

VIDYAVARDHAKA LAW COLLEGE

Sheshadri Iyer Road, Mysuru

Subject: Constitutional Law – II

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UNIT – I

Q.No.I FREEDOM OF TRADE, COMMERCE AND INTERCOURSE THROUGHOUT THE TERRITORY OF INDIA: ARTICLES 301 TO 307

Art 301: freedom of trade , commerce & intercourse – section 92 of the Australian constitution.

Object: is to minimize the regional trade barriers & allow the free flow of the stream of trade, commerce & intercourse throughout the territory of India.

- Free movement & exchange of goods throughout the territory of India is essential for the economic unity of the country which alone can sustain the progress of the country.

Trade: buying or selling of goods

Commerce: includes all forms of transportation

Intercourse: movement of goods from one place to another place.

Trade, Commerce, Intercourse : covers all kinds of activities which are likely to come under the nature of commerce.

Art 301: Freedom of trade, commerce and intercourse throughout the territory of India
Throughout the territory of India.

- Not absolute freedom & regulation.
- Art 301 applies only those laws whose direct & immediate effect is to restrict or inhibit freedom of trade, commerce or intercourse will hit by Art 301.

- A purely regulatory & compensatory law can not be regarded as violative of freedom of trade & commerce.
- Traffic regulations, licensing of Vehicles, tax, toll fee.

Whether tax is compensatory or not

- **Indian cement V/S State of AP:** the notification issued by the state of AP & karnataka U/S 8(5) of the central sales tax Act.

Under this Act reducing the rate of tax on the sale of cement by the local cement manufactures. The local cement manufacture of other state were challenged. Supreme Court held that variation of the rate of interstate sales tax does affect free trade, commerce & creates a local preference which is contrary to the scheme of part XII of the constitution.

State of Mysore V/S Sanjeevaiah:The govt made a rule under the Mysore forest Act banning movement of forest produce between sunset & sunrise.SC held that void not regulatory.

State of Bihar V/S Harihar prasad Debuka:A notification issued by the Bihar govt requiring a person transporting goods – permission.Notification was regulatory in nature.

State of Tamil Nadu V/S sanjeeth trading co: The validity of clause 3 of the Tamil Nadu (movement control) order 1982 was challenged. By notification timber was declared to be an essential article & a total ban was imposed on its movement from the state of TN to any place outside the state. Held that it was regulatory measure for ensuring the availability of timber to a common man at a reasonable price, authorized U Art 301 & 304.

Auto mobile transport Ltd V/S St. Rajasthan:A Challenged the validity of the Rajasthan Motor Vehicles taxation Act.State govt imposed a tax on all motor vehicles used & kept within the state of Rajasthan.

1) Art 301 : inter & intra state

2)T,C,I have the widest connotation & take in movement of goods & persons

3)the freedom is not only form laws enacted in the exercise of the powers conferred by the legislative entries relating to trade& commerce or production, supply & distribution of goods but also to all laws including tax laws.

4) Only those laws whose direct or immediate effect to inhibit or restrict freedom of trade or commerce will come with the mischief of Art 301.

5) Laws which are merely regulatory or which impose purely compensatory taxes & hence intended to facilitate freedom of trade are outside the scope of Art 301.

Sale of lottery ticket is a trade or not

B.R Enterprise V/S State of Up: S5 of the Lottery regulation Act.

Restriction on trade & commerce

Art 302: parliament's power to impose restriction: one state or another or throughout the territory of India.

Public interest & reasonable.

Ex: essential commodities Act

Art 303 power of parliament U Art 302 is limited by Art 303

- Art 303(1): provides that parliament shall not have power to make any law giving any preference to any one state over another by virtue of any entry relating to trade & commerce in any one of the list in the 7th Schedule.
- Art 303(2) the parliament may however discriminate among states if it is declared by a law that it is necessary to do so for the purpose of dealing with a situation arising from scarcity of goods in any part of the territory of India

Art 304 state power to regulate trade & commerce:

- 304(1) empowers the state to impose any tax on goods imported from other state, if similar goods in the state are subject to similar tax so as not to discriminate between goods so imported & goods manufacture or produce in the state.

State of MP V/S Bhailal Bhai: state law imposes sales tax on imported tobacco but locally produced tobacco was not subject to such sales tax. Not valid. Art 304(2) state has power to impose reasonable restriction.

Conditions: previous sanction of the president, public interest, reasonable.

Article 305: saving of existing laws & laws providing for state monopolies.

Article 306: repealed

Article 307: appointment of authority for carrying out the purpose of Art 301 to 304.

Q.No 11 EXPLAIN THE LEGISLATIVE RELATIONSHIP BETWEEN UNION AND STATE

Legislative relations Article 245- 255

- Federal form of government.
- Two fold of distribution of legislative power
 - 1) With respect to territory
 - 2) With respect to subject matter.
 - 1) With respect of territory: territorial jurisdiction.

Art 245(1)

Art 245(2) extra territorial operation.

Legislative power of the parliament: the scheme of the distribution of power, fundamental rights, other provisions of the constitution.

Doctrine of territorial nexus

- State legislature
- Exception: extra territorial operation will be valid if there is sufficient nexus between the object & the state.

Wallace brothers & co V/S CIT: co was incorporated in England & has a registered office, there was a partner in a firm in India.

- Co made an over all profit & major part of the profit was derived from India.
- The levy of income tax by the India income tax authorities on the entire income of the co was held to be valid.

Legislative power is plenary

- Constitutional limits & legislative competence.
- Prospectively & retrospectively.
- Delegated legislation.

Reasons: 1) pressure of parliamentary work

2) technicality of subject matter

3) opportunity for experimentation

4) unforeseen contingencies

5) emergency.

Limitation : essential legislative function

- Control
- Sub delegated legislation
- **Distribution of legislative power – subject matter**
- The govt of Indian Act 1935 introduce a scheme of 3 fold enumeration.
- Art 248: residuary power.
- Art 246: principles relating to the Interpretation of lists – Interpretation of the legislative power.
- Pith & substance:

Sometimes a law made with respect to the matter or subject enumerated in one list touches on the matter or subject enumerated in another list.

Legislative competence – true nature & character.

State of Bombay V/S F.N.Balsara

- **Bombay prohibition Act**
- It prohibited the sale & possession of liquor in the state. The possession, production, manufacture, transport, purchase & sale of intoxicating liquors fall with the state list, while import of liquor falls in the union list.
- Prohibition of the sale & possession of liquor will affect its import.
- SC it was incidental & Act was intra vires & valid.
- **Colourable legislation: K.T. Moopil Nair V/S state of kerala** : the travancore cochin Land tax Act held invalid on the ground that the Act apparently purported to be a taxing Act but in reality it was not a taxing Act.
- **Doctrine of Harmonious construction**: When there is a conflict between two or more statutes or two or more parts of a statute then the rule of harmonious construction needs to be adopted.
- Every attempt has been made by the constitution makers to make the entries in one list exclusive of those in other lists but in spite of it often conflict or overlapping between an entry in one list and an entry in the other lists is found. To meet such a situation the doctrine of harmonious construction has been evolved by the Court. In such situation it is the duty of the court to reconcile the entries and bring out harmony between them.

- **State of Bombay V/s Balsara:** the Bombay Prohibition Act was challenged, which prohibited the sale and possession of liquor in the state, was challenged on the ground that it incidentally encroached upon the import and export of liquors across borders, which was a central subject. The act was held valid by the court and gave a narrow to the word “import” and held that it should not be taken to mean that importer of prohibited liquor in the state of Bombay could possess and sell it. The Act was held valid.
- **Art 247: power of parliament to provide for the establishment of certain additional courts:** Article 247 of the Constitution speaks of the power of the parliament to provide for the establishment of certain additional courts in respect of matters under the Union list.

Art 248: Residuary power: (1)Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent list or State list.

(2) These power shall include the power of making any law imposing a tax not mentioned in Union list and State list.

Attorney General for IndiaV/S Amratlal Prajivandas: The S/C has observed that the test to determine the legislative competence of Parliament is this whenever the competence of parliament to enact a specific statute is questioned one must look to the entries in list II. If that specific statute is not relatable to any of the entries in list II, no further inquiry is necessary as parliament will be competent to enact the statute either by virtue of the residuary power contained in article 248.

Several Acts have been enacted by parliament under its residuary power, for example, The wealth Tax Act, Gft Tax Act, Commission of Inquiry Act.

Article 249 power of parliament to legislate with respect to a matter in the state list in the National interest: Article 249 says, if Rajyasabha pass a resolution with 2/3 majority that says that central Government has to make laws about the matter which comes in states list as it is need of the hour and in national interest then it given special power to the Union Government to form laws. Its maximum time period is 1 years but it can be extended by passing again this resolution.

Article 250 power of parliament to legislate with respect to any matter in the state list if a proclamation of emergency is in operation: According to article 250 of the Indian constitution while the proclamation of emergency is in operation the parliament shall have power to make laws for the whole or any part of the territory of India With respect to goods and service tax provided under article 246A or any of the matters in

the state list. Such a law shall cease to have effect on the expiration of six months after the proclamation of emergency has ceased to operate.

Article 251 Inconsistency between laws made by parliament under Articles 249 & 250 & laws made by the legislature of states: if any provision of law made by the legislature of state is repugnant to any provision of a law made by parliament. Which parliament has under either article 249 and 250 power to make, in a case the law made by parliament. Whether passed before or after the law made by the legislature of the state, shall prevail, and the law made by the legislature of the state shall to the extent of the repugnancy be inoperative, but only as long as the law made by parliament continues to have effect. This means, once the law made by the parliament cease to have effect that law made by state legislature will again come into effect.

Article 252 power of parliament to legislate for two or more states by consent & adoption of such legislation by any other state: If the legislature of two or more states passes a resolution to the effect that it is desirable to have a law passed by the parliament on any matters in the State list, then the Parliament can make laws for regulating that matters.

Article 253 legislation for giving effect to international agreements: 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.

Article 254 Repugnancy between union law & state law:

Article 254 says, where there arises a conflict between the Central and the State law. What it primarily does is that it provides absolute supremacy to Central Government to make laws and in effect the division made between State and Center is negated.

If there is any inconsistency of a law made by the Legislature of a State with any provision of a law made by Parliament which Parliament is competent to enact, or on a matter of Concurrent List, then, the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail.

Article 254 clause (1) says that in case the Parliament enacts a law, with respect to a matter enumerated in the concurrent list (both Center and State have the power to make laws on matters listed here), which is in conflict (whether at the time of enactment or subsequently) with a law enacted by the Legislature of the State then, in

that case, the law enacted by the Parliament shall prevail to the extent there is a conflict.

Clause (2) provides an exception to clause (1) that if the State Legislature has received the assent of the President then such law shall prevail over and above the Central law. However, the Center can, if it wants, override such a law which has received President's assent by enacting a subsequent law.

M. Karunanidhi v. Union of India: In this case, a constitutional bench of the Apex court considered the question of repugnancy between a law made by the Parliament and a law made by the State legislature. It was observed that the following conditions should be satisfied for the application of the doctrine of repugnancy:

1. A direct inconsistency between the Central Act and the State Act.
2. The inconsistency must be irreconcilable.
3. The inconsistency between the provisions of the two Acts should be of such nature as to bring the two Acts into direct collision with each other and a situation should be reached where it is impossible to obey the one without disobeying the other.

The Court also laid down some propositions in this respect. For the application of the doctrine of repugnancy, two enactments must contain provisions that are so inconsistent that they cannot stand together in the same field.

Article 255 requirement as to recommendation & previous sanctions to be regarded as matters of procedure only: This article provides that any law made by parliament or state legislature will not be invalid only because where the recommendations required was that of the Governor, and where the recommendations required was that of the President, was not taken.

Q.No.III. EXPLAIN THE ADMINISTRATIVE RELATIONSHIP BETWEEN UNION AND THE STATE

Article 256 of Constitution of India "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.

For instance, the Union can give directives to the State pertaining to the construction and maintenance of means of communication, declared to be of national or military importance, protection of railways within the State, the provisions of adequate facilities for instructions in mother tongue at the primary stage of education to children belonging to linguistic minority groups in the State and for the drawing up and execution of the specified schemes for the welfare of the Schedule Tribe in the State. This is essential to ensure the implementation of Parliamentary laws throughout the country.

Non-compliance of the directives might lead to a situation mentioned under Art.365 and then it shall be lawful for the President to hold that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of the Constitution.

Thus, the Union can invoke **Article 356**, for the imposition of **President's rule** in the State and take over the administration of the State.

Article 257:-Control of the Union over States in certain cases

According to [Article 257](#); the exercise of the executive powers of the States must not impede or prejudice the exercising of the executive power of the Union, and the executive power of the Union shall extend up to directing a State which as it may find necessary for the purpose.

Such directions by the Union Government may also extend to a State in 2 specific matters- a) The construction and maintenance of the communication mean possessing national and military significance, b) Measures to be adopted by the States in protecting the railroads situated within the perimeter of the States.

This directive power by no means encroaches on the Parliamentary powers to declare highways or waterways as National Highways and waterways, and construct communication modes as a part of functions relating to the military forces of the Union.

If any extra cost is incurred by the State Government, while carrying out the directions of the Union Government; relating to construction and maintenance of the national and military communication, or relating to the protection of the railroads within the States, then the Union Government shall pay such sum as agreed under this provision. If the Center and the States fail to agree regarding the payment of such compensation, then an arbitrator appointed by the Chief Justice of India shall decide on the matter.

B) Delegation of Union's function upon the States

I. Power of the Union to confer powers, etc on the State in certain matters

According to [Article 258](#);

1. The Parliament may, with the consent of the State Government, either conditionally or unconditionally, entrust the state or its officers with functions relating to the executive power of the Union.
2. The Parliament is also empowered to use the State machinery for enforcing the Central laws and may confer and impose duties upon the State or its officers in this regard. It is notable that the delegation of power mentioned under clause 1 is delegated with the State's consent, whereas the delegation under clause 2 can be done by the Parliament without the consent.
3. If a law conferring delegated powers and duties is passed, it would be the duty of the officers of the State to implement it. Thus, the Parliament is capable of interfering in the State's administrative affairs even without the State's consent.

II. Powers of the States to entrust functions on the Union

According to [Article 258 A](#); the Governor of a state with the consent of the Union Government, may entrust it or its officers with functions, relating to any matter which is under the domain of the Union's executive power.

C) Full faith and credit clause

According to [Article 261](#); full faith and credit shall be provided throughout the Indian territory to the following:

1. Public acts,
2. Records, and
3. Judicial Proceedings of the Union and each State.

Also, final judgment or orders passed by Civil Courts in any part of the territory can be executed anywhere in the country.

D) Disputes relating to Water

According to [Article 262](#);

The Parliament has authorization to legally provide adjudication of any dispute or complaints with respect to-

1. The uses;
2. Control or distribution over the waters of any interstate river or river valley.

The Parliament may legislate to withhold the Supreme Court or any other Court to have jurisdiction over disputes relating to the water of the inter-state rivers and river valleys.

E) Grants in aid

The economic resources of the State are very limited although they have to perform many social upliftment tasks under the requirement of the Directive Principles. In order to cope with their ever-expanding needs, the Central Government grants aid to the States.

These aid grants serve a twofold purpose-

- The Central Government exercises strict control over the States because these grants are subject to two certain conditions and it is withdrawable if any State disagrees with these conditions. It forms a center-state coordination & cooperation.

F) All-India Services

According to [Article 312](#); if the Rajya Sabha passes a resolution of national interest supported by a 2/3rd majority, the Parliament may legislate to create one or multiple All-India Services having conditions for persons appointed to any service.

This provision is objected towards ensuring greater inter-state coordination and implementation of the policies of the Central Government. Also, this helps the Central Government to implement the Union laws through the State Government.

Cooperative Federalism

According to [Article 263](#); if at any time the President opines that the public interests would be served by the establishment of a Council charged with the duty of-

1. Inquiring into and advising on disputes between the States;
2. Investigating and discussing on subject matters of common interest between the States, or the Union and one or multiple States;
3. To recommend upon any subject, particularly for the better coordination of policy and action, then the President shall by order establish such council, and define-
 - The nature of the duties performed by it,
 - Its organization and procedure.

Constitution of the Council

The Council shall be constituted by the following members-

1. The Prime Minister;
2. Chief Ministers from all the States;
3. Chief Ministers of the Union Territories having a legislative assembly and the Administrators from the Union Territories lacking a legislative Assembly;
4. 6 Cabinet Ministers in the Union Ministerial Council nominated by the Prime Minister.

The Prime Minister shall be the Chairman of this Council and preside over its meeting. In his absence, he may nominate any Union Cabinet Minister for the purpose.

The Procedure of the Council

1. The Council shall adopt guidelines to identify and select issues which are to be brought before it;
2. The Council may meet 3 times every year;
3. The meeting of the Council shall be recorded by Camera;
4. The members shall form a question for the Council meeting;
5. All such framed questions shall be decided through consensus;

6. The Council may while conducting its business observe such other procedures as it may lay down from time to time.

Q.NoIV.EXPLAIN FINANCIAL RELATIONSHIP BETWEEN CENTRAL AND STATE ARTICLE 264 TO 291

In financial field too the centre is more powerful than the states. In fact, for their development plans the states are purely dependent on the centre. No state can afford to work without active financial assistance of the central government. Undoubtedly in all federations, the units are financially not self-sufficient, but in India economic dependence of the states on the centre is rather too much.

Division of subjects, as provided in the constitution is of such a nature that the states have many more sources of expenditure than those of income.

Of course, there are taxes which are levied and collected either exclusively by the states or centre, but there are also taxes which are collected by the states on behalf of the centre, while some of the taxes are collected by the union government and handed over to the states. On the whole, however, the states are to depend on the grant-in-aid to be given by the central government to the states.

In India system of taxation is very much based on the Act of 1935, with the provision that after every five years President shall appoint a Finance Commission to find out the ways and methods of properly distributing sources of income. The states are empowered to collect taxes, such as stamp duties, excise duties, etc., but are not required to deposit the amount so realised with the Union Government.

The taxes on such items as succession to property, terminal taxes on goods carried by railways, air force or navy, tax on railway fares and freights, tax on transactions in stock exchanges, etc., are to be collected by the Union Government but to be appropriated to the state governments.

It is also provided that the taxes on such items as income other than agricultural income, duties on excise, etc., will be levied and collected by the Union Government and shared between the Union and the States. Since the states have comparatively less sources of income, the central government provide grant-in-aid to them to ran their administrative and development expenses.

Taxes Exclusively Assigned to the Union:

- i) Customs and export duties

- (ii) Income tax
- (iii) Income from railways and postal departments.
- (iv) Excise duty on tobacco, Jute cotton.
- (v) Estate duty and succession duty in respect of property other than agricultural land.
- (vi) Corporation tax
- (vii) Taxes on Capital values of both individual and companies assets.

Taxes Exclusively Assigned to the States:

- 1) Succession and estate duty in respect of agricultural land.
- 2) Taxes on Vehicles used on roads, animals, boats. Income from land revenue and
- 3) Stamp duty except on documents included in the Union List.
- 4) Taxes on consumption or sale of electricity.
- 5) Taxes on goods and passengers carried by road or inland water.
- 6) Toll tax.
- 7) Taxes on lands and buildings. Taxes on Professions and traders.
- 8) Duties on alcoholic liquors for human consumption.

Taxes Leviable by the Union but to be Collected and Appropriated by the States:

- Taxes on luxuries and bettings.
- Taxes on bill of landing, letters of credit.
- Stamp duties on bills of exchange, cheques and promissory notes.
- Excise duty on medicinal toilet preparations.
- **Taxes Levied and Collected by the Union but Assigned to the States:**
- Duty in respect of succession to property other than agricultural land.
- Taxes on railway freights and fares.
- Taxes on transactions in stock exchanges.
- Terminal taxes on goods and passengers carried by railway, sea or air.
- Taxes on sale and purchase of news papers and on advertisements published there in.

Article 264 of Constitution of India "Interpretation"

In this Part, "Finance Commission" means a Finance Commission constituted under Article 280.

Article 265 of Constitution of India "Taxes not to be imposed save by authority of law"

No tax shall be levied or collected except by authority of law.

Article 266 of Constitution of India "Consolidated Funds and public accounts of India and of the States"

What is Consolidated Fund of India?

The Consolidated Fund of India includes revenues, which are received by the government through taxes and expenses incurred in the form of borrowings and loans. It represents one of the three parts of the Annual Financial Statement with the other two: the Contingency Fund and Public Account. All government expenditures are met by consolidated funds except a few made by contingency fund or public fund. The Consolidated Fund of India was created under Article 266 of the Constitution. It is also considered as the most important part of the financial statement. Similar to the Centre, every state has its own Consolidated Fund as well.

What goes into Consolidated Fund of India?

All the government revenue generated from taxes, asset sale, earnings from state-run companies, etc go into the Consolidated Fund of India. The fund gets money from:

- Revenue earned in direct taxes such as income tax, corporate tax, etc
- Revenue earned in indirect taxes such as GST
- Dividends and profits from PSUs (Public Sector Undertakings)
- Money earned through government's general services

Keep in mind , no money can be withdrawn from the Consolidated Fund of India, without the government securing the approval of the Parliament.

Charged Expenditures on Consolidated Fund of India

The disbursements charged on the Consolidated Fund or Charged Expenditures are non-votable charges. No voting takes place for the withdrawal of these expenditures from the Consolidated Fund of India. These charges have to be paid whether the Budget is passed or not.

The expenses under this category include salaries and allowances of:

the President

the Speaker

the Deputy Speaker of the Lok Sabha

Chairman and Deputy Chairman of the Rajya Sabha

salaries and allowances of Supreme Court judges

pensions of Supreme Court and High Court judges.

Article 267:- Contingency Fund

The Contingency Fund stores money for some of the urgent or unplanned expenditures of the government. The President gives advance for a particular sum of money to be stored in the Contingency Fund for emergency uses. The Comptroller

and Auditor General, is responsible for audit of receipts and expenditure from the Fund and also of the states.

Article 268:- Duties levied by the Union but collected and appropriated by the States:

This Article was amended by the Constitution (seventh amendment) Act, 1956 with effect from 1st November 1956.

Article 268 (1) provides that stamp duties and excise on medicinal and toilet preparation which are mentioned in Union List, the collection of duties shall be made by the State which shall be levied by the Union Government. The proceeds of any such duty leviable within any State in any financial year shall not form part of the consolidated Fund of India but shall be assigned to that State.

Article 269: Taxes levied and collected by the Union but assigned to the States:

This Article was lastly amended by the eightieth amendment with effect from 1st April, 1996. Taxes which shall be levied and collected by the Government of India which are included in this Article: (a) the consignment of goods which takes place in the course of inter-state trade or commerce, (b) sale or purchase of goods which takes place in the course of inter-state trade or commerce.

Article 270: Taxes levied and distributed between Union and States:

This Article was lastly amended in eightieth amendment which was in effect from 1st April, 1996. This Article specifically provides that taxes on income other than agricultural income and corporation tax shall be levied and collected by the Union and is distributed by the Union and States . The revenue which shall be transferred to the States is unconditional and the States shall be free to use their income as and when they like. In spite of the large transfer, the fact remains that States are not happy and the main reason being that due to political reasons, the States do not make adequate efforts to impose more tax. The tax proceeds shall not form a part of consolidated fund of India but shall be distributed among States.

Article 271: Surcharge on certain duties and taxes for purposes of the Union

Article basically speaks that Parliament is empowered to levy a surcharge from time to time as it's the parliament who has imposed a surcharge and so it won't be precluded to surcharge in another form. All proceeds from such surcharges are to form part of the Consolidated Fund of India and are not liable to be distributed among the states. No one can prevent Parliament to impose a surcharge.

Article: 272: Taxes which are levied and collected by the Union and may be deistributed between the Union and the States:

This Article has been omitted by the Constitution Act, in eightieth amendment.

Article 273: Grants in lieu of export duty on jute and jute products:

The Central Governement shared the net proceeds of the jute export duty with the jute growing provinces. Under this Constitution, the States are not entitled to any share. The Provision specifies that for a period of 10 years from the commencement of the Constitution, the jute growing states of West Bengal, Bihar, Orissa and Assam will receive grants-in-aid from the Union in lieu of the share of the jute export duty to the extent of sums specified by the President with the consultation of Finance Commission.

• **Article 274:- Previous sanction of the President**

No Bill or amendment can be introduced or moved in either House of Parliament *without the previous sanction of the President*, if:

- It imposes or varies any tax in which the States are interested; or
- It varies the meaning of the expression “Agricultural Income” as defined in the Indian Income-Tax Act; or
- It affects the principles on which money are distributed to the States; or
- It imposes a surcharge on the State taxes for the purpose of the Union.

Article 275:Grants from the Union to certain States

Article 275 empowers the *parliament to make grants to the states which are in need of financial assistance* and not to every state. Also , different sums may be fixed different states. These sums are charged on the Consolidated Fund of India every year.

- Apart form this general provisions, the Constitution also provides for specific grants for promoting the welfare of the scheduled tribed in a state or for raising the level of administration of the scheduled areas in a state including the State of Assam. The statutory grants under article 275 are given to the states on the recommendations of the Finance Commission.
- The Parliament may make grants-in-aid from the Consolidated Fund of India to any States as are in need of assistance (**Art.275**), particularly for the promotion of welfare of tribal areas.

Article 276:- Taxes on Profession, trade, calling and employments.

No law of the Legislature of a State relating to taxes for the benefit of the State or of a municipality, district board, local board or other local authority therein in respect of professions, trades, callings or employments shall be invalid on the ground that it relates to a tax on income.

The total amount payable in respect *of any one person to the State or to any one municipality, district board, local board or other local authority in the State by way of taxes on professions, trades, callings and employments shall not exceed two hundred and fifty rupees per annum.*

Article 277:- Saving

Any taxes, duties, cesses or fees which, immediately before the commencement of this Constitution, were being lawfully **impose by the Government of any State or by any municipality** or other local authority or body for the purposes of the State, municipality, district or other local area may impose taxes, duties, cesses or fees are **mentioned in the Union List, continue to be levied and to be applied to the same purposes until provision made by Parliament.**

Article 278:- 7th Amendment Act 1956 – Omitted

Article 280:- Finance Commission:

The Finance Commission of India was established on 22nd November, 1951. It was established under Article 280 of the Indian Constitution by the President of India. It was formed to describe the financial relations between the centre and the state.

The Finance Commission has been provided for the Indian constitution as part of the scheme of division of financial resources between the two different sets of governments. Finance Commission also serves as a constitutional body for the purpose of allocation of certain resources of income between the Union and the State Governments.

The **Commission has** been given passable powers to perform its function and within its area of activity. It has all the **powers of the Civil Court as per the Code of Civil Procedure, 1908.** It can call any witness, or can ask for the production of any public record or document from any court or office. It can ask any person to give information or document on matters as it may feel to be useful or relevant. It can function as a civil court in discharging its duties.

Functions:-

The Commission makes recommendations to the president with regard to:

- The distribution of the proceeds of taxes between the union and the states.

- The principles which should govern the grants-in-aid to be given to the states.
- Any other matter referred to the Commission by the President in the interest of sound finance.
- The recommendations of the commission are generally accepted by the Union Government as well as by the parliament.

Article 281 of Constitution of India "Recommendations of the Finance Commission"
The President shall cause every recommendation made by the Finance Commission under the provisions of this Constitution together with an explanatory memorandum as to the action taken thereon to be laid before each House of Parliament.

Article 282:- Expenditure defrayable by the Union or a State out of its revenues:-

The Union or a State may make any grants for any public purposes, Public Health, education.

Article 283:- Custody of Consolidated Fund, Contingency Funds and moneys credited to the public accounts:

283(1) The custody of the Consolidated Fund of India and the Contingency Fund of India, the *payment of moneys* into such Funds, the *withdrawal of moneys* therefrom, the custody of public moneys other than those credited to such Funds received by or on behalf of the Government of India, their payment into the public account of India and the withdrawal of money in this account and all other matters connected with or other matters *shall be regulated by law made by Parliament, and, until provision in that behalf is so made, shall be regulated by rules made by the President.*

Article 283(2) :The custody of the Consolidated Fund of a State and the Contingency Fund of a State, the payment of moneys into such Funds, the *withdrawal of moneys* therefrom, the *custody of public moneys* other than those credited to such Funds *received by or on behalf of the Government of the State*, their payment into the public account of the State and the withdrawal of money in this account and all other matters connected with or other matters shall be *regulated by law made by the Legislature of the State, and, until provision in that behalf is so made, shall be regulated by rules made by the Governor of the State.*

Article 284:-Custody of suitors' deposits and other moneys received by public servants and courts.

All moneys received by or deposited with-

a) Any officer employed in connection with the affairs of the Union or of a State in his capacity as such, other than *revenues or public moneys raised or received by the Government of India* or the *Government of the State*, or

(b) Any court within the territory of India to the *credit of any cause, matter, account or persons*,

Shall be paid into the public account of India or the public account of State.

Article 285:- Exemption of property of Union and State taxation:

It says that Property of Union should be exempt from all state taxation. This clause raises two questions, 1. whether tax is one on property

2. Whether such property is vested in Union property includes lands, buildings, chattels, share, debts, anything that has a money value, every kind of property movable or immovable.

The State cannot tax under Article 298. Property of Union means the ownership is vested in Union.

Article 286:-Restrictions as to imposition of tax on the sale or purchase of goods:-

State Legislature cannot impose a tax or authorize the imposition of a tax, on the sale or purchase of goods takes place,

1. Outside the State or
2. In the course of the import of the goods into or export of the goods out of, the territory of India.

When the sale or purchase of goods takes place in the course of inter-state trade or commerce, the centre is competent to impose a tax and the State cannot impose sales tax on sale or purchase.

The State can impose tax on sales in case the sale or purchase of the goods takes place within the State.

Article 287:-Exemptions from the taxes on electricity:

Under Schedule 7 list II Entry 53, the state legislature has exclusive power of making laws as to the imposition of taxes on the consumption or sale of electricity. Article 287 and 288 impose some limitation upon it which is relating to Central Government and to the railways. Under Article 288, restriction is relating to electricity, water stored, generated, consumed distributed or sold by authorities constituted for developing any inter state river or river valley. But parliament by making law can permit to tax upon that.

Article 288 Exemption from taxation by States in respect of water or electricity in certain cases – President may by order otherwise provide, no law of a State in force immediately before the commencement of this Constitution shall impose, or authorise the imposition of, a tax in respect of any water or electricity stored, generated, consumed, distributed or sold by any authority established by any existing law or any law made by Parliament for regulating or developing any inter-State river or river-valley.

Article 289 Exemption of property and income of a State from Union taxation:

- 1) The property and income of a State shall be exempt from Union taxation.
- 2) clause (1) shall prevent the Union from imposing, or authorising the imposition of, any tax to such extent, if any, as Parliament may by law provide in respect of a trade or business of any kind carried on by, or on behalf of, the Government of a State, or any operations connected therewith, or any property used or occupied for the purposes of such trade or business, or any income accruing or arising in connection therewith.

Article 290 Adjustment in respect of certain expenses and pensions –

Where under the provisions of this Constitution the expenses of any court or Commission, or the pension payable to or in respect of a person who has served before the commencement of this Constitution under the Crown in India or after such commencement in connection with the affairs of the Union or of a State, are charged on the Consolidated Fund of India or the Consolidated Fund of a State, then, if—

- a) in the case of a charge on the Consolidated Fund of India, the court or Commission serves any of the separate needs of a State, or the person has served wholly or in part in connection with the affairs of a State; or
- (b) in the case of a charge on the Consolidated Fund of a State, the court or Commission serves any of the separate needs of the Union or another State, or the person has served wholly or in part in connection with the affairs of the Union or another State, there shall be charged on and paid out of the Consolidated Fund of the State or, as the case may be, the Consolidated Fund of India or the Consolidated Fund of the other State, such contribution in respect of the expenses or pension as may be agreed, or as may in default of agreement be determined by an arbitrator to be appointed by the Chief Justice of India.

Q.No.5. PRESENT STATUS OF JAMMU AND KASHMIR

- On 5th of August 2019, the President of India promulgated the **Constitution (Application to Jammu and Kashmir) Order, 2019**.
- The order effectively abrogates the special status accorded to Jammu and Kashmir under the provision of **Article 370** . whereby provisions of the Constitution which were applicable to other states were not applicable to **Jammu and Kashmir (J&K)**
- According to the Order, provisions of the **Indian Constitution are now applicable in the State**.
- This Order comes into force “at once”, and shall “supersede the Constitution (Application to Jammu and Kashmir) Order, 1954.”
- A separate Bill - the **Jammu and Kashmir Reorganisation Bill 2019** - was introduced to bifurcate the State into two separate **union territories of Jammu and Kashmir (with legislature)**, and **Ladakh**.
- **Jammu and Kashmir Reservation (Second Amendment) Bill, 2019** was also introduced to extend the reservation for **Economically Weaker Sections (EWS)** in educational institutions and government jobs in Jammu and Kashmir.

What are the provisions of article 370:- This article provides Special Status to J&K, which are- Special rights have been conferred to residents of the state of j&k with regard to public employment, acquisition of immovable property and scholarship etc. Directive Principles of State Policy and Fundamental Rights are not applicable to J&K. Fifth and Sixth Schedule of Indian Constitution are not applicable to J&K. Financial emergency cannot be imposed in the state. Financial Emergency cannot be imposed in J&K. President’s rule can be made applicable only on failure of constitutional mechanism of the state and not otherwise. Part VI of Indian Constitution, which deals with State Governments not applicable to J&K. Provision of Official Language applicable only as long as it relates to the official language of the Union. Residuary power vests with the state, except in the cases of prevention of activities relating to terrorism, or when the issue is about questioning or disordering the sovereignty of India. National Emergency if imposed in India would have an effect on J&K except with the concurrence of the state. These are the major privileges given to the state of J&K under Article 370.

Article 35A:

Article 35A gives the Jammu & Kashmir Legislature full discretionary power to decide who the 'permanent residents' of the state are. It gives them special rights and

privileges regarding employment with the state government, acquisition of property in the state, settling in the state, and the right to scholarships and other forms of aid that the state government provides. It also allows the state legislature to impose any restrictions upon persons other than the permanent residents.

Before	Now
Special powers exercised by J&K	No special powers now
Dual citizenship	Single citizenship
Separate flag for Jammu & Kashmir	Tricolour will be the only flag
Article 356 not applicable	Article 356 applicable
Article 360 (Financial Emergency) not applicable	Article 360 will be applicable
No reservation for minorities	Minorities will be eligible for reservation
Indian citizens from other states cannot buy land or property in J&K	People from other states will now be able to purchase land or property in J&K
RTI not applicable	RTI will be applicable
Duration of Legislative Assembly for 6 years	Assembly duration in Union Territory of J&K will be for 5 years

Here are some of the significant changes in Jammu and Kashmir:

1. J&K Constitution scrapped

Before Article 370 - It was the only state with its own Constitution. The article provided J&K provisions of the Constitution which were not applicable to other states of the country including special autonomy, separate state laws, etc.

After Article 370 - With the scrapping provisions of Article 370, the separate Constitution ceases to exist'

2. Separate flag

Before Article 370 - The J&K state had two different flags - India and the state.

After Article 370 - There would be no separate flag for the state.

3. Any Indian can now buy properties in J&K

Before Article 370 - Only residents of J&K could buy and sell properties in the state.

After Article 370 - Any Indian citizens will be able to buy and sell properties in J&K.

4. Before Article 370 - Residents of J&K had separate laws related to citizenship, ownership of property, and fundamental rights.

After Article 370 - There will be no separate laws for the citizens of J&K. Crpc will be in, Ranbir Penal Code of the state will be out.

5. The state becomes a Union Territory

Before Article 370 - Jammu and Kashmir was a state with special status.

After Article 370 - J&K downsized to a Union Territory (UT) with legislature while Ladakh becomes the UT without any legislature.

UNIT- II

Q.NO.1 WRITE A NOTE ON IMPEACHMENT OF THE PRESIDENT OF INDIA

Article 61

- Violation of the constitution
- The impeachment charge against him may be initiated by either house of parliament

- The charge must come in the form of a proposal contained in a resolution signed by not less than $\frac{1}{4}$ of the total number of the members of the house & moved after giving at least 14 days advance notice.
- Such a resolution must be passed by a majority of not less than $\frac{2}{3}$ rd of the total membership of the house.
- The charge is then investigation by the other house.
- The president has right to appear & to represent.
- If the other house after investigation passes a resolution by $\frac{2}{3}$ rd majority declaring that the charge is proved.

Q.NO.2 POWERS AND FUNCTIONS OF THE PRESIDENT OF INDIA

1) Executive powers:

a) Head of the Union: The President is at the head of the Union Executive. Consequently, all executive powers are exercised in his name. The executive power of the Union to be exercised by the President is extended to the matters with respect to which Parliament has power to make laws and to conclude treaty and agreement.

b) Appointments: As head of the executive, the President appoints the Governors of States, the Judges of the Supreme Court and the High Courts, the Auditor General of India and many other high officials, such as the members of Finance Commission, Election commission, Union Public commission etc.

c) Appointment of the Prime Minister and other Ministers: The President also appoints the Prime Minister and with his advice the other Ministers of the Union Council of Ministers. But here too, as in all other appointments, the President can seldom use his discretion. He is, ordinarily, duty-bound to summon the leader of the political party which secures an absolute majority in the Lok Sabha to become the Prime Minister and form the Ministry. He does enjoy some discretionary powers in the matter only under exceptional circumstances. When no single political party wins a clear absolute majority and, as a result, no Council of Ministers can be formed without a coalition of parties the President can exercise his discretion judiciously in appointing the Prime Minister. Such situations developed in the past. India has entered into an age of coalition politics. And it may so happen that no single party will be able to secure an absolute majority, and the President may be required to exercise his discretionary power for some time to come, in appointing Prime Minister.

2) Legislative powers: President is an integral part of parliament.

- Art 102: disqualification for membership of either house of parliament.
- Art 80(3) nominate 12 members to RS

- Art 85(1) power to summon & prorogue the parliament & he can dissolve the LS
- Art 108: resolve the deadlock
- Art 111: Assent to bill
- Art 03: a bill for the recognition of a new state..
- Art 331:nominate two Anglo Indians to the LS.
- Introduce certain bills after recommendation of the president . 360,money bill
- Art 77(3): shall make rules for the more convenient transaction of the business of the government of India & for the allocation among ministers of the said business.
- Art 118(3) make rules as the procedure with respect to joint sitting.
- Ordinance making power – 123: Both houses of parliament are not in session
- The president is satisfied that circumstances exist which render it necessary for him to take immediate action.
- Co extensive with the legislative power of parliament.
- Re promulgation of ordinances without placing them before the legislature in a routine manner would be fraud on the constitution.
- **R.C.Cooper V/S UOI**: Banking companies(Acquisition and transfer of undertaking) ordinance ,1969.
- **R.K.Garg V/S UOI**: the special Bearer Bonds (immunities and exemptions) ordinance,1981.
- **A.K.Roy V/S UOI**: the national security ordiance,1980
- **D.C.Wadhwa v/S State of Bihar**

3) **Judicial powers**: Art 72 the president shall have power to grant pardons, reprieves, respites or remission of punishment or to suspend remit or commute the sentence of any person convicted of any offence –

- a) In all cases where the punishment is by court martial
- b) In all cases where the punishment or sentence is for an offence against any law relation to a matter to which the executive power or the union extends ,
- c) In all cases where the sentence is a sentence of death.

Changing the possible judicial error

- **Pardon- forgiveness**
- Reprieve – temporary suspension of the punishment fixed by law
- Respite – postponement of execution of sentence or punishment.
- Remission – reducing the amount of punishment without changing its nature.
- Commutation – changing the nature of the punishment.

How the mercy petition are decided upon

1. The Constitution of India – Article 72 – gives the power to the President of India to pardon, commute, suspend or remit a death sentence.
2. The President, however, acts on the advice of the Council of Ministers.
3. The Minister of Home Affairs examines all mercy pleas and advises the President of India.
4. There is, however, no fixed time for the President or MHA to decide on a mercy plea. Presidents have demitted office without taking any decision on mercy pleas.
5. Once a convict has been awarded a death sentence by the Supreme Court – the highest court in India – anyone, even a foreign national can move a mercy plea.
6. A mercy plea can be sent directly to the President of India or the Governor of the concerned state who then refers the issue to Minister of Home Affairs

Manu Ram V/S UOI: in exercising the pardoning power the object and the spirit of section 433-A of Crpc must be kept in view.

Kuljeet Singh V/S Lt. Governor of Delhi

Kehar Singh V/S UOI

Pardoning power subjected to judicial review:

Epuram sudhar V/S Government of Andhra pradesh

4) **Financial powers:** The President of India also exercises financial powers. No money bill can be introduced in Parliament without the recommendations of the President. According to the Constitution of India, the Annual Financial Statement is placed by the President before both the Houses of Parliament. This statement shows the estimates of revenue and expenditure of the central Government for the next year. It may be pointed out that the proposal for taxation and expenditure cannot be made without the approval of the President. . No proposal for spending money or raising revenues for purposes of government can be introduced in Parliament without previous permission of the President.

5) **Diplomatic powers:** All international treaties and agreements are negotiated and concluded on behalf of the President. However, in practice, such negotiations are usually carried out by the Prime Minister along with his Cabinet (especially the Foreign). Also, such treaties are subject to the approval of the Parliament. The President represents India in international forums and affairs where such a function is chiefly ceremonial. The President may also send and receive diplomats, i.e. the

officers from the Indian Foreign Service. The President is the first citizen of the country.

6) **Military powers:** The President is the Supreme Commander of the Indian Armed Forces. The President can declare war or conclude peace, on the advice of the Union Council of Ministers headed by the Prime Minister. All important treaties and contracts are made in the President's name. He also appoints the chiefs of the service branches of the armed forces.

7) **Emergency Powers :** The constitution of India empowers the President to proclaim three kinds of Emergencies:1) National Emergency (Art. 352);

2. Emergency for failure of Constitutional Machinery in a State (Art. 356);

3. Financial Emergency (Art. 360)

1 National Emergency: The President of India may issue a Proclamation of National Emergency when the security of India or any part thereof is threatened by war, armed rebellion or external aggression. Such a Proclamation of Emergency may remain in force for an indefinite period. During a Proclamation of National Emergency, the executive power of the States is to be exercised in accordance with the directions given by the Central Government. Parliament has the power to make laws on the subjects enumerated in the State List. The right to freedom of speech and expression, freedom to form association, freedom to practice and profession, etc., embodied in Article 19 shall remain suspended.

2. Failure of State Constitutional Machinery In Case of failure of Constitutional machinery in a State, the President of India is authorized to make a Proclamation to that effect. The maximum duration of this type of emergency is three (3) years. During such an emergency, the President may assume to himself the executive powers of the State. The powers of the legislatures of the State are to be exercised by the Union Parliament.

3. Financial Emergency :The President may also issue a Proclamation of Financial if he is satisfied that the financial stability of India is threatened. This type of emergency may continue to remain in force for an indefinite period. The Central Government may give directions to the States for canons of financial propriety. All money-bills passed by the State Legislatures are to be reserved for the consideration of the President.

The President of India grants, pardons, reprieves or remissions of punishment to any person who has been convicted by a Court of Law.

Q.NO.3.POWERS AND FUNCTION OF GOVERNOR

1) Legislative Powers

Even though the Governor isn't the member from either House of the State Legislature, yet he is vested with some significant powers and obligations in the authoritative space.

- He is to bring the House or each House of the State Legislature, if it is a bicameral governing body, to meet at such time and spot as he deems fit. There must not be a difference of more than 6 months between the first and the last session of the house. He ensures that the balance is maintained.
- He may prorogue the Houses or either House and break up the Legislative Assembly. For example, on March 12, 1967, the Punjab Governor, Dr D.C. Pavate, prorogued the State Vidhan Sabha (Legislative Assembly) which was deferred by the Speaker for two months on March 7, 1967, preceding the House could think about the Budget. This was an initial move towards an answer of established emergency that held the State. The disintegration of the Assembly has been finished by the Governors numerous periods.
- He can address either or both of the Houses, amassed together at the beginning of the first session after each General Election and furthermore, at the initiation of the main session every year.
- The Bills passed by the State council require his consent. He can retain his consent and return the Bill (other than a Money Bill) to the State governing body for re-examination. In any case, if the House ends, with or without alteration, he should accord his consent to it.
- He is engaged in saving specific Bills for the consent of the President. For example, the Bills accommodating obligatory procurement of the property or diminishing the forces of the High Court must be so saved for President's assent.
- He designates people, having extraordinary learning or pragmatic involvement concerning such issues, like Literature, Art, Science, Co-usable Movement and Social Service.
- He designates a few individuals from the Anglo-Indian Community if he finds the last insufficiently spoke to.

- On the guidance of the Election commission, he is approved to choose questions emerging about the exclusion of any individual from either House.
- He can issue statutes amid the opening of the governing body if some projection emerges. These mandates stop to work at the lapse of about a month and a half from the reassembly of the Legislature, or prior if a goal objecting such a law is passed by the Legislative Assembly and consented to by the Legislative Council. Governor's mandates are liable to specific confinements. On the off chance that they identify with any issue in regard of which a Bill would have required the President's prior approval or his consent after reservation, the Governor cannot issue them aside from on the President's guidance.
- He may likewise send messages and ask for updates to the House or Houses on a Bill pending in the council or something else.
- He can get the State Assembly suspended while prescribing to the President the taking over of the State Administration. Such a stage is taken with the plan to reinstall mainstream service at an early date. This was finished by the Governor of Uttar Pradesh on June 13, 1973, and Governor of Punjab on October 4, 1983.

2) Executive Powers

The executive powers vested to the Governor of the state under the Indian Constitution are as follows:

- His powers to stretch out to the issues counted in the State list. On account of issues gave in the Concurrent List, Governor practices to control over them at the same time, subject to the official advice of the President
- He makes rules for the exchange of the matters and portfolios of the legislature of the State for its allotment among Ministers.
- He has the privilege to look for data from the Chief Minister, and the Chief Minister of the State must notify and answer him regarding all choices of his service.
- He can likewise require the Chief Minister to present any individual Minister's choice for the thought of the Council of Ministers,
- He is enabled to make arrangements of the Council of Ministers and on the recommendation of different Ministers.
- He is consulted by the President in the appointment of the Judges of the state High Court.
- The Governor appoints Judges of the District Courts.

- In case he/she feels that the Anglo-Indian community has not been adequately represented in the Vidhan Sabha, he or she can nominate one member of the community to the Legislative Assembly of the state.
- In all the states where a bicameral legislature is present, the Governor has a right to nominate the members, who are “persons having special knowledge or practical experience in matters such as literature, science, art, co-operative movement and social service”, to the Legislative Council.

In like manner, he can expel the Chief Minister or his Council of Ministers just when the Legislative Assembly passes a demonstration of majority disapproval or reproaches the CoM or annihilations an important measure. As it were, Governor is not authorised to act and exercise his duty at his pleasure since it is the Legislative Assembly which upholds the aggregate obligation of the CoM to itself [Article 164(2)]. The Supreme Court in [S.R. Bommai v. Union of India](#) saw that at whatever point an uncertainty emerges whether a service has lost the certainty of the House, the primary method for testing is on the floor of the House.

Clearly, the evaluation of the quality of the Ministry had not been left to the Governor. This reality was affirmed when Uttar Pradesh Governor rejected **Kalyan Singh’s Government** on Feb. 21, 1998 as 25 M.L.As of Lok Tantrik Congress and Janata Dal (Raja Ram) Group pulled back help, and it was left in the minority. Kalyan Singh would not leave. Subsequently, he was rejected. Governor did not allow him to look for certainty vote on the floor of the House. Allahabad High Court in a milestone between time requests reinstalled Kalyan Singh and left it to the Governor to request a preliminary of solidarity on the floor of the House.

3) Financial Powers

Financial powers of the Governor enlisted in the constitution are as follows:

- No money Bill can be presented in the Assembly aside from on Governors’ proposal.
- The Contingency Fund is available to him. He can make signs of progress out of it to meet unexpected use, pending its approval by the State Legislature.
- No interest for a grant can be made except on the suggestion of the Governor.
- Under Article 205, the Governor can request advantageous, expansion or abundance gifts from the State Legislature.
- Governor is required to see that the yearly financial report or spending plan of the State is presented before the House or Houses of the Legislature have gone through it.

- Amendments making arrangements for budgetary issues can't be moved without the assent of or on the recommendations of the Governor if any changes have to be done.

4) Judicial Powers

Judicial Powers of the Governor are as follows:

- Power to grant pardon – Art 161: the governor of the state shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend remit or commute the sentence of any person convicted for any offence against any law relating to a matter to which the executive power of the state extends.
- He cannot pardon the death sentence
- He cannot pardon the punishment by court-martial.
- **Maru Ram case**
- **K.M Nanvati V/S State of Bombay**
- **In Swaran Singh v State of U.P.**, the Governor of U.P. had granted remission of life sentence awarded to the Minister of the State Legislature of Assembly convicted for the offence of murder. The Supreme Court interdicted the Governor's order and said that it is true that it has no power to touch the order passed by the Governor under Article 161, but if such power has been exercised arbitrarily, mala fide or in absolute disregard of the "finer cannons of constitutionalism", such order cannot get approval of law and in such cases, "the judicial hand must be stretched to it." The Court held the order of Governor arbitrary and, hence, needed to be interdicted.
- **Epuru Sudhakar & Anr vs Govt. Of A.P. & Ors**
- The Governor is consulted by the President in the appointment of the Chief Justice to the High Court of that specific state.

5) Discretion powers

- Art 163(1) G- COM
- Art 163(2): discretion of the governor , it's final.
- the appointment of the Chief Minister largely falls under the discretionary power of the Governor. The Governor in making the appointment of Chief Minister under Article 164(1), "[acts in his sole discretion.](#)"
- Art 200: assent- reserve the bill passed by the state legislature.
- Art 356.

Powers, functions & Positions of parliament

- 1. Legislative: Make law – union list & concurrent list – residuary power – emergency (state list).
 - Ordinary bill – joint sitting .
 - Financial bill with the recommendation of President.
2. power to make provision with respect to election to legislatures (Art 327): preparation of electoral rolls, the delimitation of constituencies & all other matters necessary for securing the due constitution of such house or houses.
 3. Bar to interference by courts in electoral matters (Art 329): 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 Article 327 or 328 shall not be called in question in any court.
 4. power to amend the constitution.
 5. Rules of procedure – Art 118: Each house of parliament may make rules for regulating, subject to the provision of this Constitution, its procedure & the conduct of its business.
 - May make rules as to the procedure with respect to joint sitting of, and communication between the two houses.
 6. Financial power: Parliament exercises control & supervision over the national finance.
 - Tax can not be levied or collected except by authority of law.
 - Parliament has full control over the consolidated fund of India.
 - Annual financial statement is laid before the house of parliament.
 - Art 280.
 7. executive powers
 8. other powers & functions: Appointment and impeachment of president and vice president of India.
 9. Impeachment of Judges of Supreme Court and High court.

Privileges of the Legislature or State legislature:

T.F. May as: some of the peculiar rights enjoyed by each house collectively as a constituent part of the parliament & by members of each house individually. Without which they could not discharge their functions & which exceed those possessed by other bodies or individuals.

1. Freedom of speech: Art 121 prohibits any discussion..... Lok Sabha rules 349 to 356.
2. Right to publication of its proceedings:

Suresh V/S Nabakrishna: parliamentary proceedings (protection of publication) Act 1956, 1975 repealed.

S.P.Bharacha, S.Rajendra babu, & G.N. Ray JJ.

Whether by virtue of Art 105 of the Constitution a member of parliament can claim immunity form protection on a charge of bribery in a criminal court.

Whether a member of parliament is a public servant.
3. Other privileges: Freedom from arrest
 - a) Right to hold secret session
 - b) Right to exclude strangers from its proceedings
 - c) Right to prohibit to publication of its reports & proceedings
 - d) Right to regulate internal proceedings
 - e) Right to hold enquires and summon witness
 - f) Right to punish members or outsiders for breach of privileges & contempt of house.
 - Privileges & fundamental rights
 - Privileges and courts: In re Under Art 143- keshava singh – Mr.Soloman ,moved an Habeas corpus.
 - The petition was heard by bench of two judges of the Allahabad HC which granted an interim bail to keshava singh & he was released, pending decision of the case on merit.
 - House passed a resolution....
 - Art 226 – resolution amounted to contempt of court- set aside and its implementation be stayed by interim order.
 - Warrant of arrest against the two judges was withdrawn ...
 - At this stage the president of India referred to SC

Council of Ministers (Prime Minister & other ministers)

- COM – Cabinet ministers, state ministers, Deputy ministers.
- Cabinet consisting of Principal ministers.
- A minister can not criticize the decision of the cabinet.(conventional body)
- Art 54

- Art 74 – aid & advice of COM & no point of time the president can dispense with the COM.

- Art 75(1) PM appointed by the president.

No party required majority

- Leader of majority party

Convention:

1) Leader of the opposition is invited to form a stable government.

2) Leader of the largest party in Lok Sabha to form government.

3) If two or more than two parties form a coalition before the election & the coalition secures the majority in the Lok Sabha, the leader of the coalition should be invited to form the government.

Non member can be appointed as PM

- S.P Anand V/S H.D.Deve Gowda

- Non member can not be reappointed without being elected: S.R.Chauhan V/S State of Punjab.

- Convicted person can not be appointed CM:

B.R.Kapoor V/S State of Tamil Nadi & others – In 2001 assembly election AIADMK headed by Smt. Jayalalitha won the election & obtained absolute majority. Prior to election, she was convicted for various offence committed under prevention of corruption Act during her tenure as the CM & sentenced to imprisonment for more than 2 months.

Limitation on total number of ministers

- Not exceed 15% of the total number of the House of people.(91st amendment Act 2003)
- Powers & functions: PM – President.
- He can compel the resignation of a minister – not resign – can obtain his dismissal through the president.
- The resignation of the PM amounts to resignation of the whole community.
- He has free hand in the making of his cabinet.
- Make rules for the more convenient transaction of the business of the government.

Article 78 : is shall be the duty of PM

- A) to communicate to the president all decisions of the COM relating to the administration of the affairs of the union & proposals for legislation
- B) to furnish such information relating to the administration for the affairs of the union & proposals for legislation as the president may call for, &
- C) if the president so requires, to submit for the consideration of the COM any matter on which a decision has been taken by a minister but which has not been considered by the council.
- Art 53 & Art 74(1)
- Summon & prorogue the parliament.
- Dissolution of HOP.
- Preparation of message.
- Money bill or budget introduced in parliament.
- Prepare a time table as to what bill should be introduced in parliament first.
- Execute the law passed by the parliament & control & supervise the different department of public administration.
- Pardoning power
- COM is a supreme authority in India. Today , for every work including defence & welfare activities people look to the COM.

Control the COM

- Its absolute necessary for the COM to retain the confidence of the HOP.
 - Six months
 - No tax can be authorised.
 - Parliament passed the Act & it is the duty of the COM to execute it.
 - PM or Minister, a public servant.
 - Art 75(2) Collective responsibility
 - Individual responsibility.
-

UNIT-III

I.Powers & jurisdiction of the Supreme court

1) court of Record (including power to punish for contempt of court 129):

- Contempt of court Act
- Jurisdiction to punish for contempt of High courts or subordinate courts : s 10
- Can a judge be held liable for contempt of court : S 16
- **St of Rajasthan V/s Prakash chand** : not apply
- The contempt liability of state & ministers
- Abuse of process of court
- Interference with witness
- Special & extraordinary jurisdiction to be exercised in exceptional circumstances:
keshava singh case

Object of contempt jurisdiction

Can the licence of an advocate be suspended or cancelled by the court in the exercise of contempt jurisdiction: Supreme court bar association V/S UOI

2) original Jurisdiction

- a) Concurrent original jurisdiction
- b) Exclusive original jurisdiction:
 - Art 71
 - Art 131
 - Exception to Art 131:

1) Dispute arising out of any treaty, agreement, covenant, engagement, sanad or other similar instrument which, having been entered into or executed before the commencement of the Constitution of India, continues in operation after such commencement or which provides that the said jurisdiction shall not extend to such a dispute.

2) parliament may by law exclude the jurisdiction of the Supreme court in dispute between the states which respect to the use, distribution or control of the waters of any inter state river or river valley.

3) not extended to the matters referred to finance commission U A 280.

4) the dispute between the union & the states relating to the adjustments of certain expenses specified in Art 290 may be settled by agreement & in case of default, by an arbitrator appointed by the CJI(Art 290)

3) Appellate jurisdiction

a) Appeal in constitutional matters:

1) judgment, decree or final order of a High court

2) certificate of the High court that the case involves a substantial question of laws as to the interpretation of the constitution.

b) Appeal in civil matters:

1. Judgment, decree or final order of High court.

2. certificate of HC that the case involves a substantial question of law of general importance & in the opinion of the HC the question needs to be decided by the supreme court.

c) Appeal in criminal matters:

1) without certificate of HC:

a) If the HC has on appeal, reversed an order of acquittal of an accused person & sentenced him to death; or

b) Has withdrawn for trial before itself any case from any court subordinate to its authority & has, in such trial convicted the accused person & sentenced him to death.

d) Special leave to appeal

- It's a discretionary power.
- Art 136 does not confer a right of appeal upon the party.
- Require to exercise great care.
- Alternative remedy.
- Exception cases: breach of PNJ, serious miscarriage of justice.
- Appeal from interlocutory order also.
- Not confined a matters
- Without certificate
 - * Tribunals –quasi judicial functions. Election commission, labour appellate tribunal,
 - * Income tax appellate tribunal.
- Excess of jurisdiction, want of jurisdiction, PNJ, error of law etc.,.
- Jurisdictions of SC not restricted (parliament)

- SC does not allow the party to raise new plea which has not been raised before the court below.
- Art 136 revoked in appropriate cases: misrepresentation, suppression of material facts.
- The prohibition or limitation in statutory provisions do not limit the power of the SC U 136 & 142.
- S320,321,482 of the Crpc do not limit the power of the Sc to quash criminal proceedings.
- Excess of jurisdiction, want of jurisdiction ,PNJ,error of law etc.,.
- Jurisdictions of SC not restricted (parliament)
- SC does not allow the party to raise new plea which has not been raised before the court below.
- Art 136 revoked in appropriate case: misrepresentation, suppression of material facts. The prohibition or limitation in statutory provisions do not limit the power of the SC U 136 & 142.
* S320,321,482 of the Crpc do not limit the power of the Sc to quash criminal proceedings.
- 4) **To review of its judgment** – Art 137: Art 137 subject to the provisions of any law made by parliament or any rules made U Art 145, the SC shall have power to review its judgment pronounced or made by it.
- Great need of justice.
- Art 139(a) to transfer of cases: where the cases involving the same or substantially the same question of law are pending before the SC or one or more HCs
- 5) **Art 145 rule making power**
- 6) **Art 139A to transfer of cases**
- 7) **Art 145 rule making power**
- 8) **Art 143 Advisory jurisdiction**: At any time it appears to be president that a question of law or fact has arisen or is likely to arise, which is of such a nature of such public importance that it is expedient to obtain the opinion of supreme court.
- May indicate SC is not bound to express its opinion.
- **Dr.M.Ismail Faruqui V/S UOI**: proper & good reasons .eg incapable of being answer.
- President refer the matter involving the dispute arising out of treaty.....
- Art 143(1) , if the question referred are likely to arise in future or such questions are of public importance or there is no decision of the SC which has already decided the question referred.

- Binding force.
- Confined only the question referred.
- Delhi Laws Act in 1951, Kerala education Bill in 1958, Berubari in 1960, Keshava singh case in 1965, cauvery water disputes tribunals, etc,

8) Ancillary powers

II. Jurisdiction and powers of High court

- Art 215 court of record
- Art 227 power of superintendence
- Art 228 power to withdraw certain cases form subordinate courts
- Art 225 general jurisdiction
- Art 226 writ jurisdiction

III. Independent of Judiciary

- 1) Security of tenure
- 2) Salary of judges fixed, not subject to vote of legislature
- 3) Parliament can extend but cannot curtail the jurisdiction and power of the supreme court
- 4) No discussion in legislature on the conduct of the judges
- 5) Power to punish for its contempt
- 6) Separation of judiciary from executive
- 7) Judges of the supreme court are appointed by the executive with the consultation of legal experts
- 8) Prohibition on practice after retirement.

IV. Appointment & transfer of Judges

- Supreme court of India: The Guardian of the Constitution.
- Composition of the Court:
- Appointment of Judges: Position before 99th amendment of Constitution: 2014.
- U/ Article 124(2) the president in appointing other judges of the Supreme Court was bound to consult the CJI but in appointing the CJI he was not bound to consult anyone.
- Till 1973 the practice was to appoint the senior most judge of SCI.

- This practice has virtually been transformed into a convention and was followed by the executive without any exception.
- In 1956, the law commission headed by the then Attorney –General MC Setalvad disfavoured this practice and recommended that in appointing the CJI the experience of a person as a judge, his administrative competence and merit should be judged and seniority should not only be the main consideration.
- On April 24, 1973 however this practice suddenly broken by the government.
- Shelat, Hegde, Grover.
- Its subject to criticism by Bar, general public.
- It absolute discretion of the president, recommendation of the law commission and philosophy of judges to be taken into account by the executive.
- **Supremacy of Executive: S.P. Gupta V/S UOI (judges transfer Case –I)**
- solely and exclusively vested in the central government.
- **Judicial supremacy: Supreme Court Advocates on Record Association V/S UOI (Judges transfer case –II)**
- **Appointment of the Chief Justice of India**
 - 1) Individual initiation of high constitutional functionaries in the matter of judges appointments reduced to minimum. It gave primacy to the CJI but a rider that he must consult his two colleagues.
 - 2) Constitutional functionaries must act collectively in judicial appointments.
 - 3) CJI was given the final say in transfer of chief justice and judges of High courts.
 - 4) Transfers of Chief Justices and judges of High courts could not be challenged in courts.
 - 5) Appointment of the chief justice of Indian by seniority.
 - 6) No judge could be appointment by the Union government without consulting the CJI.
 - 7) Fixation of the strength in High courts was justiciable.
- **Sole opinion of Chief justice of India without following consultation process**
- Not binding on government: (Appointment and transfer of Judges case- III)
- 9 judge bench of the SC unanimously held that the recommendation made by CJI on the appointment of judges of SC & High courts.
- National Judicial Appointment Commission: In S.P Gupta V/S UOI, Justice Bhagwati had suggested for the appointment of a judicial commission on the line of Australian Judicial commission.

- **Position after 99th amendment of Constitution**
- The Constitution (99th amendment) Act, 2014 amended articles 124(2), 127 and 128. It inserted Articles 124 A, 124B, & 124C.
- Art 124-A: the provisions of National Judicial appointment commission:
- There shall be a commission to be know as the National Judicial appointments commission consisting of the following namely:
 - The CJI, Chairperson, ex officio
 - B) two other senior judges of the supreme court next to the CJI – Members, ex officio
 - c)The union Minister in charge of law and justice – Member, ex officio
 - d)Two eminent persons
- 2) No act or proceedings of the National Judicial Appointments Commission shall be questioned.

Functions of National Judicial appointment commission – Art 124 B

- A) to recommend persons for appointment as CJI, judges of the supreme court, chief Justice of High courts and other judges of High courts
- B) to recommend transfer of chief justices and other judges of high courts from one high court to any other high court
- C) to ensure that the person recommended is of ability and integrity.

Procedure for appointment to be regulated by the parliament – 124C

- the parliament may by law , regulate the procedure for the appointment of CJI and other judges of the Supreme court and chief justice and other judges of High courts and empower the commission to lay down by regulations the procedure for the discharge of its functions, the manner of selection of persons for appointment and such other matters as may be considered necessary by it.

Supreme court advocates – on record association V/S UOI

- unconstitutional
 - As a result of this decision , the position as it stood prior to the constitution (99th amendment) Act shall continue to be the legal position because the aforesaid decision renders 99th amendment nugatory.
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UNIT- 4

1. EXPLAIN THE CONSTITUTIONAL SAFEGUARDS AVAILABLE TO CIVIL SERVANTS UNDER THE INDIAN CONSTITUTION

Part XIV ,Articles 308 to 311

Art 309: Recruitment & regulation of conditions of services.

Include matters relating to salary, time scale of pay or grades, PF, dearness allowance, termination of service, eligibility for promotion, seniority, retirement, pension, suspension, fixation of quota for promotees.

Rules made for the recognition of association of govt servants, compulsory retirement, reducing the age of superannuation, rules providing preference to women in direct recruitment to service U/ govt covered under Art 309.

- St of UP V/S Ram Gopal Shukla
- In Motiram Deka V/S North Eastern Railway

Art 310 – TENURE OF OFFICE - Doctrine of Pleasure

UK- Latin phrase- Durante bene placito- means during the pleasure.

When it be invoked?

- 1)Civil servant is involved in any criminal case & is convicted in any offence,
- 2)A govt employee , who has committed bigamy & proved,
- 3) Borrow huge amount & accumulate the huge property,
- 4) If he does any private jobs, business

Justification for the rule of pleasure

UOI V/S Tulsiram patel

- Implication of the doctrine of pleasure under Art 310 (1)
 - 1) The government has the right to regulate or determine the tenure of its employees at pleasure.
 - 2) The government has power to punish any of its servants for misconduct committed not only in the course of official duties but even for that committed in private life.
 - 3) This pleasure is not fettered by ordinary legislation

- 4) The parliament or state legislature U/Art 309 can make rules regulating the conditions of service.
 - 5) Exercised by the president with the aid and advice of the COM.
- **Restrictions/ Limitation on the doctrine of pleasure**
 - 1) Procedural safeguard to the govt servants before dismissal or removal from service.
 - 2) This doctrine is not applicable to the post of SC judges, HC judges, auditor general of India, Chief election commissioner , chairmen & member of UPSC.
 - 3) This doctrine is not violate fundamental rights.
 - **Who may claim this safeguards?**
 - 1) Members of the civil services of the union
 - 2) Members of all India services
 - 3) Members of the civil services of the states
 - 4) Persons holding CIVIL POST under the union or states.
 - **Who can not claim these safeguards**
 - An employee of a statutory corporation such as LIC, Hindustan steel Ltd
 - The employees of govt companies registered under the Co's Act 1956
 - Industrial establishment , universities,
 - Statutory bodies like state Electricity board.
 - Members of autonomous district/ Regional council under Schedule VI of the constitution.

Constitutional safeguards for civil servants – Article 311

State of UP V/S A.N.Singh

The following are the types of limitation on the DOP & safeguards are available to civil servants

Limitations:

I. Justiciable limitation

- a) **Procedural limitation: 1)No removal or dismissal by an authority subordinate to the appointing authority**
 - * Appointing authority
 - * Removal by authority equal in rank or superior to appointing authority.

Mahesh Prasad V/S St of UP: Mahesh prasad appointed as a clerk in the east Indian Railway by the Divisional Personal officer. He was dismissed by the superintendent power. Valid.

- **In Superintendent of Police V/S R.K.Tamalsam singh.**
- Article 311(1) does not say that even the departmental proceeding must be initiated by the appointing authority
- Initiation of proceeding - by subordinate authority.

N.Ramanthe Pillai V/S State of Kerala

Article 311(2) No removal or dismissal or reduction in rank, except after an inquiry affording reasonable opportunity of hearing.

- PNJ
- Communication of charges
- Holding of inquiry into the charges

A.K .Kraipak V/S UOI

State of UP V/S Mohd. Nooh

- b) **Substantive limitation:** they are the fundamental rights enshrined in the constitution. No employee can waive the Fundamental rights.

II.Non justiciable limitation(Exception to Art 311(2)

1) conviction of criminal charges

Roshan lal Ahuja V/S S.C. Jain: the petitioner working as a draftsman, dismissed from service on the ground of his conviction for attempting to commit murder of his wife. Its valid.

2) Where inquiry is not reasonably Impracticable: eg:strike

3) Security of Nation.

Q.NO.2. EXPLAIN ROLE AND FUNCTIONS OF PUBLIC SERVICE COMMISSION

- ⊙ The PSC was set up in India with the objective outlined by Royal Commission on superior services in India, popularly called the Lee Commission 1924.
 - ⊙ Article 315-323 in part XIV of the Indian Constitution provides for the establishment of the Public Service Commission for the Union and a Public Service Commission for each state
- Article 315 - Public Service Commissions for the Union and for the States**
- ⊙ Subject to the provisions of this article, there shall be a Public Service Commission for the Union and a Public Service Commission for each State.
 - Two or more States may agree that there shall be one Public Service Commission for that group of States, and if a resolution to that effect is passed by the House or, where there are two Houses, by each House of the Legislature of each of those States,

Parliament may by law provide for the appointment of a Joint State Public Service Commission to serve the needs of those States

Article 316 - Appointment and term of office of members

- ⊙ PSC consists of a chairman and a number of other members.
- ⊙ The constitution does not prescribe the number of members which commission shall consist and the qualification.
- ⊙ President /Governor may by regulations determine the number of the commission.
- ⊙ The *Chairman and other members* of a Public Service Commission shall be *appointed* by the president and in the case of joint commission and State Commission, by the Governor of the State.
- ⊙ Article 316(1): *one-half of the members* of every Public Service Commission shall be persons who at the dates of their respective appointments *have held office for at least ten years either under the Government of India* or under the Government of a State.
- ⊙ In *Jai Shankar Prasad V/S State of Bihar*: SC held that Art 316(1) was a directory. No point of time the said proportion should either go above or fall below 50%.

Tenure of Office

- ⊙ A *member* of a Public Service Commission shall hold office *for a term of six years* from the date on which he enters upon his office *or until* he attains *the age of sixty-five years*, whichever is earlier.
- ⊙ In the case of a State Commission or a Joint Commission, shall hold office *for a term of six years* from the date on which he enters upon his office *or until* he attains *the age of sixty-two years*, whichever is earlier.

Resignation may be addressed to President/ Governor

Article 317- Removal and suspension of a member of a Public Service Commission

- ⊙ Subject to the provisions, the Chairman or any other member of a Public Service Commission shall only be removed from his office by order of the President on the ground of misbehavior. (after a fact finding inquiry)
- ⊙ Such order of removal can be made by the President only when the following requirements are complied with –
 - 1) The president must make a reference of the matter to the Supreme Court
 - 2) The supreme court after holding an inquiry must have reported that the concerned person ought to be removed on the ground of such misbehavior.
- Recently SC opined that PSC failed to maintain the required standard of integrity and rectitude performance of their constitutional duties.

Article 317(3): President may by order remove from office the Chairman or any other member of a Public Service Commission if the Chairman or such other member, as the case may be,—

- 1) is adjudged an insolvent; or
- 2) engages during his term of office in any paid employment outside the duties of his office; or
- 3) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body.

Article 317(2) : Suspension.

Article 318 - Power to make regulations as to conditions of service of members and staff of the Commission.

- ⦿ In the case of the Union Commission or a Joint Commission, the President and, in the case of a State Commission, the Governor of the State may by regulations—
- ⦿ determine the number of members of the Commission and their conditions of service, and make provision with respect to the number of members of the staff of the Commission and their conditions of service:
- ⦿ Provided that the conditions of service of a member of a Public Service Commission shall not be varied to his disadvantage after his appointment.

Article 319 - Prohibition as to the holding of offices by members of the Commission on ceasing to be such members

- ⦿ On ceasing to hold office-
- ⦿ the Chairman of the Union Public Service Commission shall be ineligible for further employment either under the Government of India or under the Government of a State;
- ⦿ the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of any other State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State;
- ⦿ a member other than the Chairman of the Union Public Service Commission shall be eligible for appointment as the Chairman of the Union Public Service Commission or as the Chairman of a State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State;
- ⦿ a member other than the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of that or any other State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State.

Article 320 - Functions of Public Service Commissions

1)The UPSC conducts examination for All-India Services Central Services and Public Services for different Indian states and Union territory

2)It helps the states in composing and implementing schemes of combined recruitment for any services requiring special qualifications.

3)Advisory functions:

a) All matters relating to methods of recruitment to civil services and for civil posts.

(b) The principles to be followed in making appointments to civil services and posts and in making transfers and promotions from one service to another and on the suitability of the candidates for such appointments, transfers and promotions.

(c) All disciplinary matters affecting a person serving under the Government of India in a civil capacity, including memorials or petitions relating to such matters.

(d) Any claim of costs incurred by a civil servant in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his official duty.

(e) Any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India and any question as to the amount of any such award.

f) Any matter related to personnel management referred to it by the president.

⦿ **Article 320(4) PSC need not be consulted in the following matters:**

- 1) As respects the manner in which any provision referred to in Article 16(4)
- 2) As respects the manner in which effect may be given to the Article 335.
- 3) Article 321 empowers the parliament or the legislature of state as the case may be to confer additional functions on a PSC as respects the services of the union or the state and also as respects the services of any local authority or other body corporate constituted by law or of any public institution.

Article 321 - Power to extend functions of Public Service Commissions.

- ⦿ An Act made by Parliament or, as the case may be, the Legislature of a State may provide for the exercise of additional functions by the Union Public Service Commission or the State Public Service Commission as respects the services of the Union or the State and also as respects the services of any local authority or other body corporate constituted by law or of any public institution.

Article 322 - Expenses of Public Service Commissions.

- ⦿ The expenses of the Union or a State Public Service Commission, including any salaries, allowances, and pensions payable to or in respect of the members or staff of the Commission, shall be charged on the Consolidated Fund of India or, as the case may be, the Consolidated Fund of the State.

⦿ **Article 323 - Reports of Public Service Commissions**

It shall be the duty of the Union Commission to present annually to the President a report as to the work done by the Commission and on receipt of such report, the President shall cause a copy thereof together with a memorandum explaining, as respects the cases, if any, where the advice of the Commission was not accepted, the reasons for such non-acceptance to be laid before each House of Parliament.

Q.NO.3WRITE A NOTE ON ADMINISTRATIVE TRIBUNAL

Articles 323-A and 323-B

- Part XIV-A consisting of Articles 323-A and 323-B.
- Inserted by 42nd amendment Act, 1976.
- Deals with the setting up of administrative tribunals for adjudication of disputes relating to various matters.
- Tribunal can be defined as an individual or an institution which has authority to judge and to order.
- Tribunals are not ordinary courts, these tribunals have jurisdiction over very specific matters or can be stated as that they deal with specific matters only.
- Judgement of tribunals is as effected as the judgement given by ordinary courts, hence in some matters it becomes essential to have an institution which deals specifically with a single issue and have achieved specialization over it.
- Supreme Court of India do have jurisdiction over them provided in **Article 136** of the Indian Constitution where a person can always appeal to Supreme Court against the order of any tribunal.

Object

To reduce the mounting arrears in the High courts,

To secure speedy disposal of service matters, revenue matters and certain matters of special importance in the context of the socio- economic development and progress.

establish a specialized institution for cases of similar dispute or issue.

Neither Supreme Court nor the High Court can interfere in the functioning of the tribunals

- **T.Sudhakar Prasad V/S Government of A.P:** SC observed: The parliament was motivated to create new adjudicatory for a to provide new, cheap and fast track adjudicatory systems and permitting them to function by tearing of the conventional shackles of strict rule of pleadings, strict rule of evidence, tardy trials, endless revisions and reviews, creating hurdles in fast flow of stream of justice.
- **Associated Cement Companies Ltd V/S P.N.Sharma:** The main and the basis test , however is whether the adjudicating power which a particular authority is empowered to exercise, has been conferred on it by a state and can be described as a part of the states inherent power exercised in discharging its judicial function.

- **Harinagar sugar Mills V/S Shyam Sunder:** Hon'ble Justice Hidayatullah opined that, tribunals have the authority of law to pronounce upon valuable rights, act in a judicial manner and even on oath.
- That they were not part of the ordinary courts of civil jurisdiction. Though they share the exercise of the judicial power of the state, but they are brought into existence to implement some administrative policy or to determine controversies arising out of some administrative law.
- **Article 323-A: Tribunals for service matters:** Basic aim of this tribunal was speedy disposal of matters which are in regard with government officials regarding promotion, dispute due to recruitment of persons etc.
- **Tribunals for other matters –Article 323B:** Parliament or state legislature to establish tribunals for the adjudication or trial of any disputes, complaints or offences with respect to all or any of the following matters:

a) levy, assessment, collection and enforcement of any tax;

(b) foreign exchange, import and export across customs frontiers;

c) industrial and labour disputes;

d) Land reforms undertaken under Article 31-A

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 food-stuffs (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 right, title and interest of landlords and tenants;

i) offences against laws with respect to any of the matters specified in sub-clauses (a) to (h) and fees in respect of any of those matters;

J) any matter incidental to any of the matters specified in sub-clauses (a) to (i).

L.Chandra Kumar V/S UOI: SC Struck down the article 323 –A (2) (d) and 323-B 3(d) to the extent they exclude the jurisdiction of the High court and Supreme court Under Articles 226/227 and 36 of the Constitution.

The SC ruled that the tribunals created under Article 323A and 323B would continue to be the courts of the first instance in their respective areas for which they are constituted. The

litigants are not allowed to approach the High Courts directly by overlooking the jurisdiction of the concerned tribunal.

No appeal for the decision of the tribunal would lie directly before the Supreme Court under Article 136 but instead, the aggrieved party would be entitled to move the High Court under Article 226 and 227 and after the decision of the Division Bench of the High Court, the party may approach the Apex Court under Article 136.

Q.NO 4 EXPLAIN THE ROLE AND FUNCTIONS OF ELECTION COMMISSION OF INDIA

Art 324- election commission

- ▶ Art 324 provides for the appointment of an election commission to superintend, direct & control elections.
- ▶ To conduct elections to the parliament , state legislature & elections to the office of the president & VP.
- ▶ Its is an independent & constitutional body,

It able to function freely without any executive interference.

Constitution of election commission

- ▶ One CEC & two EC.
- ▶ Parliament by law fix the number of EC
- ▶ For the first time, two additional Commissioners were appointed on 16th October 1989 but they had a very short term till 1st January 1990. Afterwards, on 1st October 1993 two additional Election Commissioners were appointed.
- ▶ **T.N.Seshan V/S UOI**: The chief election commissioner and other election commissioners (conditions of serve) Act 1991.

Appointment & Tenure of Commissioners

- ▶ The President has the power to select Chief Election Commissioner and Election Commissioners.
- ▶ They have tenure of six years, or up to the age of 65 years, whichever is earlier.
- ▶ They have the same status and receive pay and perks as available to Judges of the Supreme Court of India.
- ▶ The Chief Election Commissioner can be removed from office only through accusation by Parliament.

- ▶ Election commissioner or a regional commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner.

One general electoral roll for every constituency – Art 325

- ▶ **Art. 325:** there shall be one general electoral roll for every territorial constituency for election to either Houses of Parliament and State legislature. It establishes equality among citizens by affirming that no person shall be ineligible for inclusion in the electoral roll on the grounds of religion, race, caste or sex.

Section 22 of the Representation of the people Act, 1950 empowers the Electoral Registration officer of a constituency to delete the name of a person from the electoral roll on certain grounds.

Powers of election commission of India

- ▶ To organize and periodically amend electoral rolls and to register all qualified voters.
- ▶ To inform the dates & schedules of election and to scrutinize the nomination papers.
- ▶ To grant recognition to political parties & allot election symbols to them.
- ▶ To act as an adjudicator for settling disputes relating to elections & election symbol.
- ▶ The commission can repress the results of opinion polls if it deems such an action fit for the cause of democracy.
- ▶ The commission can recommend for disqualification of members, if it thinks that they have violated guidelines.

In case a candidate is found guilty of dishonest practices during the elections the SC& HC consult the commission.

Functions of election commission

- ▶ The Election Commission of India is considered the guardian of free and reasonable elections.
- ▶ It **issues the Model Code of Conduct in every election** for political parties and candidates so that the decorum of democracy is maintained.
- ▶ It **regulates political parties and registers them for being eligible to contest elections.**
- ▶ It publishes the allowed limits of campaign expenditure per candidate to all the political parties, and also monitors the same.
- ▶ The **political parties must submit their annual reports to the ECI** for getting tax benefit on contributions.

- ▶ It guarantees that all the political parties regularly submit their audited financial reports.

System of adult suffrage – Art 326

- ▶ A person must register as voter :

- 1) He must be a citizen of India
- 2) Not less than 18 years
- 3) Not disqualified under the constitution/ any other laws: non residency, unsoundness of mind etc.

* Representation of people Act 1950

In Rajbala V/S State of Haryana: Apex court referring to the provisions of Articles 80,171,325,326 held that right to vote,& the right to contest election are constitutional rights of a citizen not merely statutory right.

Art 327 & 328 power to enact election laws:

- ▶ Representation of people Act 1951
- ▶ The presidential & vice presidential elections Act 1952
- ▶ The Delimitation commission Act 1952
- ▶ Anti defection laws
- ▶ The Election commission (conditions of service of election commissioner & Transaction of Business) Act 1991.

Settlement of election disputes- Art 329

- ▶ Election tribunals
- ▶ After 19th amendment Act 1966 , HC & Supreme court of India.

Q.NO 5. EXPLAIN THE GOVERNMENT CONTRACT

- Section 2(h) Act: contract is a agreement enforceable by law. It create a legal right & obligations.
- Standard form of contract.
- Contract is basically a matter of private law.
- Need to protect public interest & also to protect individuals against unfair exercise of administrative power.
- In India still in the process of evolution.
- Articles 298 & 299

Article 298- the executive power of the union or a state extends to the making of contracts for any purpose.

U/article 298 the government can enter into a contract in exercise of its executive power & no statutory authority is necessary for this purpose.

Article 299(1) :

1) all such contracts are to be expressed to be made by the president or governor as the case may be.

2)executed by an authorized persons.

3)Expressed in the names of president or governor & expressed on his behalf.

Its mandatory not directory. formalities cant 'be waived – void – not enforceable on the account of breach of contract.

St of Bihar V/S Karam chand Thapar

Bhikraj Jaipuria V/S UOI

- Not enforceable because not to fulfill article 299(1).
- Specifically rule that there would be nothing to prevent ratification especially if that was for the benefit of the govt.
- **Service agreement** : a contract of service with the govt is not to be struck down for non compliance with the provisions of Art 299.
- A govt service is a matter of status & rights & duties of govt servants are determined by statutory rule.
- **Statutory contract** : Art 299 not applies.- contract made in executive of statutory power & not ordinary executive powers.

Estoppel & govt contract: **Nathulal V/S St of Rajasthan**

St of UP V/S Murari lal

Q.NO 6 EXPLAIN TORTIOUS LIABILITY OF THE GOVERNMENT.

- In India : to what extent the administrator would be liable for the tort committed by its servant.
- The whole idea of vicarious liability of the state for tort committed by its servants is based on 3 principles.
 - 1) Respondent superior (let the principle liable)
 - 2) qui facit per alium facit per se (he who acts through another does it himself)
 - 3) Socialization of compensation.

Article 300 – deal with the extent of liability of the UOI & the state, instead of laying down the liability on specific terms refers to S 176 of govt of India Act ,1935.

L.Old view – before commencement of constitution

- P&O Steam navigation co V/S secretary of state of India
- Nobin chunder Dey V/S secretary of state of India
- Gurucharan kaur V/S Madras Province
- **Sovereign function – state not liable**
- **Non sovereign function - state is liable.**

II. After commencement of the constitution

St of Rajasthan V/S Vidhyawathi

Kasturilal Ralia Ram Jain V/S St of UP

III. Later developments

- St of UP V/S Hindustan lever
 - Amulya patnaik V/S St of Orissa
 - State V/S Dattamal
 - Khatri V/S St of Bihar
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UNIT- V

Q.No.1 Explain the National emergency and its effect

- Art 352: provides that if the president is satisfied that a grave emergency exists whereby the security of India or any part of India is threatened either by war, external aggression or armed rebellion.
- Actual occurrence of the events.
- Advice of the union cabinet(COM – PM).
- As regard the justifiability of the satisfaction of the president can be questioned before the court of law?
- **Minerva Mills V/S UOI**

Territorial extent of proclamation: either throughout the territory of India and any part of the India

- **Procedure:** the proclamation of emergency must be laid before each house of parliament & it shall cease to be in operation at the expiration of ONE MONTH.
- Unless before the expiry of one month it has been approved by resolution of both houses of parliament.

- Every such resolution must be passed by a special majority in each house & should be not less than 2/3 of these present & voting.
- **Duration:** 6 months.

Some instances:

- 1962 on the ground of external aggression(China).
- 1965 & 1971 on the ground of external aggression (Pakistan)
- 1971 & 1975 on the ground of internal disturbance.
- Prior to 44th amendment 1978 – Armed rebellion was substituted for the word internal disturbance.

Effect of proclamation emergency

- Art 353(b):Parliament empowered to legislate on state subject:
- Art 83(2): extension of life of the house of people.
- Art 354: union's power to alter distribution of revenue between the union & the state(Articles 268 279)
- Art 353: extension of the executive & legislative power of the union.
- Art 358: effect of fundamental rights guaranteed by Article 19.
- Art 359: suspension of the enforcement of the fundamental rights during emergency.
- Duty of the union to protect states(355)

II. Explain State emergency and its effects with special reference to S.R.Bommai V/S Union of India

- Due to failure of constitutional machinery.
 - 1) Break down of law & order
 - 2) Where no ministry could be formed
 - 3) Political instability as a result of defection
 - 4) Complete paralysis of the state administration
 - 5) Corruption & mal administration
 - 6) Where state government works against secularism

Procedure: the proclamation has to be placed before each house of parliament for approval.

It ceases to operate on the expiration of 2 months unless each house approves it by resolution.

Duration: 6 months

Beyond – election commission certified that there are difficulties in holding elections to state legislative assembly.

Effects:

- Governor exercised all power & functions.
- The president can declare that the power of the legislature of the state shall be exercised by or under the authority of the parliament.
- Promulgate ordinance.
- **S.R.Bommai V/S UOI:** president rule is subject to judicial review?
- Presidential proclamation dissolving a state legislative assembly is subject to JR.
- If a state government works against secularism president rule can be imposed.
- No wholesale dismissal of opposition ruled states government when a new political party assumes power at the center.
- If president rule is imposed only on political consideration the court can even restore the assembly.
- Imposition of president rule & dissolution of state assembly can not be done together.
- State assembly can be dissolved only after parliament approves central rule.
- The supreme court or HC can compel the union government to disclose material on whose basis president's rule is imposed on the state.
- The power of the president U/Art 356 is a constitutional power, it is not an absolute power. The existence of material is a pre condition to form the satisfaction to impose the president rule.

III. Financial emergency and its effects (Article 360)

- Financial stability
- Procedure: 2 months

Effects: 1) the union executive can give directions to any state to observe such canons of financial property as may be specified in the directions.

- 2) The president can ask the states to reduce to salaries & allowances of all or any class of persons serving in connections of the affairs of state.
- 3) The president can ask the states to reserve the money bill & other bills passed by the state legislature for his consideration.
- 4) The president may also direct for the reductions of salaries & allowances of all those serving under union including the judges of the SC & HC.

IV Amendment of the Constitution – Article 368

- Necessity of amending provisions in the constitution.
- Neither rigid nor flexible.
- For the purpose of amendment the various Articles of the constitution are divided into 3 categories:
 - 1) Amendment by simple majority: articles 5, 169, 239 A
 - 2) Amendment by special majority
 - 3) By special majority & ratification by states: Election of the president – Article 54 & 55

Extent of the executive powers of the union & states – Article 73 & 163

Articles dealing with judiciary, SC, HC in the states and Union territories – Articles 124 to 147, 214 to 231, 241.

Distribution of legislative powers between the centre & the state – Articles 245 to 255.

Any of the lists of the VIIth schedule

Representation of states in parliament IVth schedule

Article 368 itself.

Amendment of Fundamental Rights

- **Shankari Prasad V/S UOI**: 1st amendment Act 1951- articles 31- A & 31B.

- Take away or abridges the rights of Part III.
- SC held that amendment includes F R.
- Law includes only an ordinary law made in exercise of legislative powers & does not include constitutional amendment which is made in exercise of constituent power.
- Constitutional amendment will be valid even if it abridges of F.rights.

Sajjan singh V/S State of Rajasthan:

- 17th amendment Act 1964.
- Upheld the sankari prasad's case & held that the words amendment of the constitution means amendment of all the provisions of the constitution.
- Golak Nath V/S state of Punjab: acting under punjab security & land tenures act 1953 which was place in 9th schedule by 17th – state acts to 9th schedules.
- 6:5 prospectively over ruled.
- Subba rao :
- **Petitioner argument:** The Constitution of India as drafted by the Constituent Assembly is of permanent nature and no act which changes or tries to bring about a change is constitutional.
- The word 'amendment' only implies a change in accordance with the basic idea & not altogether a new idea.
- The Fundamental rights as provided under Part III cannot be taken away by an act of parliament of whatsoever nature because they are the essential & integral part of the Constitution without which Constitution is like a body without a soul.
- Article 368 only defines the procedure for amending the Constitution. It does not grant the power to parliament to amend the Constitution.
- Article 13(3)(a) in its definition of "law" will cover all types of law i.e. statutory or constitutional etc. in its ambit therefore by the virtue of Article 13(2), any constitutional amendment violative of Part III will be unconstitutional.

Respondent arguments:

- Constitutional Amendment is a result of the exercise of sovereign power & this exercise of sovereign power is different from the legislative power which Parliament exercises to make laws.
- The very object of the amendment is to change the laws of the nation as per the changing needs of the society. The absence of such provision would result in Constitution becoming too rigid.
- There is no hierarchy in the Constitutional provisions as basic or non-basic and all the provisions are of equal importance and equal status.
- Most of the amendments being the answers to political questions, they are outside the ambit of judicial scrutiny.
- **A.K. Golak nath V/S State of Punjab**

Prospective over ruling

- Sovereign power & supreme to the legislative power & did not permit the any implied limitations. Political question excludes the JR.
- Power of parliament to amend the constitution- article 245 R/W entry 97 of list I. Art 368 procedure for amendment.
- Amendment is a legislative procedure.
- Law includes amendment. article 13(2) includes every kind of law.
- Justice Hidayatullah, though writing a separately but agreed to CJI Subba Rao on the point that there is no difference between legislative and amending process.
- Prospective over ruling – 1st, 4th 17th valid.
- **After Golak nath case** On April 7, 1967, just two months after Golaknath judgment Nath Pai M.P. from Rajapur Constituency introduced a private member's bill into Parliament to indirectly overrule the decision. However, the bill failed to reach the floors of the house. The then Congress Government led by Indira Gandhi won the elections with a huge majority in 1971. The Indira Gandhi government with malicious

intent to overrule whatever was laid down in Golaknath passed the Constitutional 24th Amendment Act, 1971.

- **24th amendment Act 1971**
- Procedure for amendment of constitution
- Power of parliament to amend the constitution & procedure thereof.
- Art 368(3) (1) which provides that notwithstanding anything in this constitution ,parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provisions of this constitution in accordance with the procedure laid down in this article.
- Assent of the president.

Kesavananda Bharati Vs. State of Kerala

- His Holiness SripadGalvaru Kesavananda Bharati was chief of a religious sect in Kerala.
- The sect had certain lands acquired under its name. Some of these lands by virtue of Kerala Land Reforms Act, 1963 which was further amended by Kerala Land Reforms (Amendment) Act, 1969 were to be acquired by the state government to fulfill their socio-economic obligations.
- Therefore, on 21st March 1970 the petitioner moved to Apex Court u/a 32 for the enforcement of rights under Articles 25 (Right to practice and propagate religion), 26(Right to manage religious affairs), 14(Right to Equality), 19(1)(f) (Freedom to acquire property), 31(Compulsory Acquisition of Property).
- Meanwhile, when the petition was under consideration by the Court the State Government of Kerala passed Kerala Land Reforms (Amendment) Act, 1971.
- **25th amendment:** The parliament in order to clarify their stance that they are not bound to adequately compensate the landowners amended Article 31(2) in case there property is acquired by the state. The word “*amount*” was placed instead of compensation in the provision.
- Article 19(1)(f) was delinked from Article 31(2).

- Article 31 C, a new provision was added to the Constitution to remove all difficulties that
 - I. Articles 14, 19 & 31 are not to be applied to any law enacted under the fulfillment of objectives laid down under Article 39(b) & 39(c).
 - II. Any law to give effect to Article 39(b) & 39(c) will be immunized from court's intervention.

29th Amendment

- The 29th Amendment passed in the year 1972 had the effect of inserting The Kerala Land Reforms Act into IX Schedule which means it is outside the scope of judicial scrutiny.
- Since all these central amendments in one way or another saved the State amendments from being challenged in courts of law, along with the impugned provisions of Kerala Land Reforms Act, validity of 24th, 25th, & 29th Constitutional Amendments was also challenged.
- **Issue**
- Constitutional Validity of 24th Constitutional (Amendment), Act 1971
- Constitutional Validity of 25th Constitutional (Amendment), Act 1972
- Extent of Parliament's power to amend the Constitution
- Judgment: The court by a majority of 7:6 held that Parliament can amend any and every provision of the constitution subject to condition that such amendment does not violate Basic Structure of the constitution. The majority decision was delivered by S.M. Sikri CJI, K.S. Hegde, B.K. Mukherjea, J.M. Shelat, A.N. Grover, P. Jagmohan Reddy jj. & Khanna J. concurring with the majority. Whereas the minority opinions were written by A.N. Ray, D.G. Palekar, K.K. Mathew, M.H. Beg, S.N. Dwivedi & Y.V. Chandrachud. The minority bench though writing separate opinions, didn't concede to the fact that there are some provisions which are fundamental. They were reluctant to grant complete and unfettered authority to Parliament with respect to power of amendment.

- The 13 judges bench gave this landmark decision on 24 April, 1973 (on the day when the then CJI S.M. Sikri was to retire).
- **DOCTRINE OF BASIC STRUCTURE:**
- Supremacy of the constitution
- Rule of law
- Sovereignty, liberty and republic nature of Indian polity.
- Judicial review
- Harmony and Balance between fundamental rights and directive principles.
- Separation of power.
- Federal character.
- Parliamentary system.
- Rule of equality.
- Unity and integrity of the nation.
- Free and fair elections.
- Powers of SC under Article 32,136,142,147
- Power of HC under Article 226 and 227.
- Limited power of parliament to amend the constitution.
- Welfare state.
- Freedom and dignity of an individual.
- **Sikri:** Supremacy of the constitution
- Republican & democratic forms of the government
- Secular character
- SOP

- Federal character of constitution
 - **Shelat & grover:** Supremacy of the constitution
 - Republican & democratic forms of govt & sovereign of the country
 - Secular & federal character of the constitution
 - Demarcation of power b/w the organs of the govt
 - Unity & integrity of the nation
 - Dignity of the individual
 - **Hegde & Mukherjee** Sovereignty of India
 - Democratic character of our policy
 - The unity of the country
 - Individual freedom
 - Mandate to build a welfare state
 - **Mineral Mills Ltd V/S UOI** Limited power of parliament to amend the constitution
 - Harmony and balance between F.rights & DPSP
 - Fundamental rights in certain cases
 - Power of judicial review in certain cases
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