on other’s duties and other’s rights based on our duties. State does not create rights, but only recognizes, maintains and co-ordinates the rights of its people.

Origin of Fundamental Rights

The rights that are basic to the advancement of the human race are called Fundamental Rights. All other rights are derived from these rights as direct implications or application of their principles. It is an accepted belief among the philosophers that these rights are nothing but “natural human rights”, which distinguish between humans and animals and which have been so instrumental in bringing humans from the stone age to the present age. Among all, the right to life and liberty is considered to be the most basic.

The history of legally enforceable fundamental rights probably starts from Magna Carta, which was a list of rights extracted from Kind John by the people of England in 1214 AD. This was followed by the “Bill of Rights” in 1689 in which Englishmen were given certain civil and political rights that could not be

The most important advancement in history of fundamental rights occurred when the USA incorporated certain fundamental rights in the form on “Bill of Rights” in their constitution by the way of first 10 amendments. These rights were deemed to be beyond the vagaries of politics. The protection by the constitution meant that these rights could not be put to vote and were not dependent on the whims of politicians or of the majority.

After this, nearly all democracies of the world have given a constitutional sanctity to certain inalienable rights available to their citizens. (Source: Hanumant.com)

The need for Fundamental Rights

1. Rule of Law
These rights are a protection to the citizens against the govt and are necessary for having the rule of law and not of a a govt or a person. Since explicitly given by the constitution to the people, these rights dare not be transgressed by the authority. The govt. is fully answerable to the courts and is fully required to uphold these rights.

2. First fruits of the freedom struggle
After living in subjugation for such a long time, people had forgotten what is meant by freedom. These rights give people hope and belief that there is no stopping to their growth. They are free from the whims of the rulers. In that sense, they are first fruits of the lengthy freedom struggle and bring a sense of satisfaction and fulfillment.

3. Quantification of Freedom
Every Indian citizen in free to practice a religion of his choice, but that is not so in the gulf countries. Our right to speech and expression allows us to freely criticize the govt. but this is not so in China.

Fundamental Rights in India

As regard India Simon Commission and Joint Parliamentary Committee had reject the idea of enacting declaration of Fundamental right on the ground that the abstract declaration is useless. Although the demand of the people was not met by the British Parliament under the government of India Act 1935 yet the enthusiasm of the people to have such right in the constitution was not impaired. The recommendation of the Nehru Committee was included in the constitution in 16 May’1946 by the cabinet mission.
PART III talks about the fundamental rights such as:

- Right to Equality (Article 14 – 18)
- Right to Freedom (Article 19 – 22)
- Right against Exploitation (Article 23 – 24)
- Right to freedom of Religion (Article 25 – 28)
- Cultural and Educational Right (Article 29 – 30)
- Right to Constitution Right (Article 32)

Art. 19(1)a – 19(1)g and Art. 19(2) places reasonable restriction on rights. Our rights are not absolute rights.

Definition of State

Article 12 of the Constitution defines the State as follows:

“In this part, unless the context otherwise requires, “the State” includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.”

The definition of the term “the State” specifies the authorities and instrumentalities functioning within or without the territory of India, which shall be deemed to be “the State” for the purpose of part III of the Constitution. The definition is inclusive and not exhaustive. Therefore, authorities and instrumentalities not specified in it may also fall within it if they otherwise satisfy the characteristics of “the State” as defined in this article.

Local Authorities

A local authority having a legal grievance may be able to take out a writ. Thus, a writ was issued on the petition of a local authority against a public utility concern, for the latter’s failure to fulfil its statutory obligation to supply power to the local authority, a consumer;

Case Law:

Corporation of City of Nagpur v. N.E.L & Power Co., AIR 1958 Bom 498

Other Authorities

Mr. Justice Bhagwati has given following test for determining whether an entity is an instrumentality or agency of the State –

- Share capital of the corporation is held by Government
• Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation
• State protected monopoly status of a corporation
• Existence of deep and pervasive State control
• If the functions of the corporations of public importance and closely related to governmental functions

**Article 13: Laws inconsistent with or in derogation of the fundamental rights**

**Case Laws:**

1. **A.K. Gopalan Vs. State of Madras. 1951**  
   By unanimous decision declared that Section 14 of the Act invalid and thus manifested its competence to declare void any parliamentary enactment repugnant to the provisions of the Constitution.

2. **Minerva Mills case, 1980**  
   Supreme Court had trunk down section 4 of the 42nd Amendment Act which gave preponderance to the Directive Principles over Articles 24, 19 and 31 of the Part III of the Constitution, on the ground that Part III and Part IV of the Constitution are equally important and absolute primacy of one over the other is not permissible as that would disturb the harmony of the Constitution. The Supreme Court was convinced that anything that destroys the balance between the two part will, by that very fact, destroy an essential element of the basic structure of our constitution.

**Doctrine of Severability**

Article 13 of the Indian Constitution provides for **Doctrine of Severability** which states that All laws in force in India before the commencement of Constitution shall be void in so far they are inconsistent with the provisions of the Constitution.

A law becomes invalid only to the extent to which it is inconsistent with the fundamental rights. So only that part of the law will be declared invalid which is inconsistent, and the rest of the law will stand. However, on this point a clarification has been made by the courts that invalid part of the law shall be severed and declared invalid if really it is severable, i.e if after separating the invalid part the valid part is capable of giving effect to the legislature’s intent, then only it will survive, otherwise the court shall declare the entire law as invalid.

**Case Laws:**
   Held that the preventive detention minus section 14 was valid as the omission of the Section 14 from the Act will not change the nature and object of the Act and therefore the rest of the Act will remain valid and effective.

2. **D.S. Nakara v. Union of India**
   The Act remained valid while the invalid portion of it was declared invalid because it was severable from the rest of the Act.

3. **R.M.D.C. v. Union of India, AIR 1957 S.C. 628**
   1. The intention of the legislature is the determining factor in determining whether the valid parts of a statute are severable from the invalid parts.
   2. If the valid and invalid provisions are so inextricably mixed up so that they cannot be separated from the other, then the invalidity of a portion must result in the invalidity of the Act in its entirety.
   3. Even when the provisions which are invalid, are distinct and separate from those which are invalid if they form part of a single scheme which is intended to be operative as a whole, then also the invalidity of a part will result in the failure of the whole.
   4. If after the invalid portion is expunged from the Statute what remains cannot be enforced without making alterations and modifications therein, then the whole of it must be stuck down as void as otherwise it will amount to judicial legislation.

**Doctrine of Eclipse**

It states that an existing law which is inconsistent with a fundamental right become inoperative from the date of the commencement of the constitution, it cannot be accepted as dead altogether. The Doctrine of Eclipse is based on the principle that a law which violates fundamental rights, is not nullity or void ab initio but becomes, only unenforceable i.e. remains in a moribund condition. “It is over-shadowed by the fundamental rights and remains dormant, but it is not dead.”

**Case Laws:**

   “In this case the provisions of C.P. and Berar Motor Vehicles (Amendment) Act 1948 authorized the State Government to take up the entire motor transport business in the Province to the exclusion of motor transport operators. This provision though valid when enacted, but became void on the commencement of the Constitution in 1950 as they violated Article 19(1)(g) of the Constitution. However, in 1951 Clause (6) of Article 19 was amended by the Constitution (1st Amendment Act)
so as to authorize the Government to monopolise any business. The Supreme Court held that the effect of the amendment was to remove the shadow and to make the impugned Act free from blemish or infirmity. It became enforceable against citizens as well as non-citizens after the constitutional impediment was removed. This law was eclipsed for the time being by the fundamental rights. As soon as the eclipse is removed, the law begins to operate from the date of such removal”. (Courtesy: Adv. Smita via LegalServices.co.in)

Right to Equality (Article 14-18)

Application of the same laws uniformly to all of them will, therefore, be inconsistent with the principle of equality.

Article 14 – Equality before law

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

It is the core article under Right to Equality. It deals with two kinds of rights. It states that the State shall not deny to any person

1. Right to equality before the law.
2. Right to Equal Protection before the law.

1. Right to Equality before the law

It is a negative concept because it means that no man is above the law or in other words all individuals are subject to the Law of the land. Rule of law means the absolute supremacy of ordinary law of land as opposed to the influence of arbitrary power of the ruler.

The three principles which govern the Rule of law are:

- (I) No man shall be punished either in body or goods (material) except for the violation of law in force. Further, the violation of law shall be established in an ordinary court of land in an ordinary legal manner.
- (II) All individuals irrespective of their social or economic understanding are subject to ordinary law of land. Further, all the individuals are subject to the jurisdiction of the court. I.e. all individuals can be sued before the court. A person can appear before the court in form of attorney or himself.
- (III) The constitution is the result of ordinary Law of land.
However the third rule had been modified in its application under the Indian constitution where the third law reads as the Constitution is Supreme law of Land and all laws passed by the legislature shall conform to it to be legally valid.

**Significance of Rule of law**

(i) It is the adoption of rule of law that has changed the constitution from Rex Lex (king is law) to Lex Rex (Law is king)

(ii) The rule of law is essential to maintain an individual’s liberty. Therefore, Rule of law is an essential feature of democracy.

**Protection of Rule of Law**

The constitution under article 32 and 226 confers the power on Supreme Court and the High Court’s respectively to safeguard the Rule of law by exercising the writ jurisdictions. Further the constitution emphasizes that the Rule of Law is an immutable Principle of Governance of the Country.

In *Keshavananda Bharati Vs State of Kerala, 1973* case Supreme Court held that the Rule of Law is a part of basic structure of the constitution and cannot be destroyed.

**Exceptions to the Rule of Law**

- (1) Article 361- The President or the Governor of State is not answerable to a court of law with regard to exercise of its executive functions.
- (2) No criminal proceedings whatsoever can be instituted against the President and Governor of State during his/her term of office. He should be first remove impeached to continue the proceedings against him.
- (3) No civil proceedings in which relief is claimed can be instituted against the President or the Governor of State in a court, except of the expiry under a 2 month notice served on the President and Governor.
- (4) According to the International Laws- The visiting subject to the jurisdiction of local court.

**2. Equal protection before Law**

- (1) It originated as a concept in USA.
- (2) It is a positive concept.
- (3) It means equality of treatment in equal circumstances. Among equals the law shall be equal and equally administered. “The like should be treated alike”. All the persons placed in equal circumstances shall be
treated similarly. Therefore, it ensures equality among equals. It does not mean inequality among equals.

- (4) It allows State to classify individuals on a reasonable basis into similar groups. Once such a classification is made, the law shall apply equally among all the people within a group. Then no person within a group shall be treated differently. However, the State is free to discriminate people between the groups.

- (5) The concept of equal protection before law is also called “Positive Discrimination” on the Part of the State and the policy of reservation is legally justified under it.

- (6) This concept is based on the Aristotelian Principle that ‘Equality can exist only among the equals and equality cannot exist among unequals.

Thus the Legislative may:

- (i) Exempt certain classes of property from taxation such as charities, libraries etc.
- (ii) Impose different specific takes upon different trades and professions.
- (iii) Tax income and property of individuals in different manner etc.

CASE LAWS

**Air India Etc. Etc vs Nergesh Meerza & Ors. Etc. Etc on 28 August, 1981**

A.H. under A.I. was retired from service in the following contingencies:

- (a) On attaining the age of 35 years;
- (b) On marriage if it took place within four years of the service; and
- (c) On first pregnancy.

The court held that the last portion of regulation 46 (i) (c) struck down. The provision ‘or on first pregnancy whichever occurs earlier’ is unconstitutional, void and violative of Article 14 of the Constitution and will, therefore, stand deleted. It will, however, be open to the Corporation to make suitable amendments.

It is undisputed that what Art. 14 prohibits is hostile discrimination and not reasonable classification. If equals and unequals are differently treated, there is no discrimination so as to amount to an infraction of Art. 14 of the Constitution. *A fortiori* if equals or persons similarly circumstanced are differently treated, discrimination results so as to attract the provisions of Art. 14.

**Case Laws:**
• Bhagwati Justice of the Supreme Court in Maneka Gandhi v Union of India
• Ramana Dayaram Shetty v International Airport Authority (IAA)
• Mithu v State of Punjab
• Ramakrishna Dalmia v Justice Teldolkar
• Air India v Nergesh Meerza and others
• Indian Council of Legal Aid and Advice, etc. etc. v Bar Council of India and another

Article 15 – Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

Protective Discrimination

Case Laws:

Mrs. Valsamma Paul v Cochin University and others

Githa Hariharan v Reserve Bank of India

Pranatosh Roy (Dr.) v University of Calcutta

Sexual Harassment

Vishaka v State of Rajasthan

Women Reservation

Rajesh Kumar Gupta v State of U.P.

P. Sagar v State of A.P.

Dattareya v State of Bombay

Women Reservation Bill

Article 16 – Equality of opportunity in matters of public employment

CASES

M.R. Balaji v State of Mysore

Devadasan v Union of India

State of Kerala v N.M. Thomas
Akhil Bharatiya Karmachari Sangh v Union of India

Indira Sawhney & others v Union of India and others

Promotions – Before & After the 77th Amendment of the Constitution

Article 17 – Abolition of Untouchability

“Untouchability” is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of “Untouchability” shall be an offence punishable in accordance with law.

- Casteism is a great enemy.
- Casteism is founded on “Manusmrithi” in the ancient India.
- Several Acts such as: the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Protection of Civil Rights Act, 1955
- Punishment

Article 18 – Abolition of titles

No title, not being a military or academic distinction, shall be conferred by the State.

No citizen of India shall accept any title from any foreign State.

No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State.

No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, or office of any kind from or under any foreign State

Bharat Ratna, Padma Vibhushan, Padma Bhushan and Padma Shri Awards:

The Order of Leopold

Fundamental Rights

The Constitution of India contains the right to freedom, given in articles 19, 20, 21 and 22, with the view of guaranteeing individual rights that were considered vital by the framers of the constitution. The right to freedom in Article 19 guarantees the following six freedoms:
Freedom of speech and expression, which enable an individual to participate in public activities. The phrase, “freedom of press” has not been used in Article 19, but freedom of expression includes freedom of press. Reasonable restrictions can be imposed in the interest of public order, security of State, decency or morality.

Freedom to assemble peacefully without arms, on which the State can impose reasonable restrictions in the interest of public order and the sovereignty and integrity of India.

Freedom to form associations or unions on which the State can impose reasonable restrictions on this freedom in the interest of public order, morality and the sovereignty and integrity of India.

Freedom to move freely throughout the territory of India though reasonable restrictions can be imposed on this right in the interest of the general public, for example, restrictions may be imposed on movement and travelling, so as to control epidemics.

Freedom to reside and settle in any part of the territory of India which is also subject to reasonable restrictions by the State in the interest of the general public or for the protection of the scheduled tribes because certain safeguards as are envisaged here seem to be justified to protect indigenous and tribal peoples from exploitation and coercion. Article 370 restricts citizens from other Indian states and Kashmiri women who marry men from other states from purchasing land or property in Jammu & Kashmir.

Freedom to practice any profession or to carry on any occupation, trade or business on which the State may impose reasonable restrictions in the interest of the general public. Thus, there is no right to carry on a business which is dangerous or immoral. Also, professional or technical qualifications may be prescribed for practicing any profession or carrying on any trade. The constitution guarantees the right to life and personal liberty, which in turn cites specific provisions in which these rights are applied and enforced: Protection with respect to conviction for offences is guaranteed in the right to life and personal liberty.

19. Protection of certain rights regarding freedom of speech etc

(1) All citizens shall have the right

- (a) to freedom of speech and expression;
- (b) to assemble peaceably and without arms;
- (c) to form associations or unions;
• (d) to move freely throughout the territory of India;
• (e) to reside and settle in any part of the territory of India; and
• (f) omitted
• (g) to practise any profession, or to carry on any occupation, trade or business

(2) Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence

(3) Nothing in sub clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub clause

(4) Nothing in sub clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub clause

(5) Nothing in sub clauses (d) and (e) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe

(6) Nothing in sub clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub clause, and, in particular, nothing in the said sub clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,

• (i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or
• (ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise
Maneka Gandhi vs Union Of India

20. Protection in respect of conviction for offences

- (1) No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.
- (2) No person shall be prosecuted and punished for the same offence more than once.
- (3) No person accused of any offence shall be compelled to be a witness against himself.

According to Article 20, no one can be awarded punishment which is more than what the law of the land prescribes at that time. This legal axiom is based on the principle that no criminal law can be made retrospective, that is, for an act to become an offence, the essential condition is that it should have been an offence legally at the time of committing it. Moreover, no person accused of any offence shall be compelled to be a witness against himself. “Compulsion” in this article refers to what in law is called “Duress” (injury, beating or unlawful imprisonment to make a person do something that he does not want to do). This article is known as a safeguard against self incrimination. The other principle enshrined in this article is known as the principle of double jeopardy, that is, no person can be convicted twice for the same offence, which has been derived from Anglo Saxon law. This principle was first established in the Magna Carta.

21. Protection of life and personal liberty

No person shall be deprived of his life or personal liberty except according to procedure established by law.

Protection of life and personal liberty is also stated under right to life and personal liberty. Article 21 declares that no citizen can be denied his life and liberty except by law. This means that a person’s life and personal liberty can only be disputed if that person has committed a crime. However, the right to life does not include the right to die, and hence, suicide or an attempt thereof, is an offence. (Attempted suicide being interpreted as a crime has seen many debates. The Supreme Court of India gave a landmark ruling in 1994. The court repealed section 309 of the Indian penal code, under which people attempting suicide could face prosecution and prison terms of up to one year. In 1996 however another Supreme Court ruling nullified the earlier one.) “Personal liberty” includes all the freedoms which are not included in Article 19 (that is, the six freedoms). The right to travel abroad is also covered under “personal liberty” in Article 21.
In 2002, through the 86th Amendment Act, Article 21(A) was incorporated. It made the right to primary education part of the right to freedom, stating that the State would provide free and compulsory education to children from six to fourteen years of age. Six years after an amendment was made in the Indian Constitution, the union cabinet cleared the Right to Education Bill in 2008. It is now soon to be tabled in Parliament for approval before it makes a fundamental right of every child to get free and compulsory education.

The constitution also imposes restrictions on these rights. The government restricts these freedoms in the interest of the independence, sovereignty and integrity of India. In the interest of morality and public order, the government can also impose restrictions. However, the right to life and personal liberty cannot be suspended. The six freedoms are also automatically suspended or have restrictions imposed on them during a state of emergency.

Class Notes on Constitutional Law – Unit II (1st Sem / 3 year LL.B)

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Application of the principles – Art. 37

State to secure a Social order for the Promotion of Welfare of the People – Art. 38

Certain Principles of Policy to be followed by the State – Art. 39

Equal Justice and Free Legal Aid – Art. 39-A

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Provision for Just and Humane Conditions of Work and Maternity Relief – Art. 42

Living Wage, etc., for Workers – Art. 43

Participation of Workers in Management of Industries – Art. 43-A

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Parliamentary Government – Art. 79 – 122

The General Provisions relating to Parliament – Arts. 79 – 122
Class Notes on Constitutional Law – Unit III (1st Sem / 3 year LL.B)

UNIT – III

Judicial Process Under the Constitution

Nature of Judicial Review

The Constitution if the Supreme law of the land and any law which is inconsistent with the constitution is termed to be void. ‘Judicial Review‘ is a term refers to the power that can be utilised for judicially reviewing an enactment passed by the Legislature, or a decision of an administrator, an order of a quasi-judicial authority and/or in a given case, a decision of the judiciary.

The concept of Judicial Review started from the case of Marbury vs Madison in 1800 in the USA. In this case, justice John Marshall held that judiciary has inherent power to review actions by legislature even if no explicit provision is given in the constitution.

Judicial Review – Art. 32, 226 and 227

In India, by reason of Arts. 32 and 136, the Supreme Court can exercise the power of judicial review. Similarly, under Arts. 226 and 227 High Courts have a power of judicial review. No other Court has been conferred with such a power. In the case of L Chandra Kumar vs Union of India SC AIR 1997 held that the power vested in SC by art 32 and High Court by art 226 over legislative action is a basic feature.

Judicial Review has two prime functions

1. Legitimizing government action; and
2. To protect the Constitution against any undue encroachment by the Government

**Court system in India**

- Supreme Court
- High Court
- Sessions Court
- Assistant Sessions Judge
- Chief Metropolitan Magistrate
- Chief Judicial Magistrate
- Metropolitan Magistrate
- Special Metropolitan Magistrate

**Supreme Court and High Court Judges – Appointments, conditions of service**

The supreme court, being the guardian of the constitution, ensures that the fundamental rights of the citizens are not violated. To let the judiciary fulfill this big responsibility efficiently, the constitution has provided several measures that ensure the independence of the judiciary.

**Composition of the Supreme Court**

Art 124 specifies that the SC will be composed of a Chief Justice and at most 7 other judges. The number of other judges has now been increased to 25.

To be appointed as a judge of the supreme court, a person must be a citizen of India and

- has been a Judge of a High Court for 5 yrs.
- has been an advocate of a High Court for 10 yrs.
- in the opinion of the president, a distinguished Jurist.

**Appointment of the Judges**

The procedure of appointment of the Chief Justice and other judges has created a lot of controversy because it is the key aspect of the independence of the judiciary. Art 124 specifies that the Chief Justice is appointed by the president after consulting with the judges of the supreme court and the high courts. Further, that while appointing other judges, the CJ must be consulted. Thus, the constitution clearly tried to prevent the executive from having complete discretionary powers in the appointment of the judges.
Until 1973, the senior most judge of the supreme court was appointed as the Chief Justice. However, this convention was broken when Justice AN Ray was appointed as the CJ by passing 3 more senior judges. This was seen as a blatant assault on the independence of the judiciary. The govt. pleaded that the word “consult” does not mean that the president is bound by the advise. He is free to make his own decision.

In 1977, in the case of Union of India vs Sankalchand Seth, which was related to the transfer of a Judge from one high court to another under Article 222, SC held that the President has the right to differ from the advice provided by the consultants.

The 11th Presidential Reverence sought clarification on certain doubts over the consultation process to be adopted by the Chief Justice of India as stipulated in the 1993 case relating to judges appointment and transfer opinion.

The following propositions were laid down:

1. CJI should consult a collegium of four senior most Judges of the Apex Court
2. The Collegium should make the decision in consensus and unless the opinion of the collegium is in conformity with that of the CJI, no recommendation is to be made
3. In the transfer of HC Judges, in addition to the collegium of four senior most Judges, the CJI was obliged to consult the CJ of two High Courts.
4. In regard to the appointment of HC Judges, the CJI was required to consult only two senior most Judges of the Apex Court

Case Law:

This matter was raised again in the case of SC Advocates on Record Association vs Union of India, AIR 1982. In this case, the SC overruled the decision of the S P Gupta case and held that in the matter of appointment of judges of high courts and supreme court, the CJ should have the primacy and the appointment of the CJ should be based on seniority. It further held that the CJ must consult his two senior most judges and the recommendation must be made only if there is a consensus among them.

As of now, due to the decision in this case, the appointment of the judges in SC and High Courts are fairly free from executive control. This is an important factor that ensure the independence of the judiciary.

Jurisdiction of the Supreme Court
The jurisdiction of the SC can be increased but not decreased i.e. their power cannot be curtailed.

**Art 129 Court of Record**

SC is a court of record and has all the powers including power to punish for civil or criminal contempt of court. In the case of Delhi Judicial Service Asso. vs State of Gujarat 1991, SC held that it can even punish for contempt of any subordinate court in India as well.

In the aftermath of babri masjid demolition, UP CM Kalyan Singh was punished for contempt of court for failing to deliver on his promise not to allow any construction in disputed area.

**Art 131 Original Jurisdiction**

The SC has original jurisdiction in any dispute arising between:

- Center and one or more states.
- Center and one or more states on one side and one or more states on another.
- two or more states.

Under original jurisdiction, individuals cannot bring a suit against the Govt. of India. The suit must involve a question of law or fact on which a legal right depends. Further, the suit cannot be because of any commercial relation or political relation between the two parties.

In the case of **State of Karnataka vs Union of India 1978**, SC held that the suit filed by State of Karnataka against the Govt. regarding its objection to the appointment of an inquiry commission is maintainable.

**Art 132 Appellate Jurisdiction – Constitutional**

The SC is the highest court of appeal in the country. The writs and the decrees of the SC run throughout the country. A person can appeal to the SC under its appellate jurisdiction if he is not satisfied with the decision of the lower courts.

Art 132(1) allows an appeal to be filed in the SC if three conditions are satisfied:

1. The order appealed must be against the judgement of a high court in civil, criminal, or other proceedings.
2. The case involves a question of law as to the interpretation of the constitution.
3. The High Court, under 134A certifies that the case be heard by the SC.

**Krishnaswamy vs Governor General in Council 1947** – If there is a difference of opinion among High Courts and if there is no direct decision by SC on that point, it is a substantial question of law that can permit appeal in SC.

**Art 143 Advisory Jurisdiction**

Art 143 provides that if at any time it appears to the president that a question of law or fact has arisen or is likely to arise and that the question is of such public importance that expeditious opinion of the SC is required, then he may refer it to the SC. The SC, after such hearing as it may deem fit, will report back to the president. Under 143(2), the SC is can be asked to give opinion even on matters not permitted under art 131.

There is no similar provision in the American constitution. In US, the court can give ruling only on concrete cases.

**In re Kerala Education Bill 1953**, SC has interpreted the word “may” in clause 1 as it is not bound to give its opinion. If it has a good reason, it may refuse to express its opinion.

**In re Special Courts Bill 1979 case**, SC has held that opinions given by it under this jurisdiction are binding on all courts in the country.

In the landmark case of **Ayodhya Dispute and Advisory opinion 1994**, the SC refused to express its opinion on whether a temple existed on the disputed location because it was superfluous, unnecessary, and favors a particular religion.

**Public Interest Litigation (PIL)**

The Supreme Court has developed new methods of dispensing justice to the masses through the public interest litigation. Former Chief Justice PN. Bhagwat, under whose leadership public interest litigation attained a new dimension comments that “the supreme court has developed several new commitments. It has carried forward participative justice. It has laid just standards of procedure. It has made justice more accessible to citizens”.

**Judicial Activism**
The term ‘judicial activism’ is intended to refer to, and cover, the action of the court in excess of, and beyond the power of judicial review. From one angle it is said to be an act in excess of, or without, jurisdiction. The Constitution does not confer any authority or jurisdiction for ‘activism’ as such on the Court.

- interference of the judiciary in the legislative and executive fields
- occurs due to the non-activity of the other organs of the government
- relief is provided to the disadvantaged and aggrieved citizens
- a base for policy making in competition with the legislature and executive

In short, **judicial activism** means that instead of judicial restraint, the Supreme Court and other lower courts become activists and compel the authority to act and sometimes also direct the government regarding policies and also matters of administration.

**Judicial Restraint**

In adjudging the constitutionality of socio-economic legislation, judges accord deference to the legislative will and such legislation is not invalidated unless it is patently discriminatory. Judges do not interfere with the policy of the executive government if it is not contrary to a statute or the Constitution.

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**Class Notes on Constitutional Law – Unit IV (1st Sem / 3 year LL.B)**

**Federalism – Distribution of Legislative Powers between Centre and States** – Arts. 245, 246 + VII Schedule

**Center-State Relations**

**The Power of the Union and the States to carry on trade, etc.** – Art. 298

**Freedom of Trade, Commerce and Intercourse** – Arts. 301 – 307

**The Amendment of the Indian Constitution** – Art. 368

**The Doctrine of Prospective Over-ruling**

**Limitation on Constitutional Amendment – the Basic Structure Theory** – Art. 368

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**Class Notes on Constitutional Law – Unit V (1st Sem / 3 year LL.B)**

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 (Article 352)
- failure of constitutional machinery in a state (Article 356), or
- financial emergency (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 advise 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 – 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.
4. State Government is not dismissed when National Emergency is proclaimed but brought under the effective control of the Union.
5. As soon as National 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 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.

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

**Art 359**

This 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:

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

However, this 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 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 article has never been invoked.

Effects of Financial Emergency

1. President is empowered to suspend the distribution of financial resources with States.
2. President can issue directions to States to follow canons of financial propriety.
3. He can direct State Government to decrease salaries allowances of Civil Servants and other Constitutional dignitaries.
4. 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 this 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 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 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

The Doctrine of Pleasure

The doctrine of pleasure owes its origin to common law. The rule in England was that a civil servant can hold his office during the pleasure of the crown and the service will be terminated any time the crown wishes the same rule is applied in India. The member of Defence services or civil services of the union or All-India services hold their office during the pleasure of president. Similarly member of state services holds the office during the pleasure of governor. the provisions related to services under union and state is contained under part XIV of the Indian constitution.

The article 310 of Indian constitution reads that

“Except as expressly provided by this Constitution, every person who is a member of a Defence service or of a civil service of the Union or of an All India Service or holds any post connected with Defence 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.

“Notwithstanding that a person holding a civil post under the Union or a State holds office during the pleasure of the President or, as the case may be of the Governor of the State, any contract under which a person, not being a member of a Defence service or of an All-India service or of a civil service of the Union or a State, is appointed under this Constitution to hold such a post may, if the President or the Governor, as the case may be, deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation, if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate the post”.

Now if such powers are given to president of India and the governor of states than it would be really difficult to exercise power on them so there are certain offices which are outside the purview of article 310 and article 311 was put as a restriction to doctrine of pleasure.

Services excluded from the purview of Article 310

1. Tenure of supreme court judges (Article 124)
2. Tenure of high court judges (Article 148(2))
3. The chief election commissioner (Article 324)
4. Chairman and member of public-service commission (Article 317)
The article 311 acts as a safeguard to civil servants. It reads as under;

(1) No person who is a member of a civil service of the Union or an all-India service or 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.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges: Provided that where, it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed: Provided further that this clause shall not apply —

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or
(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or
(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.”

The procedure laid down in Article 311 is intended to assure, first, a measure of security of tenure to Government servants, who are covered by the Article and secondly to provide certain safeguards against arbitrary dismissal or removal of a Government servant or reduction to a lower rank. These provisions are enforceable in a court of law. Where there is an infringement of Article 311, the orders passed by the disciplinary authority are void ab-initio and in the eye of law “no more than a piece of waste paper” and the Government servant will be deemed to have continued in service or in the case of reduction in rank, in his previous post throughout. Article 311 is of the nature of a proviso to Article 310. The exercise of pleasure by the President under Article 310 is thus controlled and regulated by the provisions of Article 311.

When termination of service will amount to punishment of dismissal or removal.
1. Whether termination of service of a Government servant in any given circumstance will amount to punishment will depend upon whether under the terms and conditions governing his appointment to a post he had a right to hold the post but for termination of his service. If he has such a right, then the termination of his service will, by itself, be a punishment for it will operate as a forfeiture of his right to hold the post. But if the Government servant has no right to hold the post the termination of his employment or his reversion to a lower post will not deprive him of any right and will not, therefore, by itself be a punishment.

2. If the Government servant is a temporary on and has no right to hold the post, dismissal or removal will amount to punishment if such a Government servant has been visited with certain evil consequences.

When Article 311 is applicable.

The most notable point is that Article 311 is available only when “dismissal, removal, reduction in rank is by way of punishment”. so it is difficult to determine as to when an order of termination of service or reduction in rank amounts to punishment

in case of Parshottam Lal Dhirga Vs Union of India. The supreme court laid down 2 tests to determine when termination is by way of punishment –

- Whether the servant had a right to hold the post or the rank;
- Whether he has been visited with evil consequences.

If a government servant had a right to hold the post or rank under the terms of any contract of service, or under any rule, governing the service, then the termination of his service or reduction in rank amounts to a punishment and he will be entitled to protection under Article 311. Articles 310 and 311 apply to Government servants, whether permanent, temporary, officiating or on probation.

Exceptions to Article 311 (2)

The provision to Article 311 (2) provides for certain circumstances in which the procedure envisaged in the substantive part of the clause need not be followed. These are set out below.

1. Conviction on a criminal charge. – One of the circumstances excepted by clause (a) of the provision is when a person is dismissed or removed or reduced in rank on the ground of conduct which has laid to his conviction on a criminal charge. The rationale behind this exception is that a formal inquiry is not
necessary in a case in which a court of law has already given a verdict. However, if a conviction is set aside or quashed by a higher court on appeal, the Government servant will be deemed not to have been convicted at all. Then the Government servant will be treated as if he had not been convicted at all and as if the order of dismissal was never in existence. In such a case the Government servant will also be entitled to claim salary for the intervening period during which the dismissal order was in force. The claim for such arrears of salary will arise only on reinstatement and therefore the period of limitation under clause 102 of the Limitation Act would apply only with reference to that date. The grounds of conduct for which action could be taken under this proviso could relate to a conviction on a criminal charge before appointment to Government service of the person concerned. If the appointing authority were aware of the conviction before he was appointed, it might well be expected to refuse to appoint such a person but if for some reason the fact of conviction did not become known till after his appointment, the person concerned could be discharged from service on the basis of his conviction under clause (a) of the proviso without following the normal procedure envisaged in Article 311.

2. **Impracticability** – Clause (b) of the proviso provides that where the appropriate disciplinary authority is satisfied, for reasons to be recorded by that authority in writing that it does not consider it reasonably practicable to give to the person an opportunity of showing cause, no such opportunity need be given. The satisfaction under this clause has to be of the disciplinary authority who has the power to dismiss, remove or reduce the Government servant in rank. As a check against an arbitrary use of this exception, it has been provided that the reasons for which the competent authority decides to do away with the prescribed procedures must be recorded in writing setting out why it would not be practicable to give the accused an opportunity. The use of this exception could be made in case, where, for example a person concerned has absconded or where, for other reasons, it is impracticable to communicate with him.

3. **Reasons of security** – Under proviso (c) to Article 311 (2), where the President is satisfied that the retention of a person in public service is prejudicial to the security of the State, his services can be terminated without recourse to the normal procedure prescribed in Article 311 (2). The satisfaction referred to in the proviso is the subjective satisfaction of the President about the expediency of not giving an opportunity to the employee concerned in the interest of the security of the State. This clause does not require that reasons for the satisfaction should be recorded in writing. That indicates that the power given to the President is unfettered and cannot be made a justifiable issue, as that would amount to substituting the satisfaction of the court in place of the satisfaction of the President.
Is suspension or compulsory retirement a form of punishment?

Neither suspension nor compulsory retirement amounts to punishment and hence they can’t be brought under the purview of Article 311 and has no protection is available.

Supreme court in case of such Bansh Singh Vs State of Punjab clearly held that suspension from service is neither dismissal nor removal nor reduction in rank, therefore, if a Government servant is suspended he cannot claim the constitutional guarantee of Article 311[2].

In Shyam Lal Vs State of U.P, Supreme Court held that compulsory retirement differ from dismissal and removal as it involves no penal consequences and also a government servant who is compulsory retired does not loose any part of benefit earned during the service so it doesn’t attract the provisions of Article 311.

Other safeguards to civil servants

Article 311(1) : It says that a civil servant cannot be dismissed or removed by any authority subordinate to the authority by which he was appointed

Article 311(2): It says that a civil servant cannot be removed or dismissed or reduced in rank unless he has been given a reasonable opportunity to show cause against action proposed to be taken against him.

In many cases like in Khem Chand vs. Union of India, and in Union of India and another vs. Tlusiram Patel, the Supreme Court gave an exhaustive interpretation of the various aspects involved and they provide the administrative authorities authoritative guidelines in dealing with disciplinary cases.

Is article 310 and 311 contrary to article 20(2) of Indian constitution or to the principle of natural justice?

When a government servant is is punished for the same misconduct under the army act and also under central civil services (classification and control and appeal) rules 1965 then the question arises that can it be brought under the ambit of double jeopardy. The answer was given by supreme court in the case of Union of India Vs Sunil Kumar Sarkar. held that the court martial
proceeding is different from that of central rules, the former deals with the personal aspect of misconduct and latter deals with disciplinary aspect of misconduct.

Ordinarily, natural justice does not postulate a right to be represented or assisted by a lawyer, in departmental inquiries but in extreme or particular situation the rules of natural justice or fairness may require that the person should be given professional help.

The Liability of State in Contracts – Art. 299

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 authorise.

(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 Article 299

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.
2. 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 authorise.
3. 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.
4. Article 299 is mandatory
5. If the requirements of Article 299 are not complied with, the officer executing the contract would be personally liable.
6. 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.

7. Depending upon the facts and circumstances, the Doctrine of Estoppel may also apply in the Government Contracts under 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 Estoppel

The Doctrine of Promissory Estoppel has been variously called ‘Promissory Estoppel’, ‘Requisite Estoppel’, ‘Quasi-Estoppel’ and ‘New Estoppel’. It is a principle evolved by equity to avoid injustice and though commonly named ‘Promissory Estoppel’, it is neither in the realm of Contract nor in the realm of Estoppel. The true principle of ‘Promissory Estoppel’ seems to be that where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or effect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective of whether there is any pre-existing relationship between the parties or not.

The Doctrine of Promissory Estoppel need not be inhibited by the same limitation as estoppel in the strict sense of the term. It is an equitable principle evolved by the Courts for doing justice and there is no reason why it should be given only a limited application by way of defence.

M.P. Sugar Mills v State of U.P.

U.P. Rajkya Nirman Nigam Lt.d v Indure Pvt. Ltd. and others

The Liability of State in Torts / Suits and Proceedings – Art. 300
Article 300 of the Constitution of India lays down provisions that the State can sue and can be sued, and it is also liable for its and its employees’ torts.

300. Suits and proceedings. —

(1) The Government of India may sue or be sued by the name of the Union of India and the Government of a State may sue or be sued by the name of the State and may, subject to any provisions which may be made by Act of Parliament or of the Legislature of such State enacted by virtue of powers conferred by this Constitution, sue or be sued in relation to their respective affairs in the like cases as the Dominion of India and the corresponding Provinces or the corresponding Indian States might have sued or been sued if this Constitution had not been enacted.

(2) If at the commencement of this Constitution—

- (a) any legal proceedings are pending to which the Dominion of India is a party, the Union of India shall be deemed to be substituted for the Dominion in those proceedings; and
- (b) any legal proceedings are pending to which a Province or an Indian State is a party, the corresponding State shall be deemed to be substituted for the Province or the Indian State in those proceedings.

Buron v Denman

Hardial Singh v State of PEPSU

Defences of Sovereign Immunity

Sovereign Immunity – Position in England

Sovereign Immunity – Position in India

BEFORE COMMENCEMENT OF THE CONSTITUTION

Secretary of State (1861)

AFTER COMMENCEMENT OF THE CONSTITUTION

State of Rajasthan v Vidyawati

State of Gujarat v Memon Mahomed Haji Hasan
Smt. B.K.D. Patil v State of Mysore

The Vicarious Liability of State – Art. 300

Position in England

“Res non protest peccare” (The King can do no wrong) is an ancient and fundamental principle of the English law. King is regarded above all laws. This principle was also extended to his employees. Therefore, if a tort was committed by King’s servants in the course of their employment, the injured has no right to sue the King under the vicarious liability.

“Respondeat Superior” principle was not adopted in the case of the King. The Courts in various decisions criticized this exemption given to the King, opining that it was against the principles of equity, good conscience and justice. As a result of long discussions in the Courts and in the Parliament, at last, the Britain Parliament passed The Crown Proceedings Act, 1947. Now, the Crown can also be sued for his servants’ tortious acts committed in their course of employment under the principle of “Respondeat Superior“.

Position in India

Rup Ram v The Punjab State

Vidyawati v Lokumal

Kasturilal v State of U.P.

Pagadala Narasimham v The Commissioner & Special Officer, Nellore Municipality

State of Orissa v Padmalochan

State of M.P. v Chironji Lal

State of Punjab v Lal Chand Subharwal

Satyawati Devi v Union of India

State of Gujarat v Memon Mahomed