



CONSTITUTIONAL LAW, CYBER LAW, IP LAW AND PROFESSIONAL ETHICS

Unit 2: Federal System – Legislature, Executive and Judiciary

Constitutional Law, Cyber Law and Professional Ethics

Union Judiciary



Among the noble aims and objectives of the constitution, the founding fathers accorded the highest place to 'justice'. The preamble speaks of "we the people of India" resolving to secure "Justice- social, economic & political" to "all its citizens".

The juxta position of words and concepts in the preamble is important "Justice' is placed higher than the other principles of 'Liberty', Equality and Fraternity. Again, the preamble clearly enjoins precedence to social and economic justice over political justice.

The constitution lays down the structure, appointment, transfer and removal of judges and denies, delimits and demarcates the role and functions of every organ of the state including the judiciary. By all these, independence of judiciary is established.

"The Judiciary was to be an arm of the social revolution upholding the equality that Indians had longed for".

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Union Judiciary



- The Union Judiciary (Articles 124-147): Supreme Court stands at the Apex
- **Establishment and Constitution of Supreme Court:** There shall be a Supreme Court of India consisting of a **Chief Justice** of India and, until Parliament by law prescribes a larger number, of **not more than seven other Judges (now increased to 30)**
- Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty- five years

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- Hold office – Till the age of sixty-five years:
- Resign or Removed in the manner provided
- Qualification to appoint Judges of the S.C. of India
 - ❖ He is a **citizen of India**
 - ❖ has been for at least **five years a Judge of a High Court** or of two or more such Courts in succession
 - ❖ has been for at least **ten years an advocate** of a High Court or of two or more such courts in succession
 - ❖ is, in the opinion of the President, a **distinguished jurist**

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Union Judiciary



Apart from the above mentioned qualifications expressly prescribed by the Constitution, the implied qualifications required are: unimpeachable character and integrity; impartiality, independence; equanimity; incorruptibility.

As stated under Art.124 (2), a judge of the Supreme court shall hold an office until he attains the age of sixty-five years. He may **resign** before the age of retirement by addressing his **letter of resignation to the president.**

Article 124 (4)- Impeachment :

- Order of the President
- Passed after an address by each House of Parliament
- Supported by a majority two-thirds of the members of the House present and voting
- Ground - proved misbehavior or incapacity.

Impeachment proceedings were initiated against a Supreme Court or High Court Judge **4 times** in the history of the Supreme Court of India.

V. Ramaswami J was the first judge against whom impeachment proceedings were initiated. In 1993, the motion was brought up in Lok Sabha but failed to secure the required two-thirds majority.

Soumitra Sen J of the Calcutta High Court resigned in 2011 after the Rajya Sabha passed an impeachment motion against him. He was the **first judge** to have been impeached by the Upper House for **misconduct**.

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In 2015, 58 members of the Rajya Sabha moved an impeachment notice against **J.B. Pardiwala J** of the Gujarat High Court for his “**objectionable remarks on the issue of reservation.**”

In 2017, Rajya Sabha MPs moved a motion to initiate impeachment proceedings against **C.V. Nagarjuna Reddy J** of the High Court for Andhra Pradesh and Telangana.

In March 2018, opposition parties signed a draft proposal for moving an impeachment motion against **Dipak Misra CJI**.

JURISDICTION, POWERS AND FUNCTIONS OF THE SUPREME COURT

The jurisdiction of the Supreme Court under the constitution is vast. It is the apex court of appeal in respect of all the matters. The apex court is conferred with the following powers Power to Enforce Fundamental Rights (Art.32):

Article 32 - Remedies for enforcement of rights conferred by this Part

(1) The **right to move** the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed

(2) The Supreme Court shall have **power to issue directions or orders or writs**, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part

JURISDICTION, POWERS AND FUNCTIONS OF THE SUPREME COURT

(3) Without prejudice to the powers conferred on the Supreme Court by clause (1) and (2), Parliament may by law **empower any other court to exercise within the** local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

4) The right guaranteed by this article shall **not be suspended** except as otherwise provided for by this Constitution.

- **Article 129: Supreme Court to be Court of Record** : - Power to punish for contempt of itself.

A court of record has

- 1) Power to determine **its own jurisdiction** and
- 2) It has power to **punish for its contempt**.

Article 32: Enforcement of Fundamental Rights:. Under article 32 every citizen has a right to move the Supreme Court for the enforcement of the Fundamental Rights.

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- **Jurisdiction of the Supreme Court:**

- a) **Original Jurisdiction (Article 131):**

The Supreme Court has **got original and exclusive** jurisdiction in any dispute -

- between the Government of India and one or more States, or
 - between the Government of India and any State or States on one side and one or more other States on the other, or
 - between the two or more States.

- b) **Appellate Jurisdiction:** Article 132 confers Appellate jurisdiction of Supreme Court in appeals from High Courts in certain cases.

- Only if High court certifies that there is substantive question of law with respect to Constitution of India.

Article 133: Appellate jurisdiction of Supreme Court in appeal from High Courts in regard to civil matter:

- High Court certifies that the case involves a substantial question of law

Article 134: Appellate jurisdiction of Supreme Court in regard to criminal matters: If the High Court-

- a) has on appeal reversed an order of acquittal of an accused person and sentenced him to death
- b) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death
- c) certifies that the case is a fit one for appeal to the Supreme Court.

Article 136: Special leave to appeal by the Supreme Court: The Supreme Court - in its discretion grant special leave to appeal from any judgment, decree, determination, sentence or order in any matter passed by any court or tribunal in the territory of India.

Article 137: Review of judgements or orders by the Supreme Court.
grounds-

- (a) discovery of new and important matter of evidence,
- (b) mistake or error apparent on the face of the records,
- (c) any other sufficient reason

Article 141. Law declared by the Supreme Court to be binding on all courts: The law declared by the Supreme Court shall be binding on all courts within the territory of India.

Advisory jurisdiction Article 143 - Power of President to consult Supreme Court

- (1) If at any time it appears to the President that a question of law or fact has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to that Court for consideration and the Court may, after such hearing as it thinks fit, report to the President its opinion thereon.

Such advisory opinion of the Supreme Court may be rendered at the instance of the president of India which may enable parliament to pass appropriate legislation or to introspect and effect suitable amendments to the existing law.

- The High Court of a State is the **highest court of the State** and **all other courts of the State work under it.**
- Normally there is one High Court in every State but there can be **only one High Court for two or more States as well according to the constitution.**
- In every High Court, there is a Chief Justice and many other judges whose number is defined by the President of India.
- The Chief Justice of a High Court is appointed by the President with the consultation of the **Chief Justice of the Supreme Court and the Governor of the State.**
- The other judges are appointed by the will of President, Governor and the Chief Justice of High Court

- The High Court is vested with wide powers and functions.
- Every High Court has the power to issue writs of habeus corpus, mandamus, prohibition, quo-warranto and certiorari for the enforcement of Fundamental Rights or for other purpose.
- It has the power of Superintendence over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction.
- The High Court is consulted by the Governor in the appointment, posting and promotion of District Judges. It is also consulted in the appointment of other members of the State Judicial Service.
- The control over district court and courts subordinate thereto including the posting and promotion of and the grant of leave to persons belonging to the judicial service of a State and holding any post inferior to the post of district judge is vested in the High Court.

- A judge of the High Court should be a:
 - ☐ Citizen of India,
 - ☐ Holding a judicial office for not less than 10 years in a territory of India,
 - ☐ An advocate of the High Court for at least 10 years in succession.
 - ☐ The judges and the Chief Justice of the High Courts are appointed officially by the President.

- ☐ The Chief Justice - appointed by the President in consultation with Chief Justice of India and Governor.
- ☐ A judge of the High Court holds his office until he attains the age of 62
- ☐ If he wants to resign, he can resign by writing to the president
- ☐ He can also be removed by the President on the recommendation of the Parliament.
- ☐ A High Court judge after retirement can practice either in Supreme or High Court in which he has not served.

Article 219 - Oath or affirmation by Judges of High Courts

- Every person appointed to be a Judge of a High Court shall, before he enters upon his office, **make and subscribe before the Governor of the State**, or some person appointed in that **behalf by him**, an oath or affirmation according to the form set out for the purpose in the **Third Schedule**.
- The judge is called upon to take oath according to Article 219 wherein he is required to bear **true faith and allegiance** to the Constitution. Also the judge is bound to perform the **duties unbiased**, in good will and without favouritism. The oath propagates that the judge **shall uphold the Constitution and the laws**.

Process of Removal of Judges

- Recommendation of the Parliament on grounds of proved incapacity or misbehavior.
- A motion to remove the judge of HC can be introduced in any house of parliament. It must be introduced by at least 100 members in Lok sabha or 50 members in Rajya Sabha whenever it is introduced.
- The Speaker or Chairman may reject this proposal or set up a 3 member committee to investigate the concerns.
- When the committee finds him guilty, then the motion has to be passed by both houses by a special majority. Then, the President gives his assent and Judge of HC is removed.

- The High Court is consulted by the Governor in the appointment, posting and promotion of District Judges. It is also consulted in the appointment of other members of the State Judicial Service.
- The control over district court and courts subordinate thereto including the posting and promotion of and the grant of leave to persons belonging to the judicial service of a State and holding any post inferior to the post of district judge is vested in the High Court.
- High Court has original and appellate jurisdiction in civil and criminal matters as conferred by the Codes of Civil and Criminal Procedure and the Letters of Patent.

Article 226 : Power of High Courts to issue certain writs

Article 226 also enables the High Courts to issue to any person or authority, any government, orders or writs in the nature of Writ of Habeas Corpus,

- Writ of Mandamus,
- Writ of Certiorari,
- Writ of Prohibition and
- Writ of Quo Warranto.

CONSTITUTIONAL LAW, CYBER LAW AND PROFESSIONAL ETHICS



EMERGENCY



EMERGENCY (ARTICLE 352 to 360)



Emergency Provisions:

A novel feature of the Indian Constitution is the way in which the normal peace-time federalism, can be adopted to an emergency situation. The framers of the Constitution felt that, in an emergency, the **Centre should have overriding powers to control and direct all aspects of administration and legislation throughout the country.**

The Indian Constitution envisages three types of emergencies-

1. **Emergency arising from a threat to security of India or any part of its territory;**
2. **Failure of Constitutional Machinery in a State;**
3. **Financial Emergency**

EMERGENCY (ARTICLE 352 to 360)



Need For Emergency

It occurs whenever there is imbalance within the Country, whether wholly or partly.

Ultimate aim of government is to secure good life & safe life to its citizen.

If we analyse the ex 1, 2 & 3"emergency in all the cases. The social equilibrium of the country was imbalanced and security of the citizen was on the threat.

In order to secure their good life, union becomes more powerful.

The main moto behind it is welfare state -> greatest the happiness to greatest the number.

EMERGENCY (ARTICLE 352 to 360)



- ☐ **National Emergency (352):** If the President is satisfied that a grave emergency exists whereby the security of India or any part of its territory is threatened by **war, external aggression or armed rebellion**, he may proclaim a state of emergency under Article 352.
- ☐ No such proclamation can be made by the President until Union Ministers headed by the Prime Minister, recommend to the President that such a proclamation should be issued.
- ☐ The proclamation may be revoked subsequently;
- ☐ If not, it shall be laid before both Houses of Parliament. If Parliament does not approve of it within **one month**, it will become invalid.
- ☐ So far, there have been three occasions when emergency of the first category was proclaimed by the President: 1962 (Chinese aggression), 1971 (Indo-Pakistan war before the formation of Bangladesh) and 1975 (internal emergency).

EMERGENCY (ARTICLE 352 to 360)



- ❑ **State Emergency (356):** If the President is satisfied on receipt of a report from the Governor or otherwise that a situation has arisen in which the Government of a State cannot be carried on in accordance with the provisions of the Constitution, he can proclaim an emergency under Article 356 and 365.
- ❑ As a result,
 - ❖ He may assume to himself all or any of the functions of the State or he may vest all or any of those functions in the Governor or any other executive authority; or
 - ❖ He may declare that the powers of the State legislature shall be exercisable by Parliament; or
 - ❖ he may make any other incidental or consequential provisions necessary to give effect to the objects of the Proclamation

EMERGENCY (ARTICLE 352 to 360)

- ❑ The proclamation may be revoked subsequently; if not, it shall be laid before both Houses of Parliament, if Parliament does not approve of it within **two months**, it will become ineffective.

- ❑ During the period of emergency, - the State is empowered to suspend the Fundamental Rights guaranteed under Article 19 of the Indian Constitution.

EMERGENCY (ARTICLE 352 to 360)



- ❑ **Financial Emergency (ARTICLE 360):** If the President is satisfied that a situation has arisen whereby the financial stability or credit of India or any part of it is threatened, he may declare a financial emergency under Article 360. The proclamation in this case also should be approved by Parliament as in the other two cases of emergency.
- ❑ When such a proclamation is in operation, the centre can give directions to any State to observe such canons of financial propriety as may be specified in the directions. It may also give such other directions as the President may deem necessary and adequate for the purpose. Any such directions may provide for the reduction of salaries and allowances of all or any class of persons serving in the State.

EMERGENCY (ARTICLE 352)



The 44th Amendment makes article 360 self-contained. It provides that the proclamation of financial emergency will cease to be in operation at the expiry of two months unless it has been approved by both Houses of Parliament. Such a proclamation may be revoked or varied by the President by a subsequent proclamation. But if the Lok Sabha is dissolved during the period of two months and resolution is approved by the Rajya Sabha, but not by the Lok Sabha the proclamation shall cease to operate at the expiry of 30 days from the date on which the new Lok Sabha sits unless before the expiry of 30 days a resolution approving proclamation is passed by the Lok Sabha.

The duration of a proclamation of financial emergency will be in operation for two months and unless approved by President it shall cease to operate at the expiry of two months' period.

CONSTITUTIONAL LAW, CYBER LAW AND PROFESSIONAL ETHICS

AMENDMENT OF CONSTITUTION OF INDIA



AMENDMENT OF CONSTITUTION

- ❑ The Indian Constitution came into force on 26th January 1950. The provisions of the constitution were so designed to meet the social, economic conditions prevailing at that time. To meet the changing conditions, there shall be an appropriate mechanism to alter the provisions of the constitution. Such mechanism is called the “Amendment of the Constitution”.
- ❑ **Amendment of the Constitution is done under Article 368**

Procedure for Amendment

- ❑ An amendment to the Constitution of India may be allowed by the introduction of a Bill for the purpose in either House of the Parliament (Lok Sabha or Rajya Sabha). The bill has to be passed in each house by a majority, which is more than 50% of the total membership of that House and by a majority of not less than two-thirds of the members of the House present and voting.
- ❑ Then the Bill goes to the President of India for his assent and when such assent is given, the Bill becomes an Act.

AMENDMENT OF CONSTITUTION



After acquiring the majority, the Bill is presented to the President who will then give his assent to the Bill.

- ❑ In the case of amendment of provisions mentioned in Article 368, It needs to be ratified by not less than half of the states. Ratification should be done by a resolution passed by the state legislature.

Basic Structure: The Basic Structure Doctrine states there are certain fundamental structures and founding principles of the constitution which make the backbone of the constitution. In simple terms, they are ideologies of the constitution which are essential for the survival of the constitution

AMENDMENT OF CONSTITUTION



Landmark Supreme Court judgments

Shankari Prasad v. Union of India (AIR 1951 SC 455) was the first time when the question of whether Fundamental Rights enshrined under Part III of the Constitution of India, can be amended under Article 368. The Five Judge Bench had stated, Article 368 provides for general and strict power to the Parliament of India to amend the Constitution.

AMENDMENT OF CONSTITUTION



Golaknath v. State of Punjab (1967 AIR 1643) was the case where three amendments, namely, the first, fourth, and seventeenth amendments, were challenged. The bench had eleven judges out of which the majority six-judge bench held that **Part 3 of the Constitution (Fundamental Rights) could not be amended by the Parliament of India.**

Keshvananda Bharati v. Union of India (1973) 4 SCC 225 was a landmark case where for the first time, the Supreme Court brought in the doctrine of Basic Structure. The court overruled the judgment of the Golaknath case, The apex court held that article 368 of the Constitution does not empower the Parliament to change, damage, or alter the basic structure of the Constitution of India. The Preamble is actually the basic structure of the Constitution of India.

42nd Amendment

42nd Amendment to the Constitution of India added the words “secular” and “socialist” to the Constitution of India and added clause 4 and 5 to Article 368. This amendment recognized the ultimate power of the Parliament in amending the Constitution of India even after the Supreme Court judgments of Keshvananda Bharati and Raj Narayan.

Recent Trends and Constitutional Development-

Basic Structure



Recent trends in India's constitutional development show the basic structure doctrine is increasingly important for protecting core constitutional principles from amendment.

The Supreme Court, establishing this doctrine in the Kesavanada Bharati (1973), acts to safeguard foundational aspects like **Constitutional Supremacy, rule of law, judicial review and Secularism** though the exact boundaries remain subject to judicial interpretation and debate. This ongoing evolution highlights the tension between adapting to societal changes and preserving the Indian Constitution's enduring integrity.

Recent Trends and Constitutional Development- Basic Structure



Key Aspects of the Basic Structure Doctrine

- **Protective Mechanism:**

The doctrine acts as a legal shield, preventing Parliament from altering the Constitution's fundamental features.

- **Judicial Review:**

The Supreme Court can review and strike down constitutional amendments that violate the Constitution's basic structure.

- **Core Principles:**

Commonly accepted elements of the basic structure include constitutional supremacy, rule of law, judicial review, separation of powers, federalism, secularism, and the protection of fundamental rights.

Recent Trends and Constitutional Development- Basic Structure



Recent Trends and Developments

- **Continuing Judicial Scrutiny:**

The doctrine continues to be applied by the Supreme Court, with judgments often debating the scope of what constitutes the "basic structure".

- **Balancing Evolution and Preservation:**

There is an ongoing need for the Constitution to adapt to changing societal needs while maintaining its core values and principles.

- **Potential for Debate:**

While the doctrine is widely accepted, its applicability to ordinary legislation (not just amendments) and the precise definition of its components are subjects of ongoing legal discussion.

Recent Trends and Constitutional Development- Basic Structure



Significance

- **Safeguarding Democracy:**

The basic structure doctrine serves to protect the democratic foundations of the Indian Constitution from potential abuse of power.

- **Ensuring Stability:**

By preserving the Constitution's fundamental integrity, the doctrine contributes to the stability of the Indian legal and political landscape.

- **Evolution of Constitutional Law:**

The doctrine has profoundly influenced Indian constitutional law, acting as a "most potent tool" for maintaining checks and balances within the democratic system

Article 370 gave *special status* to Jammu & Kashmir.

In 2019, the Union Government abrogated it through **Presidential Orders & Parliamentary Resolutions.**

After repealing Article 370, the entire Indian Constitution extended to Jammu and Kashmir.

Basic Structure angle:

Critics argued it violated **federalism**, which is part of the Basic Structure.

The Supreme Court (2023 judgment) upheld the abrogation, stating that **federalism in India is asymmetric** and Parliament acted within its powers.

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THANK YOU

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