

# 1. analyze the Berubari union case by examining its detail and explain the intricacies of the case

- The Berubari Union case pertains to a territorial dispute between India and Pakistan, which was subsequently resolved through diplomatic means and a mutual agreement. Here is an analysis of the Berubari Union case, examining its details and intricacies:
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  - **\*\*Background:\*\***
    - - The Berubari Union is a small area situated on the border between India and East Pakistan (now Bangladesh).
    - - The issue arose in the context of the Radcliffe Award of 1947, which demarcated the boundaries between India and Pakistan during the partition.
    - - The Radcliffe Award left certain areas, including Berubari, undivided, and the details of the boundary in these areas were not clearly specified.
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  - **The Dispute:**
    - 1. Initial Dispute: The dispute over Berubari arose when India and Pakistan were unable to agree on the exact demarcation of the boundary in this region. Both countries claimed sovereignty / authority over Berubari.
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    - 2. Referral to the International Court of Justice (ICJ): In an attempt to resolve the dispute, India and Pakistan agreed to refer the matter to the ICJ in 1958. The ICJ was asked to determine the boundary in the Berubari Union area.
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    - 3. ICJ Decision (1960): The ICJ, in its decision in 1960, ruled that Berubari would be awarded to East Pakistan (now Bangladesh). However, this decision was not implemented.
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  - **Resolution and Agreement:**
    - - Realizing the complexities of the situation and the potential for diplomatic resolution, India and Pakistan engaged in bilateral talks to find an amicable solution.
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    - 1. Nehru-Noon Agreement (1960): In 1960, Indian Prime Minister Jawaharlal Nehru and Pakistani President Ayub Khan reached the Nehru-Noon Agreement. According to this agreement, it was decided that India would retain about 500 acres of Berubari, while the rest would go to East Pakistan.
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    - 2. Constitutional Amendment: To give effect to the Nehru-Noon Agreement, both countries had to make constitutional amendments. However, the proposed amendments faced opposition in both the Indian and Pakistani legislatures.
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- 3. Stalemate and Abandonment: Due to the political challenges in implementing the constitutional amendments, both countries faced a stalemate. Eventually, the agreements were not ratified, and the Nehru-Noon Agreement was effectively abandoned.
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- **Intricacies and Lessons:**
- 1. Political Sensitivities: The case highlights the intense political sensitivities associated with territorial disputes, especially in the aftermath of the partition.
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- 2. Role of Diplomacy: While the ICJ provided a legal avenue, the ultimate resolution came through diplomatic negotiations. The Nehru-Noon Agreement demonstrated the significance of direct talks between the parties involved.
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- 3. Domestic Opposition: The case underscores the challenges that leaders face in implementing international agreements, especially when they require constitutional amendments and face domestic political opposition.
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- 4. Legacy of Dispute: The Berubari case left a legacy, influencing subsequent diplomatic efforts between India and Pakistan. It serves as a historical reference point for understanding the complexities of border disputes.
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- In conclusion, the Berubari Union case is a complex episode in the history of India-Pakistan relations, marked by legal proceedings, diplomatic negotiations, and domestic political challenges. It sheds light on the intricate dynamics involved in resolving territorial disputes between nations.

## 2. keeping "Kesavananda Bharati Case" in mind, deduce why this case is said to have saved the Indian constitution?

The Kesavananda Bharati case, a turning point moment in Indian constitutional history, is widely regarded as the case that saved the Indian Constitution. Several factors contribute to this perception, highlighting the case's pivotal role in preserving the foundational principles of the Constitution:

### 1. Basic Structure Doctrine:

- The Kesavananda Bharati case established the Basic Structure principle, asserting that while Parliament has the power to amend the Constitution, it cannot alter its "basic structure."

- The recognition of the basic structure, comprising essential features like democracy, secularism, federalism, and the separation of powers, serves as a protective shield for the core principles of the Constitution.

## **2. Limitation on Parliamentary Powers:**

- The judgment imposed a limitation on the amending power of the Parliament under Article 368 of the Indian Constitution.
- By delineating boundaries on parliamentary authority, the case prevented the possibility of arbitrary amendments that could undermine the fundamental principles enshrined in the Constitution.

## **3. Overruling Golaknath Case:**

- Kesavananda Bharati effectively overruled the earlier decision in the Golaknath case (1967), which had asserted that Parliament had unrestricted power to amend any part of the Constitution, including fundamental rights.
- This reversal affirmed the idea that fundamental rights and other essential features are not subject to unchecked parliamentary discretion.

## **4. Judicial Review and Independence of Judiciary:**

- The case reaffirmed the role of the judiciary as the guardian of the Constitution and emphasized the need for an independent judiciary to protect the basic structure from legislative interference.
- By upholding the principle of judicial review, the case ensured that constitutional amendments would be scrutinized to prevent any violation of the basic structure.

## **5. Preservation of Constitutional Supremacy:**

- Kesavananda Bharati reinforced the supremacy of the Constitution as the supreme law of the land.
- The case underscored that no organ of the state, including the Parliament, could act in a manner that jeopardizes the overarching principles and values enshrined in the Constitution.

## **6. Impact on Subsequent Cases:**

- The doctrine laid down in Kesavananda Bharati has had a lasting impact on subsequent cases, serving as a precedent in various legal challenges related to constitutional amendments.

- The case set a precedent that continues to be invoked in the defense of constitutional principles, ensuring the enduring relevance of its principles.

In conclusion, the Kesavananda Bharati case is considered the savior of the Indian Constitution because it introduced the Basic Structure principle, imposed limitations on parliamentary powers, and affirmed the principles of judicial review and constitutional supremacy. The case played a pivotal role in safeguarding the foundational ethos of the Indian Constitution from arbitrary changes and ensuring its resilience in the face of evolving legal challenges.

### 3. How a President is impeached in India?

#### **\*\*1. Introduction:\*\***

- The impeachment process in India is a constitutional mechanism designed to remove the President from office in case of grave misconduct or violation of the Constitution.

- The procedure is outlined in Article 61 of the Indian Constitution.

#### **\*\*2. Initiating the Process:\*\***

- The impeachment process can be initiated in either house of Parliament, i.e., the Lok Sabha (House of the People) or the Rajya Sabha (Council of States).

- A notice of motion for the President's impeachment must be signed by at least one-fourth of the total members of the house in which it is introduced.

#### **\*\*3. Charges and Investigation:\*\***

- The notice of motion must contain the charges against the President and be presented to the presiding officer of the house.

- If the notice is found in order, the presiding officer may admit it, and a three-member committee is constituted to investigate the charges. The committee consists of the Chief Justice of India, and two other judges or persons as appointed by the President.

#### **\*\*4. Committee's Report:\*\***

- The committee conducts an investigation and presents its report to the house that initiated the impeachment process.

- If the committee finds the charges substantiated, the motion for impeachment is taken up for consideration in the house.

#### **\*\*5. Passing the Resolution:\*\***

- The impeachment resolution must be adopted by a special majority, which means a majority of the total membership of the house and a majority of not less than two-thirds of the members present and voting.
- If the resolution is adopted, the motion is then sent to the other house for consideration.

#### **\*\*6. Second House's Consideration:\*\***

- The motion is taken up for consideration in the second house (either Lok Sabha or Rajya Sabha).
- Again, a special majority is required for the motion to be adopted.

#### **\*\*7. President's Removal:\*\***

- If both houses pass the resolution with the requisite majority, the President stands impeached and ceases to hold office.
- The impeachment process is a political and constitutional act, and the decision is final without the involvement of any external authority, including the judiciary.

#### **\*\*8. No Judicial Intervention:\*\***

- Article 361 of the Indian Constitution explicitly states that the President shall not be answerable to any court for the exercise and performance of the powers and duties of the office.

#### **\*\*9. Historical Context:\*\***

- The impeachment process has never been used in India to remove a sitting President, making it an extraordinary and seldom-invoked constitutional provision.

#### **\*\*10. Conclusion:\*\***

- The impeachment process for the President in India is a rigorous and multi-stage procedure involving both houses of Parliament. It is designed to ensure that the removal of the President is based on serious charges and enjoys broad political consensus, thereby upholding the dignity and sanctity of the highest office in the land.

### **4. Write a short note on “Veto Power of the President of India?”**

#### **\*\*1. Introduction:\*\***

- The President of India, as the ceremonial head of the state and the highest constitutional authority, possesses certain powers, including the power to exercise a veto in the legislative process.

#### **\*\*2. Constitutional Basis:\*\***

- The President's veto power is derived from Article 111 of the Indian Constitution, which deals with the assent to bills passed by Parliament.

### **\*\*3. Types of Veto:\*\***

- The President's veto power can take three forms: the absolute veto, the suspensive veto, and the pocket veto.

- **\*\*Absolute Veto:\*\*** The President can withhold assent to a bill, preventing it from becoming law.

- **\*\*Suspensive Veto:\*\*** The President can return a bill, requesting reconsideration by the Parliament. If the Parliament passes it again, the President must give assent.

- **\*\*Pocket Veto:\*\*** If the President neither assents nor explicitly vetoes a bill, and simply keeps it without taking any action until the term of the Parliament expires, it is referred to as a pocket veto.

### **\*\*4. Constitutional Duties:\*\***

- The President's veto power is an integral part of the system of checks and balances, ensuring that legislation is thoroughly examined and aligns with constitutional principles.

### **\*\*5. Executive Discretion:\*\***

- While the President's veto power is considered a constitutional safeguard, its exercise is largely a matter of convention and executive discretion. The President generally acts on the advice of the Council of Ministers led by the Prime Minister.

### **\*\*6. Rarely Used:\*\***

- The President's veto power is rarely exercised, and instances of a bill being returned for reconsideration are infrequent in the history of independent India. This reflects the consultative and collaborative nature of Indian parliamentary democracy.

### **\*\*7. President's Role in Lawmaking:\*\***

- The President's role in the legislative process is not just limited to a formal approval or disapproval of bills. The President, through the veto power, can signal concerns about the constitutionality or prudence of proposed legislation.

### **\*\*8. Influence on Legislation:\*\***

- Even though the President's veto power is not frequently invoked, the awareness of this power serves as a factor influencing the legislative process. It encourages thorough deliberation and scrutiny of bills before they are presented for presidential assent.

### **\*\*9. Safeguarding Constitutional Principles:\*\***

- The veto power serves as a mechanism to safeguard the principles embedded in the Constitution. It prevents hasty or arbitrary legislation that might be inconsistent with the constitutional framework.

### **\*\*10. Conclusion:\*\***

- The veto power of the President of India is a crucial constitutional tool that ensures a careful and deliberate approach to lawmaking. While the power is seldom exercised, its presence contributes to the stability and integrity of India's parliamentary democracy by upholding the principles enshrined in the Constitution.